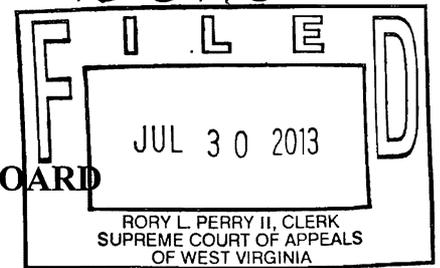


**BEFORE THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA**



**In Re:** David S. Hart, a member of  
The West Virginia State Bar

**Bar No.:** 7976  
**I.D. Nos.:** 11-01-496,12-01-111,  
12-01-421, 12-01-485,  
12-01-498,12-01-500

---

---

**STATEMENT OF CHARGES**

---

---

**To:** David S. Hart, Esquire  
Hayden & Hart PLLC  
102 McCreery Street  
Beckley, West Virginia 25801

**YOU ARE HEREBY** notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

1. David S. Hart (hereinafter "Respondent") is a lawyer practicing in Beckley, which is located in Raleigh County, West Virginia. Respondent was admitted to The West Virginia State Bar on September 29, 1999, by successful completion of the Bar examination. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

**COUNT I**  
**I.D. No. 11-01-496**  
**Complaint of Greta J. Walker**

2. Complainant Greta Walker filed a complaint against Respondent on or about October 20, 2011. Complainant retained Respondent to represent her in a divorce case which involved a Qualified Domestic Relations Order (QDRO) regarding a 401(k) account allegedly held by her ex-husband with American Century Investments.
3. A Temporary Order was issued in the divorce case on or about August 27, 2007, prohibiting both parties from making “any withdrawal from any retirement account, 401(k), pension or other such retirement account held by that party and in that party’s name as a result of any period of employment during the parties’ marriage. The [ex-husband] shall specifically be barred from making any additional withdrawal from the 401(k) account held by [the ex-husband] that had an approximate balance of \$48,200.49 at the time of the parties’ separation. [Complainant] shall cause a copy of the Temporary Order to be mailed to the administrator of the [ex-husband’s] 401(k) account to ensure that no further distributions are made from the said account.” However, Complainant alleged that Respondent failed to forward the order freezing the account.
4. The Final Order in the matter also stated that Complainant was “entitled to an equitable distribution of the [ex-husband’s] 401(k) account, with [Complainant] being entitled to receive an amount equal to one-half of the money or assets held in the

401(k) account at the time of the parties' separation on June 2, 2007. Counsel for the [Complainant] shall be responsible for the preparation of a Qualified Domestic Relations Order necessary for the division of the [ex-husband's] 401(k).” Complainant alleged that Respondent failed to prepare the QDRO, therefore she has been unable to receive her equitable share from the 401(k).

5. Complainant alleged that she contacted Respondent on numerous occasions to discuss this situation but that he did not return her telephone calls. She stated that she has attempted to obtain information about the matter herself, but has repeatedly been told to contact her attorney.
6. By letter dated October 28, 2011, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response to the ethics complaint within twenty (20) days.
7. After receiving no response, on or about December 7, 2011, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by December 20, 2011, and advising him that his failure to do so may result in a subpoena *duces tecum* being issued for his appearance at the Office of Disciplinary Counsel for a sworn statement, or the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. The Return Receipt indicated that this letter was delivered on or about December 8, 2011.

8. On December 22, 2011, Respondent requested an additional ten (10) days to provide his response. This request was granted.
9. On or about January 3, 2012, Respondent provided a verified response to the complaint. Respondent stated that Complainant, not Respondent, was to provide a copy of the Temporary Order to the investment account holder, American Century, in order to advise the investment account holder that the account was frozen. Respondent maintained that Complainant had all of the information regarding the account at that time.
10. After the Final Order was issued, Respondent stated that he attempted to prepare the QDRO, but there were problems. However, Respondent was unable to recall any specific problems and had no notes or correspondence with American Century, but he stated that he would contact American Century in order to obtain information regarding dividing the account and will forward that information upon its receipt.
11. Respondent stated that he had not heard from Complainant for quite some time, but stated that she could have made an appointment with his office to discuss the matter if he was unavailable when she called.
12. On or about March 15, 2012, the Office of Disciplinary Counsel requested a status update from Respondent regarding his progress in completing the QDRO, as well as copies of any correspondence directed to American Century regarding the same.

13. After receiving no response from Respondent, on or about May 22, 2012, the Office of Disciplinary Counsel again requested that Respondent provide a status update and copies of correspondence with American Century via certified mail. Respondent was advised that the request was a lawful demand for information within the meaning of Rule 8.1(b) of the Rules of Professional Conduct. The Return Receipt was returned on or about May 24, 2012, indicating that this letter was received. Respondent again failed to respond.
14. Disciplinary Counsel caused a subpoena *duces tecum* to be issued for Respondent's appearance at the Office of Disciplinary Counsel on August 30, 2012, to give a sworn statement concerning this matters.
15. During his August 30, 2012 sworn statement, Respondent stated that he had informed Complainant that she needed to provide the Temporary Order to the account administrator, because she had the information regarding the account at the time.
16. Respondent said that one of his assistants had been working on this matter and that he believed the assistant had spoken to American Century. But the assistant had left his employment in March of 2012, and he was unsure if the Temporary Order had actually been sent. Respondent said he believed the assistant had sent a draft of the QDRO to American Century to determine whether the account would be sufficient to divide, but he had not been informed that the money had been removed since the time the Order was entered. Respondent also said that Complainant's file had been located

while cleaning out the assistant's office. When he reviewed the file after it was "found," he realized that the QDRO had not been entered. Respondent said that the plan administrators were not cooperating and that this would make the order more difficult to enter. Respondent stated that the QDRO just needed to be submitted to the Court and to the ex-husband's attorney advising of the submission of the QDRO, and that he planned to do that as well as contact Complainant.

17. When questioned about his lack of response to letters from this Office, Respondent admits that "there's no good reason why I didn't [respond]."
18. On or about November 7, 2012, Complainant notified the Office of Disciplinary Counsel that Respondent had submitted the QDRO, but she had also received a letter from American Century stating that there were no investments with their company. Complainant contacted American Century, and was told the account was with JPMorgan Retirement Plan Services. Complainant attempted to contact Respondent, in order to pass along this information, but said she has not been successful in having Respondent return her calls.
19. On or about December 17, 2012, a copy of Complainant's letter was forwarded to Respondent requesting his response within ten (10) days.
20. On or about January 17, 2013, the Office of Disciplinary Counsel again requested Respondent to reply to Complainant's letter via certified mail. Respondent was advised that the request was a lawful demand for information within the meaning of

Rule 8.1(b) of the Rules of Professional Conduct. The Return Receipt indicated that this letter was received on or about January 18, 2013.

21. To date, Respondent has not responded.
22. Because Respondent failed to act with reasonable diligence by failing to pursue the entry of the QDRO on Complainant Walker's behalf, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides as follows:

**Rule 1.3. Diligence.**

A lawyer shall act with reasonable diligence and promptness in representing a client.

23. Because he failed to keep Complainant Walker reasonably informed about the status of the matter and failed to promptly comply with her reasonable requests for information about her case, Respondent has violated Rule 1.4(a) and Rule 1.4(b) of the Rules of Professional Conduct, which provide as follows:

**Rule 1.4. Communication.**

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

24. Because he failed to comply with the Office of Disciplinary Counsel's lawful requests for information, Respondent has violated Rule 8.1(b) of the Rules of Professional Conduct, which provides as follows:

**Rule 8.1. Bar admission and disciplinary matters.**

[A] lawyer in connection with . . . a disciplinary matter, shall not:

\* \* \*

(b) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

**COUNT II**

**I.D. No. 12-01-111**

**Complaint of Orban H. Schlatman, Jr.**

25. Complainant Orban Schlatman, Jr., hired Respondent in approximately May of 2010 to file an appeal of a criminal conviction. Complainant paid Respondent a retainer fee of Seven Thousand Five Hundred Dollars (\$7,500.00). Complainant alleged that the first appeal Respondent filed was filed too late. Complainant was resentenced on or about October 19, 2011, and on or about November 21, 2011, Respondent filed a Notice of Intent to Appeal. However, Complainant filed his complaint against Respondent on or about February 24, 2012, because no appeal had yet been filed with the Supreme Court of Appeals of West Virginia. Complainant stated that he has attempted to call Respondent numerous times, and also his wife, Mrs. Sadie E. Schlatman has attempted to call Respondent, but they have had little success in reaching Respondent to discuss the matter. Complainant said that Respondent has told them that the appeal has been filed, however when they call the Supreme Court, they are informed that no Appeal has been filed.

26. By letter dated February 27, 2012, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response to the ethics complaint within twenty (20) days.
27. After receiving no response, on or about April 13, 2012, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by April 25, 2012, and advising him that his failure to do so may result in a subpoena *duces tecum* being issued for his appearance at the Office of Disciplinary Counsel for a sworn statement, or the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. The Return Receipt indicated that this letter was delivered on or about April 17, 2012.
28. On or about May 3, 2012, Respondent provided a verified response. Respondent acknowledged that he missed the first deadline for filing an appeal, and therefore he filed a motion with the Supreme Court to extend the time of the petition. Once the Supreme Court remanded the matter back to the Circuit Court, Respondent prepared an Order resentencing Complainant. Respondent then filed a second Notice of Appeal with the Circuit Court. Respondent said he later realized that the Notice should have been filed with the Supreme Court. Respondent stated that he then filed the Notice with the Supreme Court and along with second Motion to Extend Time to recognize the improper filing of the Notice of Appeal. At the time he filed his

response, Respondent indicated that he had not yet received any response from the Supreme Court regarding this matter. Finally, Respondent stated that he provided Complainant with copies of the filings.

29. Respondent maintained that he has spoken with Complainant and Complainant's wife on several occasions.
30. Respondent also offered to keep the Office of Disciplinary Counsel updated on the status of the matter.
31. On or about June 25, 2012, Complainant sent a letter stating that Respondent has sent him copies of the filings. However, his wife was told by the Supreme Court that they had sent Respondent a form to complete and send back within thirty (30) days, but Respondent failed to do so. Complainant alleged that Respondent lied about the Appeal, and pointed out that it has been two years, and not one appeal has been properly filed.
32. On or about June 25, 2012, a copy of Complainant's letter was sent to Respondent, requesting a response within ten (10) days. Respondent was also advised that the request was a lawful demand for information within the meaning of Rule 8.1(b) of the Rules of Professional Conduct. Respondent failed to respond.
33. On or about August 13, 2012, via certified mail, the Office of Disciplinary Counsel again requested that Respondent reply to Complainant's letter by August 24, 2012. The Return Receipt was received on or about August 16, 2012, indicating that this

- letter was received. Respondent was again advised that the request was a lawful demand for information within the meaning of Rule 8.1(b) of the Rules of Professional Conduct and that failure to respond could result in disciplinary action.
34. On or about September 11, 2012, Respondent notified this Office that he was awaiting entry of a second Order resentencing Complaint. Once it is entered, Respondent stated that he will re-file the previously prepared Notice of Appeal on Complainant's behalf. Respondent stated that he has informed Complainant of these developments.
  35. On or about December 17, 2012, this Office requested a status update from Respondent, requesting a replay within ten (10) days.
  36. On or about January 17, 2013, the Office of Disciplinary Counsel again requested a status update from Respondent via certified mail. The Return Receipt indicates that this letter was received on or about January 18, 2013.
  37. On or about February 14, 2013, Complainant notified the Office of Disciplinary Counsel that Respondent has blocked Complainant's calls. Complainant stated that Mrs. Schlatman contacted the Supreme Court and was informed that no appeal has been filed.
  38. On or about February 20, 2013, the Office of Disciplinary Counsel contacted the Supreme Court of Appeals of West Virginia to inquire about the status of Complainant's appeal. The Office was informed that nothing has been filed on behalf of Complainant.

39. A copy of Complainant's letter was sent to Respondent on or about February 20, 2013 via certified mail. The Return Receipt indicated that this letter was received on or about February 21, 2012.
40. On or about March 6, 2013, Respondent informed the Office of Disciplinary Counsel that Complainant's appeal was perfected on or about February 25, 2013. Respondent stated that he "has provided Complainant a copy of the Brief of the Petitioner and various volumes of the Appendix of Exhibits in this matter." Respondent stated that he will forward Complainant the other information he has requested.
41. Because he neglected Complainant Schlatman's case and failed to properly file at least two appeals of Complainant Schlatman's criminal conviction, Respondent has violated Rules 1.1 and 1.3 of the Rules of Professional Conduct which provide as follows:

**Rule 1.1. Competence.**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**Rule 1.3. Diligence.**

A lawyer shall act with reasonable diligence and promptness in representing a client.

42. Because Respondent failed to keep Complainant Schlatman informed as to the status of the matter and failed to respond to his and his wife's requests for information,

Respondent has violated Rules 1.4(a) and 1.4(b) of the Rules of Professional Conduct, as set forth above.

43. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with Complainant Schlatman's objective, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

**Rule 3.2. Expediting litigation.**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

**COUNT III**

**I.D. No. 12-01-421**

**Complaint of Tony R. Henderson, Jr.**

44. Complainant Tony Henderson Jr., filed a complaint with the Office of Disciplinary Counsel on or about July 24, 2012. Complainant retained Respondent to represent him in a child support case in or about March 2011. Complainant alleged that Respondent neglected the matter and failed to respond to requests for information about the case. On or about June 27, 2012, Complainant terminated Respondent's representation and he requested a refund of the retainer fee he had paid. Complainant stated that he received only One Thousand Dollars (\$1,000.00) back from Respondent out of Three Thousand Five Hundred (\$3,500.00). Complainant also requested an

accounting of the fee, but has not received anything from Respondent. Finally, Complainant was concerned that time limitations in his case may have expired.

45. By letter dated July 30, 2012, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response to the ethics complaint within twenty (20) days.
46. On or about August 30, 2012, Complainant faxed additional correspondence to the Office of Disciplinary Counsel. Complainant stated that he also paid Four Thousand Dollars (\$4,000.00) to Respondent on or about February 22, 2011, and another payment of Three Thousand Seven Hundred Fifty Dollars (\$3,750.00) on or about March 22, 2012. Complainant again requested an accounting of these payments. Complainant also stated that Respondent ignored numerous phone messages and e-mail messages, and canceled numerous scheduled meetings. Finally, Complainant alleged that Respondent did not provide a diligent defense in the matter and allowed statutes to expire.
47. After receiving no response, on or about September 28, 2012, the Office of Disciplinary Counsel sent a second letter, along with a copy of Complainant's additional correspondence, by certified and first class mail directing Respondent to file a response by October 8, 2012, and advising him that his failure to do so may result in a subpoena *duces tecum* being issued for his appearance at the Office of Disciplinary Counsel for a sworn statement, or the allegations in the complaint would

- be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. The Return Receipt for this letter was received by the Office of Disciplinary Counsel<sup>1</sup> indicating that this letter was received by Respondent.
48. On or about December 17, 2012, this Office again sent a letter to Respondent via certified mail notifying him of the complaint. The Return Receipt indicates that this letter was received on or about December 19, 2012.
49. To date, Respondent has not filed any response in this matter.
50. Because he failed to act with reasonable diligence by failing to pursue Complainant Henderson's child support matter in a timely manner, Respondent has violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.
51. Because he failed to keep Complainant Henderson reasonably informed about the status of the matter and failed to promptly comply with Complainant Henderson's reasonable requests for information, Respondent has violated Rule 1.4(a) and Rule 1.4(b) of the Rules of Professional Conduct, as set forth above.
52. Because he failed to produce an accounting and/or itemized statement detailing Complainant's account as requested, he has violated Rule 1.15(c) of the Rules of Professional Conduct, which provides as follows:

**Rule 1.15. Safekeeping property.**

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another

---

<sup>1</sup>The date stamp on this Return Receipt is illegible.

person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion that is in dispute shall be kept separate by the lawyer until dispute is resolved.

53. Because he failed to return any unearned portion of the fee paid to him by Complainant Henderson, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows:

**Rule 1.16 Declining or terminating representation**

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

54. Because Respondent failed to comply with the Office of Disciplinary Counsel's lawful requests for information, he has violated Rule 8.1(b) of the Rules of Professional Conduct, as set forth above.

**COUNT IV**

**I.D. No. 12-01-485**

**Complaint of Casey M. Johnson**

55. Respondent had represented Complainant Casey Johnson in a divorce case. Complainant then hired Respondent again to represent her on a custody modification. Complainant met with Respondent on or about January 4, 2011. Complainant stated

that Respondent asked her to pay half of the Two Thousand Five Hundred Dollar (\$2,500.00) retainer fee as well as the filing fees within forty-five (45) days and he would start proceedings. Complainant said she paid the first half of the retainer and the filing fees and then made a final payment on or about June 6, 2011.

56. Complainant alleged that she did not hear from Respondent again until approximately August 2011, when he called and advised that the modification had not yet been filed. Respondent stated that it “fell through the cracks” but he assured her that it would be filed within a week.
57. Complainant stated that she has not heard from Respondent since that telephone conversation despite calling his office numerous times and leaving voice mails as well as messages with his staff.
58. Complainant stated that she faxed a letter to Respondent in or about April 2012 “informing him his services would no longer be needed.” Complainant stated that she gave her address and telephone number so he could make arrangements to reimburse her payments and filing fees. A copy of this letter as well as copies of checks paid to Respondent were provided with the complaint filed on or about August 28, 2012, with the Office of Disciplinary Counsel.
59. By letter dated August 29, 2012, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response to the ethics complaint within twenty (20) days.

60. After receiving no response, on or about December 17, 2012, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by January 2, 2013, and advising him that his failure to do so may result in a subpoena *duces tecum* being issued for his appearance at the Office of Disciplinary Counsel for a sworn statement, or the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. The Return Receipt for this letter was received by the Office of Disciplinary Counsel indicating that this letter was received by Respondent on December 19, 2012.
61. To date, Respondent has not issued any response in this matter.
62. Because he failed to act with reasonable diligence by failing to pursue Complainant Johnson's modification matter in a timely manner, Respondent has violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.
63. Because he failed to keep Complainant Johnson reasonably informed about the status of the matter and failed to promptly comply with Complainant Johnson's reasonable requests for information, Respondent has violated Rule 1.4(a) and Rule 1.4(b) of the Rules of Professional Conduct, as set forth above.
64. Because he failed to return the unearned fee paid to him by Complainant Henderson, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, as set forth above.

65. Because Respondent failed to comply with the Office of Disciplinary Counsel's lawful requests for information, he has violated Rule 8.1(b) of the Rules of Professional Conduct, as set forth above.

**COUNT V**  
**I.D. No. 12-01-498**  
**Complaint of Duane L. Hammock**

66. Complainant Duane L. Hammock hired Respondent to file an appeal of a criminal conviction.<sup>2</sup> Complainant requested copies of the evidence that was used against him, specifically a surveillance CD, audio CD, and a transcript, but he alleged that he never received any response from Respondent. Complainant included copies with his complaint filed on or about August 31, 2012, of letters he has written to Respondent and the Honorable H. L. Kirkpatrick, III, requesting these items and requesting that a new attorney to be appointed in his case.

67. On or about September 6, 2012, the Office of Disciplinary Counsel sent Respondent a copy of the complaint.

68. On or about September 12, 2012, the Office of Disciplinary Counsel received Respondent's verified response. Respondent stated that another attorney within his law firm was initially appointed to represent Complainant, however, that attorney left the law firm and Respondent took over the case. Respondent stated that against his advice, Complainant chose to go to trial on the criminal charges against him.

---

<sup>2</sup>Case 10-F-30, *State of West Virginia v. Duane Hammock*, Raleigh County, West Virginia.

Complainant was found guilty and sentenced to a ten-year determinate sentence. As this was Complainant's second felony, the Court was required to add an additional five (5) years to the sentence. Respondent stated that he convinced the Court to find that a firearm was not used during the crime because the weapon Complainant used was a BB gun. As a result, Complainant is eligible for parole in three and three quarter (3 3/4) years instead of five (5) years. Respondent stated that he strongly recommended that Complainant take the State's plea offer, which would have resulted in a shorter sentence based on the strength of the evidence against him.

69. Respondent stated that Complainant's request for new counsel was denied.
70. Following conviction, Respondent stated that he filed motions requesting a new trial, but those motions were denied. Respondent stated that he requested copies of the transcripts, which he has received. Respondent stated that he has also filed a Notice of Appeal, and has provided a copy to Complainant. Respondent stated that he has previously provided Complainant a complete copy of his file, including the items Complainant had listed in the complaint. Respondent stated that he will keep Complainant updated on the status of the case.
71. On or about September 26, 2012, the Office of Disciplinary Counsel received Complainant's response to Respondent's letter. Complainant stated that he had been unaware that his original attorney had left Respondent's law firm until Respondent visited the jail approximately six months later. Complainant acknowledged that

Respondent encouraged him to take the plea offered by the State. However, Complainant insisted that he did not wish to take the plea. Complainant requested that Respondent send him the items he has been requesting. Complainant further alleged that Respondent “did not object to things at the trial that [Respondent] should have objected to.”

72. On or about December 19, 2012, the Office of Disciplinary Counsel requested an update on the status of the appeal from Respondent. Respondent did not respond.
73. On or about January 7, 2013, the Office of Disciplinary Counsel again requested an update on the status of Complainant’s appeal from Respondent via certified mail. The Return Receipt indicates this letter was received on or about January 8, 2013.
74. On or about January 29, 2013, the Office of Disciplinary Counsel received a letter from Complainant informing of his new address and stating that he never received the items he had requested from Respondent. He stated that Respondent’s response had stated that these items were provided to Complainant, however Complainant stated that was not true. He never received anything.
75. On or about February 4, 2013, the Office of Disciplinary Counsel forwarded a copy of Complainant’s letter to Respondent for response via certified mail. The Return Receipt indicates that this letter was received on or about February 5, 2013.
76. On or about February 5, 2013, the Office of Disciplinary Counsel received a certified docket sheet regarding Complainant’s case. The docket sheet indicated that the

Notice of Appeal was filed on or about September 16, 2011, but no appeal had yet been filed. The docket sheet also indicated that the transcripts of the arraignment and motions hearing, jury trial transcripts volumes 1, 2, 3, and the sentencing hearing transcript were filed on November 8, 2011. The transcript also indicated that Complainant was re-sentenced on September 10, 2012. This was the last entry on the docket sheet.

77. On or about February 26, 2013, Respondent sent a letter to the Office of Disciplinary Counsel advising that the appellate brief and appendix record for Complainant's case has been filed with the Court.
78. On or about March 6, 2013, the Office of Disciplinary Counsel received a letter from Complainant again informing that he has still not received the items he requested from Respondent.
79. Because he neglected Complainant Hammock's case and failed to timely pursue the filing of the appeal of Complainant Hammock's criminal conviction, Respondent has violated Rules 1.1 and 1.3 of the Rules of Professional Conduct, as set forth above.
80. Because Respondent failed to keep Complainant Hammock informed as to the status of the matter and failed to respond to his requests for information, Respondent has violated Rules 1.4(a) and 1.4(b) of the Rules of Professional Conduct, as set forth above.

81. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute and failed to make reasonable efforts consistent with Complainant Hammock's objective, he has violated Rule 3.2 of the Rules of Professional Conduct, as set forth above.

**COUNT VI**  
**I.D. No. 12-01-500**  
**Complaint of Charles E. Banks**

82. On or about September 5, 2012, Complainant Charles Banks filed a complaint with the Office of Disciplinary Counsel regarding Respondent. Complainant hired Respondent on or about December 23, 2008, to contest the administration of the estate of his father because Complainant's sister had sold everything from their father's estate, including cars, houses, and land, without notifying the other siblings of their father's passing. Complainant paid a flat fee of Five Thousand Dollars (\$5,000.00) plus the cost of filing fees.

83. Complainant provided a copy of the contract he entered into with Respondent dated December 23, 2009, as well as copies of the cashier's check paid to Respondent in the amount of Five Thousand Dollars (\$5,000.00).

84. Complainant also provided a copy of a letter dated January 25, 2010, which he received from Respondent stating that Respondent had completed the petition and requesting payment for the filing fee in the amount of One Hundred Forty-Five Dollars (\$145.00) and the service of process fee in the amount of Seventy-Five

Dollars (\$75.00) as soon as possible. Respondent's letter stated that he planned to have the petition ready to file in the Circuit Court of Fayette County, West Virginia, by the first week of February.

85. Complainant alleged that since that time, Respondent has failed to communicate with him regarding the case.
86. By letter dated September 7, 2012, the Office of Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response to the ethics complaint within twenty (20) days.
87. After receiving no response, on or about December 17, 2012, the Office of Disciplinary Counsel sent a second letter by certified and first class mail directing Respondent to file a response by January 2, 2013, and advising him that his failure to do so may result in a subpoena *duces tecum* being issued for his appearance at the Office of Disciplinary Counsel for a sworn statement, or the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. The Return Receipt indicates that this letter was received on or about December 19, 2012.
88. To date, Respondent has not filed any response in this case.
89. Because he failed to act with reasonable diligence by failing to pursue Complainant Banks' matter in a timely manner, Respondent has violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.

90. Because he failed to respond to Complainant Banks' reasonable requests for information and failed to communicate to the extent reasonably necessary for Complainant Banks to make informed decisions about the representation, Respondent has violated Rule 1.4(a) and Rule 1.4(b) of the Rules of Professional Conduct, as set forth above.
91. Because he failed to return the unearned fee paid to him by Complainant Banks, Respondent has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows
92. Because Respondent failed to comply with the Office of Disciplinary Counsel's lawful requests for information, he has violated Rule 8.1(b) of the Rules of Professional Conduct, as set forth above.

#### **Aggravating Factors**

93. Respondent has exhibited a pattern and practice of misconduct by continuing to fail to respond to his clients's inquiries, failing to act diligently in representing his clients, and in failing to respond to the Office of Disciplinary Counsel.
94. On or about March 6, 2007, a Statement of Charges was filed against Respondent alleging violations of Rules 1.3, 1.4(a), 1.4(b), and 8.1(b) of the Rules of Professional Conduct. Moreover, the underlying charges in the March 6, 2007 Statement of Charges involved Respondent's failure to timely perfect an appeal of the denial of the Complainant's Petition for Writ of *Habeas Corpus* after his March 30, 2003 appointment, failure to respond to the Complainant's inquiries about the status of the

appeal, and then Respondent's failure to respond to the Office of Disciplinary Counsel after the complaint was filed against him in 2005. By Order of the Supreme Court of Appeals entered on September 13, 2007, Respondent was required to complete six (6) additional hours of continuing legal education during the 2006-2008 reporting year, and to pay the costs of the disciplinary proceeding. Respondent was also directed to file a Motion to Withdraw.<sup>3</sup> See, *Lawyer Disciplinary Board v. David S. Hart*, Supreme Court No. 33328.

\* \* \*

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

**STATEMENT OF CHARGES ORDERED** on the 28<sup>th</sup> day of June, 2013, and  
**ISSUED** this 7~~4~~ day of July, 2013.

---

<sup>3</sup>The Order included specific instructions to Respondent in the event his Motion to Withdraw was denied by the Circuit Court of Raleigh County.

*Ch. J. Kaiser, Jr.*

---

**Charles J. Kaiser, Jr., Chairperson**  
Investigative Panel  
Lawyer Disciplinary Board