

**IN THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA**



LAWYER DISCIPLINARY BOARD,

Petitioner,

vs.

No. 19-0879

E. LAVOYD MORGAN, JR.,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

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I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS AND RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE

Formal charges were filed against E. Lavoyd Morgan, Jr. (hereinafter “Respondent”) with the Clerk of the Supreme Court of Appeals of West Virginia (hereinafter “Supreme Court”) on or about September 30, 2019, and served upon Respondent via certified mail by the Supreme Court Clerk on October 3, 2019. Lawyer Disciplinary Counsel filed her mandatory discovery on or about October 23, 2019. Respondent filed his Answer to the Statement of Charges on or about November 4, 2019, and provided his mandatory discovery on November 22, 2019. An evidentiary hearing was set to commence on January 27, 2020.

Thereafter, this matter proceeded to hearing in Lewisburg, West Virginia, on January. The Hearing Panel Subcommittee (hereinafter “HPS”) was comprised of Timothy E. Haught, Esquire, Chairperson; David A. Wandling, Esquire; and Reverend Robert M. Wood, Layperson. Jessica H. Donahue Rhodes, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel (hereinafter “ODC”). Lonnie C. Simmons, Esquire, appeared on behalf of Respondent, who also appeared. The HPS heard testimony from Dana F. Eddy, Esquire, Christine B. Stump, Esquire, Valerie D. Norwood Grow, Elizabeth Ann Good, Denney William Bostic, Harmony Grace Flora, Travis R. Norwood, Todd W. Clutter, Jacqueline Marie Clutter, W.T., S.P., Lonnie Dennis Lilly, P.B., Dani K. Jones, Andrew M. Arrick, D.K., Lori Ann McKinney, Crystal M. Sheppard, E.L., T.R., J.H., Denise Pettijohn, Esquire, Richard D. McKinney, Kelsea L. Hower, Lisa Stansell Galitz, Hunter P. Chellis, R.D., Theresa L. Reynolds, Sara E. Reynolds, Brandon E. Perdue, Zana G. Osborne, Tina O’Neill and Respondent. In addition, ODC Exhibits 1-350 and Joint Exhibit 1 were admitted into evidence.

On or about April 14, 2020, the HPS issued its decision in this matter and filed its “Report of the Hearing Panel Subcommittee” (hereinafter “Report”) with the Supreme Court. The HPS properly found that the evidence established that Respondent committed multiple violations of the Rules of Professional Conduct (hereinafter “RPC”).¹ The HPS issued the following recommendation as the appropriate sanction:

1. That Respondent’s law license be annulled;
2. That Respondent refund the following:
 - i. \$1,192.50 to PDS;
 - ii. \$7,500.00² to Valerie Norwood;
 - iii. \$3,500.00³ to W.T.;
 - iv. \$3,500.00⁴ to E.L.;
 - v. \$9,000.00⁵ to Todd Clutter;
 - vi. \$1,250.00⁶ to Lonnie Lilly;
 - vii. \$3,000.00⁷ to R.D.;

¹ For convenience, an Appendix is attached to this Brief recites all of the Rules of Professional Conduct that Respondent was found to have violated.

² Ms. Norwood testified that she received a check for \$500.00 from Respondent. Further, testimony was presented that Respondent falsified the itemization he provided for his representation of Travis Norwood. Therefore, Respondent needs to refund the entire amount, less what he has already paid.

³ Respondent did not have a written fee agreement for his representation of S.P., W.T.’s granddaughter, and therefore, needs to refund the entire amount.

⁴ Respondent did not have a written fee agreement for his representation of E.L., and therefore, needs to refund the entire amount.

⁵ This was the amount listed in Mr. Clutter’s ethics complaint, and Respondent did not provide an accounting to show he learned that amount.

⁶ Respondent did not have a written fee agreement for his representation of Lonnie Lilly, and therefore, needs to refund the entire amount.

⁷ Respondent did not have a written fee agreement for his representation of R.D., and therefore, needs to refund the entire amount.

- viii. \$4,800.00⁸ to T.R.;
 - ix. \$3,050.00⁹ to D.K.;
 - x. \$1,300.00¹⁰ to J.H.;
 - xi. Judgment plus interest¹¹ to Elizabeth Good; and
 - xii. \$3,500.00¹² to P.B.
3. That Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure (hereinafter "RLDP") unless he has submitted such as part of his immediate suspension in Case No. 19-0885; and
4. Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the RLDP.

B. FINDINGS OF FACT

Respondent is a lawyer practicing in Lewisburg, which is located in Greenbrier County, West Virginia. ODC 50, Bates 2136; 1/28/20 H.G. Trans. 181. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on October 2, 1995. ODC 50, Bates 2136; 1/28/20 Hrg. Trans. 180-181. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court and its properly constituted Lawyer Disciplinary Board.

⁸ Respondent did not have a written fee agreement for his representation of T.R., and therefore, needs to refund the entire amount. T.R. The entire fee was to be \$5,000.00, but T.R. testified she did not pay Respondent \$200.00 of that amount.

⁹ Respondent did not have a written fee agreement for his representation of D.K., and therefore, needs to refund the entire amount.

¹⁰ Respondent did have a written fee agreement for his representation of J.H., and it was for a flat fee of \$2,500.00. The additional \$1,000.00 J.H. paid to Respondent should be refunded along with the \$300.00 J.H. had to pay to get copies of his file from the circuit court.

¹¹ Ms. Good testified Respondent owed her \$2,342.00 for unpaid wages, and she did file an action in Magistrate Court to obtain those wages. There was a judgment entered against Respondent, so the full amount of the judgment plus interest needs to be paid.

¹² P.B. paid Respondent \$3,500.00 for representation in two cases, and then Respondent billed P.B. P.B. paid the additional bill and therefore, Respondent should refund the initial payment he received from P.B.

COUNT I
I.D. No. 17-05-329
Complaint of Office of Lawyer Disciplinary Counsel

On or about June 8, 2017, the ODC was provided with documentation showing Respondent had billed the Public Defender Services Corporation (hereinafter "PDS") for time over 18 hours on eighteen days. ODC 2, Bates 2-46. Specifically, the time and days were listed as follows:

<u>Date</u>	<u>Number of Hours Submitted to PDS</u>
2/22/16	18.6
3/22/16	19.1
5/2/16	22.8
5/6/16	18.3
5/23/16	22.4
7/6/16	18.5
7/12/16	20.2
7/26/16	27.0
8/4/16	18.3
8/9/16	23.7
8/17/16	20.3
8/30/16	20.4
9/2/16	26.9
9/26/16	18.6
9/28/16	19.2
10/17/16	21.8
12/13/16	20.1
1/3/17	20.2

On or about September 28, 2017, Respondent responded that his office used a combination of written contemporaneous time slips and time reconstructed from review of the files at the time of billing. ODC 7, Bates 58. When reconstructing time, the office manager often would enter time related to a given court appearance on the same date as the court appearances, even if it did not occur on that date. ODC 7, Bates 59. Time spent on weekends was often moved to a weekday. Id. Reconstructed time was often entered as the date the voucher was prepared for data entry convenience. Id. Respondent also asserted that unaccounted-for time was lost, resulting in frequent underbilling on case files. Id.

Respondent acknowledged and affirmed that it was his duty to properly review bills, maintain time records, and assure the accuracy of material submitted to the Court and to the PDS. Id. Respondent said that he is aware of W.Va. Code 29-21-13a, which required attorneys to keep detailed time records, but noted there is nothing within the statute, the PDS website, or case law which precludes the use of reconstructed time. ODC 7, Bates 60. The only requirement under the code section is that the time records be accurate and detailed. Id. Respondent stated that, based on a review of his billings, the daily time discrepancies were overwhelming based on the dates entered as to reconstructed time. ODC 7, Bates 63. Respondent said that other billing errors were caused by misidentification of the billing attorney and clerical errors causing a duplicate time entry. Id. Respondent stated that he has changed office policy to require contemporaneous handwritten time slips be used on all time entered, and also instituted internal procedures to discontinue the use of reconstructed billing. ODC 7, Bates 64.

In additional correspondence, Respondent stated that time for a second attorney, Denise Pettijohn, Esquire, was attributed to Respondent on several dates. ODC 15, Bates 209-211. Respondent said he was not alerted to the misidentification on the face of the submission materials. Id. Respondent provided information indicating that a lot of the time was for work on weekends or another day, and it was incorrectly submitted for the wrong dates. ODC 22, Bates 243. Respondent acknowledged duplicate travel time was submitted for the following days: (1) 1.5 hours on May 2, 2016 (ODC 7, Bates 87-88); (2) 1.5 hours on September 2, 2016 (ODC 7, Bates 138); (3) 1.5 hours on September 28, 2016 (ODC 7, Bates 143); and (4) 1 hour on October 17, 2016 (ODC 7, Bates 146).¹³ Respondent stated time provided by Ms. Pettijohn was claimed for him as follows: (1) 6.6

¹³ At a rate of \$45.00 an hour, with 5.5 hours of duplicate billing, Respondent owes a refund of \$247.50.

hours on May 6, 2016 (ODC 7, Bates 89-92); (2) 5.7 hours on July 6, 2016 (ODC 7, Bates 100-103); (3) 2.9 hours on July 26, 2016 (ODC 7, Bates 114-115); (4) 1.3 hours on August 17, 2016 (ODC 7, Bates 128-129); (5) 3 hours on September 2, 2016 (ODC 7, Bates 137); and (6) 1.8 hours on September 28, 2016 (ODC 7, Bates 143-144).

Disciplinary Counsel sought information from PDS about the days listed by Respondent as the correct days for his time. ODC 10, Bates 170-171. For several days, the time already submitted by Respondent, plus the additional time he listed made those days have high hours. ODC 10, Bates 170. Those days are as follows:

- a. July 11, 2016: 10.6 hours plus the 7.9 hours from Respondent's corrections = 18.5 hours (ODC 10, Bates 170; ODC 7, Bates 105-109);
- b. July 25, 2016: 11.6 hours plus 4.8 hours from Respondent's corrections = 16.4 hours (ODC 10, Bates 170; ODC 7, Bates 110-113);
- c. August 3, 2016: 14.3 hours plus 4 hours from Respondent's corrections = 18.3 hours (ODC 10, Bates 170; ODC 7, Bates 116-117);
- d. August 8, 2016: 17.3 hours plus 3.4 hours from Respondent's corrections = 20.7 hours (ODC 10, Bates 170; ODC 7, Bates 120-122); and
- e. August 29, 2017: 15.8 hours plus 1.4 hours from Respondent's corrections = 17.2 hours (ODC 10, Bates 170; ODC 7, Bates 130-131).

Respondent was asked to address these dates, along with the numerous corrections with high numbers of hours for weekends. ODC 18, Bates 220-221. Additionally, Respondent's correction to add 9.5 hours to December 20, 2016, made the total number of hours submitted for that day = 28.8 hours. ODC 25, Bates 461-462; ODC 7, Bates 151-152; ODC 15, Bates 211.

Respondent filed additional correspondence and again stated time for weekends or other days were submitted for the wrong dates. ODC 22, Bates 243. Further, Respondent said 6.1 hours for a paralegal on August 3, 2016, was submitted as his work.¹⁴ ODC 22, Bates 243, 258-260. Regarding his high hours billed for weekends, Respondent stated that he is required to work weekends to handle

¹⁴ At a rate of \$45.00 an hour, with 6.1 hours being submitted incorrectly by Respondent, a refund of \$274.50 is due to PDS.

follow-up work made necessary by his weekday schedule. ODC 22, Bates 243. Respondent noted that due to personal health issues that required health care appointments during regular working hours, it was the norm in 2016 and currently for him to work on one weekend day, if not both weekend days. Id. Further, Respondent stated that he was forwarding a check to PDS for the 5.5 hours of duplicate travel time in the amount of \$247.50. ODC 22, Bates 247.

On or about January 11, 2018, Disciplinary Counsel obtained updated information from PDS, which showed that Respondent had days previously noted which had an increase in the number of hours billed, and those are as follows:

f.	February 22, 2016	18.6 hours (old) (ODC 2, Bates 3-4)	19.0 hours (new)
g.	May 23, 2016	22.4 hours (old) (ODC 2, Bates 12-14)	22.7 hours (new)
h.	September 28, 2016	19.2 hours (old) (ODC 2, Bates 37-38)	22.3 hours (new)
i.	December 13, 2016	20.1 hours (old) (ODC 2, Bates 42-43)	20.9 hours (new)
j.	January 3, 2017	20.2 hours (old) (ODC 2, Bates 44-46)	22.5 hours (new)

ODC 24, Bates 277-278. Respondent also had new days with eighteen or more hours, and they are as listed:

k.	May 31, 2016	18.0 hours
l.	October 21, 2016	20.7 hours
m.	October 26, 2016	18.8 hours
n.	November 10, 2016	18.3 hours
o.	November 29, 2016	20.5 hours
p.	December 2, 2016	18.5 hours
q.	December 5, 2016	18.0 hours
r.	December 19, 2016	19.4 hours
s.	December 20, 2016	19.3 hours
t.	January 25, 2017	18.0 hours
u.	February 1, 2017	18.9 hours
v.	February 2, 2017	19.9 hours
w.	March 1, 2017	21.0 hours
x.	March 6, 2017	20.5 hours
y.	March 10, 2017	19.0 hours
z.	April 19, 2017	18.5 hours

ODC 24, Bates 277-278. Respondent was asked to address the billings for those new dates, and also about the additional hours he attributed to December 20, 2016, wherein the PDS report showed 19.3

hours already billed for that date. ODC 25, Bates 461-462. The new total for that date would be 28.8 hours. ODC 25, Bates 461.

Respondent filed a response and indicated that the incorrect dates were submitted along with work performed by an associate as follows: (1) 1.1 hours on October 21, 2016 (ODC 28, Bates 466, 474); (2) 3.5 hours on November 10, 2016 (ODC 28, Bates 466, 478); (3) 1.7 hours on December 2, 2016 (ODC 28, Bates 466, 482); (4) 1.3 hours on December 5, 2016 (ODC 28, Bates 466, 483); (5) 1.1 hours on December 19, 2016 (ODC 28, Bates 466, 487); (6) 2.6 hours on January 25, 2017 (ODC 28, Bates 491-492); (7) 4.2 hours on February 1, 2017 (ODC 28, Bates 466, 494); (8) 1.1 hours on March 1, 2017 (ODC 28, Bates 466, 499); (9) 1.2 hours on March 10, 2017 (ODC 28, Bates 466, 523); and 3.5 hours on April 19, 2017 (ODC 28, Bates 466, 505). Respondent admitted to overbilling as follows: (1) 3 hours on November 29, 2016 (ODC 28, Bates 479-480); (2) 1.4 hours on December 2, 2016 (ODC 28, Bates 467, 481); and (3) 1 hour on December 19, 2016 (ODC 28, Bates 467, 487).¹⁵

In an additional response from Respondent, Respondent said that the additional hours added to the initial days were correct. ODC 28, Bates 465-466, 469-470. Further, Respondent stated that he could not resolve the errors for December 20, 2016, in particular the 9.5 hours he attributed from December 13, 2016 to December 20, 2016. ODC 32, Bates 518. Respondent “suggest[ed] the 9.5 hours be stricken and amounts reimbursed to PDS.”¹⁶ Id. Respondent noted that he had completed assessments with the Lawyer’s Assistance Program and was awaiting a report. ODC 32, Bates 519. Respondent further noted that he was undergoing a medical procedure on April 6, 2018. Id. An

¹⁵ Respondent overbilled for 5.4 hours of out of court time and, therefore, he owes a refund of \$243.00 to PDS.

¹⁶ The 9.5 hours from December 13, 2016, that Respondent initially attributed to December 20, 2016, was for out of court time. Accordingly, Respondent owes a refund of \$427.50 to PDS.

inquiry to the Supreme Court revealed there were no submissions for Respondent regarding invoices for family court or mental hygiene matters. ODC 64, Bates 2384-2385; ODC 66, Bates 2390-2391.

Denney Bostic provided a sworn statement on July 17, 2018, and stated that Respondent billed for work which Mr. Bostic performed in court appointed cases as if Respondent had done the work. ODC 166, Bates 3361-3362. Mr. Bostic denied that Respondent put in a lot of work in court appointed cases (ODC 166, Bates 3352-3354), and rarely worked on weekends or holidays. ODC 166, Bates 3403. Mr. Bostic said Respondent was not in his office everyday. ODC 166, Bates 3360.

On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating he was representing Respondent in this case. ODC 48, Bates 1803-1804.

At her September 7, 2018 sworn statement, Harmony Flora stated that the time on the vouchers submitted to PDS were not correct. ODC 187, Bates 5021-5022. Ms. Flora was unaware of Respondent working on weekends. ODC 187, Bates 5023.

At her October 25, 2018 sworn statement, Denise Pettijohn, Esquire, indicated that she began work at Respondent's law office as an attorney, and there were no other attorneys working there when she began working there in or around 2014 or 2015. ODC 194, Bates 5133. While working at Respondent's office, she would review vouchers submitted to PDS for the cases she handled and, at times, she would make changes on the vouchers when she reviewed them regarding the time for the action or the specificity of the action. ODC 194, Bates 5115, 5117. She discovered some voucher submissions in her cases showed work performed by Respondent, but he never appeared in those cases. ODC 194, Bates 5142-5143. She stated Respondent's law office went by Morgan and Associates, and she was unaware of any associate working there at that time. ODC 194, Bates 5133.

At his sworn statement on November 1, 2018, Respondent stated that the name of his law office was E. Lavoyd Morgan and Associates, LC, but admitted that there are no other attorneys in

his office as of the beginning of 2018. ODC 53, Bates 2142-2143. Respondent also acknowledged that an attorney cannot bill over 24 hours in a day. ODC 53, Bates 2166. Respondent said that he did not record all of the time he worked on PDS cases, and that he would “underestimate” the time it took to prepare a pleading because he had to recreate the time. ODC 53, Bates 2168, 2170. Respondent indicated that he “c[a]me to learn that PDS prefers time entries in tenths of an hour.” ODC 53, Bates 2172. Respondent denied reading the statute regarding billing to PDS. ODC 53, Bates 2173. Respondent stated that he took “full responsibility . . . to make sure [the billing entries are] right.” *Id.* Respondent never questioned his staff entering time he worked on the weekends on weekdays. ODC 53, Bates 2175. Respondent said he never taught anyone how to handle the billing. ODC 53, Bates 2177. Respondent stated that he billed in fifteen minute increments. ODC 53, Bates 2178-2179. Respondent could not answer if the additional 9.5 hours he attributed to December 20, 2016, in his initial response were overbilling, and said that he did not resolve the errors. ODC 53, Bates 2179-2180. Respondent then admitted that it was hard to work an 18 hour day. ODC 53, Bates 2181. Respondent was unaware of what the check to PDS for \$40.50 was for. ODC 53, Bates 2184. Respondent was unaware how Mr. Bostic’s work was billed to PDS, but acknowledged some attorney time billed for him was work performed by Mr. Bostic. ODC 53, Bates 2219-2220. Respondent admitted he reviewed the vouchers. ODC 53, Bates 2170-2171.

On or about March 22, 2019, PDS provided additional information regarding Respondent, and his submission of bills for May 4, 2017 at 19.2 hours. ODC 61, Bates 2368-2379. On or about March 25, 2019, a copy of the PDS information was sent to Respondent asking him to provide a response regarding the hours. ODC 62, Bates 2380.

On or about April 19, 2019, Respondent filed additional correspondence regarding the billing on May 4, 2017, for 19.2 hours. ODC 67, Bates 2392-2395. Respondent said there were incorrect

billings for 12.0 hours billed for that date, which included billing paralegal time as attorney time along with overbilling 1 hour of travel time as 2 hours of travel time. Id. Also, there was 0.5 hours billed on May 4, 2017, that should have been billed on May 3, 2017. ODC 67, Bates 2393-2394. That left only 6.7 hours for the correct hours for May 4, 2017. ODC 67, Bates 2394.

Based on Respondent's responses, ODC determined Respondent owed PDS a total amount of \$1,732.50¹⁷ for reimbursements as follows:

- (1) For 14.9 hours (9.5 hours + 5.4 hours) of overbilling --- \$670.50;
- (2) Billing paralegal time as attorney time --- \$274.50;
- (3) Submitting duplicate Travel time --- \$247.50; and
- (4) Overbilling of 12.0 hours on 5/4/17 --- \$540.00.

On or about September 11, 2019, Respondent submitted correspondence indicating that in the beginning of the Spring and Summer of 2018, he accepted appointed work, but did not submit any bills for his time to PDS. ODC 69, Bates 2407.

On or about September 12, 2019, PDS provided information that showed Respondent only had one day over 8 hours, which was for 13.2 hours on September 25, 2017. ODC 68, Bates 2396-2404. Further, the last submission from Respondent to PDS was for May 11, 2018. ODC 68, Bates 2396. West Virginia Code § 29-21-13a(a) (2008) required panel counsel for the PDS to "maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients[.]" Subsection (d) of that status provides that panel counsel "shall be compensated . . . for actual and necessary time expended for services performed and expenses incurred[.]" Lawyer Disciplinary Board v. Cooke, 239 W.Va. 40, 49, 799 S.E.2d 117, 126 (2017). "West Virginia Code § 29-21-14 [1981], which governs state payment of counsel fees for indigent criminal defendants,

¹⁷ The PDS showed a payment by Respondent for \$40.50 on June 23, 2017, but it is unclear what that amount was for, but that amount may need to be deducted from the total reimbursement if Respondent can provide proof that the payment was for reimbursement of any of the amounts listed.

envisages a system where each client is proportionately billed according to the time spent actually representing that client; consequently, billing for more hours than are actually worked is duplicative billing that is clearly contrary to the system envisaged by the legislature.” Syllabus Point 1, Frasher v. Ferguson, 177 W.Va. 546, 355 S.E.2d 39 (1987).

COUNT II
I.D. No. 17-05-523
Complaint of Travis R. Norwood

In his complaint filed on October 5, 2017, Travis R. Norwood stated he retained Respondent for representation in three felony cases for \$8,000.00. ODC 72, Bates 2454-2459. However, Respondent was discharged and Mr. Norwood was appointed an attorney who appeared on his behalf at court proceedings and at his trial. ODC 72, Bates 2455. Mr. Norwood said Respondent failed to communicate with him, which included not attending court hearings or meeting with him at the prison after the retainer contract was signed. Id. Mr. Norwood provided a copy of a June 12, 2017 letter from Respondent’s office to him that indicated that retainer agreement was enclosed for his review and signature, along with a June 12, 2017 letter from Respondent’s office to John Anderson, Esquire, that indicated a proposed Order Substituting Counsel was enclosed for review and signature to be forwarded to the Court after review, along with a request for the complete client file. ODC 72, Bates 2456-2458.

In his response dated November 13, 2017, Respondent stated that his paralegal, Mitchell Coles, met with Mr. Norwood in prison on May 4, 2017, for an initial intake after Mr. Norwood had made a request for representation in an appeal. ODC 75, Bates 2463-2477. Respondent noted that his quote for an initial retainer was \$8,000.00 after reviewing the case, and the same was paid by Valerie Norwood on May 25, 2017, with Mr. Norwood signing the retainer agreement on June 16,

2017.¹⁸ ODC 75, Bates 2463-2464. After signing the agreement, Respondent stated Mr. Norwood contacted him and sent pleadings regarding his other pending felony cases, and Respondent forwarded those on to Mr. Norwood's other counsel as he had other counsel for those matters. ODC 75, Bates 2464.

Respondent said that it was a July 14, 2017 letter from Mr. Norwood that informed them of a request for representation in the other pending felony cases. Id., ODC 75, Bates 2470. Respondent provided a copy of a July 21, 2017 letter he sent to Mr. Norwood about his representation being limited to the appeal and conviction proceedings, and that any other cases would need a separate agreement and retainer fee. ODC 75, Bates 2471. Mr. Coles spoke with Mr. Norwood on July 28, 2017, about the price for representation regarding post-trial motions and sentencing in one felony case and pre-trial representation in a separate criminal case. ODC 75, Bates 2464, 2472. Respondent related that the retainer fee for both of those cases was \$5,000.00 each, and were separate from the retainer fee for the appeal. ODC 75, Bates 2464. By letter dated August 2, 2017, Mr. Norwood confirmed that Respondent only represented him in the appeal case, and that he was not comfortable in paying an additional retainer fee without seeing how Respondent handled the current case. Id., ODC 75, Bates 2473.

Respondent stated that the proposed Order Substituting Counsel was sent to Mr. Anderson, but the proposed Order was never tendered to the Court because Mr. Norwood did not retain Respondent for the case. ODC 75, Bates 2464. Respondent asserted that he was recently contacted by Mr. Norwood to terminate his representation of him, along with a request for a full refund of the retainer. Id. A review of Respondent's client file showed a letter from Complainant dated October

¹⁸ The retainer agreement dated May 28, 2017, indicated that it was for representation in a "criminal/appellate matter," and listed an hourly rate of \$300.00 an hour. ODC 75, Bates 2467-2468. It was signed by Mr. Norwood on June 16, 2017. ODC 75, Bates 2468.

7, 2017, informing Respondent that his services were no longer needed and requesting a refund of the \$8,000.00 retainer. ODC 105, Bates 2614-2615. Respondent said he was preparing an accounting of the work performed in the case, and would refund any unused portion of the retainer fee. ODC 75, Bates 2464. Respondent provided a copy of the retainer agreement with this correspondence, which stated that it “confirm[ed the] agreement concerning [Respondent’s] representation of [Mr. Norwood] in a Criminal/Appellate matter” for an initial retainer of \$8,000.00 at \$300.00 an hour. ODC 75, Bates 2467. Also attached was a July 21, 2017 letter from Respondent to Mr. Norwood that stated Respondent’s “representation of you is limited to an appeal and proceedings before the Supreme Court of West Virginia following your conviction, . . .” ODC 75, Bates 2471. Mr. Norwood was advised that he would have to ‘retain [Respondent’s] services for representation before the Circuit Court of Greenbrier County, but [Mr. Norwood] must do so by separate agreement and retainer fee.” Id.

On or about November 26, 2017, Mr. Norwood provided correspondence wherein he admitted to meeting Mr. Coles on May 4, 2017, and that the \$8,000.00 retainer fee was for the sentencing and appeal in case number 16-F-136. ODC 76, Bates 2478-2483. Mr. Norwood stated that he was told by Mr. Coles that Respondent would likely take the other two cases after the initial \$8,000.00 was paid and, after that was paid, he received a letter from Respondent with a retainer agreement and an Order substituting counsel. ODC 76, Bates 2478. Mr. Norwood said he signed the retainer agreement on June 16, 2017, but Respondent never communicated with Mr. Norwood thereafter. Id. Mr. Norwood stated that he spoke with Mr. Coles around July 28, 2017, concerning representation in the other two cases, and was told that Respondent would take the cases for \$5,000.00 each. Id. Mr. Norwood had indicated that he would send the money, but reconsidered after considering Respondent’s failure to communicate with him or to even show up for hearings. ODC

76, Bates 2479. Mr. Norwood noted that he contacted ODC for help in communicating with Respondent, but it was not successful. Id. Mr. Norwood denied receiving the July 21, 2017 letter from Respondent. Id.

On or about December 27, 2017, Disciplinary Counsel wrote to Respondent asking him to provide an accounting for his representation of Mr. Norwood, and to address whether Respondent owed a refund of the \$8,000.00 retainer. ODC 78, Bates 2485. Disciplinary Counsel subpoenaed records from the regional jail on or about January 10, 2018. ODC 83, Bates 2504-2507. The regional jail provided the following:

1) two privileged mail receipts for Mr. Norwood from Respondent for June 14, 2017 and November 17, 2017 (ODC 84, Bates 2510); 2) visitors log showed that Mr. Coles visited Mr. Norwood on May 4, 2017, and May 17, 2017 (ODC 84, Bates 2512); and 3) telephone log showed 108 calls from Mr. Norwood to Respondent's telephone number, and most were not accepted, with a few inmate hang ups, no answer, and one time up call (ODC 84, Bates 2513-2516).

On or about January 22, 2018, Respondent filed correspondence which contained a statement of account for work performed for Mr. Norwood. ODC 85, Bates 2517-2521. Respondent reiterated that Mr. Norwood retained him for an appeal, and that he was represented by other counsel on the pending criminal charges. ODC 85, Bates 2517. While Mr. Norwood sought to retain Respondent for the additional cases, Mr. Norwood did not want to pay the additional retainer. Id. The accounting showed Respondent claimed he worked 12.6 hours, for a total of \$2,014.50 plus \$0.98 in expenses for a total of \$2,015.48. ODC 85, Bates 2520-2521.

On or about February 5, 2018, Disciplinary Counsel received correspondence from Mr. Norwood questioning why Respondent was charging him \$216.00 for obtaining a file from other counsel, along with reviewing the case file on June 13, 2017, and \$135.00 for drafting an order of substitution when Respondent was not representing him in those cases. ODC 86, Bates 2522-2523.

On or about February 13, 2018, Disciplinary Counsel requested that Respondent address Mr. Norwood's questions regarding the fees charged and whether his appeal rights were preserved, and noted that the issue of the refund had not been addressed. Respondent was given twenty days to file a response. ODC 87, Bates 2526. Respondent failed to respond.

On or about April 2, 2018, Respondent was sent a letter by both regular and certified mail regarding his failure to respond to the February 13, 2018 letter. ODC 91, Bates 2551-2552. The letter noted that Respondent had been granted an extension to March 23, 2018, to file the response, but failed to do so. ODC 91, Bates 2551. Respondent was asked to provide his response by April 12, 2018. Id.

By letter dated April 12, 2018, Respondent filed additional correspondence and stated he would send a refund check to Valerie Norwood on April 30, 2018. ODC 92, Bates 2554. Respondent again provided the accounting that claimed he earned \$2,015.48. ODC 92, Bates 2557-2558. Respondent also provided a Trust Account Summary for Mr. Norwood that stated a "Trust deposit Ck No. 510 by Valerie D. Norwood (Union Bank & Trust) for \$8,000.00 on May 29, 2017, and that a "Payment from trust" was made on April 9, 2018, for \$2,015.48 for "Close File; Close ODC inquiries." ODC 92, Bates 2559.

On or about April 23, 2018, Disciplinary Counsel sent a letter to Respondent asking him to address charging \$135.00 for drafting an order of substitution for a case Respondent was not hired for, requested the due date of Mr. Norwood's appeal, and also why the refund check would not be sent until April 30, 2018. ODC 93, Bates 2560. On or about April 25, 2018, the April 2, 2018 letter sent to Respondent by certified mail was returned to sender due to it being unclaimed. ODC 94, Bates 2561.

On or about April 28, 2018, Mr. Norwood sent correspondence noting that Respondent claimed he was retained on June 16, 2017, and Mr. Coles spoke with Mr. Norwood on July 28, 2017, about representation on all the criminal cases, so why would Respondent draft an Order substituting Counsel on June 12, 2017, for all of the cases forty days before the conversation occurred. ODC 95, Bates 2562-2564. A review of the accounting showed that the Order substituting Counsel was drafted on June 12, 2017. ODC 92, Bates 2557. Respondent failed to respond to the April 23, 2018 letter. It did not appear that Respondent refunded the \$5,984.52 he indicated that was not earned, even after sending correspondence stating he was going to send the refund on April 30, 2018.

On or about May 25, 2018, a letter was sent by both certified and regular mail asking Respondent to address the charge for drafting a substitution order for a case wherein he did not represent Mr. Norwood, and for the due date of Mr. Norwood's appeal and the cause of the delay in sending the refund check. ODC 96, Bates 2565-2566. Respondent was given to June 4, 2018, to respond. Id. On or about June 22, 2018, the certified letter of May 25, 2018, from Disciplinary Counsel was returned to sender marked as unclaimed. ODC 97, Bates 2567. On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about August 9, 2018, Mr. Norwood provided correspondence indicating that neither he nor his mother had received the refund of the retainer payment. ODC 100, Bates 2578.

On or about August 20, 2018, Respondent provided correspondence stating that, as a solo practitioner, he relies on the employees in his office to communicate with clients when he is in court or otherwise out of the office. ODC 51, Bates 2121. Respondent said that he had problems

maintaining a consistent staff presence in his office because of sporadic income in his office. Id. Respondent stated that his ex-wife used to work in his office when they were married and, after the divorce, she continued to work for another year in his office. Id. Further, in 2016, Respondent hired Mitchell Coles as a paralegal for his office. Id. Respondent said that Mr. Coles had a lot of client contact for Respondent, and he had access to everything in the office, except to withdraw money or signature authority on bank accounts. Id. Respondent stated that he has since learned that Mr. Coles was untrustworthy and embezzled thousands of dollars from Respondent. Id. Respondent said that he learned of the problems with Mr. Coles after he had an unanticipated surgery in 2018. ODC 51, Bates 2122. Respondent related that he had various symptoms that impacted his ability to work. Id. Respondent stated that prior to the surgery, he went through his calendar and continued any matters pending in May and June of 2018 due to his unavailability to work for several weeks. Id. Respondent said that the plan was for Mr. Coles to manage office communications while Respondent was recuperating from his surgery. Id.

On May 21, 2018, Respondent underwent surgery in both of his legs. Id. After the surgery, Respondent was placed in the Intensive Care Unit. Id. During the weekend after the surgery, Respondent said that Mr. Coles was arrested in Virginia and extradited to Pennsylvania and, therefore, he had no one to cover his office while he was recuperating from the surgery. Id. Respondent related that it was discovered that Mr. Coles had multiple addresses and identities that he used to commit a wide variety of financial crimes, including welfare fraud charges in Raleigh County, West Virginia. Id. Respondent stated that he was working with law enforcement to determine how much money Mr. Coles had embezzled from his office, and had already determined that he took more than \$30,000.00 from Respondent. Id. Further, Respondent said that he also determined that Mr. Coles, who is not an attorney, was operating a shadow law practice and meeting

with potential clients. Id. He said Mr. Coles would sometimes take money from the client, and then would not open the case file in Respondent's office. Id. Respondent stated that he identified ten or more clients who had provided money to Mr. Coles for work performed by Respondent or work to be performed by Respondent, but the money was not deposited into Respondent's law firm account. Id. Respondent said that he even ran into a friend over the last weekend who paid Mr. Coles \$5,000.00 for some work, but the money was never deposited into Respondent's law firm account. Id. Respondent noted that he has provided *pro bono* work for the clients in the cases where he has discovered that the money was not deposited into his account. Id.

Respondent said that after his surgery, he was unable to return to work immediately because he needed to recuperate and to go through physical therapy. ODC 51, Bates 2123. Further, without Respondent at the office and with Mr. Coles having been arrested, there was no one to answer the telephone, take care of mail, or address any questions from clients who appeared at Respondent's office. Id. Respondent stated that he had anticipated that Mr. Coles would handle matters until his return, but that did not happen. Id. Respondent was able to slowly return to work in the latter part of June of 2018 and, when he returned to his office, he found that someone had been in his office and bagged up a lot of his mail which included ethics complaints filed against him. Id.

Regarding Mr. Norwood, Respondent indicated that he would address Disciplinary Counsel's questions about the substitution order, the appeal due date, and the refund after reviewing the records and file. ODC 51, Bates 2125. On or about September 2, 2018, Mr. Norwood filed correspondence indicating that while Respondent went through such challenges, Mr. Norwood is still facing issues with being able to fund his appeal because he never received a refund as promised. ODC 103, Bates 2596-2599.

At her September 7, 2018 sworn statement, Harmony Flora stated that Respondent falsified records documents sent to Mr. Norwood and created the invoice with time that was made up. ODC 187, Bates 5069-5070. Further, Mr. Coles was given responsibility regarding the bank accounts, and even opened an operating account at BB&T Bank after City National Bank stopped cashing checks. ODC 187, Bates 5014-5015. Ms. Flora said when she and Mr. Coles spoke with Respondent about what checks out of that account were for, and why funds were withdrawn, Respondent's response was anger. ODC 187, Bates 5038. Ms. Flora said she was present when Mr. Coles told Respondent about his criminal past, and this occurred a couple months after Mr. Coles started working there. ODC 187, Bates 5039. Respondent responded that he was aware of Mr. Coles' past, and that it was not a problem. ODC 187, Bates 5040. Further, Respondent was aware of the accounts Mr. Coles set up in Respondent's name, as Respondent and Mr. Coles discussed it in front of her. ODC 187, Bates 5041. Ms. Flora said she sent multiple emails to Respondent about concerns over bank statements, and that it appeared his ex-wife was also taking money. ODC 187, Bates 5044. Ms. Flora said any fraud that Mr. Coles may have committed was done with Respondent's knowledge. ODC 187, Bates 5046-5047.

On or about September 26, 2018, Disciplinary Counsel sent Respondent a copy of Mr. Norwood's September 2, 2018 letter and asked Respondent to respond within twenty days of receipt of the letter. ODC 104, Bates 2602.

At her October 25, 2018 sworn statement, attorney Denise Pettijohn, Esquire, stated that she spoke to Respondent about Mr. Coles holding himself out as an attorney. ODC 194, Bates 5124. Further, a year or so before she left in September of 2017, she discussed the fact that Mr. Coles had a criminal history with Respondent. ODC 194, Bates 5140. Ms. Pettijohn stated it was agreed that Mr. Coles had served his time, and he was competent in his job. ODC 194, Bates 5140-5141.

Further, it was not a problem since Mr. Coles was not a signee on the bank accounts. ODC 194, Bates 5146.

At his sworn statement on November 1, 2018, Respondent said that he maintained his IOLTA account at City National Bank since around 2007, and he did not maintain any other client trust accounts. ODC 53, Bates 2146. Respondent stated when he would receive a flat fee, he would put the amount in the operating account or the IOLTA. ODC 53, Bates 2190-2191. Respondent said that he had been unable to get into the account to determine if he had funds for the refund for Mr. Norwood, and asserted that a former staff member had taken the amount of the refund. ODC 53, Bates 2194-2195. Respondent stated he is unable to determine if he pulled earned fees from his client trust account. ODC 53, Bates 2199-2200. Respondent said that he charged Mr. Norwood for preparation of pleadings in another case because it was work that he performed. ODC 53, Bates 2201. Respondent stated that he “thinks” Mr. Norwood still had the ability to appeal the case when Respondent stopped representing him, and Respondent still had not refunded the unused portion of the retainer. ODC 53, Bates 2202-2203. Respondent provided a copy of the client file at his sworn statement, and it had a copy of the \$8,000.00 check written by Valerie Norwood on May 24, 2017, and reflected a deposit into City National Bank on May 29, 2017. ODC 105, Bates 2713.

Bank records were obtained from City National regarding Respondent’s IOLTA account. ODC 177, Bates 3549-3890. A review of the IOLTA account does not show a deposit on May 24, 2017, for \$8,000.00, and only shows a debit from the IOLTA account for that day. ODC 177, Bates 3826-3830. By the end of July of 2017, the IOLTA account held a negative balance. ODC 177, Bates 3844-3846. On or about November 2, 2018, Respondent sent correspondence indicating that he was obtaining a forensic accountant to provide a report, and wanted extra time to obtain the report. ODC 54, Bates 2315. On or about November 15, 2018, Disciplinary Counsel informed Respondent that

they would await the forensic accountant's report, but wanted proof that the accountant had been hired and an estimation of the time needed to complete the report. ODC 55, Bates 2316.

On or about November 29, 2018, Mr. Norwood sent in correspondence asking again why he was charged for the substitution order, and why he was charged \$216.00 for Respondent to obtain his file in June of 2017, when the trial was not until September of 2017. ODC 108, Bates 2732-2733. Mr. Norwood indicated that he was still awaiting a refund of the retainer. ODC 108, Bates 2733.

On or about December 4, 2018, Respondent provided the name of the accountant, Jessica Terry, and stated that she hoped to finalize the report in the next two weeks. ODC 56, Bates 2317-2318. On or about December 12, 2018, Disciplinary Counsel sent Respondent a copy of Mr. Norwood's November 29, 2018 correspondence and asked him to respond within twenty days of receipt of the letter. ODC 110, Bates 2735. Respondent did not respond to the December 12, 2018 letter from Disciplinary Counsel.

On or about January 11, 2019, Disciplinary Counsel sent Respondent a letter by certified and regular mail asking him to respond to Mr. Norwood's November 29, 2018 letter, and gave him until January 22, 2019 to respond. ODC 112, Bates 2738-2740. The green card was signed for by Respondent's counsel on January 14, 2019. ODC 112, Bates 2740.

On or about January 16, 2019, Disciplinary Counsel sent a letter to Respondent asking for the status of the report from the forensic accountant, and for Respondent to provide a response by January 30, 2019. ODC 57, Bates 2319. On or about January 22, 2019, Respondent sent a letter indicating that he had some recent medical issues and the holidays caused the response to be late. ODC 113, Bates 2747. Respondent advised that the report from the forensic accountant was anticipated to be completed in the next week, and a copy would be provided to Disciplinary Counsel when it was received. Id. Regarding Mr. Norwood, Respondent reiterated the \$8,000.00 retainer was

for the criminal appellate matter and Mr. Norwood did not retain him for the other cases. ODC 113, Bates 2748. Respondent said it was appropriate to issue a refund of \$216.00 for obtaining the file in a case that Respondent did not represent Mr. Norwood in. Id. As for the refund to be issued on April 30, 2018, Respondent said it was in the middle of his health problems, and now cannot find any record showing that the refund had been paid. ODC 113, Bates 2749. Respondent stated that he is unable to pay the refund in full, and would send a \$500.00 payment tomorrow as the initial payment of a \$6,000.00 refund. Id.

On or about April 8, 2019, Respondent sent a letter indicating that an audit could not be completed due to missing records. ODC 65, Bates 2386-2387. Another accountant, Mark Collins, was retained to provide an agreed upon procedures report, and such report would be provided in June of 2019. Id.

On or about September 11, 2019, Respondent submitted correspondence indicating that he had an additional surgery on May 21, 2019. ODC 69, Bates 2405. Further, no charges have been filed against Mr. Coles due to the acts committed at Mr. Morgan's office, but welfare charges are still pending against him. Id. Respondent said he has met with authorities about Mr. Coles, and has provided documentation about money people paid to Mr. Coles who thought they were retaining Respondent, but some of that has been difficult to obtain. ODC 69, Bates 2406. Respondent noted Mr. Coles criminal history, but stated he had no knowledge of the same when Mr. Coles was hired. Id. Respondent also indicated that an audit could not be performed due to missing files and documents, along with not being able to identify monies paid to Mr. Coles directly. ODC 69, Bates 2407. Respondent said he was working with the accountant to identify problems with how his bank accounts were handled, and to correct those issues. Id.

Regarding Mr. Norwood, Respondent said he paid Mr. Norwood's mother \$500.00, and intends to pay back a total of \$6,000.00. ODC 69, Bates 2408. Respondent stated he sent a check to Mr. Norwood for \$135.00 as previously mentioned, but the jail returned the check. Id. Respondent indicated he was trying to figure out how to get that money to Mr. Norwood. Id.

COUNT III
I.D. No. 17-02-554
Complaint of Lori Ann McKinney

On November 7, 2017, Complainant Lori Ann McKinney filed a complaint against Respondent. ODC 119, Bates 2803-2805. In the complaint, she stated that she retained Respondent to represent her and her husband, Richard McKinney, on December 20, 2016, through his paralegal Mitchell Coles, for some criminal charges. ODC 119, Bates 2804. Mrs. McKinney indicated that the retainer was \$5,000.00, with an additional \$300.00 monthly fee, for a total of \$10,000.00 at completion of the case. Id. Mrs. McKinney also stated that when another attorney decided not to continue to represent her and Mr. McKinney in a medical malpractice case after their arrest, she dropped off all the records from the case at Respondent's office in January of 2017. Id. Mrs. McKinney alleged Respondent did not do anything for her or her husband in court during several hearings. Id. They denied knowing what they were signing regarding the plea agreement, and signed them just minutes before the plea hearing. Id. Further, Mrs. McKinney alleged Respondent lied in court about meeting with them outside of court. Id. Mrs. McKinney said that Respondent also never filed the medical malpractice case as he had promised, and that the statute of limitations on the medical malpractice case has now passed. Id. Mrs. McKinney noted that she had paid \$5,900.00 of the \$10,000.00, and said that she was not paying any more. Id.

On or about January 5, 2018, after receiving an extension to file his response (ODC 121, Bates 2809-2810), Respondent stated that he was retained by Mr. and Mrs. McKinney on December

20, 2016, to represent both of them on felony criminal charges of possession with the intent to deliver methamphetamine, delivery of methamphetamine, transportation of methamphetamine into the state, and conspiracy to deliver methamphetamine. ODC 122, Bates 2811. Respondent stated that he was able to secure a plea agreement for Mr. McKinney to plead guilty to one count of possession with intent to deliver methamphetamine, with all remaining counts against him dismissed, and all counts against Mrs. McKinney were to be dismissed. Id. Respondent said that both Mrs. McKinney and Mr. McKinney agreed to the plea offer, and it was shown by his testimony at the plea hearing that Mr. McKinney was satisfied with Respondent's representation. Id.; ODC 122, Bates 2841.

Regarding the medical malpractice case, Respondent stated that Mr. and Mrs. McKinney had discussed with him about representation in a medical malpractice case in Kentucky. ODC 122, Bates 2812. Respondent said that he informed them that he was not licensed in Kentucky, and that he would have to associate with another attorney before he could represent them. Id. Respondent stated that he did some preliminary research into the matter, and began looking for attorneys to associate with if he decided to take the case. Id. Respondent said that he was unable to take the case because he received the October 2, 2017 letter from Mrs. McKinney, which was the ethics complaint in this matter. Id. Respondent moved to withdraw from Mr. McKinney's case, and the same was granted by the court. Id. Respondent said that he did not take any further action regarding the medical malpractice case. Id.

On or about February 13, 2018, Disciplinary Counsel sent Respondent a letter asking him when did he first receive the information about the medical malpractice from Mrs. McKinney, when did he start looking for counsel in Kentucky, and to provide an accounting of the work he performed for the McKinneys in the criminal matter. ODC 124, Bates 2849. Respondent was given twenty days to respond. Id. On or about February 20, 2018, Mrs. McKinney filed a reply and reiterated the

allegations in her complaint. ODC 125, Bates 2850-2852. Mrs. McKinney said that since January of 2017, Respondent told her that he was going to file her husband's medical malpractice claim. ODC 125, Bates 2850. In September of 2017, Mrs. McKinney stated that she learned from a Kentucky lawyer that the statute of limitations in Kentucky is one year, as her husband was injured in Kentucky, and the date of the injury was August 4, 2016. Id. Respondent did not respond to Disciplinary Counsel's February 13, 2018 letter. On or about April 2, 2018, Disciplinary Counsel sent a letter by certified and regular mail to Respondent regarding the February 13, 2018 letter, and gave him until April 12, 2018 to respond. ODC 126, Bates 2853-2854.

On or about April 12, 2018, Respondent provided additional correspondence wherein he stated that he began looking for Kentucky counsel in April of 2017, as Mrs. McKinney provided the information about the medical malpractice case on March 30, 2017. ODC 127, Bates 2855. Respondent said that he could not provide an accounting for the work he performed for Mrs. McKinney and her husband, but noted that they were on a monthly payment plan for the retainer. Id. Respondent said that Mrs. McKinney stopped making payments prior to filing the ethics complaint. Id. Respondent stated that when he located the file, he would finalize the accounting statement and provide it to the ODC. Id.

On or about April 23, 2018, Disciplinary Counsel wrote to Respondent inquiring about the statute of limitations for a medical malpractice case in Kentucky, along with the accounting and requesting copy of the fee agreements for the criminal and medical malpractice cases. ODC 128, Bates 2857. On or about April 25, 2018, the certified April 2, 2018 letter sent to Respondent was returned to sender due to being unclaimed. ODC 129, Bates 2858. Respondent failed to respond to the April 23, 2018 letter from Disciplinary Counsel. On or about May 25, 2018, Disciplinary Counsel sent a letter by certified and regular mail to Respondent regarding the April 23, 2018 letter, and gave

him until June 4, 2018, to respond. ODC 130, Bates 2859-2860. On or about June 25, 2018, the certified letter sent to Respondent on May 25, 2018 was returned to sender due to being unclaimed. ODC 131, Bates 2861.

On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594.

At his July 17, 2018 sworn statement, Denney Bostic stated that he explained the plea agreement to the McKinneys. ODC 166, Bates 3386. At her September 7, 2018 sworn statement, Harmony Flora stated that only Mr. Bostic met with the McKinneys. ODC 187, Bates 5066-5067.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding the McKinneys, Respondent said he could not find the McKinneys' criminal file and denied agreeing to represent them in the medical malpractice case. ODC 51, Bates 2125-2126. Respondent said he could not provide an accounting without the criminal file, but would review his office's computer data. ODC 51, Bates 2126. Respondent stated he did consult with other attorneys licensed in Kentucky to see if they were interested in the case, but all responses were in the negative. Id.

On August 30, 2018, Mrs. McKinney sent a letter indicating that she had no knowledge of any person named Mitchell Coles doing anything inappropriate. ODC 135, Bates 2889. Mrs. McKinney said Respondent's denial of any agreement to take on the medical malpractice case was false. Id. Mrs. McKinney also stated that Respondent failed to file the necessary documents with probation for alternative sentencing to be an option. Id.

At his sworn statement on November 1, 2018, Respondent stated he had a lot of involvement in the McKinneys case, and both had indicated at a plea hearing that they were satisfied with his representation. ODC 53, Bates 2203-2204. Respondent maintained he reviewed the plea agreement with them, and that he had indicated to them that he would look into the Kentucky medical malpractice case. ODC 53, Bates 2207-2208. Respondent admitted that he did not research the medical malpractice issue, and then stopped working on the medical malpractice case after receiving the ethics complaint, even though the statute of limitations in Kentucky on those type of cases is one year and the ethics complaint was filed more than a year after the accident. ODC 53, Bates 2208-2211. Respondent further admitted that he never told the McKinneys that he was not going to handle the medical malpractice case. ODC 53, Bates 2212-2213. Respondent said that he cannot find the McKinney's criminal and/or medical malpractice file, and cannot provide an accounting of the work he performed, as he no longer has access to the computer program that contained the information. ODC 53, Bates 2211-2212.

On or about September 11, 2019, Respondent submitted correspondence indicating he could not find the McKinney's files. ODC 69, Bates 2408. However, Respondent found his appointment calendar, and provided a copy thereof, that showed appointments and hearings in their cases. ODC 69, Bates 2439-2440.

COUNT IV
I.D. No. 17-05-574
Complaint of W.T.

Complainant W.T. filed her ethics complaint against Respondent on or about November 7, 2017. ODC 140, Bates 2959-2966. W.T. stated that her granddaughter, S.P., hired Respondent to represent her. ODC 140, Bates 2960. W.T. said that she paid Respondent a \$500.00 retainer fee from her own personal checking account. Id. About a month later, in June of 2017, C.P., W.T.'s daughter,

asked W.T. for a credit card check for \$3,000.00 to pay to Respondent. ODC 140, Bates 2960-2961. W.T. provided a copy of the June 22, 2017 check written from her account to Respondent for \$3,000.00, and Respondent's signature appeared on the back of the check. ODC 140, Bates 2965. W.T. stated that Respondent has done no work in the case, and he never made any contact with her. ODC 140, Bates 2961. W.T. said that she attempted to stop payment on the credit card check, but could not do so without providing a contract from Respondent. Id. W.T. wanted a full refund of the \$3,500.00 paid to Respondent. Id.

On or about November 30, 2017, Respondent was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 141, Bates 2967-2968. On or about January 5, 2018, Respondent filed a response. ODC 142, Bates 2969-2971. Respondent stated that he was retained by S.P., the granddaughter of W.T., to represent S.P. in a family court matter in Summers County, West Virginia, on or about June 1, 2017. ODC 142, Bates 2969. Respondent said that the retainer agreement was for \$3,500.00, and S.P. indicated to him that she was going to ask family for help to pay the retainer. Id. Respondent stated that he was not aware of the specific agreement(s) between S.P. and her family. Id. Respondent denied ever representing W.T.. Id. Respondent noted that S.P. has informed him that she is satisfied with his representation, and wants him to continue representing her. Id. Respondent said that S.P. also advised him that she was not seeking any refund of the monies paid to him. Id. Respondent stated that W.T. is not his client, and he owes no duty to her. Id.

On or about February 9, 2018, W.T. filed a reply, stating that she never had an agreement with Respondent to retain his legal services, but her granddaughter, S.P., had reached out to him. ODC 144, Bates 2973. W.T. said that she never met with Respondent to discuss the legal representation and she never received a receipt for any payment. Id. W.T. noted that Respondent

made multiple promises to S.P. that her daughter would be reunited with her after the first hearing, but that did not happen. Id. Further, S.P. is no longer receiving legal services from Respondent and is now being represented by court appointed counsel. Id. W.T. again requested a full refund of the \$3,500.00. Id. In another letter received on February 20, 2018, from W.T., she stated that when S.P. cursed at her, she tried to cancel the check, and even tried to cancel Respondent's services, but he refused to do so. ODC 144, Bates 2974. W.T. stated that Respondent told S.P. to plead guilty in order to get a court appointed attorney and, therefore, she did not know what the money she paid was used for in the case. Id.

On or about February 23, 2018, a letter was sent to Respondent asking him to answer whether he received the checks directly from W.T., and to provide an itemization of the work he performed in the case, within twenty days of receipt of the letter. ODC 145, Bates 2976. Respondent failed to respond to the February 23, 2018 letter. On or about April 2, 2018, by certified and regular mail, a letter was sent to Respondent again asking about his receipt of the checks and an itemization. ODC 146, Bates 2977-2978. Respondent was given until April 12, 2018, to file his response. Id.

On or about April 12, 2018, Respondent provided additional correspondence wherein he indicated that he never accepted any type of payment from W.T. for S.P.. ODC 147, Bates 2979. Respondent further noted that he "had no dealings, agreements, or communication with" W.T.. Id. Respondent stated that he received the \$3,500.00 retainer payment from S.P.. Id. Respondent said that S.P.'s case was still pending in family court after the abuse and neglect case concluded before the circuit court. Id. While the response indicated that an itemization was attached, no itemization was attached. ODC 147, Bates 2979-2980.

On or about April 23, 2018, a letter was sent to Respondent advising him that the itemization was not attached to his April 12, 2018 letter, and again asked for a copy of the itemization within

twenty days of receipt of the letter. ODC 148, Bates 2981. On or about April 25, 2018, the certified letter sent to Respondent on April 2, 2018 was returned to sender due to it being unclaimed. ODC 149, Bates 2982. Respondent failed to respond to the April 23, 2018 letter. On or about May 25, 2018, by certified and regular mail, a letter was sent to Respondent asking for a copy of the itemization. ODC 150, Bates 2983-2984. Respondent was given until June 4, 2018 to file his response. ODC 150, Bates 2983. On or about June 25, 2018, the certified letter sent to Respondent on May 25, 2018 was returned to sender due to it being unclaimed. ODC 151, Bates 2985.

On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for provide a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594.

On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 20, 2018, Respondent filed additional response. ODC 51, Bates 2120-2129. Regarding W.T., Respondent noted that ODC had informed him about the itemization not being provided and stated that his review of the client file did not show the itemization. ODC 51, Bates 2126. Respondent indicated that he was going to review his computer records in an attempt to provide the itemization. Id.

On or about September 13, 2018, Complainant filed an additional reply wherein she said that her granddaughter, S.P., denied that Respondent performed any services for her after he received the check, and she ended up with a court appointed attorney. ODC 153, Bates 3011. Complainant did not think Respondent had the right to take her money, even though he apparently has had money

embezzled from him. Id. On or about September 25, 2018, S.P., filed correspondence wherein she indicated that she had her child kept away from her by her boyfriend's mother and had a Protective Order filed against her. ODC 155, Bates 3015. S.P. stated that she consulted with Respondent and hired him to represent her to obtain custody of her child for a total of \$3,500.00, which would cover representation in both the protective Order and custody of her daughter. Id. S.P. said that Complainant, her grandmother, wrote a \$500.00 check to Respondent at the first hearing, and then provided a credit card check for \$3,000.00 before the second hearing. Id. S.P. stated that Respondent was late for both hearings, and all of the parties had to wait for him to begin the hearing. Id. S.P. said Respondent did nothing in her case after Child Protective Services became involved, and that she only saw him at the initial consultation and the two hearings. Id. S.P. wanted the \$3,500.00 returned to Complainant. Id.

At his sworn statement on November 1, 2018, Respondent stated that the \$3,500.00 was for a Domestic Violence Protective Order that was going to become a child custody case (ODC 53, Bates 2214), and that money was deposited into the his IOLTA account with City National Bank. ODC 53, Bates 2217. Respondent said the case became an abuse and neglect case, and S.P. had a court appointed attorney for that case. ODC 53, Bates 2215. Respondent said he was "fairly sure it was a check from W.T. made out to [him]." Id. Respondent said he attended a DVP hearing with S.P., and there was more than one hearing in that case. ODC 53, Bates 2216-2217. Respondent noted that the case was not over, as the child custody issue was in limbo until the abuse and neglect case was completed. ODC 53, Bates 2217. When questioned about the itemization, Respondent said that he would have to use his Quickbooks and that he did not have it on paper. ODC 53, Bates 2218.

At his sworn statement, Respondent provided his client file for S.P., and no itemization or fee agreement was found in the client file. ODC 157, Bates 3017-3212. The client file contained a

Notice of Appearance that Respondent filed in Summers County Family Court for an unknown family court case number and Magistrate Case No. 17-M45D-00030 on or about May 31, 2017. ODC 157, Bates 3177-3178. There also was a copy of check written to Morgan & Associates dated May 30, 2017, for \$50.00 from J. and C.P., and a copy of S.P.'s driver's license was on the same page. ODC 157, Bates 3207. On or about August 2, 2017, a \$200.00 check was written from Respondent's operating account to the Summers County Circuit Clerk and the memo line contained the word "Parkin." ODC 157, Bates 3181. A receipt reflecting a June 1, 2017 payment of \$500.00 for S.P. labeled as "legal services/retainer payment" by check and by "given to [Respondent] in summers Co. Fam. Ct." ODC 157, Bates 3206.

Further, in July of 2018, Disciplinary Counsel subpoenaed Respondent's bank account records from City National Bank regarding his IOLTA account. ODC 177, Bates 3549-3890. It is unclear whether the \$3,000.00 check and the \$500.00 check were deposited into the account by the end of June of 2017 (ODC 177, Bates 3844-3845), but the IOLTA account was in a negative balance by July of 2017, and only reflected \$35.43 in August of 2017. ODC 177, Bates 3844-3849.

COUNT V
I.D. No. 18-03-081
Complaint of Denney W. Bostic

Complainant Denney W. Bostic filed his ethics complaint on or about March 7, 2018. In it, he alleged that Respondent, who was his former employer, had committed theft, fraud and embezzlement by converting funds that were due to him, or to be paid on his behalf for federal income taxes, Social Security taxes and health insurance. ODC 158, Bates 3284. Mr. Bostic stated that monies had been withheld from his paycheck, but were never paid to the appropriate agencies. Id. Mr. Bostic said he has some documentation to prove his claim, and that he also suspected that

his state income taxes to West Virginia had not been paid, but he had yet to see any documentation on that issue. ODC 158, Bates 3284-3285.

Mr. Bostic alleged that Respondent asked him to file pleadings in cases that he believed to be frivolous at best, or a fraud upon the court at worst. ODC 158, Bates 3285-3286. Mr. Bostic stated that he saw Respondent take \$2,500.00 in cash from a client and pocket the money without providing a receipt, then later told office staff that the client did not pay him. ODC 158, Bates 3286. Mr. Bostic said that Respondent refused to do the day to day things that a good lawyer should do, and that he lied to his clients and staff about all matters. Id. Mr. Bostic said Respondent never took responsibility for his missteps, but instead blamed his staff. Id. Mr. Bostic said that Respondent has a “phantom” Charleston office, but has told the City of Charleston that he has no office when it was requested that he pay user fees to the City. Id. Mr. Bostic provided a copy of Respondent’s letterhead, which shows both a Charleston and Lewisburg office. ODC 158, Bates 3300. He indicated that the telephone number listed for Charleston was a cell phone number of Respondent’s ex-wife, Tina O’Neil (formerly Tina Morgan). Id.

Mr. Bostic stated that Respondent wrote him a bad check for his salary on January 12, 2018, drawn on City National Bank. ODC 158, Bates 3290. He said that the check could not be cashed at City National Bank, and the only way they would stamp it as void or rejected was if he processed it through his personal bank account. Id. Mr. Bostic said he would not do so because he would incur fees from his bank for a bad check. Id. Mr. Bostic said he returned to the office and was given a 2nd payroll check, drawn on BB&T, and he was able to cash that check. Id. Mr. Bostic stated that Mr. Morgan refused to pay the \$2,142.76 on his health insurance that was past due (Id.), and he provided a January 9, 2018 letter from Healthmark WV advising him that his health insurance had been terminated. ODC 158, Bates 3293. He said he was also notified that he was responsible to pay for

the one month grace period premium that had been extended before the policy was cancelled. ODC 158, Bates 3290. Mr. Bostic said Respondent also failed to pay workers' compensation premiums for him and a former employee (Id.), and he provided a copy of a January 10, 2018 letter from the Offices of the Insurance Commissioner which threatened to pull Respondent's business license for non-payment of mandatory fees. ODC 158, Bates 3295. Mr. Bostic also provided a copy of an IRS notice sent to Respondent about having unpaid taxes for September 30, 2017, with the amount due of \$10,583.56. ODC 158, Bates 3296. Mr. Bostic said that a portion of that amount represents money withheld from his pay, but that the money was instead converted to personal use by Respondent. ODC 158, Bates 3290-3291. In addition, Mr. Bostic provided a copy of a statement from the West Virginia State Tax Department sent to Respondent which showed an amount of taxes due of \$18,751.80, from the end of 2015 to the end of September 2017. ODC 158, Bates 3298. Mr. Bostic believed that these were funds that should have been paid on his behalf as well. ODC 158, Bates 3291.

Mr. Bostic stated that on March 2, 2018, Respondent wrote him a payroll check on the BB&T account, and the bank did not honor the check on that date. ODC 158, Bates 3292. Mr. Bostic tried again to cash the payroll check on March 3, 2018, but again the bank would not honor the check. Id. Mr. Bostic stated that he repeatedly requested a copy of his payroll withholding statements for the entire month of February 2018, and also for the March 2, 2018 check, but never received these documents. Id. Mr. Bostic believed that funds had also not been paid to the proper agencies as required by law. Id. By letter dated January 4, 2018, Mr. Bostic wrote to law enforcement officers in Lewisburg to inform them of Respondent's alleged criminal activity regarding the payroll issues. ODC 158, Bates 3301-3306. Mr. Bostic sent a second letter on March 3, 2018, regarding the bounced payroll check. ODC 158, Bates 3307-3308.

On or about March 9, 2018, Respondent was sent a copy of the ethics complaint along with a letter directing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 159, Bates 3310-3311. Respondent failed to file a response. On or about April 18, 2018, by certified and regular mail, a letter was sent to Respondent asking him to respond to Mr. Bostic's complaint by April 29, 2018. ODC 160, Bates 3312-3314. The green card was signed for by Mr. Coles on April 23, 2018. ODC 160, Bates 3314.

On or about April 30, 2018, Respondent requested an extension to file his response due to medical issues. ODC 161, Bates 3315-3316. By letter from ODC dated May 22, 2018, an extension was granted to June 5, 2018. ODC 162, Bates 3317. On or about June 21, 2018, Respondent called to inform ODC that he had been in the hospital and would have the response out the next week. ODC 163, Bates 3318. On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594.

On or about July 17, 2018, Mr. Bostic's sworn statement was taken. ODC 166, Bates 3332-3455. Mr. Bostic admitted he was a disbarred attorney after he consented to such due to criminal issues involving embezzlement. ODC 166, Bates 3337-3339. Respondent represented Mr. Bostic in that criminal matter, and when Respondent needed somebody to work at his office, he hired Mr. Bostic as the senior paralegal. ODC 166, Bates 3339, 3341. Mr. Bostic stated Respondent took \$2,500.00 in cash from client Kenneth Cutlip, without giving a receipt, and then continued to bill the client. ODC 166, Bates 3344-3348. When Mr. Cutlip called the office about the issue, Mr. Bostic told him to not pay any more money. ODC 166, Bates 3349. Another instance involved Respondent

taking cash from a client seeking to have his gun rights restored, even though Mr. Bostic believed case law in West Virginia did not allow the gun rights to be restored. ODC 166, Bates 3350-3351. When Mr. Bostic told Respondent about current case law, Respondent said he could not tell the client that because he already took the client's money. ODC 166, Bates 3351. The case was still at Respondent's office when Mr. Bostic left Respondent's employment. ODC 166, Bates 3352. Mr. Bostic said he refused to meet with clients at the jail because such meetings would not be protected by attorney client privilege. ODC 166, Bates 3342-3343.

Mr. Bostic stated Respondent's letterhead showing a Lewisburg and a Charleston office was false, because it was an empty office in Charleston, West Virginia. ODC 166, Bates 3393. When Mr. Bostic had to meet with a client there, there was a disconnected telephone and computer. ODC 166, Bates 3396. When the City of Charleston wanted user fees from Respondent, he denied having an office in Charleston. ODC 166, Bates 3397-3398. Mr. Bostic said Respondent only had one associate working for him for a time, but not when he left, even though Respondent's law office remained "E. Lavoyd Morgan, Jr. and Associates, LLC" when no other attorney worked there. ODC 166, Bates 3415. Mr. Bostic had a paycheck from Respondent dated March 2, 2018 which contained the name of "E. Lavoyd Morgan, Jr. and Associates." ODC 158, Bates 3309. Mr. Bostic provided a copy of the Criminal Complaint: Worthless Check that he filed against Respondent on March 15, 2018 in Greenbrier County, West Virginia Magistrate Court. ODC 167, Bates 3456-3459.

On or about August 20, 2017, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Respondent also denied Mr. Bostic's allegations. ODC 51, Bates 2127.

At her September 7, 2018 sworn statement, Harmony Flora stated Respondent took \$2,500.00 in cash from client W.H. to restore his gun rights, and after she spoke with Mr. Bostic, she learned that a felon could not have his gun rights restored. ODC 187, Bates 5024-5025. Nevertheless,

Respondent told W.H. that he guaranteed restoration of the gun rights by Thanksgiving, but he never filed anything. ODC 187, Bates 5025. Ms. Flora said the money was not refunded to W.H. during her employment with Respondent. ODC 187, Bates 5026. Ms. Flora was aware that the Charleston office did not exist, even though it was included on all law firm advertising. ODC 187, Bates 5027. Ms. Flora stated she received a bad check from Respondent for her salary, and that it happened on more than one occasion. ODC 187, Bates 5029. While she received notices that her health insurance was not paid, it was eventually paid. ODC 187, Bates 5031. Ms. Flora said she understood Respondent's policy for workers' compensation was going to be cancelled for failure to pay. ODC 187, Bates 5032. Further, she stated that Respondent worked at "E. Lavoyd Morgan, Jr. and Associates" by himself, without any other attorney at times. ODC 187, Bates 5059-5060. Ms. Flora talked about a client named S.J. who hired Respondent to represent her in an annexation and waste disposal issue. ODC 187, Bates 5044. Ms. Flora was aware S.J. paid almost \$13,000.00, and part of that, \$3,000.00, was for a federal appeal that was never filed. ODC 187, Bates 5045.

At her October 25, 2018 sworn statement, Denise Pettijohn, Esquire stated that Respondent's law office went by "Morgan and Associates," and she was unaware of any associate working there at the time. ODC 194, Bates 5133.

At his sworn statement on November 1, 2018, Respondent said Mr. Bostic exaggerated the work he performed in court appointed cases. ODC 53, Bates 2218. Respondent said he had an office in Charleston at one time. ODC 53, Bates 2221-2222. Respondent admitted to bouncing Mr. Bostic's last paycheck. ODC 53, Bates 2223. Respondent also admitted Mr. Bostic's health insurance coverage was terminated at one point. ODC 53, Bates 2225. As of the date of the sworn statement, Respondent said his workers' compensation premiums were paid up, but he admitted to owing both

state and federal taxes. ODC 53, Bates 2225-2226. Respondent said that he understood the paycheck that bounced for Mr. Bostic was eventually paid. ODC 53, Bates 2229-2230.

Bank records from BB&T for account entitled "E. Lavoyd Morgan, Jr. & Associates, LC" appears to be an operating account. ODC 181, Bates 4463-4785. There were several checks written from the account to employees for paychecks and deposits made from Attorney Finance Corporation, which is money from work performed in PDS cases. ODC 181, Bates 4590-4591, 4599-4602, 4623, 4628-4630. There were also deposits which appear to be retainer fees. ODC 181, Bates 4617.

COUNT VI
I.D. No. 18-05-236
Complaint of E.L.

Complainant E.L. filed her ethics complaint against Respondent on or about June 8, 2018. ODC 195, Bates 5217-5220. E.L. filed for divorce on June 9, 2017, and hired Respondent to handle her case. ODC 195, Bates 5218. E.L. said that she paid \$3,500.00 for the representation to Mitchell Coles, a representative of Respondent's office. Id. E.L. stated that she continually asked Mr. Coles about the status of her case, in particular about the property appraisal and a court date. Id. E.L. said that the first appraiser was Tim Helmick, but she and Respondent's office were unable to contact him. Id. When E.L. contacted a second appraiser, Hodges Appraisal Group, they indicated to E.L. that they refuse to do appraisals for Respondent's office. Id. E.L. stated that she has not received any information about a court hearing, even though she had been told by Mr. Coles that it would be set soon. Id. E.L. said that when she went to Respondent's office on May 21, 2018, to meet with Mr. Coles, there was only a temporary officer worker there and that the worker did not see any scheduled events for her case. Id. Attempts by the worker to contact Mr. Coles were unsuccessful. Id. E.L. stated that Respondent's office had been closed since May 22, 2018, and she wanted a refund of what she paid to Respondent. ODC 195, Bates 5219.

By letter dated June 28, 2018, Respondent was sent a copy of the ethics complaint and directed him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 196, Bates 5221-5222. Respondent failed to file a response. On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about July 20, 2018, by certified and regular mail, a letter was sent to Respondent asking him to respond to E.L.' complaint by July 30, 2018. ODC 197, Bates 5230-5231.

On or about July 24, 2018, E.L. filed additional correspondence, and alleged that she had stopped receiving support checks as ordered at her temporary hearing on November 21, 2017. ODC 198, Bates 5332. The last check was received in April of 2018. Id. E.L. stated that she never received any information from Respondent or his office about his office closing, and other than a notice on the office door indicating that the office was closed. ODC 198, Bates 5233. E.L. also said she asked for an itemized list of the services performed by Respondent's office, but received nothing in return. Id. E.L. said that she had requested a copy of her divorce "papers" on multiple occasions from Mr. Coles, and even though he indicated that she would receive them, she never did. Id. E.L. said she finally went to the courthouse to get a copy of the documents, and the \$1.00 fee per sheet was waived, as it would be sent to E.L.' new attorney. Id. E.L. stated her divorce "papers" from June 5, 2017, indicated that she would receive half of the funds taken from a joint account, but that never happened. Id.

On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or

about August 7, 2018, Respondent was sent E.L.'s July 24, 2018 letter and asked to respond within twenty days of receipt of the letter. ODC 199, Bates 5238. On or about August 20, 2018, the certified mail sent to Respondent on July 20, 2018, was returned to sender marked as unclaimed, unable to forward. ODC 200, Bates 5243. The regular mail letter was never returned to ODC.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding E.L., Respondent said that he could not find her client file, but did remember filing a divorce petition for her. ODC 51, Bates 2124. Respondent alleged the client file was missing due to Mr. Coles' actions, but said he was going to recreate the file from the pleadings filed in court, and he planned to contact E.L. to see how she wants to proceed. Id.

On or about August 23, 2018, Disciplinary Counsel wrote E.L. about whether she paid Mr. Coles the \$3,500.00 in cash or check, and to provide either a copy of the check or a receipt for cash. ODC 201, Bates 5254. On or about August 24, 2018, E.L. responded that she wrote a check out to Mr. Coles at his direction, and that she had misplaced the bank statement when she moved. ODC 202, Bates 5255. E.L. noted that she asked for an itemization of the work performed in her case, and for a refund of any remaining money and never received an answer. ODC 202, Bates 5256. In additional correspondence dated September 1, 2018, E.L. said she filed for divorce of June 9, 2017, and nothing was done on her case until November 21, 2017. ODC 204, Bates 5258. It was then that a temporary hearing was held, and she was to receive half of her husband's retirement income, but she only received checks until April of 2018. Id. E.L. did not know why Respondent did not take any action in her case prior to his health problems. Id. E.L. also noted that she had not been contacted by Respondent despite his last correspondence indicating such. Id. E.L. provided a copy of a check she wrote to Mr. Coles for \$3,500.00 on June 2, 2017, which indicated it was for a retainer fee. ODC 204, Bates 5260.

On or about September 6, 2018, Elizabeth Ann Good, who worked for Respondent, appeared for a sworn statement. ODC 186, Bates 4968-5002. She stated Mr. Coles returned the client files he had, and from her understanding, all of the files were returned to Respondent. ODC 186, Bates 4981.

At his sworn statement on November 1, 2018, Respondent recalled speaking with E.L. and said he would have to get into his Quickbooks to get an accounting of the work. ODC 53, Bates 2232-2233. Respondent said it would be normal for clients to speak with Mr. Coles for requests of a client file or an accounting. ODC 53, Bates 2234. Respondent stated that he “wrongfully trusted” Mr. Coles. ODC 53, Bates 2234-2235. Respondent also noted that he never gave him instruction because Mr. Coles appeared to be an experienced paralegal. ODC 53, Bates 2235. Respondent did not recall speaking with E.L. about issues after the temporary hearing. ODC 53, Bates 2235-2236. Respondent said it was Mr. Coles’ signature on the back of E.L.’ check for the retainer fee, and he was unaware if the money had been deposited into his trust account. ODC 53, Bates 2237-2238. Respondent stated that he did not keep track of money coming in and out of his trust account, and acknowledged that he is responsible for his bank accounts. ODC 53, Bates 2238. Respondent had a small client file for E.L., which contained a few letters and a couple of pleadings from the case. ODC 206, Bates 5265-5274.

Bank records from City National Bank for the account entitled “The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC,” do not show a deposit of \$3,500.00, although there was a deposit of \$32,500.00 on June 27, 2017. ODC 177, Bates 3841. It is unclear if E.L.’s check would have been included in that deposit, but the check was not written out to Respondent. ODC 177, Bates 3841-3843. Further, the IOLTA account was in a negative balance by July of 2017, and only reflected a balance of \$35.43 in August of 2017. ODC 177, Bates 3844, 3847.

On or about January 4, 2019, E.L. sent correspondence indicating that Respondent had told her that he lost the information she had provided to Mr. Coles. ODC 207, Bates 5284. On or about September 11, 2019, Respondent submitted correspondence indicating E.L. was being represented by Matthew Fragile, Esquire. ODC 69, Bates 2409.

COUNT VII
I.D. No. 18-05-240
Complaint of Todd W. Clutter

On or about June 11, 2018, Complainant Todd W. Clutter filed an ethics complaint against Respondent. ODC 208, Bates 5345-5347. Mr. Clutter hired Respondent and paid him a \$9,000.00 retainer to represent Mr. Clutter and his wife in four cases. ODC 208, Bates 5346. Mr. Clutter said that Respondent appeared to be under the influence of alcohol, and failed to represent them properly. Id. Specifically, Mr. Clutter said Respondent failed to appear at two hearings, which resulted in them being evicted from their property. Id. Mr. Clutter said that Respondent had informed opposing counsel and the magistrate that he would not be at the hearing due to having surgery, but that he never told them. Id. The magistrate rescheduled the hearing, and Mr. Clutter stated that he told the magistrate that he was terminating Respondent as his counsel. Id. Mr. Clutter asserted that his attempts to contact Respondent were unsuccessful, and Respondent's office was closed when he went there to speak to Respondent. Id. Mr. Clutter said that Respondent has also not returned their money or their client file, which he needs because it contained important information, such as receipts, and to provide to his new counsel. Id. Mr. Clutter noted he and his wife are disabled, and live on a fixed income. Id. Further, his wife is ill, and they have medical bills to pay, so the loss of the \$9,000.00 has been extremely difficult for them. Id.

On or about June 28, 2018, Respondent was sent a copy of the ethics complaint along with a letter directing him to file a verified response to the complaint within twenty days of receipt of the

letter. ODC 209, Bates 5348-5349. Respondent failed to file a response. On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about July 20, 2018, by certified and regular mail, a letter was sent to Respondent asking him to respond to Mr. Clutter's complaint by July 30, 2018. ODC 210, Bates 5357-5358. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 20, 2018, the certified mail sent to Respondent on July 20, 2018 was returned to sender marked as unclaimed, unable to forward. ODC 211, Bates 5366. The regular mail letter was never returned to ODC.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Respondent stated that Mr. Clutter's unsuccessful attempts to make contact occurred when he was recuperating from his surgery. ODC 51, Bates 2125. Respondent said he had since been in contact with Mr. Clutter, represented him and his wife in several hearings, and believed any communication and other issues were now resolved. Id. In additional correspondence dated October 26, 2018, Respondent stated that he had communicated with Mr. Clutter and his wife almost daily, and they are satisfied with his representation. ODC 214, Bates 5381.

At his sworn statement on November 1, 2018, Respondent admitted to missing two hearings for Mr. and Mrs. Clutter, not for medical issues, but said it was due to him not being aware of the hearings. ODC 53, Bates 2240-2241. Respondent further admitted that it was correct that his office was closed for a time and the telephone was shut off. ODC 53, Bates 2241-2242. Respondent stated that he did not inform clients about his medical issues. ODC 53, Bates 2242. Respondent denied that

Mr. Clutter asked for his client file. Id. Respondent said he does not have an accounting because he cannot get into Quickbooks. ODC 53, Bates 2243. Respondent indicated Mr. and Mrs. Clutter were not asking for their fees back, and that he would not charge any additional fees. ODC 53, Bates 2243-2244. Respondent said Mr. and Mrs. Clutter's cases were still ongoing. ODC 53, Bates 2243.

Because there is no clear date when Mr. Clutter paid the \$9,000.00 to Respondent, the bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC," are not helpful beyond the fact that the IOLTA account was in a negative balance by July of 2017 (ODC 177, Bates 3844), and only reflected the exact balance of \$188.06 from November of 2017 until July 31, 2018. ODC 177, Bates 3847. Bank records from BB&T for the account entitled "E. Lavoyd Morgan, Jr. & Associates, LC" appears to be an operating account. ODC 181, Bates 4463-4785. Mr. Clutter's January 18, 2018 check for \$205.00 (ODC 181, Bates 4644), his February 1, 2018 check for \$1,400.00 (ODC 181, Bates 4659), and his March 9, 2018 retainer check for \$2,500.00 were all deposited into this account. ODC 181, Bates 4713.

On or about March 7, 2019, the West Virginia State Bar copied ODC on a letter to Mr. Clutter and his wife about the reconsideration of the denial of the claim with Lawyers Fund for Client Protection Committee. ODC 215, Bates 5399. The letter indicated the file was being left open and tabled for consideration during the 2019 year. Id. On or about September 11, 2019, Respondent submitted correspondence indicating he continued to represent Mr. Clutter in five separate matters and never charged him any additional fees. ODC 69, Bates 2407. However, in May of 2019, Mr. Clutter retained Jeff Pritt, Esquire to represent him. Id.

COUNT VIII
I.D. No. 18-05-246
Complaint of Lonnie Dennis Lilly

Complainant Lonnie Dennis Lilly filed his ethics complaint against Respondent on or about June 13, 2018. ODC 217, Bates 5449-5450. Mr. Lilly stated he hired Respondent to represent him in a vehicle accident case. ODC 217, Bates 5449. A hearing was held on April 20, 2018, and thereafter, Respondent instructed Mr. Lilly to call Respondent's office to make an appointment to review paperwork. ODC 217, Bates 5449-5450. Mr. Lilly said that he called Respondent's office, and was told that they would call that evening with an appointment time, as Respondent was traveling at the time. ODC 217, Bates 5450. Mr. Lilly stated that Respondent's office never called, and he made several calls to Respondent's office without success. Id. On June 5, 2018, Mr. Lilly said that he drove to Respondent's office, and no one was at the office. Id. Mr. Lilly said that a court staff member called him on June 5, 2018, and informed him that Respondent's offices were closed due to personal issues. Id. Mr. Lilly stated Respondent took his money. Id.

On or about June 28, 2018, Respondent was sent a copy of the ethics complaint along with a letter directing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 218, Bates 5451-5452. Respondent failed to file a response. On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about July 20, 2018, by certified and regular mail, a letter was sent to Respondent asking him to respond to Mr. Lilly's complaint by July 30, 2018. ODC 219, Bates 5460-5461. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 20, 2018, the certified mail sent

to Respondent on July 20, 2018 was returned to sender marked as unclaimed, unable to forward. ODC 220, Bates 5469. The regular mail letter was never returned to ODC.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Respondent stated that the attempts by Mr. Lilly to contact him by telephone and by stopping by the office had occurred when his office was closed, while Respondent was recuperating from his surgery. ODC 51, Bates 2126. Respondent said he had Mr. Lilly's file and planned to contact him. Id.

In a reply filed by Mr. Lilly on or about September 7, 2018, Mr. Lilly said he paid \$50.00 cash on April 26, 2017, an \$1,000.00 electronic debit on April 27, 2017, and \$200.00 cash on April 20, 2018. ODC 223, Bates 5485. Mr. Lilly provided a copy of the receipt for the \$50.00 payment and a partial copy of bank records showing the \$1,000.00 payment. ODC 223, Bates 5486. Mr. Lilly stated he made two payments to Ms. Flora, but the \$200.00 cash was paid to Respondent, who had a woman present with him at the time. ODC 223, Bates 5485. He stated that he also had a contingency fee matter with Respondent at 20%, and that Respondent still had half of Mr. Lilly's records. ODC 223, Bates 5484-5485.

On or about September 26, 2018, Respondent was sent a copy of Mr. Lilly's reply, and was asked to file a written response thereto within twenty days of receipt of the letter. ODC 225, Bates 5491. On or about October 26, 2018, Respondent filed a response, and stated that Mr. Lilly's case was moving forward and he wanted to Respondent to remain as his counsel. ODC 214, Bates 5381.

At his sworn statement on November 1, 2018, Respondent reiterated that Mr. Lilly's attempts to contact him occurred during his absence due to medical issues, and he asserted Mr. Lilly was satisfied with him and even hugged Respondent after the last hearing. ODC 53, Bates 2245. Respondent denied Mr. Lilly's case was a contingency fee case, and said he did not know what type

of case it was. ODC 53, Bates 2245-2246. Respondent said he was paid to handle the initial hearing, and any fee agreement would be in the client file he brought with him to the sworn statement. ODC 53, Bates 2246. Respondent denied telling Mr. Lilly about being out of the office for health reasons, and indicated that he did not have an accounting in the matter. ODC 53, Bates 2246-2247.

In the client file provided by Respondent at his sworn statement, a client intake sheet dated April 26, 2017, showed a consultation fee of \$50.00 and initial retainer of \$1,000.00. ODC 226, Bates 5497. On or about October 20, 2017, the Kanawha County Circuit Court entered an Order in Mr. Lilly's lawsuit to transfer the venue to Raleigh County. ODC 226, Bates 5500-5503. On or about September 20, 2017, Respondent sent a letter to Mr. Lilly noting their meeting on April 26, 2017, that the \$1,000.00 retainer was to answer three sets of discovery only, that any additional work would require an additional retainer fee, and that his current scope of representation was completed so he was going to file a motion to withdraw as counsel. ODC 226, Bates 5556. If Mr. Lilly wanted further representation, he had to contact Respondent within ten days of receipt of the letter. Id. There was no fee agreement in the client file. ODC 226, Bates 5495-5756.

Bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC," do not show a deposit of \$50.00, or \$1,000.00, although there was a deposit of \$15,000.00 on April 27, 2017. ODC 117, Bates 3833-3834. It is unclear if Mr. Lilly's funds would have been included in that deposit. Id. Further, the IOLTA account held in a negative balance of -\$153.57 by July of 2017, and only reflected a balance of \$35.43 in August of 2017. ODC 117, Bates 3844, 3847.

On or about November 26, 2018, Mr. Lilly filed correspondence indicating that while Respondent appeared at the November 26, 2018 hearing for him, Respondent failed to file the "papers" as discussed during a meeting on October 1, 2018. ODC 228, Bates 5765. Mr. Lilly said

Respondent wanted him to drop one of the defendants and, when Mr. Lilly refused, Respondent became angry. Id. Mr. Lilly stated Respondent met with the judge and opposing counsel without Mr. Lilly present, and Respondent was told to have the paperwork done by the end of January of 2019. Id. On or about December 12, 2018, Respondent's counsel was sent a copy of Mr. Lilly's last correspondence, and asked to file a response within twenty days of receipt of the letter. ODC 229, Bates 5767. Respondent failed to respond. On or about January 11, 2019, by certified and regular mail, a letter was sent to Respondent's counsel asking for a response by January 22, 2019.¹⁹ ODC 232, Bates 5772-5774. On or about January 22, 2019, Respondent sent a letter indicating that he had some recent medical issues and the holidays caused the response to be late. ODC 113, Bates 2447. Regarding Mr. Lilly, Respondent said he was going to file a bad faith claim against Mr. Lilly's insurance company, and would continue to represent him without requiring an additional retainer. ODC 113, Bates 2747-2748.

COUNT IX
L.D. No. 18-05-268
Complaint of Dani K. Jones & Andrew M. Arrick

Complainants Dani K. Jones and Andrew M. Arrick filed their ethics complaint against Respondent on or about June 18, 2018. ODC 235, Bates 5837-5872. Ms. Jones was a 61 year old disabled woman, and Mr. Arrick is her 21 year old son who lives with her. ODC 235, Bates 5838. Ms. Jones said that in September of 2015, she and Mr. Arrick became homeless due to long term stagnant water standing beside and under her manufactured home in Princeton, West Virginia, causing medical issues. Id. Ms. Jones stated that she was not responsible for any of the damages to their home, and believed she had a strong case for a lawsuit for medical, mental, and emotional

¹⁹ The green card was returned to ODC on January 14, 2019, and it appeared it was ripped from the envelope during processing. ODC 232, Bates 5774.

problems. Id. Ms. Jones said that her parents, which included her attorney father, helped them to prepare a lawsuit, but her mother passed away while they were preparing it. Id.

Ms. Jones stated that she spoke with Mr. Coles in July of 2017 about their case. ODC 235, Bates 5839. Mr. Coles was the senior paralegal and firm administrator for Respondent's law firm. Id. Ms. Jones said that Mr. Coles agreed to meet with her on July 29, 2017, and at that meeting, he reviewed her files and agreed to take the files, which included all supporting documents and a partially completed lawsuit, for Respondent to review. Id. Ms. Jones was concerned about the statute of limitations running soon, but Mr. Coles assured her that it was fine. Id. Ms. Jones said that she did not hear from Mr. Coles until she texted him on August 16, 2017 (Id.), and those text exchanges indicated that she was trying to get her client file back from Mr. Coles in August of 2017. ODC 235, Bates 5861, 5864, 5866. Ms. Jones stated that the statute of limitations ran in her case (ODC 235, Bates 5839), and the same was confirmed by Derrick W. Lefler, Esquire, in his letter of February 19, 2018, which indicated that the statute of limitations ran in October of 2017. ODC 235, Bates 5872.

By letter dated June 28, 2018, Respondent was sent a copy of the ethics complaint directing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 236, Bates 5873-5874. Respondent failed to respond. On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about July 20, 2018, by certified and regular mail, a letter was sent to Respondent asking him to respond to the ethics complaint by July 30, 2018. ODC 237, Bates 5882-5883. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a

Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding Ms. Jones and Mr. Arrick, Respondent stated he did not know who these people were, and cannot find a client file for them, but it appeared that they only communicated with Mr. Coles. ODC 51, Bates 2126.

On or about September 6, 2018, Elizabeth Ann Good appeared for a sworn statement. ODC 186, Bates 4968-5002. Ms. Good worked for Respondent and stated that Mr. Coles returned client files that he had and, from her understanding, all of the files had been returned to Respondent. ODC 186, Bates 4981.

On or about September 11, 2018, Ms. Jones and Mr. Arrick stated Mr. Arrick communicated with Respondent's secretary, Harmony, on numerous occasions, which even included her setting up an appointment. ODC 240, Bates 5903-5904. One appointment was scheduled for the week of November 6, 2017, and they were called by Respondent's office about meeting with Respondent on November 10, 2017, in Hinton, West Virginia, to save them a drive to Lewisburg. ODC 240, Bates 5904. When they arrived at the courthouse on November 10, 2017, the courthouse was closed. Id. When they contacted Respondent's office, they were told both that he was there and that he was on his way. Id. At some point, Respondent's office advised them that they would be meeting with Jeff Rodgers, and not Respondent. Id. Mr. Rodgers did not show up until hours later. Id. Ms. Jones and Mr. Arrick said Respondent's medical problems did not begin until May of 2018, which is not during the time frame of their issues. Id.

On or about October 12, 2018, the certified letter sent to Respondent on July 20, 2018, was returned to ODC. ODC 241, Bates 5909. The letter sent by regular mail was never returned.

At his sworn statement on November 1, 2018, Respondent reiterated that he did not know who these people were, and he had no record of them in his office. ODC 53, Bates 2247. Respondent denied knowing anything about a statute of limitations running, or that a meeting was scheduled for them in Hinton. ODC 53, Bates 2249.

On or about September 11, 2019, Respondent submitted correspondence noting that he does not know these people, and that Ms. Jones and Mr. Arrick have named Respondent and Mr. Rodgers in an \$11 million lawsuit, but Respondent had not been served with the lawsuit. ODC 69, Bates 2408.

COUNT X
I.D. No. 18-05-276
Complaint of R.D.

Complainant R.D. filed her ethics complaint against Respondent on or about June 14, 2018. ODC 244, Bates 6012-6017. R.D. stated that she hired Respondent to represent her in her divorce case in November of 2017. ODC 244, Bates 6014. R.D. said her contact with Respondent's office was through Mr. Coles. Id. R.D. stated Mr. Coles took notes, but she was unsure of what was done with them. Id. R.D. only saw Respondent twice prior to her court dates, which included him coming into the meeting to ask Mr. Coles something and briefly introducing himself, and then meeting with Respondent and Mr. Coles before a scheduled hearing. Id. On the next day, March 1, 2018, R.D. said Respondent did not say or do much. Id. When a truancy issue was brought up, R.D. told Respondent that there was evidence in her paperwork that showed the truancy occurred when the child was at her father's home, but Respondent just sat there. Id. Respondent had little to say and indicated that he would start the appeal paperwork after the hearing. Id. R.D. sent text messages to Mr. Coles about the falsehoods presented in court, and Respondent's failure to address them. ODC 244, Bates 6015. R.D. gave additional information to Respondent after the March 2, 2018 hearing, but there was no

contact from Respondent. Id. On March 15, 2018, Mr. Coles contacted R.D., and she provided information to him. Id. R.D. was told that a hearing was going to be scheduled, but there was no hearing date set. Id. Mr. Coles did not contact R.D. again until May 15, 2018. Id.

On or about June 28, 2018, Respondent was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 245, Bates 6018-6019. Respondent failed to respond. On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about July 20, 2018, by certified and regular mail, a letter was sent to Respondent asking him to respond to R.D.'s complaint by July 30, 2018. ODC 246, Bates 6027-6028. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 20, 2018, the certified mail sent to Respondent on July 20, 2018 was returned to sender marked as unclaimed, unable to forward. ODC 247, Bates 6036. The regular mail letter was never returned to ODC.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding R.D., Respondent stated he had not been able to find R.D.'s client file, and has learned R.D. is now represented by new counsel. ODC 51, Bates 2127.

On or about August 29, 2018, R.D. filed a reply. ODC 250, Bates 6049-6053. R.D. again stated she retained Respondent on November 28, 2017, and met with Mr. Coles. ODC 250, Bates 6049. R.D. provided copies of the two checks she wrote to Respondent: 1) \$2,500.00 check written to Respondent on November 28, 2017; and 2) \$500.00 check written to Respondent on December

15, 2017. ODC 250, Bates 6052-6053. R.D. did not remember if she signed a fee agreement, and she did not have a copy of such. ODC 250, Bates 6049. R.D. indicated that she provided documents to Respondent without making copies at first, and believed she lost some documents that could have been useful in her case. ODC 250, Bates 6049-6050. R.D. wanted a refund of the money she paid to Respondent. ODC 250, Bates 6051.

On or about September 6, 2018, Elizabeth Ann Good appeared for a sworn statement. ODC 186, Bates 4968-5002. Ms. Good worked for Respondent and stated Mr. Coles returned client files that he had, and from her understanding, all of the files had been returned to Respondent. ODC 186, Bates 4981.

On or about September 10, 2018, R.D. filed an additional reply and reiterated her allegations against Respondent, and said that her divorce was still not settled. ODC 251, Bates 6054-6059. R.D. said she would call Respondent, and would get his voicemail, and after a while, the voicemail box was full. ODC 251, Bates 6055. R.D. believed it was Respondent's responsibility to supervise his employees. ODC 251, Bates 6056.

At his sworn statement on November 1, 2018, Respondent said he did not recall talking to R.D., but then later remembered the issue regarding truancy. ODC 53, Bates 2250. Respondent admitted that it was routine that he would talk about filing an appeal, but did not recall working on an appeal for R.D.. ODC 53, Bates 2251-2252. Respondent asserted Mr. Coles may have taken R.D.'s client file. ODC 53, Bates 2253. Further, the retainer paid by R.D. should have been deposited into the IOLTA account at City National. ODC 53, Bates 2254. Respondent did not provide R.D.'s client file even though he had been subpoenaed to do so.

Bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC," does not show a deposit after November 14, 2017, which

is fourteen days before R.D.'s first check dated November 28, 2017, and by the end of November of 2017, the remaining balance was \$188.06. ODC 117, Bates 3865-3867. No deposits were made from December of 2017 to July of 2018, and the balance remained \$188.06, even though R.D. made a second payment to Respondent by check in December of 2017. ODC 117, Bates 3868-3890.²⁰

On or about September 11, 2019, Respondent submitted correspondence indicating R.D. was represented by Brandon Gray, Esquire. ODC 69, Bates 2408.

COUNT XI
I.D. No. 18-05-282
Complaint of T.R.

On or about July 2, 2018, Complainant T.R. filed an ethics complaint against Respondent. ODC 253, Bates 6177-6182. T.R. said she hired Respondent to represent her in a divorce case on July 21, 2017. ODC 253, Bates 6179. T.R. noted she never met with Respondent, only met with Mr. Coles, who represented himself as "almost a lawyer." Id. T.R. paid a retainer of \$5,000.00 through a payment plan, which was paid in full. Id. On August 3, 2017, a petition for divorce and a motion for temporary relief was filed. Id. Nothing else was done after that, and any time she was told there was a hearing scheduled, T.R. would be told on the day of the hearing that it was canceled. Id. This happened several times. Id. T.R. finally met with Respondent in May of 2018, after making numerous telephone calls. Id. T.R. said she received no information about her case. Id. After that meeting, Respondent and Mr. Coles disappeared, and Respondent's office telephone was disconnected and his office was closed. Id. She never received an itemized statement, and Respondent still had her \$5,000.00. Id. T.R. hired a new attorney, and learned nothing was done by Respondent from August 3, 2017, until she terminated his representation on June 18, 2018. Id. T.R.

²⁰ Respondent's operating account showed deposits of R.D.'s checks for November 28, 2017 to Morgan & Associates (ODC 181, Bates 4593), and December 15, 2017 to Morgan & Associates. ODC 181, Bates 4619.

stated the opposing party had not filed a financial disclosure, and Respondent never told T.R. about this issue, nor did he do anything to ensure the financial disclosure was filed by the opposing party. Id. T.R. provided a copy of the docket sheet, which showed that there was never a hearing in the case (ODC 253, Bates 6181), and T.R. 's new counsel could not get her client file from Respondent. ODC 253, Bates 6179. T.R. wanted a refund of her retainer. Id.

On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about July 5, 2018, Respondent was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 254, Bates 6183-6184. Respondent failed to file a response. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 6, 2018, by certified and regular mail, a letter was sent to Respondent's counsel asking him to respond to T.R.'s complaint by August 16, 2018. ODC 255, Bates 6195-6197. The green card was signed for by counsel for Respondent on August 8, 2018. ODC 255, Bates 6197.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding T.R., Respondent noted that much of the communication issues occurred while he having medical issues. ODC 51, Bates 2125. Respondent stated he had T.R. 's file, and that he filed the divorce petition in August of 2017. Id. Respondent said he represented T.R. at her temporary support hearing. Id. Respondent has since learned that T.R. hired new counsel. Id.

On or about August 29, 2018, T.R.'s new counsel, Christine B. Stump, Esquire, filed a reply for T.R.. ODC 258, Bates 6214-6222. The following was related about T.R.'s case: Respondent was paid a total of \$4,150.00. ODC 258, Bates 6214. When T.R. met with Respondent and he did not know anything about her case, she decided to terminate his representation. Id. Further, that meeting was the first and only meeting T.R. had with Respondent. Id. The docket sheet for T.R.'s case was provided, and showed that other than the original filings on August 3, 2017, nothing else was done in T.R.'s case. ODC 258, Bates 6218. Ms. Stump noted that when she took over the case on June 18, 2018, she was alarmed to find the opposing party had filed an answer, but no mandatory financial disclosure was had been filed. Id. She noted such could be easily corrected with a motion to compel, and nothing was filed about it for ten months. Id. After T.R. was unsuccessful in getting her client file, Ms. Stump sent a July 10, 2018 letter to Respondent requesting the client file, but there had been no response to the letter. Id. Attached were copies of checks T.R. wrote to Respondent over several months to pay the retainer,²¹ and a copy of a retainer agreement dated July 21, 2017, for a divorce matter with an initial retainer of \$5,000.00. ODC 258, Bates 6220-6222.

On or about September 4, 2018, Ms. Stump provided additional correspondence for T.R.. ODC 259, Bates 6223-6225. When she initially set up an appointment to meet Respondent, T.R. met with Mr. Coles instead, and he told her that he was "almost a lawyer." ODC 259, Bates 6223. T.R. denied that Respondent represented her in a temporary support hearing because no hearing was held even though she was in need of temporary support. Id. T.R. never received her client file or a refund

²¹ The following copies of checks were provided: 1) \$50.00 to Respondent on July 21, 2017; 2) \$2,500.00 to Respondent on July 21, 2017; 3) \$200.00 to Respondent on October 16, 2017; 4) \$200.00 to Respondent on November 9, 2017; 5) \$200.00 to Respondent on December 19, 2017; 6) \$200.00 to Respondent on January 4, 2018; 7) \$200.00 to Respondent on March 8, 2018; 8) \$200.00 to Respondent on April 16, 2018; and 9) \$200.00 to Respondent on May 16, 2018. ODC 258, Bates 6216. The total of the checks was \$3,950.00. T.R. asserted she made another payment by check for \$200.00 on February 5, 2018, which would put the total she paid Respondent \$4,150.00. ODC 258, Bates 6215.

of the retainer she paid. Id. T.R. stated that her attempts to communicate with Respondent were unsuccessful. Id.

On or about September 26, 2018, a copy of the recent correspondence was sent to Respondent, and he was asked to file a response within twenty days of receipt of the letter. ODC 260, Bates 6228. Respondent failed to respond to the letter.

At his sworn statement on November 1, 2018, Respondent said he did not remember T.R. and was unaware of the retainer she paid to him. ODC 53, Bates 2260. Respondent was also unaware that T.R. was told that hearings were scheduled only to be told the day of the hearing that it was rescheduled. ODC 53, Bates 2262. Respondent entered the hospital in May of 2018, but he could not recall why he did not file anything from August of 2017 to May of 2018. ODC 53, Bates 2263-2264. Respondent could not remember what he filed on T.R.'s behalf, and he was not aware of the opposing side failing to file a financial disclosure. ODC 53, Bates 2264. Respondent did not have an accounting for T.R.'s case, as he has not been able to access Quickbooks. ODC 53, Bates 2265. Respondent did not know why T.R. did not get her client file, and asserted he never got a request from Ms. Stump for T.R.'s client file. ODC 53, Bates 2265-2266. In the information provided by Respondent, there was almost 200 pages of a client file. ODC 261, Bates 6229-6426.

Bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC," do not show a deposit of in July of 2017, even though T.R. wrote two checks to Respondent, and the IOLTA account was in a negative balance of -\$153.57 by the end July of 2017. ODC 177, Bates 3844-3846. The balance at the end of August of 2017 was only \$35.43. ODC 177, Bates 3847. The balance in September of 2017 was \$16,785.43 after a deposit of \$25,000.00 was made on September 8, 2017. ODC 177, Bates 3850. T.R. did not make a payment in August or September of 2017. ODC 258, Bates 6215-6216. There were no deposits in

October of 2017 (ODC 177, Bates 3863), even though T.R. had sent a check to Respondent (ODC 258 Bates 6216), and the balance was again \$16,785.43. ODC 177, Bates 3863. November of 2017 had two deposits, but the remaining balance at the end of the month was \$188.06 (ODC 177, Bates 3865), even though T.R. sent a check for \$200.00 in November of 2017. ODC 258, Bates 6216. No deposits were made from December of 2017 to July of 2018, and the balance remained \$188.06 (ODC 177, Bates 3868-3890), even though T.R. sent checks in December of 2017, January of 2018, February of 2018, March of 2018, April of 2018, and May of 2018. ODC 258, Bates 6215-6216.

Bank records from BB&T for the account entitled "E. Lavoyd Morgan, Jr. & Associates, LC" appears to be an operating account. ODC 181, Bates 4463-4785. T.R.'s January 4, 2018 check for \$200.00 (ODC 181, Bates 4641), March 8, 2018 check for \$200.00 (ODC 181, Bates 4721), and April 16, 2018 check for \$200.00 (ODC 181, Bates 4756) were all deposited into this account. Also, a November 9, 2017 check for \$200.00 was deposited into this account. ODC 181, Bates 4586.

COUNT XII
I.D. No. 18-05-284
Complaint of D.K.

On or about June 26, 2018, Complainant D.K. filed this ethics complaint against Respondent. ODC 262, Bates 6495-6496. D.K. hired Respondent in August of 2017 for representation in a divorce, and paid him \$3,050.00 upfront for the representation. ODC 262, Bates 6495. D.K. indicated that the case was primarily handled by Mr. Coles, and that she never received any invoices and was unable to communicate with Respondent, beyond text messages to Mr. Coles. ODC 262, Bates 6495-6496. On January 18, 2018, there was a hearing and all Respondent asked her was how much she would settle the case for and then walked off to talk to opposing counsel. ODC 262, Bates 6496. D.K. indicated Respondent barely spoke to her, and the hearing ended in a bifurcated divorce Order. Id. Attempts to communicate with Respondent thereafter were unsuccessful until Mr. Coles

sent a text message on May 10, 2018, indicating that he was going to meet with opposing counsel that evening. Id. D.K. tried to find out what happened, but got no response. Id. When she went to Respondent's office on June 12, 2018, she found a sign saying it was closed for a week, and there was no answer on the office phone or Mr. Coles' phone. Id. D.K. returned on June 18, 2018, and the sign was still there. Id. When she inquired about the situation just down the hall, D.K. was told no one had been in the office since May 9, 2018. Id. D.K. was sent to the office of Robert Frank, Esquire,²² but he would not talk to her, and did not contact her after she left her name and contact information. Id. D.K. said she has experienced mental and financial strain as a result. Id.

On or about June 29, 2018, Respondent was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 263, Bates 6497-6498. On or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. Respondent failed to file a response. On or about July 20, 2018, by certified and regular mail, a letter was sent to Respondent asking him to respond to D.K.'s complaint by July 30, 2018. ODC 264, Bates 6506-6507. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 20, 2018, the certified mail sent to Respondent on July 20, 2018 was returned to sender as unclaimed, unable to forward. ODC 265, Bates 6515. The regular mail letter was never returned to ODC.

²² Mr. Frank was at one point Respondent's counsel in a disciplinary matter, but was later replaced by Mr. Simmons.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding D.K., Respondent noted that much of the communication issues occurred while he was having medical issues. ODC 51, Bates 2127. Respondent said he had not found her client file, and also does not recall having her as a client. Id. Respondent planned to speak with opposing counsel to see what information that attorney has on the case. Id.

On or about September 6, 2018, D.K.'s new counsel, Christine B. Stump, Esquire, filed a reply for D.K.. ODC 268, Bates 6528-6550. The following was related about D.K.'s case: Respondent was retained on August 4, 2017, and he filed a divorce petition on August 23, 2017, along with a motion for temporary relief. ODC 268, Bates 6528. From August 4, 2017, until the hearing on January 18, 2018, D.K. never spoke or met with Respondent. Id. D.K. met Respondent at the courthouse prior to her hearing. Id. It was noted the other side had failed to file a financial disclosure but, nevertheless, Respondent tried to settle the matter for less than what D.K. believed she was entitled to. Id. D.K. refused to settle the property issues, and a bifurcated divorce Order was entered. Id. For the next six months after that hearing, D.K. tried to get information about her case, but was unsuccessful. Id. It was noted Respondent never filed a motion for discovery or to compel financial disclosure. Id. D.K. could not understand how Respondent could not recall representing her, as he signed and filed her divorce petition and appeared in court with her. Id. D.K. never received any billing statements from Respondent. ODC 268, Bates 6529. Attached to the reply was a copy of the retainer agreement dated August 4, 2017, for a domestic matter for a initial retainer of \$3,000.00, and was signed by D.K. on August 4, 2017.²³ ODC 268, Bates 6531-6532. A check for \$3,000.00 from D.K. written to Respondent dated August 4, 2017 (ODC 268, Bates 6544), was also provided,

²³ The retainer agreement was in the name D.P., as were the pleadings in the case. ODC 268, Bates 6531-6550. The Bifurcated Divorce Order restored D.K. to her maiden name. ODC 268, Bates 6547.

along with records showing a \$50.00 payment to Respondent on August 3, 2017, which was a consultation fee. ODC 268, Bates 6543.

On or about September 26, 2018, a copy of the reply was sent to Respondent, and he was asked to file a response within twenty days of receipt of the letter. ODC 269, Bates 6553. Respondent failed to respond to the letter.

At his November 1, 2018 sworn statement, Respondent said he was unable to locate D.K.'s file, and his attempts to look at the file in the clerk's office were unsuccessful, as he was not listed as counsel. ODC 53, Bates 2255. Respondent did not have an accounting in the case. ODC 53, Bates 2256. Further, Respondent did not remember the hearing in January of 2018. *Id.* Respondent said D.K.'s issues with his office occurred when he was dealing with medical issues. ODC 53, Bates 2258. Respondent did not know why he did not seek a motion to compel the financial disclosure from the other side, and indicated he would have filed such if he knew it was an issue. ODC 53, Bates 2258-2259. Even though Respondent was sent a copy of the reply containing a copy of the retainer, and a copy of the check written to him, Respondent denied being aware of the retainer agreement and any payment made by D.K.. ODC 53, Bates 2259. There was no client file provided by Respondent even though he was subpoenaed to bring the file with him.

Bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC," shows a deposit of \$871.50 on August 15, 2017, which was then paid out by check dated August 18, 2017, for settlement proceeds to what appears to be another client. ODC 177, Bates 3857-3859. There was another deposit of \$225.00 on August 2, 2017 (*Id.*), but that was one day before D.K.'s payment of the consultation fee of \$50.00 (ODC 268, Bates 653) and two days before the date of her check for \$3,000.00. ODC 268, Bates 6544. The end balance in August of 2017 was only \$35.43. ODC 177, Bates 3857. The balance in September of 2017 was

\$16,785.43 after a deposit of \$25,000.00 was made on September 8, 2017. ODC 177, Bates 3860. The ending balance in October of 2017 was again \$16,785.43. ODC 177, Bates 3863. November of 2017 had two deposits, but the remaining balance at the end of the month was \$188.06. ODC 177, Bates 3865. No deposits were made from December of 2017 to July of 2018, and the balance remained \$188.06. ODC 177, Bates 3868-3896.

COUNT XIII
I.D. No. 18-05-304
Complaint of Hunter P. Chellis

On or about July 9, 2018, Complainant Hunter P. Chellis filed an ethics complaint against Respondent. ODC 270, Bates 6617-6619. Ms. Chellis stated Respondent represented her regarding an auto accident. ODC 270, Bates 6617. She had contacted Respondent numerous times by telephone without any response, even after being told by a secretary that Respondent would get back to her. ODC 270, Bates 6618. When Ms. Chellis showed up at Respondent's office on several occasions, no one was there. Id. Ms. Chellis expressed concerned about her case, and had tried to go to the office to get her client file, but again, no one was there. Id.

On or about July 16, 2018, Respondent was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 271, Bates 6620-6621. Respondent failed to file a response. Previously, on or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 9, 2018,

by certified and regular mail, a letter was sent to Respondent's counsel asking for a response to the complaint by August 20, 2018. ODC 272, Bates 6626-6628. The green card was signed for by the office of Respondent's counsel on August 13, 2018. ODC 272, Bates 6628.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding Ms. Chellis, Respondent noted her allegations regarding the failure to communicate likely occurred during his medical issues. ODC 51, Bates 2124. Respondent said he continues to represent Ms. Chellis, and will pursue her claim after he resolves the claim of her mother. Id. On or about October 26, 2018, Respondent provided correspondence wherein he indicated Ms. Chellis' case had been resolved and Ms. Chellis was satisfied with the result. ODC 214, Bates 5381.

At his sworn statement on November 1, 2018, Respondent said Ms. Chellis' case was settled, and he sent her a check last week. ODC 53, Bates 2266. Respondent said the settlement was deposited in his IOLTA account at City National. ODC 53, Bates 2266-2267. The case was settled for \$17,500.00, and while Ms. Chellis had signed the settlement check, Respondent had not received the signed settlement sheet. ODC 53, Bates 2267. Respondent was unaware of Ms. Chellis' request for her client file. Id. There is one bill from a doctor to be paid, but Respondent was trying to negotiate that amount down, and Ms. Chellis will receive the undisputed portion of the funds. ODC 53, Bates 2267-2268. In the client file provided by Respondent at the sworn statement, there was a client intake sheet dated April 21, 2017, for a car accident case. ODC 275, Bates 6651. There was also a copy of a check dated October 25, 2018, written to Ms. Chellis from Respondent's IOLTA account in the amount of \$3,244.69 for settlement proceeds. ODC 275, Bates 6661. There was no attorney client agreement in the file, and there was no settlement sheet. ODC 275, Bates 6650-6877.

On or about September 11, 2019, Respondent submitted correspondence indicating he was successful in settling Ms. Chellis' case (ODC 69, Bates 2407), and provided a copy of the release and settlement agreement, which was signed by Ms. Chellis on October 12, 2018. ODC 69, Bates 2416-2429. He provided a copy of the settlement showing a payment to Ms. Chellis of \$4,244.69 along with a notation that she was previously paid \$3,244.69. ODC 69, Bates 2428. He also provided copy of a check written to Ms. Chellis on November 8, 2018 for \$1,000.00 (ODC 69, Bates 2432), and a copy of a check written to Ms. Chellis on October 25, 2018 for \$3,244.69. ODC 69, Bates 2433. Both checks were written from his bank account from City National Bank entitled "E. Lavoyd Morgan, Jr. & Associates, L.C., Trust Account." ODC 69, Bates 2432-2433.

Bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC IOLTA Trust Account," show a deposit of \$17,500.00 on October 22, 2018, and a check cashed by Ms. Chellis on October 31, 2018 for \$3,244.69. ODC 277, Bates 6984-6986. Also, on November 14, 2018, another check for \$1,000.00 was cashed by Ms. Chellis. ODC 277, Bates 6981-6983.

COUNT XIV
I.D. No. 18-05-312
Complaint of Sara E. Reynolds

On or about July 12, 2018, Complainant Sara L. Reynolds filed an ethics complaint against Respondent. ODC 278, Bates 6990-6992. Ms. Reynolds stated Respondent represented her regarding an auto accident. ODC 278, Bates 6990. She had tried contacting Respondent by telephone, and received no answer. ODC 278, Bates 6991. When Ms. Reynolds stopped by Respondent's office, the office was closed for the week. Id.

On or about July 16, 2018, Respondent was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of

the letter. ODC 279, Bates 6993-6994. Respondent failed to file a response. Previously, on or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 9, 2018, by certified and regular mail, a letter was sent to Respondent's counsel asking for a response to the complaint by August 20, 2018. ODC 280, Bates 6999-7000. The green card was signed for by the office of Respondent's counsel on August 13, 2018. ODC 280, Bates 7001.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding Ms. Reynolds, Respondent noted that her allegation regarding the failure to communicate occurred while he was having medical issues. ODC 51, Bates 2123-2124. He said that he provided his cell phone number to Ms. Reynolds. ODC 51, Bates 2124. Respondent said he located Ms. Reynolds' file and is still working on it. Id. He related that she was an infant when the accident occurred and no complaint had been filed yet, as he was working to resolve the claim of her mother. Id. On or about October 26, 2018, Respondent provided correspondence wherein he indicated Ms. Reynolds case would be settled soon. ODC 214, Bates 5381.

At his sworn statement on November 1, 2018, Respondent said Ms. Reynolds case was still pending, and should be settled by the end of the month. ODC 53, Bates 2268-2269. Respondent stated he resolved the communication issue, and although Ms. Reynolds was disappointed the case was not settled at a recent mediation, she understood the issue. ODC 53, Bates 2269. In the client file provided by Respondent at the sworn statement, there was a client intake sheet dated June 21,

2017, for an car wreck case. ODC 283, Bates 7025. There was an attorney client agreement for a contingency fee in the file, but it had blank spaces on the front page as to when it was made and entered, and who it was between. ODC 283, Bates 7102-7103. However, it has the signature of Ms. Reynolds' mother on the back page. ODC 283, Bates 7103.

On or about September 11, 2019, Respondent submitted correspondence indicating he was successful in settling Ms. Reynolds' case (ODC 69, Bates 2407), and provided a copy of a check written to Ms. Reynolds on March 19, 2019 for \$2,019.69. ODC 69, Bates 2435. The check was written from his bank account from City National Bank entitled "E. Lavoyd Morgan, Jr. & Associates, L.C., Trust Account." Id. Bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC IOLTA Trust Account," show a check written and cashed by Ms. Reynolds for \$2,019.69 on March 19, 2019. ODC 277, Bates 6969-6971.

COUNT XV
I.D. No. 18-05-313
Complaint of Theresa L. Reynolds

On or about July 12, 2018, Complainant Theresa L. Reynolds filed an ethics complaint against Respondent. ODC 284, Bates 7272-7274. Ms. Reynolds stated she was in auto accident in 2015, and Respondent represented her in the matter. ODC 284, Bates 7273. For the past two months, Ms. Reynolds had tried to communicate with Respondent about the status of her case without success. Id. Although she was told that Respondent would call her back several times, he never did call her back. Id. Several times, her telephone calls would go to voicemail and the recording indicated that the voicemail was full. Id. When she went to Respondent's office, there was a note on the door indicating that the office was closed for the week, but she later learned the note had been there for several weeks. Id. Ms. Reynolds stated the only significant movement in her case was that

Respondent took a deposition. Id. Ms. Reynolds wanted her client file in order to continue with her case so it can be settled. Id.

On or about July 16, 2018, Respondent was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 285, Bates 7275-7276. Respondent failed to file a response. Previously, on or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 9, 2018, by certified and regular mail, a letter was sent to Respondent's counsel asking for a response to the complaint by August 20, 2018. ODC 286, Bates 7281-7282. The green card was signed for by the office of Respondent's counsel on August 13, 2018. ODC 286, Bates 7283.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding Ms. Reynolds, Respondent stated the failure to communicate occurred when he was experiencing medical issues. ODC 51, Bates 2123. Respondent said that Ms. Reynolds has his cell phone number, and he continues to represent her and is continuing to work on settling her case. Id. On or about October 26, 2018, Respondent provided correspondence wherein he indicated Ms. Reynolds case was resolved, and she was satisfied with the results. ODC 214, Bates 5381.

At his sworn statement on November 1, 2018, Respondent said he settled Ms. Reynolds case for \$10,000.00, and that amount was deposited into the IOLTA account. ODC 53, Bates 2270. Further, a settlement sheet was given to her, and all bills were paid out of the amount and she

received a check. ODC 53, Bates 2270-2271. In the client file provided by Respondent at the sworn statement, there was a client intake sheet dated May 25, 2016, for an auto accident case. ODC 289, Bates 7306. Respondent had a copy of a September 28, 2018 check from National General Insurance to Respondent and Ms. Reynolds for \$10,000.00. ODC 289, Bates 7316. There was a settlement sheet showing a settlement of \$10,000.00, and that Ms. Reynolds was to get a check for \$3,219.69 which was signed on October 16, 2018. ODC 289, Bates 7313. Respondent also had a copy of the check he wrote to Ms. Reynolds from his IOLTA account at City National Bank. ODC 289, Bates 7314. There was also an attorney client agreement entered on May 25, 2016, for a contingency fee of 33.33%. ODC 289, Bates 7354-7357.

On or about September 11, 2019, Respondent submitted correspondence indicating he was successful in settling Ms. Reynolds' case (ODC 69, Bates 2407), and provided a copy of the release and settlement agreement, which was signed by Ms. Reynolds on October 11, 2018. ODC 69, Bates 2422-2431. He also provided copy of a check written to Ms. Reynolds on October 16, 2018 for \$3,219.69 (ODC 69, Bates 2433), and a copy of a check written to Ms. Reynolds on August 3, 2017 for \$14,321.17. ODC 69, Bates 2434. Both checks were written from his bank account from City National Bank entitled "E. Lavoyd Morgan, Jr. & Associates, L.C., Trust Account." ODC 69, Bates 2433, 2434.

Bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC," show a check written to Ms. Reynolds on July 3, 2017 for \$14,321.17. ODC 177, Bates 3846. It also showed payments made on behalf of Ms. Reynolds by check dated July 17, 2017 to State Farm and by check dated July 14, 2017, for \$5,228.00 to Wardlow Chiropractic Center. *Id.* The end balance in July of 2017 was -153.57, and it appeared to go into the negative with the payment of \$2,066.40 to State Farm for Ms. Reynolds that was cleared through the

account on July 31, 2017. ODC 177, Bates 3844. The bank records also show a deposit of \$10,000.00 on October 11, 2018, and a check written and cashed by Ms. Reynolds for \$3,219.69 on October 16, 2018. ODC 277, Bates 6984-6986.

COUNT XVI
I.D. No. 18-05-314
Complaint of Crystal M. Sheppard

Complainant Crystal M. Sheppard filed her ethics complaint against Respondent on or about July 12, 2018, and stated that Respondent represented her for an auto accident case involving insurance and she has been unable to communicate with Respondent. ODC 290, Bates 7888-7889. Ms. Sheppard said that no one was in Respondent's office during normal work hours, and her telephone calls were not returned. ODC 290, Bates 7889. Ms. Sheppard stated that Respondent failed to complete the demand packet, and her case is one year and four months old. Id. Ms. Sheppard said that she has tried to disengage Respondent as her attorney, but he is unavailable, so she cannot get her another attorney to represent her. Id. On July 10, 2018, Ms. Sheppard stated that she sent a notarized disengagement letter via certified mail to Respondent to terminate his representation of her. Id.

On or about July 16, 2018, Respondent was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 291, Bates 7891-7892. Respondent failed to file a response. Previously, on or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating

that he was representing Respondent in this case. ODC 50, Bates 1806. On or about August 9, 2018, by certified and regular mail, a letter was sent to Respondent's counsel asking for a response to the complaint by August 20, 2018. ODC 292, Bates 7897-7898. The green card was signed for by the office of Respondent's counsel on August 13, 2018. ODC 292, Bates 7899.

On or about August 20, 2018, Respondent filed additional correspondence. ODC 51, Bates 2120-2129. Regarding Ms. Sheppard, Respondent stated the failure to communicate occurred when he was experiencing medical issues. ODC 51, Bates 2124. Respondent recalled meeting with Ms. Sheppard on one occasion, and he found her file. Id. Respondent said the file was found in a box of files discovered in Mr. Coles' possession. Id. On or about August 16, 2018, Respondent called Ms. Sheppard and left a message, and he is awaiting her return call to determine the next step. Id.

At his sworn statement on November 1, 2018, Respondent said he was working on the demand packet for Ms. Sheppard, but he was not completing it as quickly as Ms. Sheppard wanted him to. ODC 53, Bates 2271-2272. Respondent was unaware if Ms. Sheppard hired new counsel, and did not recall if she had requested her client file. ODC 53, Bates 2272. Respondent acknowledged receiving a letter from Ms. Sheppard terminating his representation. ODC 53, Bates 2273. The client file produced by Respondent contained a client intake sheet dated April 12, 2017, for an auto accident case with a contingency fee agreement. ODC 295, Bates 7919. It contained the July 10, 2018 letter from Ms. Sheppard terminating his representation and her request for all records in her case. ODC 295, Bates 7920. There was also an attorney-client agreement signed by Ms. Sheppard for a 40% contingency fee. ODC 295, Bates 7918-8027.

COUNT XVII
I.D. No. 18-05-343
Complaint of J.H.

On or about July 26, 2018, Complainant J.H. filed an ethics complaint against Respondent, and asserted Respondent represented him for the past two years when his ex-wife failed to abide by rulings made by the family court. ODC 296, Bates 8096-8097. J.H. stated that he paid Respondent over \$4,000.00 over the past two years, but Respondent has done little to effectively and fully represent him. ODC 296, Bates 8097. J.H. denied seeing any documents relating to a contempt petition that was supposedly filed by Respondent, and denied seeing any itemized statement or court pleadings. Id. J.H. said communicating with Respondent has been difficult, even before hearings, and after the last hearing on March 13, 2018, he has not heard from Respondent. Id. Further, attempts to make contact by four visits to Respondent's office were unsuccessful, as it appeared to him that Respondent's office had closed. Id.

On or about July 27, 2018, Respondent was sent a copy of the ethics complaint, along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 297, Bates 8099-8100. Previously, on or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about August 6, 2018, Lonnie C. Simmons, Esquire, filed a Notice of Substitution of Counsel indicating that he was representing Respondent in this case. ODC 50, Bates 1806.

On or about August 20, 2018, Respondent filed a response. ODC 51, Bates 2120-2129. Regarding J.H., Respondent stated he has J.H.'s client file, and had provided all legal services that were requested (ODC 53, Bates 2126-2127); however, the client was not pleased after the facts and the law did not provide him with the result he wanted in the case. ODC 53, Bates 2127.

On or about September 10, 2018, J.H. filed a reply indicating that he first paid Respondent \$2,500.00 by a check from his parents, and was told that it would cover everything. ODC 300, Bates 8119. J.H. denied signing any fee agreement. Id. About a year and a half after the first payment, J.H. was asked to pay another \$1,000.00 due to the matter not being settled. Id. The second payment of \$1,000.00 was also made with his parents' check. Id. The last court date was March 13, 2018, and there had been no contact from Respondent since then. Id. J.H. denied receiving any statement from Respondent's office, and he had to pay \$300.00 to obtain documents about his case from the court. Id.

On or about September 17, 2018, J.H. sent an additional reply stating that almost all of his communication with Respondent's office had been through Mr. Coles unless he personally went to Respondent's office. ODC 301, Bates 8120. At a hearing in January of 2017, J.H. did not know until just before the hearing that Respondent was out of town, and an associate would be handling the hearing, and J.H. asserted nothing regarding his contempt issues were addressed. Id. A hearing on March 13, 2018, involved Respondent and opposing counsel working out issues, but nothing was ever put down in writing. ODC 301, Bates 8121. When J.H. contacted Respondent's office about his ex-wife asserting she could have an overnight visitation because the court had ordered it, J.H. was told there was no Order. Id. Thereafter, he had no communication from Respondent. Id. J.H. hired new counsel, but he was unable to obtain his client file from Respondent so he had to get the documents from the court. Id. J.H. provided a copy of a July 17, 2017 check written from his parents' account to Respondent for \$1,000.00, along with two receipts: \$2,500.00 on May 6, 2016, for legal retainer fee (ODC 301, Bates 8122) and \$50.00 on May 6, 2016, for legal fee. ODC 301, Bates 8123. He also provided a copy of the \$300.00 receipt from where he paid for copies of documents from his court file. ODC 301, Bates 8124.

At his sworn statement on November 1, 2018, Respondent said J.H. and his father were never happy with the case. ODC 53, Bates 2274-2275. Respondent said that he would have filed a contempt petition if he had known the mother had not attended the parenting class, but he has discovered that he was not told everything about the case. ODC 53, Bates 2275. Respondent said any payment to him should have been put in the IOLTA. Id. Respondent stated the communication issues occurred when he was having medical issues. ODC 53, Bates 2276. Respondent said he was unaware of J.H.'s request for his client file, and that he does not have an accounting in the case. ODC 53, Bates 2277. In the client file that Respondent brought to the sworn statement, there was a client intake sheet dated May 6, 2016, which indicated \$2,500.00 was paid along with another \$50.00. ODC 303, Bates 8129. On or about August 30, 2017, Respondent filed a petition for contempt for J.H. regarding his ex-wife's failure to pay one-half of the monthly debt and his ex-wife having more than one person with her at the custody exchange. ODC 303, Bates 8139-8142; 8163-8167. A retainer agreement was signed by J.H. on May 6, 2016, for a contempt/custody matter for a flat fee of \$2,500.00. ODC 303, Bates 8338-8339.

Bank records from City National Bank for the account entitled "The West Virginia State Bar E. Lavoyd Morgan Jr & Associates LC," do not show a deposit of \$2,500.00, or \$50.00, and the only deposit was on May 26, 2016, for \$1,200.00. ODC 177, Bates 3763-3765. Also, there were no deposits in July of 2017, and the IOLTA account was in a negative balance of -\$153.57 by July of 2017 (ODC 177, Bates 3844), and only reflected a balance of \$35.43 in August of 2017. ODC 177, Bates 3847.

On or about January 29, 2019, J.H. sent in correspondence indicating that he was unaware of any results being communicated by Respondent, as there had been no communication. ODC 304,

Bates 8376. J.H. indicated he hired new counsel in June of 2018, and he was told about a new Order in November of 2018 concerning his case, but he had not been aware of it. Id.

On or about March 1, 2019, Respondent provided additional correspondence wherein he denied that he had ignored J.H.'s attempts to contact him. ODC 307, Bates 8385. Respondent said the court Order entered on August 20, 2018, was prepared by opposing counsel, and occurred after J.H. had hired new counsel. Id.

On or about March 8, 2019, J.H. asserted that Respondent told him when he paid the \$2,500.00 that this was all that would be needed to be paid. ODC 309, Bates 8388. J.H. noted that he had difficulty communicating with Respondent since he first hired him. Id. Also, a court Order was entered in November of 2018 concerning the March 2018 hearing, and J.H. did not know about the new Order and his new counsel could not find a recording of the March 2018 hearing either. Id. Further, on or about March 20, 2019, Mr. Hayes said in an additional letter that he was unable to speak with Respondent because his office was closed, and no information had been provided on how to contact him. ODC 310, Bates 8389.

COUNT XVIII
I.D. No. 18-05-370
Complaint of Elizabeth Ann Good

On or about August 20, 2018, Complainant Elizabeth Ann Good filed this ethics complaint against Respondent. ODC 311, Bates 8438-8442. Ms. Good stated on June 21, 2018, she started employment with Respondent, which continued through July 27, 2018. ODC 311, Bates 8438. Ms. Good said she terminated her employment with Respondent when he failed to pay her wages owed to her. Id. Ms. Good asserted she was owed \$2,342.00. ODC 311, Bates 8441-8442. Ms. Good noted that while working for Respondent, she received a high volume of calls from clients and clients coming into the office demanding their money back and their client files. ODC 311, Bates 8439. Ms.

Good stated she was told by Respondent to write down any payment by clients in cash or check, and to not deposit the same into the client trust account. Id. Ms. Good said Respondent would instead take the cash or check payments, and put it into his pocket. Id.

On or about August 21, 2018, Respondent's counsel was sent a copy of the ethics complaint, along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 312, Bates 8443-8444. Respondent failed to respond. Previously, on or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594.

On or about September 6, 2018, Ms. Good appeared for a sworn statement. ODC 186, Bates 4968-5002. She reiterated the allegations in her ethics complaint, but indicated she wanted to be paid in cash in order to avoid a check not being cashed. ODC 186, Bates 4983-4984.

On or about September 26, 2018, by certified and regular mail, a letter was sent to Respondent's counsel asking him to respond to Ms. Good's complaint by October 9, 2018. ODC 313, Bates 8447-8448. The green card was returned without any signature. ODC 313, Bates 8449. On or about October 9, 2018, Respondent filed a response, and Respondent's counsel accepted responsibility for the late filing of the response. ODC 314, Bates 8450. Respondent stated Ms. Good was an employee, not a client, and that he had previously explained the issue with his cash flow when Ms. Good expressed interest in wanting to work for him. Id. Nevertheless, Ms. Good agreed to work under those conditions. Id. Respondent said he told Ms. Good about possible angry calls from clients concerning money and/or lack of representation, along with the possibility of unknown clients who had given money to Mr. Coles. Id. Respondent denied telling Ms. Good not to deposit

client funds into the client trust account, but acknowledged she is likely owed money for wages. ODC 314, Bates 8451.

At his sworn statement on November 1, 2018, Respondent said he owed Ms. Good wages (ODC 53, Bates 2293), but denied it was \$2,342.0 as his records did not reflect the same.²⁴ ODC 53, Bates 2294.

COUNT XIX
I.D. No. 18-05-418
Complaint of Kelsea Hower & Lisa Stansell

Complainants Kelsea Hower and Lisa Stansell filed their ethics complaint against Respondent on or about September 6, 2018. ODC 315, Bates 8516-8633. Ms. Hower and Ms. Stansell stated they retained Respondent in November of 2013 to represent them in an auto accident case. ODC 315, Bates 8516. Ms. Hower, a minor at that time, was involved in the accident in October of 2013, and Ms. Stansell is her mother. Ms. Hower and Ms. Stansell stated there had been long stretches of time without any communication from Respondent over the last five years. ODC 315, Bates 8517.

On or about April 10, 2017, Ms. Hower settled the lawsuit and signed the settlement paperwork, but did not receive her settlement money. ODC 315, Bates 8518. Further, there had been no contact from Respondent's office since the settlement, except for three instances when Ms. Stansell contacted the office herself. *Id.* Attached to the complaint were copies of emails sent to Respondent, including a December 20, 2017 email from Ms. Stansell to Respondent about his office no longer handling the case. ODC 315, Bates 8518-8633. Ms. Stansell related in the email that she had called on three occasions and was told twice that subrogation claims were stalling the

²⁴ Both Respondent and Ms. Good testified at the hearing that a judgment had been entered against him after Ms. Good filed a suit against Respondent for the missing wages. 1/27/20 Hrg. Trans. 94-95; 1/28/20 Hrg. Trans. 370-371.

distribution of the settlement monies, and that she was informed during her last contact with Respondent's office that Respondent's ex-wife, who is not an attorney, took the client file with her when she left the office. ODC 315, Bates 8518.

On or about September 6, 2018, Ms. Hower gave a sworn statement. ODC 185, Bates 4927-4941. Ms. Hower reiterated she was involved in an accident in October of 2013, and because she was a minor at that time, her mother, Ms. Stansell, went with her to Respondent's office. ODC 185, Bates 4931-4932. In 2016, a lawsuit was filed on her behalf, and a settlement was reached on April 10, 2017. ODC 185, Bates 4933-4934. Ms. Hower denied receiving a settlement sheet, but did remember signing the back of a check. ODC 185, Bates 4934-4935. Ms. Hower denied receiving any money from the settlement, and said she had planned to use the money to pay back student loans. ODC 185, Bates 4935-4936.

On or about September 6, 2018, Ms. Stansell gave a sworn statement. ODC 183, Bates 4787-4810. Ms. Stansell reiterated the facts that a case was filed, a settlement was reached, and that her daughter, Ms. Hower, never received any funds from the settlement. ODC 183, Bates 4787-4802. Ms. Stansell believed that there should be no medical bills, as Ms. Hower had a medical card. ODC 183, Bates 4798. Ms. Stansell said she never saw a settlement sheet. Id.

At her September 7, 2018 sworn statement, Harmony Flora said she was fired by Respondent because she asked questions about Ms. Hower's case. ODC 187, Bates 5007. Ms. Flora was told by Respondent's ex-wife to tell Ms. Hower and Ms. Stansell that the delay in receiving funds was due to subrogation. ODC 187, Bates 5011. At first, Ms. Flora believed that to be true, but later learned the money was gone. ODC 187, Bates 5011-5012. Respondent also told her to not inform the clients that the funds were gone. ODC 187, Bates 5012-5013. Ms. Flora said Respondent was aware that his ex-wife took client files with her, but his ex-wife returned them when she became tired of

fielding calls about them. ODC 187, Bates 5055. Ms. Flora stated Ms. Hower's client file was returned by the ex-wife. Id.

On or about September 19, 2018, Respondent's counsel was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 316, Bates 8634-8635. Respondent failed to respond. Previously, on or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594. On or about October 23, 2018, by certified and regular mail, a letter was sent to Respondent's counsel asking him to respond to the complaint by November 1, 2018. ODC 317, Bates 8638-8639. The green card was signed and returned. ODC 317, Bates 8640.

On or about October 26, 2018, Respondent filed a response. ODC 214, Bates 5381-5383. Respondent stated he met with his ex-wife, and was told Ms. Hower's case was settled in April of 2017. ODC 214, Bates 5382. His ex-wife then began to negotiate the subrogation claims. Id. Respondent asserted his former employee, Ms. Flora, gave misinformation to Ms. Hower and lied about his ex-wife's involvement. Id. Ms. Flora was then terminated from her employment with Respondent. Id. Respondent denied being aware of the communications between Ms. Hower and Ms. Flora or his ex-wife. Id. Respondent stated Ms. Hower's case is still open, as he is trying to resolve the insurance/subrogation issues, but acknowledged that he had not had any communication with Ms. Hower since February of 2018. Id.

On or about October 29, 2018, a copy of the Order of Dismissal in Ms. Hower's case against Greenbrier Valley Solid Waste, et al., in Greenbrier County Circuit Court Case No. 16-C-72, was

obtained. ODC 321, Bates 8653-8654. The Order of Dismissal was entered on April 13, 2017, after the parties asserted all matters were settled and compromised. Id.

At his sworn statement on November 1, 2018, Respondent said that messages from Ms. Hower and Ms. Stansell were not relayed to him, and had he known about the attempts to contact him, he would have contacted them. ODC 53, Bates 2278. Respondent stated a settlement sheet was in the client file, and he was the one now working on the subrogation issue since his ex-wife left his employ, and any letters he sent to the insurance companies would be in the file. ODC 53, Bates 2279-2280. The settlement would have been placed into the City National IOLTA account. ODC 53, Bates 2280. Respondent was unaware if the case was settled for an amount that would not cover the bills associated with her treatment. ODC 53, Bates 2281. Respondent did not know how much of the settlement is remaining, but estimated it to be around \$9,000.00. ODC 53, Bates 2281-2282. Respondent said the December 2017 email was sent to his email address, but he did not check it back then and relied on his staff to deal with emails. ODC 53, Bates 2282. Respondent denied that his ex-wife took Ms. Hower's case when she left his employ. ODC 53, Bates 2283.

After being confronted that there were two deposits in April of 2017 of \$15,000.00 each and, within three months, the account was in a negative balance, Respondent said he did not realize that had happened and stated he did not check his bank statements. ODC 53, Bates 2285. Respondent said he never looked at his accounts even after the issues with Mr. Coles, and with only him having the ability to write checks from the IOLTA account, he indicated that there may have been a forgery done to change who could write checks. ODC 53, Bates 2286. Respondent said he never checked the bank account to make sure Ms. Hower's money was still in the IOLTA account. ODC 53, Bates 2287. Respondent said he was not even aware that there were electronic transfers being made in his

IOLTA account. ODC 53, Bates 2291. Respondent did not provide a copy of Ms. Hower's client file at the sworn statement.

On or about November 30, 2018, Ms. Hower filed a reply. ODC 319, Bates 8649-8650. Ms. Hower said her case settled in April of 2017, and she was told by Respondent that his office would send her a small check within the week and the rest would come a few weeks later, after subrogation, and the remaining funds would be in an escrow account. ODC 319, Bates 8649. Ms. Hower said that was the last time she spoke with Respondent, and his assertion that he was not aware of her latest email communications was shocking, as it was sent to his email address. ODC 319, Bates 8650.

On or about December 12, 2018, Respondent's counsel was sent Ms. Hower's reply, and he was asked to file a response within twenty days of receiving the letter. ODC 320, Bates 8651. Respondent failed to respond. On or about January 11, 2019, by certified and regular mail, a letter was sent to Respondent's counsel asking him to respond to the reply by January 22, 2019. ODC 322, Bates 8655-8656. The green card was signed and returned. ODC 322, Bates 8657.

On or about January 22, 2019, Respondent filed a response and indicated that his response did not change after reading her reply. ODC 113, Bates 2748. Respondent stated that once the audit of his bank records was complete, that he would have a better understanding of what happened to her claim. Id. On or about September 11, 2019, Respondent submitted correspondence providing a copy of the release signed by Ms. Hower and a deposit slip of her settlement of \$15,000.00 on April 10, 2017. ODC 69, Bates 2405-2447. Respondent stated he is still resolving her subrogation claims, but would be sending her a check for \$7,000.00 the next day. ODC 69, Bates 2408. Any additional money owed after the subrogation issues are resolved would be forwarded to her. Id.

A review of Respondent's bank account records from City National Bank regarding his IOLTA account showed the deposit on April 10, 2017 for \$15,000.00. ODC 177, Bates 3833. The

IOLTA account was in a negative balance by the end of July of 2017 (ODC 177, Bates 3844), and only reflected a balance of \$35.43 in August of 2017. ODC 177, Bates 3847. The account did receive some deposits thereafter, but after November of 2017, the remaining balance was \$188.06. ODC 177, Bates 3850-3865. There were no checks written out to Ms. Hower from the account. ODC 177, Bates 3833-3865. On or about September 12, 2019, Respondent sent Ms. Hower a letter with a check enclosed for \$7,000.00 dated September 12, 2019 from his IOLTA account. ODC 323, Bates 8718.

COUNT XX
I.D. No. 18-05-490
Complaint of ODC

On or about October 3, 2018, a letter was sent from the West Virginia State Bar notifying Respondent that P.B. had filed an application with the Lawyers Fund for Client Protection Committee of the West Virginia State Bar seeking an amount of \$3,500.00. ODC 324, Bates 8719. The application stated P.B. paid an initial retainer of \$3,500.00 to Respondent on December 11, 2017, for a divorce case. ODC 326, Bates 8727. Then an additional retainer of \$1,500.00 was paid by P.B. on December 28, 2017, for a domestic violence protective order case. Id. P.B. indicated that by February 8, 2018, the outstanding balance for both the divorce and domestic protective order case was \$1,540.05, and that he had a substitution of counsel filed on May 16, 2018. Id. P.B. provided emails sent to Respondent asking for a refund of \$3,500.00 from May of 2018 to July of 2018. ODC 326, Bates 8733-8734. Respondent then sent an email dated September 19, 2018, telling P.B. that Respondent would refund an amount between \$3,000.00 and \$3,500.00 within six to eight weeks. ODC 326, Bates 8735. P.B. provided bank records that showed P.B. paid the \$1,540.05 to Respondent, along with the two retainer payments. ODC 326, Bates 8738-8739.

On or about October 23, 2018, a complaint was opened in the name of the ODC against Respondent, pursuant to the authority as set forth in Rule 2.4(a) of the Rules of Lawyer Disciplinary

Procedure. ODC 327, Bates 8753-8754. Also, by letter dated October 23, 2018, Respondent was sent a copy of the information provided to ODC and was directed to file a response within twenty days of receipt of the letter. Id.

Previously, on or about July 3, 2018, Disciplinary Counsel obtained a subpoena for Respondent to appear for a sworn statement on August 8, 2018 (ODC 98, Bates 2570), which was served on July 12, 2018. ODC 99, Bates 2573. Subsequently, Respondent obtained counsel and the sworn statement was rescheduled to August 27, 2018, and then rescheduled to November 1, 2018. ODC 101, Bates 2594.

At his sworn statement on November 1, 2018, Respondent said the \$3,500.00 paid by P.B. was paid to Mr. Coles, and the account it was paid into was not an account Respondent used. ODC 53, Bates 2295-2296. Respondent remembered a \$1,500.00 payment by P.B., but not the \$3,500.00 payment. ODC 53, Bates 2296. Respondent acknowledged that he did not file the divorce, and said P.B. hired attorney Christine Stump, Esquire, to represent him. ODC 53, Bates 2296-2297. Respondent stated he probably earned some of the \$3,500.00, but he was not in a position to show what he earned. ODC 53, Bates 2297. He said a fee contract should be in the client file. Id. Respondent agreed to refund \$3,500.00, as he did not believe there was an accounting for the matter. ODC 53, Bates 2298-2299. In the client file Respondent provided at the sworn statement, there were two client intake sheets, one dated December 6, 2017, for a divorce matter (ODC 328, Bates 8756), and one dated December 28, 2017, for a domestic violence protective order. ODC 328, Bates 8892. The December 28, 2017 intake sheet indicated an initial retainer of \$1,500.00. Id.

A review of Respondent's bank account records from City National Bank regarding his IOLTA account showed no deposits in December of 2017, and the balance of the account was \$188.06. ODC 177, Bates 3875-3876. That amount remained the same from January to July of 2018.

ODC 177, Bates 3877-3890. On or about September 11, 2019, Respondent submitted correspondence indicating that the accountant's review of his bank accounts did not show any payment by P.B. being placed in any of Respondent's bank accounts. ODC 69, Bates 2408.

COUNT XXI
I.D. No. 19-03-135
Complaint of Brandon E. Perdue

On or about March 29, 2019, Complainant Brandon E. Perdue filed an ethics complaint against Respondent, who was appointed to represent him in a criminal case. ODC 332, Bates 9089-9090. Mr. Perdue was indicted in October of 2018, and Respondent failed to appear for a hearing. ODC 332, Bates 9089. In January of 2019, Mr. Perdue sent Respondent a copy of his indictment and that was when Respondent answered the indictment. Id. Mr. Perdue stated he had communication issues with Respondent, and even his father could not communicate with Respondent. ODC 332, Bates 9089-9090. Mr. Perdue said he had been in jail for a year, and did not have a trial date or a plea offer. ODC 332, Bates 9090.

On or about March 29, 2019, Respondent was sent a copy of the ethics complaint with a letter directing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 333, Bates 9091-9092. Respondent failed to file a response. On or about April 25, 2019, by certified and regular mail, a letter was sent to Respondent asking him to respond to Mr. Perdue's complaint by May 6, 2019. ODC 334, Bates 9093-9094. On or about June 21, 2019, the certified mail sent to Respondent on April 25, 2019, was returned to sender as unclaimed, unable to forward. ODC 336, Bates 9096. The regular mail letter was never returned to ODC.

On or about July 5, 2019, Respondent filed a response. ODC 338, Bates 9099-9101. Respondent said he initially appeared with Mr. Perdue at his preliminary hearing on August 23, 2018, and Mr. Perdue waived the preliminary hearing in exchange for a bond reduction. ODC 338,

Bates 9099. Mr. Perdue's arraignment was initially scheduled for October 3, 2018, but it was moved to November 28, 2018. Id. Respondent denied being informed of the October 3, 2018 arraignment, and only had a travel slip in the file that showed a date in November of 2018. Id. On January 9, 2019, Respondent appeared at a hearing for Mr. Perdue. Id. Respondent denied receiving telephone messages from Mr. Perdue, and noted that his jail telephone account may not have been activated at that time. Id. Respondent admitted there were several handwritten letters from Mr. Perdue in the client file, but none of the letters had dates on them. Id. Nevertheless, Respondent did not recall seeing the letters until he reviewed the client file prior to filing his response, and also noted that the client file was incomplete. ODC 338, Bates 9099-9100. Respondent believed the communication issues were a result of having sporadic staff coverage in his office, and his ongoing health issues, but said he attended all hearings for Mr. Perdue wherein he had been provided notice. ODC 338, Bates 9100.

On or about July 30, 2019, Respondent's counsel was asked to provide a complete copy of Mr. Perdue's client file within twenty days of receipt of the letter. ODC 340, Bates 9103. On or about August 9, 2019, Respondent provided the client file. ODC 342, Bates 9105-9130. It included an Order entered on March 11, 2019, noting that neither Respondent nor Mr. Perdue appeared or notified the Court about a reason for nonappearance. ODC 342, Bates 9109. On March 18, 2019, the Judge sent Respondent a copy of a letter received that same date from Mr. Perdue discussing Respondent's failure to communicate. ODC 342, Bates 9110-9111. Again on March 21, 2019, the Judge sent Respondent a copy of a letter received on March 18, 2019, from Mr. Perdue about Respondent's failure to communicate. ODC 342, Bates 9114-9115. On March 25, 2019, the prosecutor sent Respondent a plea offer for Mr. Perdue. ODC 342, Bates 9112-9113. Finally, on May

2, 2019, the court entered an Order Appointing New Counsel, which relieved Respondent as counsel and appointed new counsel for Mr. Perdue. ODC 342, Bates 9107-9108.

A copy of the court file was obtained in Mr. Perdue's case. ODC 343, Bates 9135-9279. On or about October 3, 2018, a memorandum was sent to Respondent about the arraignment scheduled for October 3, 2018, being rescheduled to November 28, 2018. ODC 343, Bates 9202. An Order was entered on May 2, 2019, appointing Christopher Davis, Esquire, to represent Mr. Perdue. ODC 343, Bates 9234-9235. On or about May 13, 2019, Mr. Davis filed an Omnibus Discovery Motion, Supplemental Discovery Request, and Standard Pretrial Motions. ODC 343, Bates 9238. On or about June 3, 2019, the State filed a response to the Motion for Discovery, and filed its own Motion for Discovery. ODC 343, Bates 9275. On or about August 12, 2019, a Notice was filed by the State indicating that a Plea & Sentencing Hearing was scheduled for August 22, 2019, just three and a half months after Mr. Davis was appointed to represent Mr. Perdue. ODC 343, Bates 9278.

COUNT XXII
I.D. No. 19-05-152
Complaint of Zana G. Osborne

On or about April 10, 2019, Complainant Zana G. Osborne filed an ethics complaint against Respondent. ODC 344, Bates 9323-9324. Ms. Osborne stated that she was in a car accident in April of 2017, and had complications from injuries that required her to go to the hospital twice. Id. In early 2018, Ms. Osborne, her sister, and her niece took paperwork to Respondent's paralegal at an information center located below Respondent's office. Id. Ms. Osborne was not told that the paralegal was not an attorney, but the paralegal nonetheless told her that she had a case. ODC 344, Bates 9324. Ms. Osborne had attempted to contact Respondent, but her telephone calls were not returned. Id. Ms. Osborne has been told that the paralegal was fired, and that Respondent's office

does not have any record of her paperwork. Id. Further, she has also been told the paralegal took the paperwork with him. Id.

On or about April 22, 2019, Respondent's counsel was sent a copy of the ethics complaint along with a letter informing him to file a verified response to the complaint within twenty days of receipt of the letter. ODC 345, Bates 9325-9326. On or about May 1, 2019, Respondent filed a response and indicated that he could not find any document or file opening the case for Ms. Osborne, or any fee agreement. ODC 346, Bates 9327. Respondent does not believe Ms. Osborne was wrong about speaking with his paralegal or employees, but he has no information regarding Ms. Osborne or her case. Id.

On or about June 5, 2019, Respondent's counsel was sent a letter asking if Respondent ever told Ms. Osborne that the former paralegal took her paperwork, and to respond within twenty days of receipt of the letter. ODC 348, Bates 9331. On or about July 5, 2019, after receiving an extension, Respondent filed a response stating he never sent a letter to Ms. Osborne about the paralegal. ODC 349, Bates 9334. Respondent noted that Ms. Osborne was free to contact him or another lawyer to resolve the underlying civil case. Id.

C. CONCLUSIONS OF LAW

The HPS made several conclusions of law as to violations of RPC. The conclusions of law were based upon the record presented and are supported by the clear and convincing standard. The HPS found that Respondent had committed misconduct involving multiple rules. The rule violations for each Count were found by the HPS as follows:

Count I: Respondent was found to have misrepresented his actual and necessary time expended for services performed in PDS filings before the appointed circuit judge and/or appointing

tribunal in violation of Rule 3.3(a);²⁵ engaged in improper and unsubstantiated billing in his PDS cases in violation of Rules 1.5(a), 8.4(c), and 8.4(d); failed to supervise legal assistants in violation of Rule 5.3; and made false statements about the PDS work he performed in violation of Rule 8.1(a).

Count II: Respondent was found to have represented a client without a written fee agreement in violation of Rule 1.5(b); failed to hold client funds in a separate client trust account and failed to keep complete records of the funds in violation of Rule 1.15(a); failed to put unearned client funds in a trust account and left earned fees in his trust account in violation of Rule 1.15(c); failed to refund unearned fees and failed to provide the client file in violation of Rule 1.16(d); misrepresented the state of the case and converted client funds to his own in violation of Rules 8.4(c) and 8.4(d); provided false information about the accounting he provided in violation of Rule 8.1(a); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count III: Respondent was found to have failed to be diligent and failed to expedite litigation, allowing a statute of limitation to expire in violation of Rules 1.3, 3.2, 8.4(c), and 8.4(d); failed to communicate in violation of Rule 1.4(b); failed to keep complete records of client funds in violation of Rule 1.15(a); and failed to provide a client file in violation of Rule 1.16(d).

Count IV: Respondent was found to have failed to have a written fee agreement in violation of Rule 1.5(b); failed to hold client funds in a separate client trust account and failed to keep complete records of the funds in violation of Rule 1.15(a); failed to put unearned client funds in a trust account and left earned fees in his trust account in violation of Rule 1.15(c); failed to refund unearned fees and failed to provide the client file in violation of Rule 1.16(d); failed to timely

²⁵ For convenience, an Appendix at the end of this brief recites all of the RPC that Respondent was found to have violated.

respond to ODC in violation of Rule 8.1(b); and misappropriated and converted client funds in violation of Rules 8.4(c) and 8.4(d).

Count V: Respondent was found to have failed to hold client funds in a separate client trust account in violation of Rule 1.15(a); failed to put unearned client funds in a trust account in violation of Rule 1.15(c); used “and Associates” in his law office name when he was the only attorney in violation of Rule 7.5; failed to timely respond to ODC in violation of Rule 8.1(b); failed to pay state and federal taxes,²⁶ and failed to pay his workers’ compensation premiums²⁷ in violation of Rule 8.4(b); and provided a worthless check²⁸ in violation of Rules 8.4(c) and 8.4(d).

Count VI: Respondent was found to have failed to keep his client reasonably informed about the state of the case, and failed to promptly comply with reasonable requests for information in violation of Rule 1.4(a); failed to hold client funds in a separate client trust account and failed to keep complete records of the funds in violation of Rule 1.15(a); failed to provide a full accounting when requested by the client in violation of Rule 1.15(d); failed to refund unearned fees and failed to provide the client file in violation of Rule 1.16(d); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count VII: Respondent was found to have failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to hold client funds in a separate client trust account in violation of Rule 1.15(a); failed to put unearned client funds in a trust account and left earned fees in his trust account in violation of Rule 1.15(c); failed to refund

²⁶ Failure to pay taxes is in violation of I.R.C. §7202 and W.Va. Code § 11-9-5.

²⁷ Failure to pay workers’ compensation premiums is in violation of W.Va. Code § 61-3-24e.

²⁸ Writing a worthless check is in violation of W.Va. Code § 61-3-39a.

unearned fees and failed to provide the client file in violation of Rule 1.16(d); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count VIII: Respondent was found to have failed to competently and diligently handle the client's case in violation of Rules 1.1 and 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to have a written fee agreement in violation of Rule 1.5(b); failed to hold client funds in a separate client trust account and failed to keep complete records of the funds in violation of Rule 1.15(a); failed to put unearned client funds in a trust account and left earned fees in his trust account in violation of Rule 1.15(c); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count IX: Respondent was found to have failed to competently and diligently handle the client's case in violation of Rules 1.1 and 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to supervise legal assistants in violation of Rule 5.3; and failed to timely respond to ODC in violation of Rule 8.1(b).

Count X: Respondent was found to have failed to competently and diligently handle the client's case in violation of Rules 1.1 and 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to hold client funds in a separate client trust account in violation of Rule 1.15(a); failed to put unearned client funds in a trust account in violation of Rule 1.15(c); provided false information about Mr. Coles having the client file and placing the retainer in the trust account during the investigation in violation of Rule 8.1(a); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count XI: Respondent was found to have failed to competently and diligently handle the client's case in violation of Rules 1.1 and 1.3; failed to hold client funds in a separate client trust account in violation of Rule 1.15(a); failed to put unearned client funds in a trust account in violation of Rule 1.15(c); failed to refund unearned fees and failed to provide the client file in violation of Rule 1.16(d); failed to supervise legal assistants in violation of Rule 5.3; provided false information about representing T.R. at a temporary support hearing, about not requesting a request for the client file from T.R.'s new counsel, and about being unaware of the retainer paid to him in violation of Rule 8.1(a); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count XII: Respondent was found to have failed to competently and diligently handle the client's case in violation of Rules 1.1 and 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to hold client funds in separate client trust account in violation of Rule 1.15(a); failed to put unearned client funds in trust account in violation of Rule 1.15(c); failed to supervise legal assistants in violation of Rule 5.3; provided false information about not recalling D.K. as a client and not being aware of the retainer contract or retainer payment in violation of Rule 8.1(a); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count XIII: Respondent was found to have failed to diligently handle the client's case in violation of Rule 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to have a written fee agreement in violation of Rule 1.5(b); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count XIV: Respondent was found to have to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count XV: Respondent was found to have failed to diligently handle the client's case in violation of Rule 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to hold client funds in a separate client trust account in violation of Rule 1.15(a); failed to timely respond to ODC in violation of Rule 8.1(b); and misappropriated and converted client funds in violation of Rules 8.4(c) and 8.4(d).

Count XVI: Respondent was found to have failed to diligently handle the client's case in violation of Rule 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to refund unearned fees and failed to provide the client file in violation of Rule 1.16(d); and failed to timely respond to ODC in violation of Rule 8.1(b).

Count XVII: Respondent was found to have failed to competently and diligently handle the client's case in violation of Rules 1.1 and 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to hold client funds in a separate client trust account in violation of Rule 1.15(a); failed to put unearned client funds in a trust account and left earned fees in his trust account in violation of Rule 1.15(c); and engaged in misrepresentation along with dishonest, fraudulent, and deceitful conduct by stating at his sworn

statement that he would have filed a contempt petition for J.H. had he known of the issues when he in fact had filed a contempt petition in violation of Rule 8.4(c).

Count XVIII: Respondent was found to have failed to timely respond to ODC in violation of Rule 8.1(b).²⁹

Count XIX: Respondent was found to have failed to competently and diligently handle the client's case in violation of Rules 1.1 and 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed to communicate with the client in violation of Rules 1.4(a) and 1.4(b); failed to hold client funds in a separate client trust account and failed to keep complete records of the funds in violation of Rule 1.15(a); failed to supervise legal assistants in violation of Rule 5.3; provided false information about the settlement being placed in the trust account in violation of Rule 8.1(a); and misappropriated and converted client funds in violation of Rules 8.4(c) and 8.4(d).

Count XX: Respondent was found to have failed to be diligent and failed to expedite litigation in handling the client's case in violation of Rules 1.3 and 3.2; failed to have a written fee agreement in violation of Rule 1.5(b); failed to hold client funds in a separate client trust account and failed to keep complete records of the funds in violation of Rule 1.15(a); failed to put unearned client funds in a trust account in violation of Rule 1.15(c); failed to refund unearned fees in violation of Rule 1.16(d); and failed to supervise legal assistants in violation of Rule 5.3.

Count XXI: Respondent was found to have failed to competently and diligently handle the client's case in violation of Rules 1.1 and 1.3; failed to keep his client reasonably informed about the state of the case, failed to promptly comply with reasonable requests for information, and failed

²⁹ Disciplinary Counsel notes that while the HPS found a violation of Rule 8.4(b) for the failure to timely pay wages, there is no criminal statute for the failure to timely pay wages. Therefore, this violation should be dismissed.

to communicate with the client in violation of Rules 1.4(a) and 1.4(b); and failed to expedite litigation in handling the client's case in violation of Rule 3.2.

Count XXII: Respondent was found to have failed to supervise legal assistants in violation of Rule 5.3.

II. SUMMARY OF ARGUMENT

The HPS correctly found that Respondent committed 134 separate violations of the RPC.³⁰ The HPS recommended that Respondent's law license be annulled. The ODC asserts there was no error in the HPS's findings of fact or conclusions of law, and the ODC agrees with the recommendation by the HPS as to the sanction. The ODC asserts that the sanction proposed by the HPS is adequate considering the clear and convincing evidence against Respondent. In ordering such a sanction in this lawyer disciplinary proceeding, this Honorable Court will be serving its goals of protecting the public, reassuring the public as to the reliability and integrity of attorneys, and safeguarding the administration of justice; and not just as punishment to Respondent. *See Lawyer Disciplinary Board v. Taylor*, 192 W.Va. 139, 451 S.E.2d 440 (1994).

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent filed an objection to the recommendation of the HPS pursuant to Rule 3.11 of the RLDP. Thereafter, pursuant to Rule 3.13 of the RLDP and pursuant to Rule 19 of the Rules of the Appellate Procedure, this Honorable Court issued an Order on May 28, 2020, which scheduled this matter for oral argument during the September 2020 Term of Court.

³⁰ The number for each rule violation is as follows: Rule 1.1 - 8 violations; Rule 1.3 - 13 violations; Rule 1.4(a) - 13 violations; Rule 1.4(b) - 13 violations; Rule 1.5(a) - 1 violation; Rule 1.5(b) - 5 violations; Rule 1.15(a) - 14 violations; Rule 1.15(c) - 10 violations; Rule 1.15(d) - 1 violation; Rule 1.16(d) - 8 violations; Rule 3.2 - 3 violations; Rule 3.3(a) - 1 violation; Rule 5.3 - 7 violations; Rule 7.5 - 1 violation; Rule 8.1(a) - 6 violations; Rule 8.1(b) - 15 violations; Rule 8.4(b) - 1 violation; Rule 8.4(c) - 7 violations; Rule 8.4(d) - 7 violations.

IV. ARGUMENT

A. STANDARD OF PROOF

The charges against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the RLDP. Syl. pt. 1, Lawyer Disciplinary Board v. McGraw, 194 W. Va. 788, 461 S.E.2d 850 (1995). Substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. Id. at Syl. pt. 2. At the Supreme Court level, "[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the [Board]." Committee on Legal Ethics v. McCorkle, 192 W.Va. 286, 290, 452 S.E.2d 377, 381 (1994).

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Syl. Pt. 1, Roark v. Lawyer Disciplinary Board, 207 W. Va. 181, 495 S.E.2d 552 (1997); McCorkle, at Syl. pt. 3. The Supreme Court gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381. The Supreme Court is the final arbiter of formal legal ethics charges and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law. Syl. pt. 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. pt. 7, Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994).

The evidence presented in this case satisfies the clear and convincing standard. The ODC asserts that the HPS's findings of fact in its Report are correct, sound, fully supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the HPS and, thus,

should not be disturbed. Further, respectful consideration of the HPS's recommendation concerning questions of law and the appropriate sanction, should lead this Honorable Court to concur with the recommendation of the HPS for the annulment of Respondent's law license due to his multiple violations of the RPC.

**B. ANALYSIS OF SANCTION UNDER RULE 3.16 OF THE
RULES OF LAWYER DISCIPLINARY PROCEDURE**

Syllabus Point 4 of Office of Lawyer Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513

S.E.2d. 722 (1998), holds that Rule 3.16 of the RLDP provides as follows:

In imposing a sanction after a finding of lawyer misconduct, unless otherwise provided in these rules, the Court [West Virginia Supreme Court of Appeals] or Board [Lawyer Disciplinary Board] shall consider the following factors: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors.

A review of the extensive record in this matter indicates that Respondent has transgressed all four factors set forth in Jordan.

1. Respondent violated duties to his clients, to the public, to the legal system and to the legal profession.

There are basic duties that attorneys owe to not only their clients, but also to the public, the legal system, and the legal profession. The duties to clients are the most important, but the duties to others also must be looked at when evaluating attorney misconduct. The public expects the highest degree integrity and honesty from attorneys. As officers of the court, the court system depends on attorneys to follow the rules and procedures and not to interfere with the administration of justice. Included in this is the expectation that attorneys will also not engage in illegal or unlawful conduct,

and follow the law. In determining the nature of the ethical duty violation, the standards assume that the most important ethical duties are those owed to a client. Clients expect and depend on an attorney to handle their cases not only within the ethical bounds, but in ways that protect the client's interests. The HPS found that the evidence in this case established by clear and convincing evidence that Respondent violated his duties owed to his clients, the general public, the legal system, and the legal profession.

The most egregious violations involved Respondent's failure to protect client funds.³¹ Thirteen different clients of Respondent had client funds misused. The HPS found that client funds were not protected by Respondent, and his bank accounts reflected that funds were missing or not properly placed in the correct account. The RPC make clear that client funds are to be kept separate from the lawyer's own funds, and that the funds should stay in the trust account until they are earned by the lawyer or returned to the client. Respondent's trust account showed his trust account was either in the negative or significantly lower than was it should have been when Respondent had client funds in his control. In fact, at one point, Respondent's trust account was in the negative. That should never occur when lawyers have client funds in their control. The HPS found that while Respondent tried to blame a staff member for the missing client funds, client funds were missing were before that staff member had control over the client funds. Further, it is Respondent's responsibility to properly supervise his staff and his responsibility to ensure client funds are protected. Respondent never reviewed his bank statements while handling client funds. Respondent failed do so for his opatering and trust accounts.

When a lawyer's representation is terminated, no matter whether it is the client's decision or the lawyer's, the lawyer has a duty to protect the client's interest by returning client files to the

³¹ The HPS found this violation in Counts II, IV, V, VI, VII, VIII, X, XI, XII, XV, XVII, XIX, and XX.

clients. The HPS found that Respondent failed to return client files to eight clients.³² Clients suffered by not being able to have their cases proceed when Respondent held onto their files. Additionally, the HPS found Respondent failed to handle client cases competently and diligently along with failing to properly communicate with his clients.³³ When clients hired Respondent, and paid him money for representation, they understandably expected Respondent would know how to handle the case, would protect their interests by filing things expeditiously, and communicate with them about what was going on in the case. When Respondent failed to do so, clients were left feeling as though lawyers had no concern about his clients. As found by HPS, twenty five people, only a few who were not clients, testified about how Respondent's failure in representing clients not only affected their opinion of attorneys, but also felt their cases were not properly handled and they suffered by worry over the outcome of their cases. This included financial worry and emotional worry.

Respondent's attempt to blame his staff for his violation of duties to clients was not supported by the evidence. The HPS found the evidence showed Respondent was told in 2017 about a staff member possibly taking client funds, and Respondent even reported that staff member to the police in January of 2018 for embezzlement. Instead of protecting his clients, Respondent then chose that staff member to run his law office when he had major surgery in May of 2018, months after he reported the embezzlement. This clearly showed that Respondent failed in his duties to his clients by failing to protect their funds, failing to communicate with them, and failing to protect their interests.

Regarding his billings to the PDS, Respondent was found to not be truthful in those billings along with committing criminal conduct as well as dishonest, fraudulent, and deceitful conduct.

³² The HPS found this violation in Counts II, III, IV, VI, VII, XI, XVI, and XX.

³³ The HPS found this violation in Counts VI, VII, VIII, IX, X, XII, XIII, XIV, XXV, XVI, XVII, XIX, and XXI.

These duties to the general public were violated as found by the HPS. The public expects lawyers to be honest and have the highest integrity, and it was clear Respondent failed in both of those duties. Respondent filed false vouchers concerning his work in PDS cases, which meant public funds were used to pay Respondent for work he did not perform. Respondent admitted to billing duplicate travel time and overbilling for certain hours. It should be noted that Respondent signed voucher attesting to the accuracy of his billing submissions. Such misconduct affected the legal system as the Executive Director of PDS, Dana Eddy, testified about his time being spent dealing with overbilling. Further, not only did the overbilling create a barrier in getting an increase in the compensation rates for PDS attorneys, it also created negative perception of lawyers to Mr. Eddy and PDS clients. The legal system relies on lawyers to abide by substance and procedure, and Respondent failed to do so.

Respondent also engaged in criminal conduct by writing a worthless check, failing to pay taxes, and failing to pay workers compensation premiums. When lawyers commit criminal conduct, the public has no faith in the integrity of lawyers. Further, the victims of the criminal acts testified about their worry over issues that could affect them, such as tax payments and being injured on the job without any protection.

The HPS found Respondent failed in his duties to the legal system by failing to expedite litigation and by providing false information to courts. The evidence showed Respondent failed to not only file a medical malpractice case within the statute of limitations, but also failed to inform those clients of his failure which resulted in the clients inability to file any medical malpractice.

Finally, the HPS found Respondent violated his duties to the legal profession by submitting false vouchers, using a misleading name for his law firm, charging unreasonable fees that he did not earn, failing to refund unearned fees, failing to return client files, and failing to respond to Disciplinary Counsel. As stated above, Respondent filed false vouchers regarding his work for PDS cases, and he “and Associates” in the title of his law firm when he did not have any other attorneys

working there. Client funds and client files were not returned to clients when Respondent was either no longer representing the clients or had settled the matters. Further, lawyers are required to respond timely to Disciplinary Counsel, and Respondent had to be sent multiple letters to get responses to questions about his misconduct. The legal profession suffers when lawyers fail to be honest, do not handle fees correctly, and do not participate in a disciplinary investigation properly.

2. Respondent acted intentionally and knowingly.

The HPS found that Respondent acted intentionally and knowingly. Acting intentionally is when a lawyer acts with the conscious objective or purpose to accomplish a particular result and acting knowingly is when a lawyer acts with conscious awareness of the nature or attendant circumstances of his conduct. Respondent's failed to properly supervise his staff to communicate with clients, handling client funds, and reviewing vouchers among other things. The most disturbing issue is that Respondent not only committed this misconduct, but he continued to commit this misconduct after ethics complaints were filed against him. This can be nothing but intentional when the lawyer was advised on possible misconduct, and the lawyer continued in the misconduct. Lawyers must properly handle client funds, and Respondent admitted he did not review bank statements and was not even aware of his trust account being in a negative balance until Disciplinary Counsel informed him of the same. Another issue with client funds is Respondent's failure to deposit client funds into the proper accounts and failure to take earned fees out of his trust account. Respondent testified that he routinely deposited flat fee retainers into his operating account, and did deposit a settlement check into his operating account. The HPS noted that confusion regarding the RPC was not an excuse as this Court has held that "[l]awyers who engage in the practice of law in West Virginia have a duty to know the Rules of Professional Conduct and to act in conformity therewith. Consequently, a claim of lack of knowledge of any prohibition or duty imposed under the

Rules is no defense in a lawyer disciplinary proceeding." Lawyer Disciplinary Board v. Ball, Syl. Pt. 2, 219 W.Va. 296, 633 S.E.2d 241 (2006). Even more telling of the intentional action, Respondent chose to put his law office in the hands of a staff member that five months prior he had reported to the police for possible embezzlement.

3. The amount of real injury is great.

In its report, the HPS found the amount of real injury to be great. Every witness called by Disciplinary Counsel testified that their opinion of lawyers was affected in a negative way by Respondent's misconduct. Clients and others testified of the emotional injury they felt from Respondent, along with multiple clients suffering injury from Respondent's failure to return client funds. Even to this day, those clients still have not received their client funds. Further, the public paid Respondent for his overbilling. Respondent's clients, the general public, the legal system, and the legal profession were injured greatly by Respondent's misconduct.

4. Respondent had six aggravating factors.

The HPS found evidence of six aggravating factors in this matter, which were his 1) prior disciplinary offenses;³⁴ 2) dishonesty; 3) a pattern of misconduct; 4) multiple offenses; 5) substantial experience in the practice of law; and 6) illegal conduct.

5. Respondent had two mitigating factors.

The HPS found Respondent provided evidence of two mitigating factors in this case. Those were: 1) physical illness as a personal problem from his medical issues resulting in his surgery in 2018; and 2) remorse. The HPS also specifically noted the case of Lawyer Disciplinary Board v. Dues, 218 W.Va. 104, 624 S.E.2d 125 (2005), which set forth the requirements for a mental

³⁴ Respondent was admonished by the Investigative Panel on January 21, 2018 for violation Rule 1.4 (failure to communicate) and 1.5 (failure to obtain a fee agreement in writing) (ODC Ex. 350, Bates 9379-9389).

disability to be considered a mitigating factor.³⁵ While Respondent testified about his work with the Judicial and Lawyers Assistance Program that resulted in a psychological evaluation and a diagnosis of Attention Deficient Disorder and depression, the HPS found there was no clear and convincing evidence that Respondent suffered from a mental disability or that the alleged disability cause the misconduct as Respondent testified that he only spoke with a forensic psychologist and his priest. Further, Respondent did not show any recovery through successful rehabilitation or that any misconduct stopped through recovery.

C. SANCTION

Rule 3.15 of the RLDP provides that the following sanctions may be imposed in a disciplinary proceeding: (1) probation; (2) restitution; (3) limitation of the nature or extent of future practice; (4) supervised practice; (5) community practice; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment.

The RPC state the minimum level of conduct below which no lawyer can fall without being subject to the disciplinary action. Syl. Pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal Ethics v. Morton, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). The principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Syl. Pt. 3, Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Syl. Pt. 2, Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

³⁵ This Court has stated that "[i]n a lawyer disciplinary proceeding, a mental disability is considered mitigating when: (1) there is evidence that the attorney is affected by aa mental disability; (2) the mental disability caused the misconduct; (3) the attorney's recovery from the mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely. Lawyer Disciplinary Board v. Dues, Syl. Pt. 3, 218 W.Va. 104, 624 S.E.2d 124 (2005).

“In deciding on the appropriate disciplinary action for ethical violations, [this Court] must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.” Syl. Pt. 2, Committee on Legal Ethics v. White, 189 W.Va. 135, 428 S.E.2d 556 (1993); Syl. Pt. 3, Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987); Syl. Pt. 5, Committee on Legal Ethics v. Roark, 181 W.Va. 260, 382 S.E.2d 313 (1989); Syl. Pt. 3, Lawyer Disciplinary Board v. Friend, 200 W.Va. 368, 489 S.E.2d 750 (1997); and Syl. Pt. 3, Lawyer Disciplinary Board v. Keenan, 208 W.Va. 645, 542 S.E.2d 466 (2000).

A review of the record clearly indicates that the HPS properly considered the evidence and made an appropriate recommendation to this Court. The evidence shows that Respondent committed multiple violations of RPC, which include Respondent's own admission that the “lack of communication, lack of diligence, lack of written fee agreements, lack of settlement statements, commingling of money, improper use of the escrow trust account” were issues for him. 1/28/20 Hrg. Trans. 437-438. That admission alone shows the significant misconduct in Respondent's work as a lawyer. Respondent further admitted to not having time records or an office management system, and failure to keep proper review of his bank accounts. 1/28/20 Hrg. Trans. 437, 243-244. It is clear Respondent has problems with not only the basic requirements for lawyers under the RPC such as communicating with clients and being diligent, but also with the important requirements to properly safeguard client funds under RPC. The basic problems show a fundamental issue in Respondent's ability to practice law, but the important problems highlight his inability to protect his client and any funds that they may entrust to him.

HPS noted that the *ABA Model Standards for Imposing Lawyer Sanctions* provides that: Standard 4.11. Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

However, not only do the *Standards* support disbarment, but several previous cases from this Court support the disbarment of Respondent. This Court has repeatedly held that "[t]he general rule is that absent compelling extenuating circumstances, misappropriation or conversion by a lawyer of funds entrusted to his/her care warrants disbarment." Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 499, 513 S.E.2d 722, 726 (1998); Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 569, 505 S.E.2d 619, 632 (1998) *remanded with directions*; *See* Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999). *See also* Lawyer Disciplinary Board v. Wheaton, 216 W.Va. 673, 610 S.E.2d 8 (2004); Lawyer Disciplinary Board v. Duty, 222 W.Va. 758, 671 S.E.2d 763 (2008). The Kupec I Court recognized the following:

The term misappropriation can have various meaning. In fact, the misuse of another's funds is characterized as misappropriation or conversion. Black's defines misappropriation as '[t]he unauthorized, improper, or unlawful use of funds or other property for the purposes other than that for which intended . . . including not only stealing but also unauthorized temporary use for [the] lawyer's own purpose, whether or not he derives any gain or benefit therefrom.' *Black's Law Dictionary* (6th ed. 1990). *See In re Wilson*, 81 N.J. 451, 409 S.2d 1153, 1155 n.1 (1979) (defining misappropriation as 'any unauthorized use by the lawyer of client's funds entrusted to him including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom').

Kupec I, 202 W.Va. 556, 568, 505 S.E.2d 619, 631.

Respondent converted client funds and commingled client funds as shown by his own admissions and the introduction of his bank statements into the record. It was clear from Respondent's bank statements that client funds were missing when certain amounts should have been in the trust account. Respondent did not present any type of "compelling extenuating circumstances" that would show that the general rule for disbarment should not be followed. Respondent's attempt to blame office staff for the missing funds would not fit under "compelling extenuating circumstances," as he chose not to oversee the safekeeping of the client funds entrusted to him. If

a staff member had taken the client funds and Respondent discovered it when reviewing bank statements, and then contacted police over the matter, that may fall under "compelling extenuating circumstances." However, in this case, Respondent did not review the bank statements at any point, and while he reported a staff member to the police for embezzlement, it was only after Disciplinary Counsel pointed out the negative balance in his trust account that he become aware of the same. The negative balance occurred before that particular staff member would have had control over the trust account. Further, Respondent then chose to put that staff member in control of his law firm while he was away from his law office for medical issues. These choices by Respondent show that he had no concern for the client funds entrusted to him. This type of misconduct supports the general rule for the disbarment of Respondent.

Respondent testified that he had not billed PDS for work that he performed in cases for which he was appointed since May of 2018. While this is commendable by Respondent, it does not mitigate against him being disbarred. This Court has stated that "[t]he repayment of funds wrongfully held by an attorney does not negate a violation of a disciplinary rule." Syl. Pt. 8, Lawyer Disciplinary Board v. Battistelli, 206 W.Va. 197, 523 S.E.2d 257 (1999); Syl. Pt. 4, Committee on Legal Ethics v. Hess, 186 W.Va. 514, 413 S.E.2d 169 (1991); and Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 569-570, 505 S.E.2d 619, 632-633 (1998), *remanded with directions*. See Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999). Further, both Battistelli and Hess indicate that any mitigation to the level of punishment for conversion due to restitution is to be governed by the facts of the particular case. This Court stated in Kupec I that

Where the restitution has been made after the commencement of disciplinary proceedings, or when made as a matter of expediency under the pressure of the threat of disciplinary proceedings, some courts have refused to consider it a mitigating factor.

Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 570, 505 S.E.2d 619, 633 (1998), *remanded with directions*.

The HPS found the evidence in this case showed Respondent failed to protect the client funds in his control by failing to review the bank statements on those accounts. Further, Respondent stopped billing his work to PDS in May of 2018, after the investigation into his misconduct began. That was clearly after disciplinary proceedings were likely to start against Respondent for his misconduct. Respondent's prior discipline also comes into play, as he was previously admonished by the Investigative Panel for failure to communicate and failure to obtain a written fee agreement. This type of misconduct is also part of this disciplinary proceedings in this matter, and it is clear Respondent has failed to learn from his misconduct. This Court stated that "prior discipline is an aggravating factor in a pending disciplinary proceeding because it calls into question the fitness of the attorney to continue to practice a profession imbued with a public trust." Committee on Legal Ethics v. Tatterson (Tatterson II), 177 W.Va. 356, 364, 352 S.E.2d 107, 115 (1986). There is nothing to mitigate against disbarment for Respondent, and his aggravating factor of prior discipline furthers supports disbarment. Additionally, this Court stated in Lawyer Disciplinary Board v. Coleman, 219 W.Va. 790, 639 S.E.2d 882 (2006), that it "do[es] not take lightly those disciplinary cases in which a lawyer's misconduct involves the misappropriation of money. In such instances, we have resolutely held that, unless the attorney facing discipline can demonstrate otherwise, disbarment is the only sanction befitting of such grievous misconduct." Id. 219 W.Va. at 797, 639 S.E.2d at 889. Respondent has not demonstrated anything to show that he should not face disbarment in this case. No evidence was submitted that should lessen the sanction for Respondent when considering not only his misappropriation of client funds, but also the multiple offenses he committed while being a lawyer.

According to the HPS, Respondent violated 19 different rules, with a total of 134 separate instances of misconduct. Respondent committed violations regarding his competency, his diligence, his communication with clients, his failure to get written fee agreements, his failure to provide client files to clients, his failure to expedite litigation, his lack of candor and honesty, his failure to ensure employees followed his ethical obligations, his failure to not mislead with the name of his firm, his failure to respond to Disciplinary Counsel, and his engagement in conduct that was prejudicial to the administration of justice. The sheer volume of the violations make the misconduct more egregious. The evidence showed that clients were unable to contact Respondent about their cases, even after making multiple attempts to do so, clients never were refunded unearned fees from Respondent, and clients never received their client files from Respondent. This was not just one case that just “fell through the cracks,” this was multiple clients that were mistreated by Respondent showing a pattern of misconduct by Respondent. West Virginia has several cases supporting the sanction of suspension for misconduct. See Lawyer Disciplinary Board v. Keenan, 189 W.Va. 37, 427 S.E.2d 471 (1993) (indefinite suspension for failure to provide competent representation, failure to act with reasonable diligence, failure to communicate effectively with his clients, and failure to return unearned fees); Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994) (three month suspension for failure to act with reasonable diligence, failure to communicate effectively with clients, and failure to respond to the disciplinary authorities repeated requests for information); Lawyer Disciplinary Board v. Burgess, No. 23030 (WV 4/25/96) (unreported) (two year suspension with one year suspension deferred while respondent undergoes a one-year period of supervision following reinstatement for violations of Rules of Professional Conduct 1.1, 1.3, 1.4 (a) and (b), 1.16(a)(3), 1.16(d); 8.1(b); and 8.4 (c) and (d)); Lawyer Disciplinary Board v. Holmstrand, No. 22523 (WV 5/30/96) (unreported) (one year suspension and psychiatric evaluation ordered for multiple violations

of Rules of Professional Conduct 1.3, 1.4(a), 3.3(a)(1)(4) and 8.4(c) and (d)); Lawyer Disciplinary Board v. Farber, No. 32598 (WV 1/26/06) (unreported) (indefinite suspension and a psychological counseling ordered to determine fitness to practice law for violating Rules of Professional Conduct 1.1, 1.3, 1.4, and 8.1(b), including failure to appear at the disciplinary hearing); Lawyer Disciplinary Board v. Morgan, 228 W.Va. 114, 717 S.E.2d 898 (2011) (one year suspension for pattern of failing to communicate with clients and failing to respond to ODC along with failure to handle client matters with diligence in multiple matters); Lawyer Disciplinary Board v. Phalen, No. 11-1746 (WV 11/14/12) (unreported) (one year suspension for multiple offenses of diligence, communication, failure to provide refunds, failure to respond to ODC, and failure to provide itemizations); and Lawyer Disciplinary Board v. Rossi, 234 W.Va. 675, 769 S.E.2d 464 (2015) (three year suspension for multiple offenses of diligence, communication, failure to properly terminate representation, failure to expedite litigation, engaging in dishonest, deceitful or misrepresentation, engaging in conduct that is prejudicial to the administration of justice, and failure to respond ODC). When looking at those cases, none of them had the amount of rule violations against clients as Respondent has in this case, and they did not have the misappropriation of client funds that Respondent committed against clients. Looking at just the misappropriation, Respondent should be disbarred, and when adding the additional rule violations, it further supports that Respondent should be disbarred for his misconduct.

ODC consents to the recommendation of the HPS due to the overwhelming evidence demonstrating that Respondent engaged in multiple violations along with Respondent's admission to the misconduct. Therefore, Respondent should be disbarred from the practice of law to not only deter Respondent from continuing this type of misconduct, but to also set an example to other attorneys that such a pattern of misconduct will result in discipline. This will serve to protect the

general public, the legal system, and the legal profession, along with potential future clients of Respondent.


V. CONCLUSION

For the reasons set forth above, the ODC consents to the recommendation of the HPS as follows:

1. That Respondent's law license be annulled;
2. That Respondent refund the following:
 - a. \$1,192.50 to PDS;
 - b. \$7,500.00 to Valerie Norwood;
 - c. \$3,500.00 to W.T.;
 - d. \$3,500.00 to E.L.;
 - e. \$9,000.00 to Todd Clutter;
 - f. \$1,250.00 to Lonnie Lilly;
 - g. \$3,000.00 to R.D.;
 - h. \$4,800.00 to T.R.;
 - i. \$3,050.00 to D.K.;
 - j. \$1,300.00 to J.H.;
 - k. Judgment plus interest to Elizabeth Good; and
 - l. \$3,500.00 to P.B.
3. That Respondent must comply with the mandates of Rule 3.28 of the RLDP unless he has submitted such as part of his immediate suspension in Case No. 19-0885; and
4. Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the RLDP.

Accordingly, the ODC urges that this Honorable Court uphold the sanctions recommended by the HPS.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel


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