

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

In Re: J. Steven Hunter, a member of
The West Virginia State Bar

Bar No.: 1826
I.D. No.: 20-06-037

STATEMENT OF CHARGES

To: J. Steven Hunter, Esquire
921 Court Street, North
Lewisburg, West Virginia 24901



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

1. J. Steven Hunter (hereinafter "Respondent") is a lawyer practicing in Lewisburg, which is located in Greenbrier County, West Virginia. Respondent, having diploma privilege, was admitted to The West Virginia State Bar on May 22, 1973. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

COUNT I
I.D. No. 20-06-037
Complaint of Stephen L. Peters

A. Background

2. Complainant Stephen L. Peters is the son of Raymond Peters (hereafter “Mr. Peters”), an elderly person, now deceased.¹ Mr. Peters lived alone on his own property in Alderson, West Virginia, while his three adult children lived outside West Virginia and rarely visited. Complainant lives in Arizona.
3. Karen Bordonaro (hereafter “Ms. Bordonaro”) was Mr. Peters’ local friend and caregiver who looked after Mr. Peters. Ms. Bordonaro lived on Mr. Peters’ property in a house he built for her use.
4. Prior to August 2018, Ms. Bordonaro and Complainant regularly emailed one another to share updates on Mr. Peters’ condition. In late 2017, Mr. Peters began experiencing memory lapses and confusion, and Ms. Bordonaro shared this information with Complainant via friendly email exchanges in which she occasionally expressed frustration. The emails included discussion regarding the disposition of Mr. Peters’ property should something happen to him, as well as Mr. Peters’ wishes concerning Ms. Bordonaro’s continued care.
5. Mr. Peters granted Complainant medical power of attorney on January 26, 2018, with Ms. Bordonaro listed as his successor representative. On that same date, Mr.

¹ Mr. Peters died on July 11, 2020, during the ODC investigation of the complaint.

Peters signed a Living Will and General Durable Power of Attorney listing Complainant as his Agent.

6. In July 2018, communication between Ms. Bordonaro and Complainant became strained. Additionally, Complainant observed several social media posts made by Ms. Bordonaro discussing plans to relocate to Rhode Island, and Mr. Peters informed Complainant that he planned to sell the property in Alderson and move with Ms. Bordonaro to Rhode Island. Complainant informed Ms. Bordonaro that he planned to visit Alderson on August 16, 2018, to discuss the situation.
7. On August 16, 2018, Ms. Bordonaro and Mr. Peters were married by the Honorable Jennifer L. Dent, Chief Judge of the Circuit Court of Greenbrier County, prior to Complainant's arrival in West Virginia.
8. On August 17, 2018, Complainant prepared a quitclaim deed granting himself and Darrell McCallister, a local neighbor of Mr. Peters who helped with caring for the land, one half undivided interest to each in Mr. Peters' property. Mr. McCallister later became Complainant's West Virginia proxy.
9. Marilyn Glaser, M.D., a physician at Alderson Family Medicine, performed an evaluation of Mr. Peters on August 29, 2018, wherein she determined Mr. Peters suffered from vascular dementia resulting in cognitive impairment which created an inability for him to handle his own affairs. Dr. Glaser's report indicated the condition was considered permanent and progressive, and she recommended that a guardian and conservator be appointed to care for Mr. Peters' affairs. Dr. Glaser

also completed an affidavit stating that Mr. Peters should not attend the upcoming emergency guardianship hearing because his progressive dementia with behavioral changes might prevent him from comprehending his own need for assistance.

10. Complainant filed an Emergency Petition for Guardianship on September 11, 2018, refiled by his attorney, Denise Pettijohn, on September 17, 2018, alleging that:
 - A. Mr. Peters had vascular dementia and was unable to make informed decisions on his own behalf;
 - B. Ms. Bordonaro had convinced Mr. Peters to marry him for “convenience” to ensure she would receive his pension and social security upon his death;
 - C. Ms. Bordonaro had planned to sell Mr. Peters’ property and leave West Virginia;
 - D. Ms. Bordonaro had stopped communicating with Complainant regarding Mr. Peters’ condition; and,
 - E. Ms. Bordonaro did not properly perform caregiver tasks, such as maintaining Mr. Peters’ personal hygiene or taking care of his medical issues.
11. Dr. Jesse Chaffin, M.D. examined Mr. Peters on October 3, 2018, and concluded that Mr. Peters “demonstrates full mental capacity.” Dr. Chaffin found that Mr. Peters did not suffer any major lapses in memory or judgment, never left a stove on or unattended, never got lost trying to return home from the grocery store or other nearby locations, had not forgotten how to balance a checkbook or pay bills, could

state his name, date, location, and POTUS, and possessed good situational awareness.

12. An emergency hearing was held on October 5, 2018, wherein Complainant was appointed Mr. Peters' temporary Guardian/Conservator, and Leigh M. Lefler was appointed as Mr. Peters' temporary guardian *ad litem*.
13. Respondent stated that he first encountered Mr. Peters and Ms. Bordonaro in the waiting area of the courthouse when they were present for the October 5, 2018, emergency hearing. Respondent found Mr. Peters to be "obviously agitated" at his sons who were with him at the courthouse that day, and Respondent observed a portion of the emergency hearing. According to Respondent, his representation of Ms. Bordonaro and Mr. Peters began soon thereafter when Mr. Peters and Ms. Bordonaro sought legal representation regarding the outcome of the Conservator hearing. Respondent stated that a local attorney, David Hammond, had prepared a Durable Power of Attorney for Mr. Peters on September 14, 2018², revoking the previous Power of Attorney appointing Complainant as Agent, and that Mr. Hammond recommended they contact Respondent for further assistance.
14. On November 16, 2018, Respondent filed a *Motion to Terminate Conservatorship and Guardianship* in Summers County Circuit Court on behalf of Mr. Peters and Ms. Bordonaro. The Motion alleged that:

² Respondent indicated Mr. Hammond video-taped Mr. Peters' interview and that he appeared competent.

- A. Complainant improperly removed \$121,000.00 from Mr. Peters' account on October 4, 2018, at a time his Power of Attorney was revoked upon the execution of the September 14, 2018, Power of Attorney;
 - B. Mr. Peters' funds were frozen following the temporary Order entered after the October 5, 2018, hearing, preventing Mr. Peters from having funds for paying bills, buying groceries, etc...and, the situation was only remedied upon intervention of the guardian *ad litem* on November 9, 2018.
 - C. Ms. Bordonaro, as Mr. Peters' wife, was the best person to be named Conservator as she had been assisting him with his care for years; and,
 - D. Complainant was not a suitable Conservator or Guardian.
15. Amelia Winsby, Psy.D, Licensed Psychologist, performed a forensic psychological evaluation of Mr. Peters on December 17, 2018, and completed a 24-page report on January 10, 2019.³ Dr. Winsby diagnosed Mr. Peters with Possible Major Neurocognitive Disorder due to Alzheimer's, without Behavioral Disturbance, and opined that Mr. Peters would have problems related to living alone. He was found to have a significant decline in memory across all indexes, and his auditory, visual, immediate, and delayed memory abilities were impaired. Dr. Winsby concluded that Mr. Peters met the requirements of being a protected person within the definition of West Virginia Code §44A-1-4, and she recommended the Court appoint a

³ Dr. Winsby was tragically killed in a car accident on April 3, 2020.

Guardian/Conservator for him. Dr. Winsby also recommended the Court examine the validity of Mr. Peters' marriage certificate from August 2018, given his significant cognitive impairment. Dr. Winsby recommended the Guardian work with DHHR to ensure Mr. Peters' living situation was safe and appropriate.

16. On March 18, 2019, Ms. Lefler submitted to the Court a *Report of the Guardian Ad Litem*, wherein she found:

- A. Mr. Peters granted Complainant a durable power of attorney on or about January 26, 2018.
- B. Mr. Peters and Ms. Bordonaro were married on August 16, 2018, but lived in separate residences on Mr. Peters' property.
- C. Ms. Bordonaro was a convicted felon who served time in prison in Alderson.
- D. Throughout her evaluations, Mr. Peters expressed desire to sell his assets and travel with Ms. Bordonaro to Rhode Island.
- E. On August 18, 2018, Mr. Peters granted to Complainant and a neighbor, Mr. McCallister, a one-half undivided interest in his real property, allegedly to prevent Ms. Bordonaro from having an interest in the property because Mr. Peters did not trust her.
- F. On September 14, 2018, a second power of attorney was executed by Mr. Peters, this one granting power of attorney to Ms. Bordonaro.
- G. At the temporary hearing held on October 5, 2018, Ms. Bordonaro was present in the lobby of the courthouse, but did not enter the courtroom. The

guardian *ad litem* requested the bailiff ask Ms. Bordonaro if she desired to be present and Ms. Bordonaro declined.

- H. Mr. Peters reported to Ms. Lefler that his mind had become a “leaky cauldron,” and he appeared confused and frustrated as to the nature of the court proceeding.
 - I. Ms. Lefler visited Mr. Peters at his home in January 2019, and he did not recall meeting her previously. The home was cluttered and dusty, but there was plenty of food, heat and running water. Although he appeared to not have bathed in several days, Mr. Peters seemed to be in good physical health. He reported it had been “a while” since he had seen his wife, and he was frustrated with his inability to express his thoughts accurately.
 - J. Ms. Lefler reviewed the financial disclosures and medical reports and recommended the Court find Mr. Peters to be a protected person within W. Va. Code §44A-2-8-1, and that a guardian/conservator be appointed.
 - K. Ms. Lefler recommended Complainant be allowed to continue in his role as guardian and conservator based on his qualifications, and that she would not recommend Ms. Bordonaro based upon the limitations placed upon her due to her felony conviction record.
17. At the March 25, 2019 hearing, Dr. Winsby testified about her evaluation of Mr. Peters, and the Court deemed her an expert in the field of Forensic Psychology and Neuropsychology. Dr. Winsby reported that Mr. Peters’ memory problems were

documented as far back as 2017 based upon emails and records she reviewed during her evaluation, and caused her to question the validity of the marriage certificate from August 2018. Dr. Winsby testified that Mr. Peters suffered from a major cognitive disorder and qualified as a protected person within the West Virginia Code standard. Dr. Winsby noted that although Mr. Peters denied having memory problems, the testing showed that he had significant impairment. She questioned the validity of all the documents executed by Mr. Peters after mid-2017, including both Durable Powers of Attorney from 2018, as well as the Quitclaim Deed from August 2018. Dr. Winsby testified that Dr. Chaffin's October 2018 conclusions were based mostly upon an interview, versus formal testing, and were not very reliable.

18. During the March 25, 2019 hearing, Mr. Peters was declared a protected person pursuant to West Virginia Code §44A-1-4, Complainant was named full Guardian and Conservator, and Leigh M. Lefler, Esquire, was appointed as Mr. Peters' full guardian *ad litem*. Both Ms. Bordonaro and Respondent were present at this hearing.
19. Due to various delays, the Court did not enter the Order from the March 25, 2019 hearing until July 11, 2019.
20. On June 18, 2019, without Complainant's knowledge or permission, Mr. Peters withdrew \$5,000.00 from his Discover Savings account and paid that amount as a retainer to Respondent.

21. Respondent's wife, DeEtta Hunter (hereafter "Mrs. Hunter"), an office worker⁴ in Respondent's office, was with Mr. Peters when he contacted Discover Bank to request the \$5,000.00 for the retainer fee. Mrs. Hunter participated in the call and indicated to the bank that she was Mr. Peters' attorney. Mrs. Hunter requested the check be sent to Mr. Peters' address, but made out to Respondent. Respondent testified in the hearing on November 8, 2019, that he was aware of Mrs. Hunter's presence with Mr. Peters when the money was requested.
22. On August 9, 2019, Respondent filed a *Motion to Terminate Conservatorship and Guardianship* in Circuit Court and *Notice of Intent to Appeal* on behalf of Ms. Bordonaro.
23. The hearing for Respondent's August 9, 2019 Motion was held on September 6, 2019, before Judge Robert Irons. Complainant and the guardian *ad litem* were present, but neither Respondent nor Ms. Bordonaro were in attendance. Respondent initially claimed to not have known the hearing was set for September 6, 2019, but admitted under oath on November 8, 2019, that he had received the email notification of the hearing date and time.
24. The Order from the September 6, 2019, hearing was issued on September 27, 2019, which held that Respondent's motion "seeks to relitigate the issues decided by the Court at the hearing on March 25, 2019, and reflected in the Order Appointing

⁴ Respondent described Mrs. Hunter as an "office volunteer" in his testimony at the November 8, 2019, hearing.

Guardian and Conservator entered July 11, 2019.” Additionally, the Order further held:

- A. The motion was filed beyond the statutorily prescribed time of thirty days for notice of appeal, and Respondent’s motion was ultimately denied;
- B. Complainant was given leave to file for divorce on behalf of Mr. Peters pursuant to W.Va. Code §48-5-202, as Mr. Peters and Ms. Bordonaro had lived separate and apart since their marriage began;
- C. That “there is a direct conflict pursuant to Rule 1.7 of the West Virginia Rules of Professional Conduct of [Respondent’s] representation of both Karen Bordonaro and Raymond S. Peters, as their interests are directly adverse;”
- D. The Court further enjoined Ms. Bordonaro from “in any way dissipating, damaging, disposing, or encumbering any part of the estate” or any financial account of Mr. Peters;
- E. Ms. Bordonaro was ordered by the Court to have no contact with Mr. Peters;
- F. Respondent was ordered to return the \$5,000 retainer fee; and
- G. Ms. Bordonaro was ordered to reimburse Mr. Peters the \$656.06 purchase she made using Mr. Peters’ credit card.

25. Respondent filed a *Motion for Emergency Stay of Judgement* on behalf of Ms. Bordonaro in September 2019.⁵ The Motion stated that Ms. Bordonaro was the legal

⁵ The Motion is most likely dated September 9, 2019. The document submitted by Respondent is dated August 9, 2019, which would have predated the hearing in question.

wife of Mr. Peters and had been his sole caretaker for many years, but was prohibited from having any contact with Mr. Peters at the September 6, 2019 hearing, and that Mr. Peters would be at serious health risk given that he had no transportation and lived in a remote area. It further stated that the Order was done on an *ex parte* basis, as Respondent thought the hearing was scheduled for September 9, 2019, instead of September 6, 2019.

26. The Motion for Stay was denied by Order entered October 17, 2019.
27. A *Petition for Show Cause Order and/or Protective Order Preventing Financial Exploitation* was filed by Ms. Lefler, Mr. Peters' guardian *ad litem*, in the Circuit Court of Summers County on October 29, 2019. The Petition alleged that:
 - A. Ms. Lefler was notified by Mr. McCallister, Complainant's WV proxy, that Mrs. Hunter had entered Mr. Peters' home and denied entry to Mr. McCallister, stating that Mr. Peters was not dressed. The Petition stated that Mrs. Hunter claimed to be there for a wellness check as a friend to Mr. Peters;
 - B. Mrs. Hunter, as wife to Ms. Bordonaro's attorney, is an agent and/or proxy for Ms. Bordonaro, and that her contact was in direct violation of the Final Order for the September 6, 2019 hearing, which directed Ms. Bordonaro to not have contact with Mr. Peters;
 - C. Despite being ordered to return the \$5,000 retainer fee, Respondent had not done so, and that he was instead using that money to fund a baseless appeal

- filed before the West Virginia Supreme Court of Appeals after Respondent failed to appear at a hearing for which all parties received adequate notice;
- D. Ms. Lefler alleged that Mrs. Hunter continued to travel to financial institutions with Mr. Peters to withdraw funds despite the Court ruling that Mr. Peters was a protected person;
 - E. Mrs. Hunter had entered Mr. Peters' home as late as October 26, 2019;
 - F. Respondent was aware of the Court's ruling and that he and his wife engaged in conduct regarding Mr. Peters that was in direct violation of the Court's directives
 - G. Respondent was in direct violation of the West Virginia Rules of Professional Conduct;
 - H. Respondent, Ms. Bordonaro, and Mrs. Hunter engaged in the financial exploitation of Mr. Peters;
 - I. Ms. Lefler requested the Court issue a show cause order as to why Ms. Bordonaro and/or her counsel should not be found to be in contempt of the Court's Order for the September 6, 2019 hearing, and that the Court enter a financial exploitation protective order.
28. By correspondence dated October 29, 2019, Complainant's counsel sent a letter to Respondent regarding the unauthorized contact between Mrs. Hunter and Mr. Peters, despite an order of no contact in place between Ms. Bordonaro and Mr. Peters. The letter reminded Respondent that the Court found a conflict of interest in

Respondent's representation of Ms. Bordonaro and Mr. Peters, and reaffirmed that Respondent did not represent Mr. Peters, as he had a guardian *ad litem* appointed for him, as well as a Guardian/Conservator. The letter also demanded Respondent and his staff cease and desist from any and all communication with Complainant pursuant to Rule 4.2 of the Rules of Professional Conduct, as Complainant was a represented party. It further cautioned that Complainant would be forced to seek a protective order against Respondent and his staff if they failed to cease and desist all contact with Mr. Peters.

29. On November 8, 2019, a hearing was held before Judge Irons regarding the *Amended Verified Petition for Show Cause Order and/or Protective Order Preventing Financial Exploitation*, filed by the guardian *ad litem*. Respondent was present and requested that he be permitted to testify in the matter. Respondent testified that:

- A. He had been unaware of the September 6, 2019 hearing until he ran into the judge at the courthouse the following Monday, September 9, 2019, and realized the hearing had been conducted in his and Ms. Bordonaro's absences;
- B. He acknowledged that electronic notice was sent to his correct email address with the proper date and time of the hearing;
- C. He was the retained attorney for both Mr. Peters and Ms. Bordonaro;

- D. Respondent admitted receiving the \$5,000.00 as a retainer for representing both Mr. Peters and Ms. Bordonaro, and that the money was “not likely” to have been deposited into his trust account;
 - E. Mrs. Hunter had visited Mr. Peters’ home on several occasions, and that she had grown fond of Mr. Peters;
 - F. He admitted to having knowledge of Mrs. Hunter’s presence at financial institutions with Mr. Peters “regarding requests for withdrawals of cash”;
 - G. He indicated he would willingly return the \$5,000.00 retainer if ordered by the Court.⁶
30. The Order for the hearing of November 8, 2019, issued on November 18, 2019, held:
- A. Complainant, who was Guardian/Conservator at the time of the transactions, had not authorized Respondent to transfer the money from Mr. Peters’ Discover account;
 - B. Complainant had not authorized Mrs. Hunter to visit Mr. Peters’ home;
 - C. Complainant had not authorized Mrs. Hunter to make withdrawals of cash for Mr. Peters at a bank;
 - D. Ms. Bordonaro had improperly accessed Mr. Peters’ credit cards for her personal use without authorization from Complainant;

⁶ Respondent had been ordered to return the \$5,000.00 at the September 6, 2019, hearing, and this was reflected in the September 27, 2019 Order.

- E. Respondent's representation "happened at a time after Mr. Peters had been declared to be a protected person," and Respondent denied "awareness as to whether this would constitute a conflict of interest;"
- F. Respondent and Ms. Bordonaro "engaged in the financial exploitation of Raymond Peters within the meaning of W.Va. Code §55-7J-1;"
- G. Both Respondent and Ms. Bordonaro were held in contempt.
- H. Respondent and Ms. Bordonaro were ordered to "immediately reimburse" Mr. Peters for the \$5,000.00 retainer fee paid to Respondent, and for the cost of the tires purchased by Ms. Bordonaro.
- I. Respondent, Mrs. Hunter, and Ms. Bordonaro were enjoined from having contact with Mr. Peters until further Order of the Court. This included entering Mr. Peters' residence, any electronic or telephonic communication, and/or any direct or indirect attempts of communication.

B. Ethics Complaint and Investigation

- 31. On or about January 29, 2020, Complainant filed this ethics complaint against Respondent. Complainant stated Respondent was ordered to return a \$5,000.00 "retainer fee" in a hearing held on September 6, 2019, and again in a November 8, 2019 hearing, but had failed to do so. Additionally, Complainant alleged that Mrs. Hunter went to Mr. Peters' house on October 26, 2019, after Ms. Bordonaro had been served an order of protection to stay away from Mr. Peters. Complainant maintained that Respondent had known Mr. Peters was a protected person since the

hearing on March 25, 2019, that Respondent had engaged in the financial exploitation of Mr. Peters, and that Respondent was in contempt of court for failing to repay the \$5,000.00 retainer fee. Complainant further alleged that it was a conflict of interest for Respondent to represent both Mr. Peters and Ms. Bordonaro after Respondent became aware that their interests were not the same.

32. By letter dated February 25, 2020, the Office of Lawyer Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response within twenty (20) days.
33. On April 3, 2020, Respondent requested additional time to file a response, as the matter was complex and he was anticipating his response would consist of many pages and document. He was given thirty additional days to respond.
34. Respondent filed his response on May 1, 2020, wherein he described his first meeting with Mr. Peters and Ms. Bordonaro, and that it was his belief that Ms. Bordonaro assisted with Mr. Peters' care by providing transportation to appointments, errands, hearings, buying groceries, and to the bank to retrieve his \$300 monthly allowance⁷. Respondent opined that allowing Mr. Peters to receive only \$300 each month deprived him of his Social Security Benefits and IBM pension, and that many calls to address the issue were made to Complainant's attorney and the guardian *ad litem* "to no avail." Respondent said that Ms.

⁷ Mr. Peters' \$300 monthly allowance was an amount agreed to by all parties in Court on March 25, 2019.

Bordonaro was expected to provide transportation for Mr. Peters, yet when she purchased tires for her vehicle, the guardian *ad litem* challenged the purchase.

35. Respondent also alleged that Complainant failed to appoint anyone in the state of West Virginia to assist Mr. Peters with the above tasks, and that Complainant and his wife “attempted to alienate” Mr. Peters from Ms. Bordonaro, his legal wife, and that the Circuit Court interfered by directing Ms. Bordonaro to have no contact with Mr. Peters.
36. Respondent admitted that the Court had issued a judgement against him for the \$5,000.00 retainer fee. Respondent noted that he had initially filed an appeal with the Supreme Court, but after delays in receiving the transcripts, he eventually withdrew the appeal. Respondent stated that he continued to work on the Deed issue after Ms. Bordonaro was ordered to vacate the house Mr. Peters had built for her use, and he planned to “again file” motions regarding the Conservatorship involving Complainant.
37. Respondent also questioned Dr. Winsby’s qualifications to make the determination regarding Mr. Peters’ dementia, opining that Mr. Peters was of elder age and suffered from hearing loss and poor eyesight, but that he was an “interesting individual” who repeatedly maintained he did not want his sons to manage his money or provide for his care.
38. Respondent also acknowledged that Mrs. Hunter developed a close relationship with Mr. Peters, and stated that Mr. Peters always appeared knowledgeable and alert.

Respondent confirmed that Mrs. Hunter accompanied Mr. Peters to Kroger and that she was amused when Mr. Peters showed her how he could get a little cash in his pocket (\$60.00) from his Discover Card. Additionally, Respondent admitted that Mrs. Hunter accompanied Mr. Peters and Ms. Bordonaro to City National Bank when he received his \$300.00 monthly allowance. Respondent defended Mrs. Hunter's actions as "humanitarian", stating that she loved the elderly and had cared for her father, who suffered from Alzheimer's.

39. Respondent also acknowledged that Mrs. Hunter was with Mr. Peters when he received the notice from Discover stating that Discover would no longer honor Complainant's Guardianship because the order had expired, and that Mrs. Hunter was also present for the conversation with Discover where Mr. Peters requested the \$5,000.00 check to use as a retainer.
40. Respondent stated that Complainant was upset that Respondent has made allegations that Complainant has failed to care for his father; has failed to account for funds received and disbursed; and declares that this is a family matter, although he "excludes a sister." Respondent stated that he intends "to see this matter to the end" in the best interests of Mr. Peters and Ms. Bordonaro.
41. Complainant replied to Respondent's response on May 9, 2020, and reiterated that his main issues involved Respondent's failure to return the \$5,000.00 retainer ordered by the Court, as well as the continued violation of the order of protection by Mrs. Hunter, whom he viewed as Ms. Bordonaro's proxy. Complainant alleged

Mrs. Hunter made several visits to Mr. Peters' home without notifying Complainant or Mr. McCallister, Complainant's WV proxy, despite being aware of the Order of Protection.

42. Complainant alleged Respondent took advantage of "technicalities" with paperwork caused by a delay with the entry of the Order from the March 25, 2019 hearing not being filed until July 11, 2019, because Respondent was aware the temporary orders established on October 5, 2018, were superseded by the permanent orders issued on March 25, 2019, as Respondent was present in the courtroom when the judge issued the ruling. Complainant also noted Respondent's reply to the complaint exhibited "truly unprofessional behavior for an attorney with 40+ years of experience."
43. Complainant defended the conversation witnessed by Respondent on October 5, 2018, in the waiting area of the courthouse as part of a family dynamic which was unknown to Respondent, and noted that Respondent is not a medical professional qualified to deem an elderly person completely alert and oriented. Complainant explained that he and his father had a respectful relationship and that he gave his father his space, but that once he noticed his father's memory began to deteriorate, he became more involved, as needed. He visited his father monthly once he was aware of his decline.
44. Complainant questioned the timing of Ms. Bordonaro marrying Mr. Peters once communication ceased between he and Ms. Bordonaro, after she had lived on the property for more than a decade with no interest in marrying Mr. Peters.

Complainant alleged that his communication with Ms. Bordonaro had broken down during Complainant's July 26, 2018 visit to West Virginia, that Ms. Bordonaro stopped communicating thereafter and was married to his father within three weeks. Complainant stated he first learned of Mr. Peters' marriage to Ms. Bordonaro when he received a call from the Summers County courthouse alerting him that a marriage license was being obtained on August 15, 2018. Complainant spoke with Mr. Peters that same day regarding the situation, and Complainant alleged that Mr. Peters indicated that a prenuptial agreement would be executed to protect his previously held assets.

45. Complainant reported that he had several recorded conversations with Mr. Peters and Ms. Bordonaro, including one in which Mr. Peters wanted "to shoot Karen for marrying him and never coming around." Complainant also recorded the conversation with Mrs. Hunter when she was with Mr. Peters at City National Bank. Complainant stated that he shared these recordings with his attorney, and Mr. Peters' guardian *ad litem*, as well as the late Dr. Winsby, and he offered to provide them to ODC, if necessary. Complainant also noted that Discover had the recording of the June 18, 2019, phone call when Mrs. Hunter claimed to be Ms. Bordonaro and Mr. Peters' attorney. Complainant also allegedly had recorded conversations between himself and Ms. Bordonaro where she accused Mr. Peters of pitting Complainant and Ms. Bordonaro against each other, and she had confirmed that Mr. Peters always wanted Complainant to have the Alderson property.

46. Complainant provided a copy of his Durable Power of Attorney, filed on March 6, 2018. He also admitted to removing savings bonds from the safety deposit box at the request of Mr. Peters, stating that Mr. Peters did not want Ms. Bordonaro to access them. Complainant reported that he cashed several bonds amounting to \$120,000.00, and submitted them to the Bureau of the Fiscal Service on September 5, 2018, who then deposited the money into Mr. Peters' bank account in Alderson, West Virginia, where it remained at the time the complaint was filed.
47. Complainant also stated that he had spoken with attorney David Hammond in September 2018, and filed for Guardianship/Conservatorship of Mr. Peters based upon Mr. Hammond's advice.
48. Complainant stated that one time when Mrs. Hunter accompanied Ms. Bordonaro and Mr. Peters to City National Bank to collect Mr. Peters' \$300 monthly allowance, the bank manager contacted Complainant for approval. Complainant declined approving the transaction because Ms. Bordonaro had taken Mr. Peters to collect the money twice in the previous month, in addition to using the credit card for grocery purchases. Complainant allegedly requested Ms. Bordonaro provide receipts for her purchases for accounting purposes, yet she failed to do so.
49. Complainant alleged that the City National Bank manager contacted him once Mr. Peters, Ms. Bordonaro and Mrs. Hunter had left, to report that Mrs. Hunter "started to unbutton my father's shirt and started rubbing his chest telling him everything would be alright." Complainant asked "who does that? A married woman of 40

years? What kind of behavior does the attorney of record for my Father's wife behave that way?" Additionally, Complainant questioned why Mrs. Hunter "was inside his father's home with the door locked when he was only in his underwear? Why would a married woman put herself in that kind of situation? Seems very deceitful and unethical to me."

50. Regarding the purchase of tires for Ms. Bordonaro on Mr. Peters' credit card, Complainant stated that Ms. Bordonaro was present in the courtroom on March 25, 2019, when the judge ordered that any purchases were to be authorized by the Guardian/Conservator prior to purchase.
51. Complainant stated that his sister, Lisa Ward, is fully aware of all the issues and has indicated to him on several occasions that she does not want to deal with any of it.
52. Complainant designated Darrell McCallister as his West Virginia Proxy in Complainant's absence in a document filed with the court on or about October 17, 2019, by Complainant's then counsel, Denise Pettijohn.
53. Complainant stated that Kyle Lusk assumed representation of Complainant, and filed a Notice of Appearance on Complainant's behalf in Mr. Peters' divorce from Ms. Bordonaro in January 2020.
54. Complainant also provided a transcript of the November 8, 2019, hearing wherein Respondent stated that he would return the retainer fee and work for Ms. Bordonaro for free, and that he did not know where the money had been deposited "and did not care as long as he had money to have a few drinks here and there."

55. On August 18, 2021, an Investigative Subpoena Duces Tecum was issued to City National Bank commanding a copy of any and all documents for all business accounts, including operating, trust or IOLTA accounts, that were open and in use by Respondent for his law practice from June 1, 2019 through September 30, 2019.
56. ODC received the documents on August 30, 2021. The starting balance for Respondent's client trust account, JBH Farm Trust, in June 2019 was \$3,520.16, and the ending balance in September 2019 was \$3,521.64, with no deposits made during that time frame. The slight increase is due to interest earned.
57. Mr. Peters passed away on July 11, 2020.
58. By correspondence dated August 23, 2021, Complainant provided additional information regarding ongoing litigation in the case:
- A. On January 20, 2021, Ms. Bordonaro presented a testamentary document,⁸ executed by Mr. Peters on October 10, 2018, to the Summers County Commission. Based upon that will, the Summers County Fiduciary appointed Ms. Bordonaro Executrix of Mr. Peters' estate, and granted her Letters of Administration.
- B. On January 25, 2021, all three of Mr. Peters' adult children contested the will.

⁸ The Last Will and Testament executed on October 10, 2018, appointed Ms. Bordonaro as the Executrix and left the majority of Mr. Peters' estate to Ms. Bordonaro. The will was prepared by attorney David Hammond.

- C. By Order dated February 10, 2021, the County Commission of Summers County, West Virginia, temporarily revoked Ms. Bordonaro's Letters of Administration and set the matter for hearing scheduled for April 14, 2021.
- D. Complainant stated that neither Respondent, nor Ms. Bordonaro, were present at the April 14, 2021 hearing. Complainant reported that Respondent and Ms. Bordonaro claimed they were not notified of the Commission Hearing. However, Complainant provided a log/diary from the Commission which indicated Ms. Bordonaro was called on February 11, 2021, to notify her of the Commission decision to suspend her authority until further notice pending the hearing. The commission notes indicate she was told of the objections, given the date of the hearing, and advised to refrain from doing estate business until the hearing. The Commission notes also indicate Mrs. Hunter contacted the Summers County Fiduciary Supervisor on February 22, 2021, and indicated she was "upset that 'they' hadn't received any notification of the objections, hearing, or commission order because they were at the beach." She was informed that notices had been sent via certified mail to their Lewisburg office address. Mrs. Hunter was "insistent" that they had not received the notice. She asked that they send additional copies of the objections and orders of law to the Lewisburg address. Ultimately, the certified mail was accepted by all parties except Respondent and Ms. Bordonaro. The Commission mailed copies of the Commission Order,

Hearing Notice and Unclaimed Certified Letters to the Greenbrier County Clerk, who said he would place the copies in Respondent's box at the courthouse. In addition, the Commission published the hearing notice in The West Virginia Daily News on March 29, 2021, and the Hinton News on March 24, 2021.

E. By Order issued April 14, 2021, the Summers County Commission unanimously rejected the October 10, 2019, Last Will and Testament of Mr. Peters, and determined that Mr. Peters was found to be a protected person by Order dated October 5, 2018, and lacked testamentary capacity to have executed a will on October 10, 2018.

F. On April 15, 2021, Complainant requested to the Commission that he be appointed as personal representative. Complainant obtained a bond and was appointed that same date, at which time he presented another Last Will and Testament to the Commission.

G. On July 11, 2021, Respondent filed an appeal to the Circuit Court of Summers County on behalf of Ms. Bordonaro, who was "misnamed by Counsel as Linda"⁹, which was dismissed without prejudice on the Court's *sua sponte* Order of July 21, 2021.

59. Respondent filed a *Second Appeal to the County Commission's Order of April 14, 2021* on July 29, 2021, wherein Respondent stated that:

⁹ Respondent provided this quote from the July 21, 2021 Court Order in his Second Appeal dated July 29, 2021.

- A. The will executed by Mr. Peters on October 10, 2018, was valid, and that all people present at the testamentary execution attested to his capacity¹⁰;
 - B. The April 14, 2021, hearing notice was not properly served on Petitioner;
 - C. The Commission violated both the United States Constitution and West Virginia's Constitution pertaining to Due Process;
 - D. The Commission relied on an Order of the Circuit Court of Summers County in a Guardian and Conservatorship proceeding, in which the burden of proof and elements are "totally different from a will contest," and that the Commission acted improperly and illegally by relying on an "Order as presented to them in an Ex Parte manner by their attorney."¹¹
 - E. Dr. Chaffin's report from October 3, 2018, was determinative.
60. Complainant stated that Respondent's July 29, 2021 court filing was "full of errors and in some cases referred to Raymond L. Peters and NOT Raymond S. Peters and Stanley Peters, NOT Stephen Peters." Complainant questioned if Respondent was cognizant while drafting the document.
61. By correspondence dated August 28, 2021, ODC sent a letter to Respondent asking if he had paid the refund ordered by the court, and if so, to provide a copy of the reimbursement check.

¹⁰ The October 10, 2018 will was executed five days *after* the Court had ruled Mr. Peters to be a statutorily protected person with both a Guardian/Conservator and guardian *ad litem* appointed for his protection in the hearing held October 5, 2018.

¹¹ This is the second time in these proceedings where Respondent has failed to attend a hearing, and then claimed ex parte communications occurred at the hearing in his absence.

62. By letter dated September 16, 2021, Respondent replied that he had paid the refund to the law firm of Lusk and Bradford, PLLC, Complainant's counsel. Although a copy of the reimbursement check was not included, Respondent provided a copy of a receipt from Lusk & Bradford, dated November 25, 2020, for payment of \$5,000.00, for client Raymond Peters, c/o Stephen Peters, from Respondent, check number 11523.
63. By correspondence dated October 26, 2021, ODC sent a letter to Respondent asking if he had a written fee agreement with Mr. Peters and/or Ms. Bordonaro, and if so, to provide a copy of said documents. Additionally, if he had failed to execute a fee agreement, ODC requested Respondent provide an explanation as to why he did not.
64. After receiving no response, on or about December 1, 2021, Disciplinary Counsel sent a second letter by certified and regular U.S. mail directing Respondent to file a response by December 13, 2021.
65. Respondent replied on December 10, 2021, that the Peters/Bordonaro file is "rather large," and that, after looking, he "did not do an engagement letter" with them. Respondent stated that he gave them a "flat fee" that had been refunded to Mr. Peters' Estate per Court Order. Respondent indicated that he has been working "pro bono for Karen Bordonaro" on the remaining pending matters "and will continue to do so," as she "has no money." He stated that he has advanced her Court costs.
66. Because the September 27, 2019, Court Order in Stephen Peters v. Raymond Peters, case number 45-2018-G-5 in the Circuit Court of Summers County determined that

“there is a direct conflict pursuant to Rule 1.7 of the West Virginia Rules of Professional Conduct of [Respondent’s] representation of both Karen Bordonaro and Raymond S. Peters, as their interests are directly adverse,” Respondent violated Rule 1.7(a)(1) of the West Virginia Rules of Professional Conduct, which provides:

Rule 1.7. Conflict of Interest; Current Clients.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) The representation of one client will be directly adverse to another client;

67. Because Respondent continued to represent Ms. Bordonaro in the same or a substantially related matter in which her interests were determined by the Court in Order dated September 27, 2019, to be adverse to the interests of Mr. Peters, and Mr. Peters did not provide informed consent to the representation, Respondent is in violation of Rule 1.9(a) of the West Virginia Rules of Professional Conduct, which provides:

Rule 1.9. Duties to Former Clients.

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

68. Because Respondent failed to comply with the September 27, 2019, Court Order directing him to return the \$5,000.00 retainer fee, as well as the November 18, 2019, Order directing him to “immediately return” the money, for more than a year and

having done so only after an ODC complaint was filed, Respondent violated Rules 3.4(c) and 8.4(c) of the West Virginia Rules of Professional Conduct, which provide:

Rule 3.4. Fairness to Opposing Party and Counsel.

A lawyer shall not:

* * *

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

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

69. Because Respondent failed to execute an engagement letter or fee agreement, and failed to communicate the scope of the representation and expenses and fees, in writing, to Mr. Peters and Ms. Bordonaro, Respondent violated Rule 1.5(b) of the West Virginia Rules of Professional Conduct, which provides:

Rule 1.5. Fees.

* * *

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation...

70. Because Respondent failed to deposit the \$5,000.00 retainer fee into his client trust account, and provided no billing statements to support when the fees were earned or expenses were incurred, Respondent violated Rule 1.15(c) of the West Virginia Rules of Professional Conduct, which provides:

Rule 1.15 Safekeeping Property.

* * *

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

71. Because Respondent had direct supervisory authority over Mrs. Hunter and failed to make reasonable efforts to ensure that her conduct toward Mr. Peters was compatible with Respondent's professional obligations as a lawyer, Respondent is in violation of Rule 5.3(b) of the West Virginia Rules of Professional Conduct, which provides:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistance.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

* * *

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

72. Because Respondent was aware the Court deemed Mr. Peters to be a Protected Person within the meaning of the West Virginia Code, and had appointed Ms. Lefler as guardian *ad litem*, and Respondent failed to obtain consent of Ms. Lefler before communicating with Mr. Peters, Respondent is in violation of Rule 4.2 of the West Virginia Rules of Professional Conduct, which provides:

Rule 4.2. Communication with Persons Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless

the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

73. Because Respondent was in direct violation of a lawful Order of the Court, and his continued course of conduct created the need for ongoing litigation, Respondent is in violation of Rule 8.4(d) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

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

C. Aggravating Factors


74. Respondent has received four admonishments by the Investigative Panel in his 49 years of practice, two in 2002, one in 2015, and one in 2019, where Respondent was admonished for violation of Rules 1.3, 1.4, 1.15(a), 1.16(d) and 5.1(a) of the West Virginia Rules of Professional Conduct.

* * *

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

Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

STATEMENT OF CHARGES ORDERED on the 5th day of February, 2022,
and **ISSUED** this 5th day of February, 2022.


Amy C. Crossan, Chairperson
Investigative Panel
Lawyer Disciplinary Board