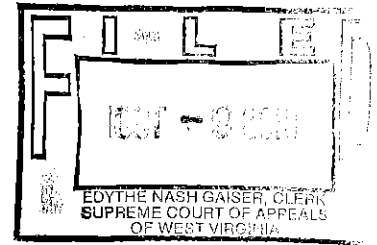


**BEFORE THE INVESTIGATIVE PANEL
OF THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**



In Re: Daniel R. Grindo, a member of
The West Virginia State Bar

Bar No.: 9131
I.D. No.: 17-03-308

STATEMENT OF CHARGES

To: Daniel R. Grindo, Esquire
624 Elk Street
Gassaway, West Virginia 26624

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. Daniel R. Grindo (hereinafter "Respondent") is a lawyer practicing in Gassaway, which is located in Braxton County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on September 24, 2002. 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. 17-03-308
Complaint of the Office of Disciplinary Counsel

2. This complaint was opened after a review of Respondent's billing vouchers submitted to the Public Defender Services Corporation (hereinafter referred to as PDS) for work performed on multiple dates. Respondent subsequently entered into a Conciliation Agreement with PDS on June 4, 2015, which stated the following:

WHEREAS, PDS' audit of the vouchers submitted by [Respondent] found that, since January 1, 2013, [Respondent] has exceeded thirty (30) hours of billing on five (5) dates; twenty-four (24) hours of billing on sixteen (16) dates; twenty (20) hours of billing on forty-seven (47) dates; and fifteen (15) hours of billing on ninety-six (96) dates;

WHEREAS, PDS' audit did not include the time that was billed by Daniel K. Armstrong for these same dates.¹

...

WHEREAS, [Respondent] disclosed that the business model for the law firm consisted of the utilization of non-attorneys to deliver legal services to clients under the supervision and direction of attorneys and that the time devoted by the non-attorneys to the performance of legal tasks was billed at the rates of compensation for "attorney work" under the Governing Act because [Respondent] claims that, otherwise, his office loses money when using staff to perform such services at the rates permitted for paralegal services under the provisions of the Governing Act;

3. The agreement further states that Respondent was cooperative and agreed to various provisions set forth in the agreement. Respondent agreed to make restitution in the amount of \$1,927.86 for payments made to PDS for mileage reimbursements and have

¹Mr. Armstrong was an associate in Respondent's law office.

been determined to be duplicative and payments made for postage charges which, upon review, were overstated. Respondent further agreed to the reduction of vouchers that were presently held by PDS for payment by one-third of the total amount. The total amount of the reduction amounted to \$40,425.90, and represented reflected legal services provided by non-attorneys, but billed at an attorney rate.

4. Respondent further agreed to seek independent counsel regarding his possible obligation to self-report this matter to the Office of Disciplinary Counsel. Respondent agreed to report the matter to ODC if counsel advised to do so. If counsel advised him that a self report was not necessary, he was to indicate the same to PDS. The conciliation agreement stated should Respondent not obtain an opinion, PDS would “independently determine whether the matter should be reported to the Office of Disciplinary Counsel.”
5. Respondent filed a timely response and admitted that he had made mistakes in his billing, but noted that he had been cooperative with PDS in addressing the issues and correcting them. Respondent stated he had been using a timekeeping system that he had learned from other attorneys who had been practicing for many years. Respondent further noted that the Executive Director of PDS, Mr. Eddy, had advised Respondent that he did not believe Respondent was attempting to defraud PDS. Respondent said he had paid the ordered restitution and had changed his timekeeping practice. With regard to the provision requiring Respondent to consult counsel on the issue of self-

reporting, Respondent stated that while he did not seek a formal opinion from counsel, he did speak informally to “several attorneys throughout the process.” Respondent stated that after those discussion, and his communications with PDS, he was of the belief that the matter was “being treated as a procedural correction.”

6. By letter dated December 27, 2017, ODC inquired of Mr. Eddy who stated that according to his records and notes, Respondent advised Mr. Eddy on August 10, 2015, that he would self-report his conduct to the Office of Disciplinary Counsel. Mr. Eddy stated he subsequently contacted Respondent to confirm his self-report and Respondent confirmed that he had conversations with the ODC.
7. There is no record that Respondent ever reported this matter to ODC or that he sought informal advice regarding the same.
8. Respondent was provided a copy of Mr. Eddy’s December 27, 2017 letter and was asked to provide an additional response regarding his representation to ODC. Respondent stated that he did not dispute Mr. Eddy’s recitation of the events, and that it appeared he neglected to make the self-report.
9. Because Respondent submitted vouchers wherein he claimed he billed thirty (30) hours of billing on five (5) dates; twenty-four (24) hours of billing on sixteen (16) dates; twenty (20) hours of billing on forty-seven (47) dates; and fifteen (15) hours of billing on ninety-six (96) dates in various cases wherein he was court appointed to

represent indigent clients, he has violated Rule 1.5(a)² of the Rules of Professional Conduct, which provides as follows:

Rule 1.5. Fees.

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

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

10. Because Respondent submitted those false billing vouchers to the Circuit Court for approval, Respondent violated Rule 3.3(a)(1)³ of the Rules of Professional Conduct, which provides as follows:

Rule 3.3. Candor toward the tribunal.

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal.

²Because Respondent's misconduct occurred prior to January 1 2015, the Rules in effect prior to that date are applicable here.

³Because Respondent's misconduct occurred prior to January 1 2015, the Rules in effect prior to that date are applicable here.

11. Because Respondent engaged in a pattern and practice of submitting vouchers and claims for fees wherein he knowingly billed paralegal services at an attorney rate and therefore failed to accurately comply with W.Va. Code §29-21-13a(g), he has violated Rule 8.4(d)⁴ of the Rules of Professional Conduct, which provides:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

12. Because Respondent committed criminal acts of fraudulent schemes in violation of W.Va. Code § 61-3-24d⁵, Respondent violated Rule 8.4(b)⁶ of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

13. In an effort to avoid inquiry into his over-billing to PDS that would subject him to disciplinary action, Respondent knowingly deceived and intentionally made false statements to PDS regarding his statements regarding his self report to ODC. Additionally, Respondent's initial representation to ODC regarding the self-report

⁴Because Respondent's misconduct occurred prior to January 1 2015, the Rules in effect prior to that date are applicable here.

⁵West Virginia Code §61-3-24d states "(a) Any person who willfully deprives another of any money, goods, property or services by means of fraudulent pretenses, representations or promises shall be guilty of the larceny thereof. (b) In determining the value of the money, goods, property or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan."

⁶Because Respondent's misconduct occurred prior to January 1 2015, the Rules in effect prior to that date are applicable here.

clause of the agreement was misleading, and as such has violated Rules 8.1(a)⁷ and 8.4(c)⁸ of the Rules of Professional Conduct, which provides as follows:

Rule 8.1. Bar admission and disciplinary matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact.

Rule 8.1 Bar Admission and Disciplinary Matters.

[Effective January 1, 2015]

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact.

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

Rule 8.4. Misconduct.

[Effective January 1, 2015]

It is professional misconduct for a lawyer to:

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

* * *

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

⁷Because Respondent's misconduct occurred prior to January 1, 2015, as well as after that date, both version of the Rules apply.

⁸Because Respondent's misconduct occurred prior to January 1, 2015, as well as after that date, both version of the Rules apply.

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 29th day of September, 2018, and
ISSUED this 1st day of October, 2018.



Nicole A. Cofer, Chairperson
Investigative Panel
Lawyer Disciplinary Board