

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

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**In Re:** JEFFERY A. DAVIS, a suspended member of  
The West Virginia State Bar

**Bar No.:** 6247  
**I.D. Nos.:** 21-03-363  
22-03-255

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**STATEMENT OF CHARGES**

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**To:** Jeffery A. Davis  
Post Office Box 175  
Wallback, West Virginia 25285

**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 West Virginia Rules of Lawyer Disciplinary Procedure, with regard to the following charges against you:

1. Jeffery A. Davis (hereinafter "Respondent") is a lawyer who last practiced in Spencer, which is located in Roane County, West Virginia. Respondent, having passed the Bar Exam, was admitted to The West Virginia State Bar on May 5, 1993. 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.

2. Respondent's law license is currently suspended pursuant to a Mandate Order entered by the Supreme Court of Appeals of West Virginia on March 14, 2022, in a separate disciplinary matter. The Mandate Order followed an Opinion filed by the Court on February 11, 2022, which held that Respondent's law license should be suspended for a period of six months.<sup>1</sup>
3. On or about August 26, 2022, Respondent filed a Petition to Reinstate License to Practice Law with the Supreme Court of Appeals pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, which is pending.

## **COUNT I**

**I.D. No. 21-03-363**

### **Complaint of the Office of Lawyer Disciplinary Counsel**

4. On or about November 2, 2021, Judge Anita Ashley, Circuit Court Judge for the Fifth Judicial Circuit of West Virginia, provided the Office of Lawyer Disciplinary Counsel ("ODC") with a copy of a handwritten document she referred to as a "*pro se* motion" she had received from Samantha Shafer.
5. At that time, Ms. Shafer was a defendant in a criminal matter pending in the Circuit Court of Roane County, West Virginia. Respondent was her court-appointed counsel in that matter.
6. The document dated October 25, 2021, and signed by Ms. Shafer, stated that Respondent made sexual gestures toward her and had asked her if she wanted to

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<sup>1</sup> See *Lawyer Disciplinary Board v. Davis*, 2022 WL 421119 (2022).

go to the beach with him while she was his client. Ms. Shafer requested she be appointed a new lawyer.

7. By letter dated November 5, 2021, the ODC advised Respondent that it had opened a complaint based upon the information received from Judge Ashley and directed him to file a response to the allegations within twenty days.
8. By letter dated December 2, 2021, received by the ODC on December 6, 2021, Respondent provided a verified response to the complaint.
9. In his response, Respondent provided background of his representation of Ms. Shafer, which had resulted in her entry of a guilty plea pursuant to a plea agreement. Respondent said that after entering her plea but before her sentencing hearing was scheduled to take place, Ms. Shafer had reviewed the Pre-Sentence Investigation report and became angry. Respondent said that Ms. Shafer had apparently been told by the probation officer that to be considered for alternative sentencing she must be enrolled in a rehab facility since she had failed a prior screen for drugs. Respondent said he discussed the situation with Ms. Shafer on October 25, 2021, and she indicated that she did not want to go to a rehab facility and regretted entering the aforementioned plea.
10. Respondent stated that Ms. Shafer filed her "*pro se* motion" with the Court that same day.
11. Respondent denied that he had made sexual gestures toward Ms. Shafer. Respondent stated that when he saw Ms. Shafer before a court hearing he had simply remarked that she looked nice and was dressed appropriately for court.

12. Regarding the comment about the beach, Respondent stated that he met Ms. Shafer for a consultation, and she expressed to him that she had high anxiety regarding her cases and she had dreamt she was going to prison. Respondent said that he encouraged her to try to distract herself and think of a “happy place,” and she replied that she liked the beach. Respondent said he then commented that he also liked the beach, and Ms. Shafer said he should take her there and they had laughed it off.
13. Respondent also stated that at Ms. Shafer’s plea hearing on September 10, 2021, she informed the Court that she had no complaints with Respondent’s representation. Respondent said that during the time between September 10, 2021, and October 25, 2021, the only contact he had with Ms. Shafer was when they went over the Pre-Sentence Report.
14. Respondent was removed and replaced as counsel for Ms. Shafer by the Circuit Court on October 26, 2021.
15. In a subsequent interview with Ms. Shafer, she confirmed to the ODC that she believed Respondent had made inappropriate and sexual references toward her. Ms. Shafer said that Respondent had contacted her asking to speak with her in person and proceeded to pick up her and her son to take them out to lunch at a fast food restaurant. Ms. Shafer said that nothing was discussed about her case during the meal, and instead Respondent asked her questions about her personal life. During this meal, she asserted that Respondent had stated that he could take her to the beach with him, “all expenses paid.”

16. Ms. Shafer said that during a meeting with Respondent at his office, Respondent had told her how nice she looked in her pants, and that it had been a long time since he had had the company of a woman.
17. Ms. Shafer also stated that she was incarcerated from June 14, 2021, to August 3, 2021, and during that time she tried numerous times to contact Respondent, but he would not return her calls or come to the jail to meet with her about her case.
18. Because Respondent failed to respond to Ms. Shafer's phone calls while she was incarcerated, he has violated Rule 1.4(a)(4) of the Rules of Professional Conduct which provides as follows:

**Rule 1.4. Communication.**

(a) A lawyer shall:

\* \* \*

(4) promptly comply with reasonable requests for information[.]

19. Because Respondent made unwelcome advances in an attempt to create an inappropriate relationship of a sexual nature with his court-appointed client, Ms. Shafer, he has violated Rule 8.4(a) and (d) [attempted violation of Rule 1.8(j) of the Rules of Professional Conduct<sup>1</sup>], which provides as follows:

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

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<sup>1</sup> Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

(j) A lawyer shall not have sexual relations with a client whom the lawyer personally represents during the legal representation unless a consensual sexual relationship existed between them at the commencement of the lawyer/client relationship. For purposes of this rule, "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a client or causing such client to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party or as a means of abuse.

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

\* \* \*

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

## **COUNT II**

**I.D. No. 22-03-255**

### **Complaint of Cletis W. Rogers**

20. In a complaint, received by the ODC on July 7, 2022, Cletis W. Rogers stated that he and Respondent had entered into an agreement for representation in a civil matter, and Mr. Rogers had paid Respondent \$500.00 to file an injunction on his behalf.
21. According to the complaint, Respondent had not done the work and Mr. Rogers wanted his money refunded.
22. By letter dated July 27, 2022, the ODC advised Respondent that it had opened a complaint based upon the complaint filed by Mr. Rogers and directed him to file a response to the allegations within twenty days.
23. By letter dated August 15, 2022, received by the ODC on August 16, 2022, Respondent provided a verified response to the complaint.
24. Respondent stated that he had agreed to represent Mr. Rogers in an injunction in Clay County, West Virginia, in September 2021. Respondent said that the injunction was regarding a right of way to Mr. Rogers' property that was being blocked, and he wanted to use the right of way to haul timber cut upon his land.

25. Respondent asserted that during late fall/early winter of 2021, Mr. Rogers informed him that there was no hurry in filing the injunction because the weather would be bad until spring.
26. Respondent said no communication with Mr. Rogers followed until he received a summons that he had been sued by Mr. Rogers in Clay County Magistrate Court on December 14, 2021.
27. Respondent said that the Magistrate awarded Mr. Rogers judgment for \$700.00 (\$500.00 refund plus \$200.00 filing fee) on March 7, 2022.
28. Mr. Rogers replied to Respondent's response and stated that he did not instruct Respondent to wait until spring to proceed with the matter.
29. On or about December 8, 2022, Respondent satisfied the civil judgment owed to Mr. Rogers.
30. Because Respondent neglected Mr. Rogers' case and failed to take appropriate action in the matter, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides as follows:

**Rule 1.3. Diligence.**

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

31. Because Respondent failed to make reasonable efforts consistent with the stated and agreed upon objectives of Mr. Rogers, he has violated Rule 3.2 of the Rules of Professional Conduct which provides as follows:

**Rule 3.2. Expediting litigation.**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

32. Because Respondent failed to return the unearned fee paid to him by Mr. Rogers upon termination of representation, he has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides as follows:

**Rule 1.16. Declining or terminating representation.**

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

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33. Rule 9.22(a) of the ABA Model Standards for Imposing Lawyer Sanctions indicates that prior disciplinary offenses constitute an aggravating factor. Respondent has previously been the subject of eight disciplinary sanctions. Respondent was admonished by the Investigative Panel of the Lawyer Disciplinary Board for not responding to the ODC in violation of Rule 8.1(b)<sup>2</sup> and a conflict issue in violation of Rule 1.8, and was also warned regarding client communication, fees, and terminating client representation involving Rules 1.4, 1.5, and 1.16 on May 12, 2007. Respondent was twice admonished by the Investigative Panel on October 25, 2008, for not responding to the ODC in violation of Rule 8.1(b) and warned about being diligent and communicating with clients involving Rules 1.3 and 1.4 in one matter, and for not responding to the

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<sup>2</sup> All the rules listed in this paragraph regard the Rules of Professional Conduct.




ODC in violation of Rule 8.1(b) and warned regarding his fees pursuant to Rule 1.5 in another matter. On April 27, 2013, Respondent was issued two admonishments for not responding to ODC in violation of Rule 8.1(b) in one matter, and for not responding to the ODC in violation of Rule 8.1(b) along with being directed to update his phone number with the State Bar in another matter. Respondent was admonished for inaccurate billing to the Public Defender Services in violation of Rules 3.3, 4.1, and 8.4 on April 13, 2018. On June 10, 2019, Respondent was suspended for thirty days by the Supreme Court of Appeals of West Virginia, being found in violation of Rules 1.4 and 8.1(b), and on March 14, 2022, Respondent was suspended for six months by the Supreme Court, being found in violation of Rules 1.3, 8.4(d), 1.4, 1.5(b) and 8.1(b).

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Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 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 15<sup>th</sup> day of December, 2022,  
and **ISSUED** this 15<sup>th</sup> the day of December, 2022.

  
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**Letitia Neese Chafin, Chairperson**  
Investigative Panel  
Lawyer Disciplinary Board

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**CERTIFICATE OF SERVICE**

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This is to certify that I, Renée N. Frymyer, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 19<sup>th</sup> day of December, 2022, served a true copy of the foregoing "**STATEMENT OF CHARGES.**" upon Respondent Jeffery A. Davis, Sr., by mailing the same via United States Mail, with sufficient postage, to the following address:

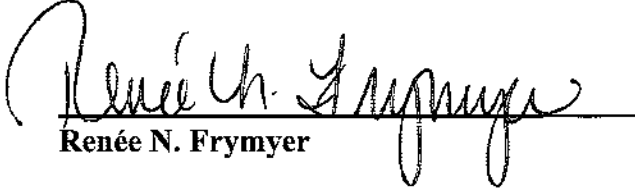
Jeffery A. Davis, Sr., Esquire  
Post Office Box 175  
Wallback, WV 25285

And upon the Hearing Panel Subcommittee at the following address:

Richard A. Pill, Esquire  
85 Aikens Center  
Martinsburg, WV 25404

David A. Wandling, Esquire  
1 Washington Avenue, Suite 200  
Logan, WV 25601

Cynthia Tawney  
3836 Indian Creek Drive  
Elkins, WV 25071

  
Renée N. Frymyer