

BEFORE THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA

COPY

**In Re:** MCGINNIS E. HATFIELD, JR.  
a member of The West Virginia State Bar

**Bar No.:** 1637  
**I.D. No.:** 13-02-399

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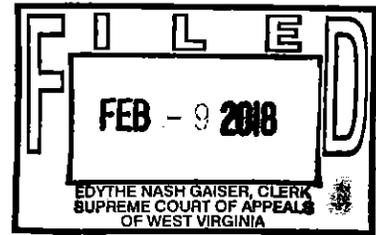
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STATEMENT OF CHARGES

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**To:** McGinnis E. Hatfield, Jr., Esquire  
Post Office Box 649  
Bluefield, West Virginia 24701



**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. McGinnis E. Hatfield, Jr. (hereinafter "Respondent"), is a lawyer who practices in Bluefield, which is located in Mercer County, West Virginia. Respondent was admitted to The West Virginia State Bar on May 20, 1975, by diploma privilege. As such, he is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.
2. By complaint received by the Office of Lawyer Disciplinary Counsel (hereinafter "ODC") on August 29, 2013, Complainant B.W.<sup>1</sup> alleged that in August of 2013, she

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<sup>1</sup> Because of the sensitive nature of the facts alleged in this case, initials are used herein for the victim. *See State v. Edward Charles L.*, 183 W.Va. 641, 645 n. 1, 398 S.E.2d 123, 127 n.1 (1990). *See also* Rule 40(e)(1) of the Rules of Appellate Procedure.

asked Respondent to represent her in a divorce action in Mercer County, West Virginia.

3. B.W.'s complaint stated that Respondent asked whether she had One Thousand Five Hundred Dollars (\$1,500.00) for his services. When she informed Respondent that she did not have the money, B.W. alleged that Respondent indicated that he would represent her in exchange for sexual relations.
4. B.W.'s complaint further stated that Respondent persisted in trying to get sexual favors from her in exchange for representation.
5. With her complaint, B.W. provided copies of audio recordings which she claimed contained telephone conversations with Respondent wherein he requests sex from B.W. in exchange for his representation in her divorce.
6. Below are excerpts from the recordings provided by B.W.:

Male: "... Did you take your papers over to the courthouse?"

Female: "No not yet because I have to go over there tomorrow."

Male: "Well, take them there and show them to them face to face, show them what you've got and say, look, I need to have forms for me to file, you know, to reply to this."

Female: "I know, but I thought like when we first started out, I was just going to pay you. I didn't know that you wanted sex out of the whole thing."

Male: "Well, I'd have to charge you like 1,500 bucks. You don't have \$1,500, do you?"

Female: "No."

Male: "So come on out here. Just come. What time do you want to come?"

\* \* \*

Male: "... [I]t's just not going to work unless you do what I say."

Female: "What do you want me to do?"

Male: "You know what I want you to do. I told you."

Female: "Well, I'm a little confused."

Male: "Well, there's nothing to be confused about."

Female: "Well, what do you want me to do?"

Male: "Well, I want you to let me eat your p\*\*\*\*, and then I want you to let - I want you to suck my d\*\*\*\*, and then, you know, I just have to - I'm as straightforward as I can be. And if you don't want to do that, then fine. I don't have any - I like you. And if you don't want to do that, then we'll just have to call it off."

Female: "Is that not - all right. That's fine. Whatever."

Male: "Is that okay?"

Female: "I mean no, not really because I'm not a whore."

\* \* \*

Male: "... And like I said, if you won't want to do that, then that's fine by me. I wish you luck. And if you don't want to do that, then I'm not going to try to represent you. So that's a benefit for you. And I'll give you some money, too[.]"

\* \* \*

Male: "Why did you hang up on - why did you hang up on me?"

Female: "Because I'm not really that type of person, like I'm not just going to up and have sex with people."

Male: "... You know, I'm shooting straight with you. I told you from the beginning that sex was important to me. I want some now. Nobody's tried to trick you. And it would be safe, too. But anyway, if you don't want to do it, that's fine by me, honey, but you'll have to get somebody to help you with your divorce, too."

Female: "Okay, That's fine."

7. By letter dated August 30, 2013, the ODC mailed Respondent a copy of B.W.'s complaint and directed him to file a verified response within twenty (20) days.
8. In his timely-filed response, Respondent stated as follows, in totality: "In response to your letter dated August 20, 2013, in regards of complainant [B.W.], there was no attorney/client relationship."
9. On November 5, 2013, B.W. provided a Statement Under Oath to Lawyer Disciplinary Counsel in which she verified that the female voice contained on the recordings was hers and the male voice contained on the recordings was that of

Respondent. B.W. also stated that Respondent's offer made her feel uncomfortable, and that she never proceeded to have a sexual relationship with him.

10. On or about March 31, 2014, Lawyer Disciplinary Counsel filed a Motion to Stay Complaint in which she requested the proceedings with respect to this ethics complaint be stayed based upon the knowledge that in late 2013, Respondent had sustained a significant brain injury and, as a result, had been residing in a nursing facility. At that time, it was unknown when and if Respondent would recover from his injury, but it was the understanding of Lawyer Disciplinary Counsel that he was no longer competent to practice law and was on "inactive" status with the State Bar.
11. On or about March 31, 2014, the Investigative Panel of the Lawyer Disciplinary Board voted to place this complaint on administrative stay until which time Complainant returned to the active practice of law.
12. By letter dated May 25, 2017, James J. Palmer, III, Esquire, advised the ODC that Respondent had agreed to reactivate his law license in order to supervise Mr. Palmer's law practice.<sup>2</sup> Mr. Palmer's letter also provided an updated address for Respondent.
13. Thereafter, by letter dated May 31, 2017, Lawyer Disciplinary Counsel provided to Respondent at his updated address a copy of B.W.'s complaint and asked that he provide the ODC with the current status of his health.

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<sup>2</sup> Mr. Palmer had previously been ordered by the Supreme Court of Appeals to undergo six months of probation with his practice supervised by an active attorney in his geographic area in a separate disciplinary proceeding.

14. By letter dated June 7, 2017, John W. Feuchtenberger, Esquire, advised the ODC that he had been engaged “to investigate and advise” Respondent in the matter, and requested a copy of the file. Mr. Feuchtenberger was provided with such on or about June 15, 2017.
15. The State Bar subsequently advised the ODC that on July 18, 2017, Respondent had reactivated his law license.
16. By letter dated July 24, 2017, Respondent stated that his health was “good” and that he had “completely recovered from the traumatic brain injury.” Respondent further stated that he did not now, nor had he ever, represented B.W.
17. At its meeting held on September 23, 2017, the Investigative Panel of the Lawyer Disciplinary Board voted to lift the previously-granted stay.
18. On October 11, 2017, the ODC was provided with some updated medical records with respect to Respondent’s injury.
19. Thereafter, on October 26, 2017, Respondent appeared at the ODC, with his counsel, to provide a sworn statement.
20. At his sworn statement, Respondent confirmed that he had listened to the audio recordings submitted with B.W.’s complaint and that it was his voice on the recordings. Respondent asserted that it sounded, to him, like he was “joking with her.”
21. Respondent denied that he wanted to have sexual contact with B.W. , and maintained that there was never an attorney-client relationship status between himself and B.W.

22. Respondent also stated that he is an alcoholic, but had been sober for approximately four (4) years.
23. The Rules of Professional Conduct have long prohibited a lawyer from having sexual relations with a client whom the lawyer personally represents during the legal representation unless a consensual sexual relationship existed between them at the commencement of the lawyer/client relationship.<sup>3</sup>
24. By using inappropriate, sexually-harassing conduct during telephone contact with B.W., a prospective client in a domestic matter, while soliciting professional employment, Respondent has violated Rule 7.3(b)(2) of the Rules of Professional Conduct, provided as follows:

**Rule 7.3. Direct contact with prospective clients.**

[Effective prior to January 1, 2015]

(b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a) if:

\* \* \*

(2) the solicitation involves coercion, duress or harassment.

25. By making unwelcome sexual advances in an attempt to create a sexual relationship with a client in exchange for his professional services, Respondent has violated Rule 8.4(a) and (d), provided as follows:

**Rule 8.4. Misconduct.**

[Effective prior to January 1, 2015]

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<sup>3</sup> Rule 8.4(g) of the Rules of Professional Conduct, effective until January 1, 2015; Rule 1.8(j) of the Rules of Professional Conduct, effective January 1, 2015.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

\* \* \*

(d) engage in conduct that is prejudicial to the administration of justice[.]

26. Because Respondent committed the criminal acts of solicitation of another to commit an act of prostitution, in violation of W.Va. Code § 61-8-5(b),<sup>4</sup> he has violated Rule 8.4(b) of the Rules of Professional Conduct, provided as follows:

**Rule 8.4. Misconduct.**

[Effective prior to January 1, 2015]

It is professional misconduct for a lawyer to:

\* \* \*

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects[.]

**POTENTIAL AGGRAVATING FACTOR**

27. Respondent has been issued admonishments by the Investigative Panel of the Lawyer Disciplinary Board on three (3) prior occasions. On or about August 18, 1990, Respondent was admonished for violating Rule 1.9 and 1.10 of the Rules of

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<sup>4</sup> W.Va. Code § 61-8-5(b) provides: "Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than sixty days nor more than six months, and by a fine of not less than \$50 and not to exceed \$100[.]"

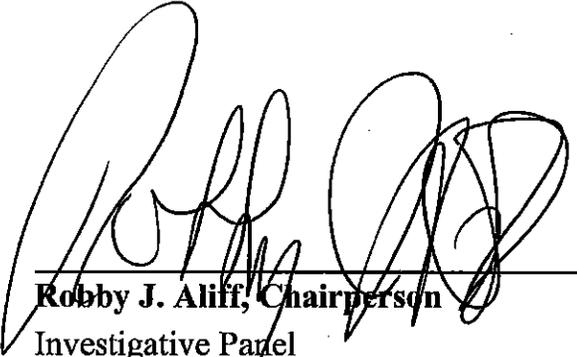
Professional Conduct. On or about September 9, 2000, Respondent was admonished for using slight physical force with his former wife in a courtroom incident. On or about March 2, 2010, Respondent was admonished for violating Rule 1.2(a) of the Rules of Professional Conduct.

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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 thirty 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 27<sup>th</sup> day of January, 2018, and  
**ISSUED** this the ~~30<sup>th</sup>~~ day of January, 2018.

31<sup>st</sup>



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Robby J. Aliff, Chairperson  
Investigative Panel  
Lawyer Disciplinary Board