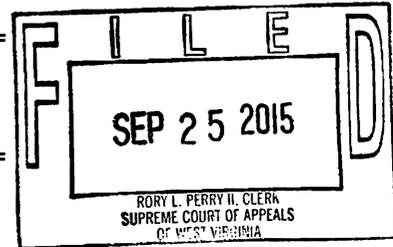


**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**

Re: EDWARD R. KOHOUT, a member of
The West Virginia State Bar

Bar No.: 4837
I.D. Nos.: 14-01-015, 14-01-274
14-01-301 & 14-01-382

STATEMENT OF CHARGES



To: Edward Raymond Kohout
235 High Street, Suite 307
Morgantown, WV 26505

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. Edward Raymond Kohout (hereinafter "Respondent") is a lawyer practicing in Morgantown, which is located in Monongalia County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on November 4, 1987. 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. 14-01-015
Complaint of Office of Disciplinary Counsel

2. The Office of Disciplinary Counsel opened this complaint against Respondent after receiving a letter dated January 8, 2014 from Rory L. Perry, II, Clerk of Court and Edythe Nash Gaiser, Deputy Clerk of Court of the West Virginia Supreme Court of Appeals.
3. By Order dated January 8, 2014, the Supreme Court of Appeals directed the Clerk to “refer the actions of [Respondent] to the Office of Disciplinary Counsel for investigation into violations of the Rules of Professional Conduct,”
4. On or about October 31, 2013, Respondent filed a Notice of Appeal with the Supreme Court of Appeals of West Virginia, in a matter captioned, *Nancy Lorraine Galford and Charles Galford v. Nancy Friend, individually, and Big Bear Lake Property Owners Association, Inc.*, Supreme Court No. 13-1134. Along with his Notice of Appeal, Respondent submitted a \$200.00 filing fee check identified as Check No. 3149, dated October 29, 2013, and drawn on Respondent’s “ATTORNEY AT LAW” account with United Bank.
5. The Supreme Court of Appeals of West Virginia subsequently entered a Scheduling Order in the matter on or about November 12, 2013.
6. By letter dated December 11, 2013, the Clerk of Court advised Respondent that on December 4, 2013, his United Bank Check No. 3149 was returned to the Clerk’s office for insufficient funds.¹ The Clerk then directed that Respondent provide to

¹ The Clerk’s December 11, 2013 letter was addressed to Respondent at “The Law Office of Edward R. Kohout,

the Clerk a cashier's check or money order for the filing fee within seven (7) days.

Respondent did not respond to the Clerk's letter.

7. On or about December 13, 2013, Respondent filed a Motion to Withdraw as Counsel in *Nancy Lorraine Galford and Charles Galford v. Nancy Friend, individually, and Big Bear Lake Property Owners Association, Inc.*, Supreme Court No. 13-1134.² By Order entered January 8, 2014, the Supreme Court of Appeals of West Virginia denied Respondent's Motion to Withdraw. In the January 8, 2014 Order, the Supreme Court of Appeals of West Virginia also "ordered that [Respondent] provide a copy of this order to his client [Nancy Lorraine Galford and Charles Galford] within ten days of receipt of this order."³
8. By letter dated January 10, 2014, Respondent provided his verified response to this complaint. Respondent stated that he received a telephone call from Ms. Gaiser on or about January 8, 2014, advising that the Court had denied his Motion to Withdraw due to the unpaid filing fee. Respondent stated that he did not recall receiving any "communications" from the Court regarding the returned check prior to this telephone call from Ms. Gaiser. Respondent stated that he immediately mailed another check for the filing fee. Respondent provided a copy of his January 8, 2014 letter to the Clerk of Court stated that "[y]our office called

PLLC, 235 High Street, Suite 307, Morgantown, WV 26505." This is Respondent's current address listed with the West Virginia State Bar and is also Respondent's address listed on Check No. 3149.

² In his March 24, 2014 Sworn Statement at the Office of Disciplinary Counsel, Respondent indicated that this civil action was a "class action suit" and that the Galfords were the chosen "nominal" plaintiffs. Respondent indicated that he filed the suit as a single plaintiff because, otherwise, he would have had to pay a separate filing fee for each plaintiff in a "class action suit."

³ In the January 8, 2014 letter from the Clerk's Office, Mr. Perry and Ms. Gaiser noted that "[i]t is not known whether Nancy Lorraine Galford and/or Charles Galford paid any funds to [Respondent] for the filing fee and the Court directs that the investigation include the same."

today and advised that the filing fee had not yet been paid for this appeal. I thought it had been paid. Therefore, enclosed is my check for \$200 for the filing fee. Thank you." Copied overtop of the bottom of the letter was a copy of Check No. 093 in the amount of \$200.00 from an account in purportedly in Respondent's name through BB&T. It is not identified as a Cashier's check.

9. In his response, Respondent also indicated that his clients, Mr. and Mrs. Galford, had already retrieved their file. Respondent stated that Mr. and Mrs. Galford, as well as the other persons involved in the case, "failed and refused to continue to pay [Respondent] for [Respondent's] time in working on this case." Respondent denied any "dishonesty, deceit or misrepresentation" in the handling of money. . . . [Respondent] was unaware that the original check had not been paid by [his] bank and [Respondent] paid it immediately when notified yesterday." Respondent further stated that because he promptly paid the check, the matter was moot and no ethical violation could be proven.
10. On or about January 17, 2014, Respondent provided a copy of a letter he had directed to Ms. Gaiser, Deputy Clerk of Court. Respondent had apparently provided the Court with another check in the amount of Two Hundred Dollars (\$200) for the filing fee for the Galfords' case. A copy of the check, identified as an "Official Check" No. 5006168607 through BB&T.⁴ In this letter, Respondent acknowledged that his Motion to Withdraw had been denied and he stated "[a]nd yes, I'm aware that I was not permitted to withdraw from this appeal. And even

⁴ Upon information and belief, this check is a counter check with Respondent's information placed on the check by rubber stamp.

though my clients came and picked up their file. I will be filing a brief prior to February 10 and in all other respects attempt to comply with the Court's rules and orders."

11. On or about November 11, 2014, Vanessa Lawson, a now former employee of Respondent's law firm who regularly received Respondent's law firm mail, indicated that she recalled receiving a letter from the Supreme Court of Appeals of West Virginia in late 2013. She recalled that the letter referenced a bounced check that Respondent had sent to the Supreme Court. Ms. Lawson indicated that she first took the letter to Kristen Taylor, Esquire, an attorney who at the time worked for Respondent. After Ms. Taylor reviewed the letter, Ms. Lawson placed the letter on Respondent's desk. She also recalled that Respondent mentioned the "bounced" check to the Supreme Court prior to Respondent closing his law office between Christmas and the New Year. Ms. Lawson resigned from her employment with Respondent's law office on or about January 1, 2014.
12. On or about November 14, 2014, Kristen Taylor, Esquire, an attorney who formerly worked in Respondent's law office stated that she recalled Respondent's "bouncing" a check in the winter of 2013, prior to Ms. Lawson's resignation. Ms. Taylor recalled Ms. Lawson showing her a letter from the Supreme Court referencing the "bounced" check and that Ms. Lawson then put the letter on Respondent's desk.
13. By subpoena issued May 7, 2014, the Office of Disciplinary Counsel subpoenaed Respondent's bank records for his IOLTA account, styled on his checks as his

“Client Trust” account, and his Operating Account, styled on his checks as his “Attorney at Law” account. Subpoenas were issued to both United Bank and Branch Banking & Trust (BB&T).¹ Respondent’s bank records were subpoenaed for the following dates: June 1, 2012 through on or about June 2014, for the United Bank accounts and December 1, 2013 through on or about June of 2014, for the BB&T accounts.

14. Upon information and belief, Respondent’s bank records for his United Bank “Attorney at Law” account and his United Bank “Client Trust” account for the time period reflected in the subpoena do not indicate that Respondent received a payment by the Galfords to file an appeal with the Supreme Court of Appeals of West Virginia.
15. Upon information and belief, Respondent did not have a written retainer agreement pertaining to the representation of the Galfords in the underlying matter. However, there was an “informal” arrangement in place wherein Big Bear Lake property owners, who wanted to participate in the law suit, would pay Respondent \$50.00 a month during the representation.
16. On or about October 9, 2013, the Circuit Court of Preston County entered an Order granting Summary Judgment to the defendants in the matter captioned,

¹ Upon information and belief, Respondent appears to have abandoned his IOLTA account and his “Attorney at Law” account at United Bank in or about December 14, 2013. At his March 27, 2014 Sworn Statement, Respondent stated that “I changed banks. Well, I was so overdrawn with United Bank, and I was so overdrawn that I couldn’t get out of the ditch to get the account back to where I could use it. So I had to open the new account. And it’s still overdrawn. . . .” He further stated that “[i]t’s still open. It’s overdrawn. And whenever I get some money, I need to pay that and get it functioning again because this has always been my primary office account.”

Lorraine Galford and Charlest Galford v. Nancy Friend, individually, and Big Bear Lake Property Owners Association, Inc., Civil Action No. 13-C-42.⁵ As indicated above, Respondent filed a Notice of Appeal on or about October 31, 2013, with the Supreme Court of Appeals of West Virginia.

17. On or about November 18, 2013, Respondent filed a Motion to Withdraw as Counsel for Plaintiffs in the Circuit Court of Preston County. In the Motion, Respondent stated that he had received a total of \$4,850.00 from all of the Big Bear Lake property owners involved in the lawsuit and that the Galfords had paid \$400.00 of that \$4,850.00. Respondent stated that despite monthly letters, the Plaintiffs have “stopped paying, apparently having lost interest in the case and have ignored [Respondent’s] repeated requests for payment.” Respondent attached several letters to his Motion as exhibits. The one letter attached to his Motion discussing the filing of the appeal is dated October 29, 2013. This letter is not addressed to the Galfords.
18. Upon information and belief, Respondent did not enter into a new retainer agreement with the Galfords for the filing of the appeal.
19. At his March 27, 2014 Sworn Statement, Respondent stated that “I didn’t ask the Galfords – I did not have a – I don’t have a specific recollection of a conversation with the Galfords about, ‘Hey, I’m going to file the appeal and it’s \$200.00.’”

⁵ Respondent had originally filed the civil complaint in Monongalia County, on or about December 11, 2012, and the law suit was assigned Civil Action No. 12-C-870. However, by Order entered on or about February 20, 2013, the Circuit Court of Monongalia transferred the case to the Circuit Court of Preston County.

20. Because Respondent failed to discuss with and obtain the Galfords' instructions concerning the objectives of representation in this matter, Respondent has violated Rule 1.2(a)⁶ of the Rules of Professional Conduct, as set forth below in part:

Rule 1.2. Scope of representation.

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. . . .

21. Because he failed to explain a matter to the extent reasonably necessary to permit the Galfords to make informed decisions regarding the representation, Respondent has violated Rule 1.4(b) of the Rules of Professional Conduct, as set forth below:

Rule 1.4. Communication.

* * *

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

22. Because he failed to hold the legal fees paid to him in advance by the Galfords, and or, other clients or third persons which were in his possession in connection to a representation separate from his own property in a "Client Trust Account," Respondent has violated Rule 1.15(a) of the Rules of Professional Conduct, as set forth below:

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

⁶ On September 29, 2014, the Supreme Court of Appeals of West Virginia entered an Order which adopted amendments to the Rules of Professional Conduct to be effective January 1, 2015. All references to the Rules of Professional Conduct in this Statement of Charges are to the Rules of Professional Conduct in effect prior to January 1, 2015.

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 safeguarded. 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.

23. Because he did not provide prior notice to the Galfords that he was filing an appeal with the Supreme Court of Appeals of West Virginia, did not have funds sufficient funds in his United Bank "Attorney at Law" bank account to cover the \$200.00 filing fee check he wrote on his United Bank "Attorney at Law" account and then tried to improperly withdraw from the representation, Respondent has violated Rules 1.1, 8.4(c) and 8.4(d) of the Rules of Professional Conduct, as set forth below:

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 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;

COUNT II
I.D. No. 14-01-274
Complaint of Vanessa D. Lawson

24. Complainant Lawson, a former employee of Respondent's law office, filed her complaint on or about May 19, 2014. Complainant alleged that four (4) of her paychecks from Respondent were returned by the bank for insufficient funds. Complainant further alleged that Respondent "routinely avoids creditors and has bounced check to the 1) WV Supreme Court; 2) Mon[ongalia] Co[unty] Circuit Court; 3) Malpractice Insurance Company (Wells Fargo)."
25. Complainant Lawson also alleged that Respondent submitted a fraudulent "Attorney's Charging Lien" against a client.⁷
26. Complainant Lawson also stated that Respondent called Complainant a "cunt" and acted unprofessional by repeatedly calling and texting her in a harassing manner.
27. Finally, Complainant Lawson alleged that Respondent borrowed money from her mother, Judy Beal, and never repaid the money.
28. Respondent provided his verified response on or about May 27, 2014. Respondent stated that Complainant Lawson was his client in the Fall of 2010. During the course of conversation at one of their meetings, Respondent mentioned that he was looking for a secretary. In or about November 2010, Complainant Lawson began working for Respondent and continued until approximately December 2013. Respondent said that Complainant Lawson received raises and bonuses and the

⁷ See Count IV, below. Complaint of Ronald G. Kramer, II, Complaint I.D. No. 14-01-382.

two “enjoyed a very close relationship as she and [her boyfriend] and [Respondent] were friends.”

29. Respondent stated that he “provided counsel and advice to [Complainant Lawson] and legal services to her mother, Judy Beal, when she sold her home in Preston County.”
30. Respondent stated that in or about Fall 2013, he began experiencing “a cash flow shortfall, which is typical in many small offices.” During this time, Respondent had hired Kristen Taylor, Esquire, and had asked both employees to take a pay cut in order “to help stretch personal expenses.” Respondent stated that both agreed.
31. Respondent stated that he closed the office for the holidays in December 2013. Upon his return to the office in January, 2014, Respondent received a note from Complainant Lawson thanking him for the opportunity to work there, but she was quitting.
32. Respondent stated that a client, Robert Kramer, Esquire, had obtained his own law license and wanted to take over a case Respondent had been handling for him.⁸ They had a disagreement regarding Respondent’s fee, so Respondent filed a charging lien, which would be reviewed at the end of the case by the Court. Respondent stated that Complainant Lawson provided an affidavit stating that Respondent “had falsely stated in [his] invoice that [he] paid his filing fee.” Respondent stated that he has cancelled checks to prove himself. Respondent

⁸ See also Count IV, below. Complaint of Ronald G. Kramer, II, Complaint I.D. No. 14-01-382.

stated that Complainant Lawson had “backstabbed” him by providing this affidavit and denied that there was anything “fraudulent” about the charging lien.

33. Respondent stated that Ms. Beal sued him in Magistrate Court in or about April, 2014, over an alleged loan in the amount of Five Thousand Dollars (\$5,000.00). Respondent stated that this was not a loan, but was an unsolicited gift, which was offered to pay for his cataract eye surgery. Respondent stated “I told [Complainant Lawson] that my insurance didn’t cover it and she told [Ms. Beal] who offered to pay for it. [Ms. Beal] did it out of consideration for the fact that [Respondent] had been good to [Complainant Lawson]. It was never intended to be a loan.”
34. Respondent acknowledged that some of his checks had been returned for insufficient funds but stated that he paid each one that was returned.
35. Respondent further denied repeatedly texting and calling Complainant Lawson. He said that the text Complainant Lawson attached to her complaint was sent “after [Respondent] was served with [Ms. Beal’s] suit.”
36. On or about November 18, 2014, the Office of Disciplinary Counsel received a fax from Monongalia County Magistrate Court regarding a civil summons for a case filed by Respondent against Complainant Lawson. Respondent accused Complainant Lawson of borrowing money totaling Four Thousand Five Hundred Dollars (\$4,500.00) and defaming Respondent by accusing him of criminal and unethical conduct, referenced this complaint, and attached copies of checks to his Magistrate Court complaint against Complainant Lawson. Respondent demanded judgment of Five Thousand Dollars (\$5,000.00) plus court costs.

37. On or about November 11, 2014, Complainant Lawson explained that the checks used as exhibits in Respondent's claim were actually bonus checks, which she was given after case settlements. Complainant noted that the copies of the checks in the exhibits are displayed next to checks written to the client's whose case had settled. Therefore, Complainant denied that the money was a loan.
38. Because Respondent filed a non-meritorious lawsuit against Complainant Lawson which purpose was to harass her, Respondent violated Rule 3.1 of the Rules of Professional Conduct, as set forth below:

Rule 3.1. Meritorious claims and contentions.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law....

39. Because Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and engaged in conduct that is prejudicial to the administration of justice by filing, on his own behalf, a frivolous lawsuit containing false allegations, he has violated Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct, as set forth above.

COUNT III
I.D. No. 14-01-301
Complaint of Sonja Richard

40. Complainant Richard retained Respondent to represent her in a civil case. On or about October 30, 2013, Respondent provided Complainant Richard with a settlement check and told Complainant "not to worry about" a medical bill from Dynamic Physical Therapy because he would pay it. However, Complainant

Richard stated that Respondent did not pay the Dynamic Physical Therapy bill and it was turned over to collections and was affecting her credit. Despite numerous attempts to contact Respondent, Complainant Richard stated that she was only able to speak to Respondent in or about March 2014. During the March conversation, Respondent requested the information from Complainant Richard about the Dynamic Physical Therapy bill and again assured her that he would pay the bill.

41. Complainant Richard also alleged that Respondent had received more than the agreed upon fee for his services. Complainant Richard stated that she did not know she could file a complaint with the Office of Disciplinary Counsel because Respondent had told her “not to talk about this case or [Complainant Richard] will have to due [sic] a pay back of all settlement money.” Complainant Richard stated that their agreed upon fee for Respondent was 33%. Her settlement was in the amount of \$35,000.00. She received \$20,000.00 and Respondent received \$15,000.00.
42. Complainant Richard also provided a copy of May 15, 2013 letter of protection signed by Respondent and addressed to Dynamic Physical Therapy.
43. On or about June 25, 2014, Respondent provided his verified response and stated that he represented Complainant Richard in a “fall down case” after she had tripped over concrete steps at her apartment and that the agreed fee for his representation was one-third of the settlement plus expenses. Respondent stated that his “expenses included the filing fee and service of process [in the amount of]

Two Hundred Seventy-five Dollars (\$275.00), the bill to Dynamic Physical Therapy [in the amount of] Nine Hundred Eighty-five Dollars (\$985.00), the cost of obtaining her hospital records from Fairmont General [in the amount of] Fourteen Dollars and Eighty-four cents (\$14.84), and [Respondent's] office expense.”⁹

44. Respondent admitted that he had guaranteed payment to Dynamic Physical Therapy but stated that “[t]o date [he had] not been billed by them. [He] never refused to pay it and [he] is holding the money to pay [the bill] once they contact him.” Respondent also maintained that this bill has had no effect on Complainant Richard’s credit, as “she already had bad credit.”
45. Respondent also alleged that Complainant Richard was having an extra-marital affair with another one of his clients. Respondent stated that Complainant Richard admitted to him that she had a criminal record and had spent four and half years in jail. Respondent stated that Complainant Richard “was just trying to extort money from [Respondent] when she called, and with this complaint.”

⁹ With his verified response, Respondent provided a copies of the following documents: (a) written fee agreement (which provides that attorney will pay the medical bills), (b) the October 31, 2013 Settlement Disbursement listing three (3) items, as follows: (1) Check from insurance company; (2) Given to client per agreement \$20,000; (2) Attorney fees and expenses \$15,000; (c) a copy of a July 12, 2013 medical bill to Ms. Richards from Dynamic Physical Therapy in the amount of \$985.00; (d) email from opposing counsel with draft of settlement agreement; (e) Agreed Order of Dismissal in *Sonja Marie Richard v. Alethea Wise*, Civil Action No. 13-C-141, Marion County, West Virginia; (f) March 6, 2014 letter from Dynamic Physical Therapy to Ms. Richards advising that payment on the bill was overdue and that after March 21, 2014 the matter would be turned over to collections; (g) May 15, 2013 letter of protection; (h) facsimile cover sheet dated July 12, 2013 from Dynamic Physical Therapy addressed to Complainant but sent to Respondent’s fax number 304-777-4087; (i) Respondent’s June 17, 2013 Check No. 3079 from his United Bank “Attorney at Law” account in the amount of \$14.84; (j) a filing fee receipt from the Marion County Circuit Clerk; (k) a copy of Plaintiff’s Answers and Responses to Defendant Alethea Wise’s First Combined Discovery Requests; (l) a copy of Confidential Settlement Agreement and Release of All Claims by Sonja Marie Richard with an unsigned copy of Settlement Disbursement sheet.

46. Respondent denied violating any of the Rules of Professional Conduct, stating that he worked diligently to obtain a settlement and Complainant Richard voluntarily accepted her settlement and signed all paperwork. Respondent stated that he kept Complainant Richard advised of the developments of her case. Respondent also stated that his written fee agreement with Complainant Richard is the standard fee agreement, and the \$15,000.00 which he received was “fair reasonable and necessary based on the time in the case, the difficulty, [Respondent’s] experience, and all of the other Rule 1.5(a) factors.” Respondent denied holding any property for Complainant Richard and again stated that he would pay the bill to Dynamic Physical Therapy once he receives the same. Respondent further denied any act of deception, fraud or deceit, or any improper conduct. Respondent stated that Complainant Richard was experiencing “buyer’s remorse” and “needs to be satisfied with the outcome.”
47. On or about July 30, 2014, Complainant Richard stated that Respondent had received a bill from Dynamic Physical Therapy on or about July 12, 2013 via facsimile. Also, Complainant Richard stated that “Teresa Johnson, out of the Morgantown office, has billed [Respondent] a few times through the mail. [Ms. Johnson] has called [Respondent’s] office and left several messages that [Respondent] has never responded to.”
48. Complainant Richard denied calling Respondent’s office to request more money. Complainant Richard stated that she called Respondent to ask why the Dynamic Physical Therapy bill had not been paid and requested “an itemized list of

[Respondent's] cost, expenses, etc.” Complainant Richard further stated that “[r]egardless of [her] credit history, this never should have made it to a collection agency.”

49. Complainant Richard stated that she was honest with Respondent regarding her past and now feels “very exposed and violated” that Respondent has attempted to use that information against her in an attempt to “take the focus of [Complainant Richard's] complaint away from [Respondent].” Complainant Richard denied any involvement in an extra-marital affair and questioned why her character needs defending, “when it is his actions that are being questioned?!”
50. Respondent's written fee agreement with Complainant Richard provides, in part, that his “attorney's fees for representing client shall be one-third (33.33%) of any funds recovered from the case, plus reimbursement of expenses associated with the same.” The fee agreement also provides, in part, that “[c]lient does hereby authorize attorney, at attorney's sole option, to withhold and pay from any sums received by way of settlement or otherwise in the prosecution of the claim: (a) Attorney's fee herein provided; (b) Any costs or expenses not yet reimbursed to attorney; (c) Any amounts owed by client for doctor or hospital bills; (d) Any other obligations owed by client arising out of the controversy for which attorney was employed.”
51. Upon information and belief, 33.33% of the settlement in this matter is approximately \$11,665.50. The “Settlement Disbursement,” however, indicates that Respondent's “attorney fee and expenses” totaled \$15,000.00. While the

“Settlement Disbursement” does not itemize Respondent’s expenses, in his verified response, he claimed expenses in the amounts of \$275.00, \$985.00, and \$14.84 leaving a balance of \$3,334.50 in unnamed “office expenses.”

52. On or about October 30, 2013, Respondent deposited Complainant Richard’s \$35,000.00 settlement check into his United Bank “Client Trust Account.”
53. On or about October 30, 2013, Respondent wrote a check from his “Client Trust Account” in the amount of \$20,000.00 as payment to Complainant Richard. There are no checks reflecting payment of “Attorney fees and expenses” from Respondent’s United Bank “Attorney at Law” account rather on the same date, Respondent made two “Internet/Phone Trans” from his United “Client Trust Account” to his United Bank “Attorney at Law” account in the amounts of \$3,000.00 and \$12,000.00, purportedly representing his “Attorney’s fees and expenses.” On the day prior to the “Internet/Phone” transfer, the balance in Respondent’s United Bank “Attorney at Law” account was negative \$2,665.44.
54. According to the November 12, 2013 bank statement for Respondent’s United Bank “Attorney at Law” account, the beginning balance on or about October 12, 2013, was negative \$292.92. Respondent’s ending balance on or about November 12, 2013, was \$1,901.80.
55. According to the December 12, 2013 bank statement for Respondent’s United Bank “Attorney at Law” account, the beginning balance on or about November 12, 2013, was \$1,901.80. Respondent’s ending balance on or about December 12, 2013, was negative \$1,741.11. The balance in Respondent’s United Bank

“Attorney at Law” account had a negative balance only eighteen (18) days after the October 30, 2013 “Internet/Phone” transfer.

56. Because Respondent failed to act with reasonable diligence in representing Complainant Richard by failing to disburse payment of the Dynamic Physical Therapy bill in a timely manner, he has violated Rule 1.3 of the Rules of Professional Conduct, as set forth above.
57. Because Respondent failed to keep Complainant Richard reasonably informed about the status of the payment of the Dynamic Physical Therapy bill and failed to promptly comply with her reasonable requests for information about the status of the payment of the medical bill, he has violated Rule 1.4(a) and Rule 1.4(b) of the Rules of Professional Conduct, as set forth below:

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.

58. Because Respondent charged Complainant Richard an unreasonable fee in this matter, he has violated Rule 1.5(a) of the Rules of Professional Conduct, as set forth below:

Rule 1.5. Fees.

(a) A lawyer’s fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and skill requisite to perform the legal service properly;

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

59. Because Respondent failed to promptly deliver funds to which either Ms. Richard and/or Dynamic Physical Therapy was entitled, failed to hold those funds separately in a client trust account, and failed to provide a “full accounting” of the money he withheld, he has violated Rules 1.15(a) and 1.15(b) of the Rules of Professional Conduct, as set forth below:

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 safeguarded. 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.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third

person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

60. Because Respondent wrongfully misappropriated and converted client funds and/or funds due his client and/or to a third person to his own personal use and asserted that Complainant Richard “was just trying to extort money from [Respondent] when she called [to inquire about his failure to pay the medical bill], and with this complaint,” he has violated Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct, as set forth above.
61. Because Respondent knowingly made a false statement of material fact in connection with a disciplinary matter by stating in his verified response that he was “holding” the money to pay the medical bill from Dynamic Physical Therapy, he has violated Rule 8.1(b) of the Rules of Professional Conduct, as set forth below:

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 IV
I.D. No. 14-01-382
Complaint of Ronald G. Kramer, II

62. Respondent represented Complainant Kramer¹⁰ in a civil action from approximately April through December 2013. Complainant Kramer stated that Respondent declined settlement offers and made counter-offers without communicating those offers to him. Complainant Kramer also alleged that after he discharged Respondent from representing him, Respondent then submitted a fraudulent attorney lien to the Court documenting fraudulent hours and expenses. Finally, Complainant Kramer alleged that Respondent also sent numerous vulgar and unprofessional email and text messages to him and other attorneys during and after the representation. For example, Complainant Kramer alleged that when Judge Gaujot ruled against Respondent regarding Respondent's fees, Respondent "emailed defense counsel stating 'I'm not going to get fucked.... And I'm supposed to take this up the ass...'" Also, "I don't give a damn about what Judge Gaujot says."
63. On or about July 23, 2014, Respondent provided his verified response and maintained that the complaint against him was "completely frivolous." Respondent stated that Complainant Kramer previously worked for Respondent as a law clerk. While Complainant Kramer was employed by Respondent, Complainant Kramer asked Respondent to "sue Volkswagen and Cochran in

¹⁰ Upon information and belief, Complainant Kramer is an attorney licensed with the West Virginia State Bar and was at one time employed by Respondent as a "law clerk." Mr. Kramer was admitted to practice on February 14, 2014.

Pittsburgh over a new 2011 Volkswagen car he leased from Cochran in December of 2010. [Complainant Kramer] said that the door was coming off the hinge and they failed to repair in [sic] three times.” Respondent stated that he informed Complainant Kramer that he would file the suit but he would have to charge Complainant Kramer for it and keep track of time and expenses. Respondent stated that Complainant Kramer agreed.

64. Respondent stated that he was offered \$18,000.00 to settle the case, “which was entirely ignored.” Respondent stated that Complainant Kramer became increasingly impatient with the process. Respondent suggested making a settlement offer in the amount of \$30,000.00 but Complainant Kramer rejected the suggestion.

65. Respondent stated that Complainant Kramer traded in the vehicle in or about fall of 2013, and that Complainant Kramer subsequently obtained his license to practice law and left his employment with Respondent. Respondent stated that on or about January 3, 2014, he and Complainant Kramer “had a nasty text exchange in which [Complainant Kramer] demanded to take over [Complainant Kramer’s] case and asked [Respondent] to withdraw.” Respondent stated that Complainant Kramer owed Respondent for the work he had performed on the case, so Respondent filed a charging lien with the court for approximately \$14,000.00. Complainant Kramer disputed the amount of the charging lien and a hearing was held before Judge Gaujot on or about January 15, 2014. However, Respondent stated that Complainant Kramer had “surreptitiously obtained from my former

secretary, Vanessa Lawson, [an affidavit] in which she essentially claimed that [Respondent] had padded [Respondent's] bill." Complainant Kramer had also claimed that he did a lot of the work himself and paid the filing fee himself, both of which Respondent stated were not true.

66. Respondent stated that Complainant Kramer met for mediation in the case and reached a settlement in the amount of \$5,000.00. A few days later Complainant Kramer requested that Respondent withdraw the charging lien, but Respondent refused. On or about July 14, 2014, Judge Gaujot ordered Complainant Kramer pay Respondent one-third (1/3) of the \$5,000.00.
67. Respondent denied declining settlement offers, submitting a fraudulent lien to the court, and any act of "dishonesty, fraud, deceit, or misrepresentation" as alleged in the complaint. Respondent denied violating the Rules of Professional Conduct, and further alleged that this complaint was a result of a "personal vendetta over a private matter."
68. On or about July 31, 2014, Complainant Kramer stated that Respondent failed to "truthfully or adequately respond to the ethical violations." Complainant Kramer stated that Respondent admitted to adding \$5,000.00 to the settlement offer. Also, Complainant Kramer noted that Respondent failed to disclose to him that the settlement they offered included a new car as well. Complainant Kramer further stated that Respondent told the defense attorneys repeatedly that "any settlement MUST include sufficient funds to cover [Respondent's] time and expenses."

69. Complainant Kramer acknowledged that Respondent had the receipt for the filing fee in the case. Complainant again maintained that Respondent's charging lien was fraudulent. Complainant Kramer further stated that he drafted all pleadings in the case and provided discovery to the defense. Complainant Kramer again alleged that Respondent rejected settlement and countered with offers without consulting Complainant Kramer.
70. By Order entered on or about July 22, 2014, the Circuit Court of Monongalia County ordered Complainant Kramer to pay Respondent one-third of the settlement amount or \$1,666.66. The Court "concluded that this was a fair amount for [Respondent's] attorney's fees as one-third is a standard contingency fee arrangement. Complainant Kramer was also ordered to pay any outstanding litigation costs incurred by Respondent and/or Complainant Kramer out of the settlement proceeds. The Court had noted that the agreement between Respondent and Complainant Kramer had been an oral contract but that the terms of the contract were "alternate views."
71. Because Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and in conduct prejudicial to administration of justice by submitting a fraudulent "Invoice for Legal Services" with his Notice of Attorney's Charging Lien in *Ronald G. Kramer, II, v. Volkswagen Group of America, Inc., et al.*, Civil Action No. 13-C-286, Circuit Court of Monongalia County, he violated Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct, as set forth above.

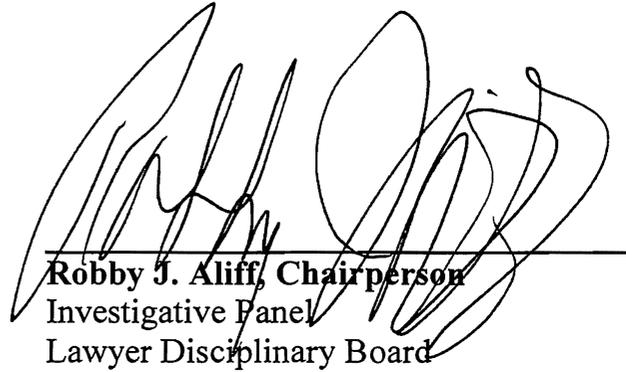
72. Aggravating factors include, but are not limited to, prior disciplinary offenses. Respondent was previously suspended from the practice of law for two (2) years for making fraudulent representations in conjunction with his application for admission to the bar and for engaging in improper practice before the Bankruptcy Court for the Northern District of West Virginia which had resulted in a three (3) year suspension of his right to practice before that Court. See, Lawyer Disciplinary Board v. Edward R. Kohout, Supreme Court No. 22629, April 14, 1995.¹¹ In addition, in I.D. No. 10-01-198, Office of Disciplinary Counsel v. Edward R. Kohout, Esquire, Respondent was admonished on May 6, 2013, for violating Rule 3.3(a)(1) of the Rules of Professional Conduct.

* * *

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.

¹¹ By Order entered March 24, 2005, the Supreme Court of Appeals of West Virginia reinstated Respondent to the practice of law.

STATEMENT OF CHARGES ORDERED on the 19th day of September, 2015,
and **ISSUED** this 23rd day of September 2015.



Robby J. Aliff, Chairperson
Investigative Panel
Lawyer Disciplinary Board