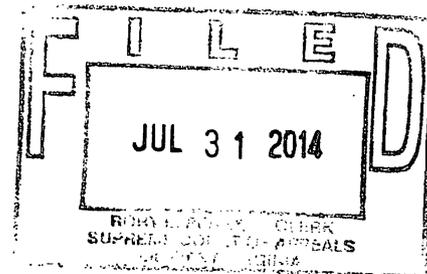


14-0749

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

In Re: HEIDI M. GEORGI STURM, a member of **Bar No.:** 9371
The West Virginia State Bar **I.D. No.:** 12-05-267 & 12-05-268

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STATEMENT OF CHARGES
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To: Heidi M. Georgi Sturm, Esquire
301 Adams Street, Suite 803
Fairmont, West Virginia 26554

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. Heidi M. Georgi Sturm (hereinafter "Respondent") is a lawyer practicing in Fairmont, which is located in Marion County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on October 9, 2003. 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.

I.D. No. 12-05-267 & 12-05-268

Complaints of Lael Brown and Laverne G. Wright-Ochoa

2. On or about August 17, 2010, Complainant Laverne G. Wright-Ochoa met with Respondent about retaining Respondent to file a Writ of *Habeas Corpus* for her son,

Complainant Lael Brown. Ms. Wright-Ochoa provided various documents to Respondent on that day regarding Mr. Brown's case.

3. On or about August 23, 2010, Respondent mailed Ms. Wright-Ochoa an agreement for the representation. The agreement was entitled "Attorney-Client Hourly and/or Flat Fee Agreement." The agreement said that Respondent was representing Complainant for a "Habeas Petition on behalf of son, Lael Brown." The hourly fees were set at One Hundred Seventy-Five Dollars (\$175.00) and stated that Respondent shall keep accurate time records. The agreement also stated that "[f]ees will not be charged unless supported by contemporaneous time records." The general retainer fee was Five Thousand Dollars (\$5,000.00). The agreement stated "**[t]his amount is non-refundable and shall not be returned even if the client or the attorney chooses to end the legal relationship.**" [emphasis in original]. The agreement indicated "[t]hat [Respondent] agrees to prosecute the above legal proceeding with due diligence to a conclusion, whether it be by settlement or entry of judgment." Further, payments for the retainer were indicated to be Two Thousand Five Hundred Dollars (\$2,500.00) to be due immediately and two (2) monthly payments of One Thousand Two Hundred Fifty Dollars (\$1,250.00) to be paid in September and October of 2010.
4. On or about August 26, 2010, Ms. Wright-Ochoa sent additional documents to Respondent.

5. On or about August 27, 2010, Ms. Wright-Ochoa signed the fee agreement. Ms. Wright-Ochoa sent the agreement back to Respondent along with a bank teller check for Two Thousand Two Hundred Dollars (\$2,200.00) and a personal check for Five Hundred Dollars (\$500.00) to cover the first payment.
6. Respondent received the two (2) checks soon after Ms. Wright-Ochoa sent them. Respondent deposited the Two Thousand Two Hundred Dollars (\$2,200.00) check into her business account and deposited the Five Hundred Dollar (\$500.00) check into her personal account.
7. On or about August 30, 2010, Ms. Wright-Ochoa sent additional documents to Respondent regarding Mr. Brown's case.
8. On or about September 10, 2010, Ms. Wright-Ochoa sent an email to Respondent asking if there was any deadline to file the *habeas corpus* petition and wanting to know the progress of the case.
9. On or about September 22, 2010, Ms. Wright-Ochoa sent a letter to Respondent about Respondent's failure to communicate with her and with Mr. Brown.
10. Ms. Wright-Ochoa attempted to contact Respondent after sending the additional documents without any response until a September 22, 2010 email from Respondent. Respondent stated that she had been out of town for court and could not return any telephone calls.

11. Respondent sent another email on or about September 24, 2010, email wherein she indicated that she had received Ms. Wright-Ochoa's messages but had been unable to return them. Respondent said that she should have the *habeas corpus* petition completed by the next week. Respondent indicated that she will need to review the petition with Mr. Brown to obtain his signature before she could file it with the Court.
12. On or about September 25, 2010, Ms. Wright-Ochoa emailed Respondent about never receiving a copy of the fee agreement with Respondent's signature. Ms. Wright-Ochoa also asked if she could meet with Respondent on October 1, 2010, since Ms. Wright-Ochoa would be in town for a hearing concerning Mr. Brown. Ms. Wright-Ochoa also sent additional information to Respondent by email on or about September 25, 2010.
13. On or about September 28, 2010, Respondent responded to Ms. Wright-Ochoa's September 25, 2010 email. Respondent stated that she would leave a copy of the fee agreement for Ms. Wright-Ochoa to pick up. Respondent was also going to leave a copy of the *habeas corpus* petition for Ms. Wright-Ochoa's review and another copy for Ms. Wright-Ochoa to provide to Mr. Brown for review. On or about September 28, 2010, Ms. Wright-Ochoa sent a letter to Respondent requesting to meet with Respondent. Ms. Wright-Ochoa said that she had not spoken to Respondent since the first consultation in August of 2010.

14. On or about September 29, 2010, Ms. Wright-Ochoa sent an email indicating that she would be unable to stop at Respondent's office prior to meeting with Mr. Brown. Ms. Wright-Ochoa indicated that she was upset because she wanted to speak with Respondent. Also, on or about September 29, 2010, Ms. Wright-Ochoa sent the One Thousand Two Hundred Fifty Dollars (\$1,250.00) payment to Respondent along with more documents. Respondent sent Mr. Brown a copy of the Petition for *Habeas Corpus* for review on or about September 29, 2010. Respondent stated that she was going to visit with Mr. Brown soon to discuss the petition and to have Mr. Brown sign the same.
15. On or about October 1, 2010, Ms. Wright-Ochoa sent an email to Respondent again asking for a meeting with Respondent because they had not spoken since the initial consultation in August of 2010.
16. On or about October 4, 2010, Respondent responded to Ms. Wright-Ochoa's October 1, 2010 email. Respondent stated that she had other clients and matters to work on. Specifically, Respondent said that she did "not have time to sit at [her] desk waiting for emails from [Ms. Wright-Ochoa]." Respondent also explained that the process with a *habeas corpus* petition could take some time and a timeline could possibly be established after the filing of the petition. Respondent again said she would meet with Ms. Wright-Ochoa the next time she was in town. On or about October 4, 2010, Ms. Wright-Ochoa received a copy of the draft *habeas corpus* petition to review. Ms.

Wright-Ochoa sent her comments about the draft petition to Respondent and Respondent indicated that she would make the various changes. A copy of the final petition would be provided to Ms. Wright-Ochoa in a few weeks.

17. On or about October 7, 2010, Respondent sent a letter to Ms. Wright-Ochoa indicating that she had responded to Ms. Wright-Ochoa's request for an appointment through email. The letter also indicated that Ms. Wright-Ochoa should call Respondent's office for set up an appointment for when Ms. Wright-Ochoa was in town.
18. On or about October 13, 2010, Respondent and Ms. Wright-Ochoa spoke over the telephone. Also, on or about October 13, 2010, Ms. Wright-Ochoa sent a confirmation letter regarding the telephone call.
19. On or about October 14, 2010, Respondent sent an email to Ms. Wright-Ochoa about clarifying issues brought up in a telephone call the day before. Respondent said that she would make herself available to meet with Ms. Wright-Ochoa and would add the revisions that Ms. Wright-Ochoa suggested to the *habeas corpus* petition.
20. On or about October 16, 2010, Ms. Wright-Ochoa sent a response to Respondent's October 14, 2010 email. Ms. Wright-Ochoa said that the issues were clarified and she agreed to send filing fees at the end of the month.
21. On or about October 29, 2010, Ms. Wright-Ochoa sent the final payment of One Thousand Two Hundred Fifty Dollars (\$1,250.00) to Respondent along with a Two

Hundred Dollar (\$200.00) check dated October 15, 2010, for the filing fee. Ms. Wright-Ochoa indicated that Respondent never cashed the filing fee check.

22. On or about November 2, 2010, Ms. Wright-Ochoa sent an email to Respondent for additional documents.
23. On or about November 11, 2010, Ms. Wright-Ochoa sent an email to Respondent asking for a meeting with Respondent to explain the case to Mr. Brown's father. Respondent response to this email indicated that the *habeas corpus* petition would be ready by the end of the next week.
24. On or about November 24, 2010, Ms. Wright-Ochoa emailed Respondent to see if Respondent had visited Mr. Brown or completed the petition. Respondent sent an response email on or about November 24, 2010 to Ms. Wright-Ochoa. Respondent said that she was sorry that she had not provided the petition to Mr. Wright-Ochoa sooner but she and her children had been sick along with dealing with several family friends who passed away.
25. On or about December 14, 2010, Ms. Wright-Ochoa sent a letter to Respondent with additional documents.
26. On or about December 15, 2010, Ms. Wright-Ochoa sent Respondent an email about not hearing from Respondent.
27. Ms. Wright-Ochoa requested information about the *habeas corpus* petition in or around January of 2011.

28. On or about January 25, 2011, Respondent sent an email to Ms. Wright-Ochoa about her daughter needing surgery over the Christmas holidays in December of 2010. Respondent said that she was still working on the *habeas corpus* petition.
29. On or about February 22, 2011, Ms. Wright-Ochoa sent Respondent an email about Mr. Brown being ineligible for parole at that time.
30. On or about March 1, 2011, Ms. Wright-Ochoa sent an email to Respondent asking if there was any progress on the petition.
31. On or about March 4, 2011, Ms. Wright-Ochoa sent Respondent an email indicating that she was still waiting for a response.
32. On or about March 22, 2011, Respondent responded by email to Ms. Wright-Ochoa that she should be able to send a completed *habeas corpus* petition by the end of March, 2011.
33. On or about July 12, 2011, Ms. Wright-Ochoa sent a certified letter to Respondent. The letter stated that Ms. Wright-Ochoa had not received a draft Petition for *Habeas Corpus* for Mr. Brown. Further, it stated that the last response Ms. Wright-Ochoa had from Respondent was in March of 2011. Ms. Wright-Ochoa pointed out that Respondent had not communicated with Ms. Wright-Ochoa and had not visited with Mr. Brown.
34. On or about July 21, 2011, Mr. Brown sent a letter to Respondent wherein he requested a refund of the Five Thousand Dollars (\$5,000.00) paid to Respondent. Mr.

Brown acknowledged that he had received a letter from Respondent in October of 2010 wherein Respondent said that she would visit with Mr. Brown to go over the petition. Mr. Brown stated that he had not heard from Respondent since that time. Mr. Brown also requested an accounting of the fees and itemization of the costs.

35. On or about August 2, 2011, Ms. Wright-Ochoa sent another certified letter to Respondent wherein she requested a refund of unearned attorney fees and an itemization of the costs earned in the matter.
36. On or about August 18, 2011, Mr. Brown filed a *pro se* Petition for *Habeas Corpus* in Monongalia County, West Virginia Circuit Court Case No. 11-C530.
37. On or about February 10, 2012, Ms. Wright-Ochoa called Respondent's office and discovered that Respondent's phone was disconnected. Ms. Wright-Ochoa was able to have another attorney reach Respondent sometime after her telephone call on or about February 10, 2012. Respondent indicated to the other attorney that her telephone had been suspended but it was now restored. After being relayed this information from the other attorney, on or about February 15, 2012, Ms. Wright-Ochoa called Respondent's office and left a message on two (2) occasions that day. On or about February 16, 2012, Ms. Wright-Ochoa called Respondent's office and left another message for Respondent. Respondent did not return any of those telephone calls.

38. On or about May 3, 2012, Ms. Wright-Ochoa and Mr. Brown filed complaints against Respondent with the Office of Disciplinary Counsel.
39. On or about May 4, 2012, the complaints filed by Ms. Wright-Ochoa and Mr. Brown were opened for investigation against Respondent. Respondent was asked to file a response.
40. Respondent filed a response dated May 21, 2011, and stated that she agreed to represent Ms. Wright-Ochoa's son, Mr. Brown, and was willing to accept payments for the retainer amount. Respondent said that Ms. Wright-Ochoa was very involved in the case and sent a lot of documents on a regular basis. Respondent stated that she spent at least eighteen (18) to twenty (20) hours on the case along with doing research on issues related to the case. Respondent said that she met with Ms. Wright-Ochoa on Saturdays when she was in town and usually lasted one (1) to two (2) hours. Respondent stated that Ms. Wright-Ochoa's emails were long as were her letters. Plus, Respondent said she received a lot of emails and letters from Ms. Wright-Ochoa. Respondent provided a copy of the draft *habeas corpus* petition to Ms. Wright-Ochoa but said that is not what she normally does in cases. Ms. Wright-Ochoa had made clear to Respondent that she wanted to be involved in every issue of the case. Respondent said that Ms. Wright-Ochoa made multiple additions to the draft petition. Respondent stated that she did not hear from Ms. Wright-Ochoa for several months. At that point, Respondent provided another copy of the draft petition but did not

receive any response from Ms. Wright-Ochoa. Respondent said that she did not want to file the *habeas corpus* petition without Ms. Wright-Ochoa's approval. Respondent stated that she was ready to file the petition if Ms. Wright-Ochoa would give her permission to do so. In regards to Mr. Brown, Respondent stated that she sent Mr. Brown with a copy of the draft petition for review but Mr. Brown never responded to Respondent.

41. By letter dated June 12, 2012, Disciplinary Counsel requested Respondent to provide answers to the following questions regarding Ms. Wright-Ochoa's complaint: 1) what was the status of the petition; 2) why was Respondent's telephone service cut off; 3) Respondent's response to the allegation of her failure to return communication; and 4) asked Respondent to provide an accounting of the work performed in the case. Respondent failed to respond to the letter.
42. By letter dated June 26, 2012, Disciplinary Counsel requested Respondent to respond as to whether she explained the *habeas corpus* process to Mr. Brown and again requested a statement of account for work that she performed for Mr. Brown. Respondent failed to respond to the letter.
43. By letters dated August 9, 2012, Disciplinary Counsel sent additional letters by both certified and regular mail to Respondent requesting answers to the above stated questions.

44. Respondent responded by letter dated August 16, 2012. Respondent apologized for her failure to answer the first letters and explained that it happened due to several transitions in her office. Respondent said that she completed the *habeas corpus* petition but did not feel comfortable in contacting Ms. Wright-Ochoa due to the pending complaint. Respondent admitted that her telephone service was interrupted but said it was for only a brief period. Respondent stated that she did return Ms. Wright-Ochoa's emails and phone calls but she could not do that every day. As for Mr. Brown, Respondent stated that she spoke with Ms. Wright-Ochoa about the case as Ms. Wright-Ochoa indicated that she wanted it that way. Respondent stated that Mr. Brown had several mental health and academic issues that affected his ability to fully comprehend the *habeas corpus* process. Respondent said that she asked Mr. Brown to review the petition to the best of his ability. Respondent believed that Ms. Wright-Ochoa had told Mr. Brown about the attorney-client relationship and why Respondent was hired. Respondent admitted that she should have had better communication with Mr. Brown. Respondent also provided the following accounting:

“Telephone, email conferences:	4.1 hours
Review of documents from L.W.O	11.3 hours
Research	7.8 hours
Draft Petition	8.7 hours
In-person conferences with clients	1.7 hours.”

Respondent said she spend additional time but she did not bill for that.

45. In or around February of 2013, Mr. Brown was released from incarceration.

46. By letter dated January 30, 2014, Disciplinary Counsel requested Respondent provide a status report on Mr. Brown's case. Respondent failed to respond to the letter.
47. By letter dated February 25, 2014, Disciplinary Counsel sent another letter by certified and regular mail to Respondent requesting the same information. Respondent responded that she had not had any contact with Ms. Wright-Ochoa due to the complaint pending and could provide a copy of the petition to Ms. Wright-Ochoa.
48. Because she neglected Mr. Brown's case and failed to timely file a Petition for *Habeas Corpus* for Mr. Brown, 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.

and

Rule 1.3. Diligence.

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

49. Because Respondent failed to respond to Mr. Brown's requests for information and failed to explain the matter to Mr. Brown, Respondent has violated Rules 1.4(a) and (b) of the Rules of Professional Conduct which provides 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.

50. Because Respondent failed to seek Mr. Brown's consent after consultation to accept compensation from Ms. Wright-Ochoa for Mr. Brown's case and failed to prevent any interference with her independence of professional judgment and the attorney client relationship, Respondent violated Rule 1.8(f) of the Rules of Professional Conduct, which provides as follows:

Rule 1.8. Conflict of Interest: Prohibited Transactions.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship;
- and
- (3) information relating to representation of a client is protected as required by Rule 1.6.

51. Because Respondent failed to reasonably maintain a normal client-attorney relationship with Mr. Brown when she understood that he had an impairment, she has violated Rules 1.14(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.14. Client under a disability.

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

52. Because Respondent failed to properly deposit all of the retainer fee the client's trust account, she has violated Rules 1.15(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.15. Safekeeping property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safe guarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

53. Because Respondent failed to promptly provide a refund of the unearned Five Thousand Dollars (\$5,000.00) which was not supported by contemporaneous time records pursuant to the fee agreement, she 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 make reasonable efforts consistent with the stated and agreed upon objectives of her client Mr. Brown, prior to his release, Respondent 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.

55. Because Respondent failed to timely comply with the Office of Disciplinary Counsel's lawful requests for information, she 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.

56. Because Respondent failed to file the Petition for *Habeas Corpus* for Mr. Brown, prior to his release, she violated of Rule 8.4(c) and (d) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(d) Engage in conduct that is prejudicial to the administration of justice.

* * *

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 21st day of June, 2014, and
ISSUED this 14th day of ^{July}~~June~~, 2014.



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