

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

**Re:** Jeffery A. Davis, a member of  
The West Virginia State Bar

**Bar No.:** 6247  
**I.D. No.:** 18-05-547

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**STATEMENT OF CHARGES**

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**To:** Jeffery A. Davis  
226 Main Street  
Spencer, West Virginia 25276

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

1. Jeffery A. Davis (hereinafter "Respondent") is a lawyer practicing in Clay, which is located in Clay 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.

**COUNT I**

**I.D. No. 18-05-547**

**Complaint of Denver Rucker**

2. On or about November 7, 2017, Denver Rucker (hereinafter "Complainant") was indicted for manufacturing a Schedule I controlled substance; three counts wanton

endangerment with a firearm; use or presentation of a firearm during commission of a felony; illegal possession of destructive devices, explosive materials or incendiary devices; four counts of causing death or injury; and four counts of wanton endangerment involving destructive devices, explosive materials or incendiary devices in the Clay County Circuit Court Case No. 17-F-44.

3. On or about November 14, 2017, an arraignment hearing was held in Complainant's case, and Respondent represented him as his counsel at that hearing.
4. On or about February 7, 2018, Complainant entered a guilty plea to manufacturing a Schedule I controlled substance, one count of wanton endangerment with a firearm, and one count of wanton endangerment involving destructive devices, explosive materials or incendiary devices. The rest of the counts from the indictment were dismissed pursuant to the plea agreement.
5. On or about March 19, 2018, Complainant was sentenced to one to five years for manufacturing a Schedule I controlled substance, five years for wanton endangerment with a firearm, and two to ten years for wanton endangerment involving destructive devices, explosive materials or incendiary devices. Complainant was credited for 580 days. The sentencing Order noted that Complainant was advised on his right to appeal.
6. On or about October 16, 2018, Complainant filed a letter with the Clay County Circuit Clerk asking if Respondent had filed a motion for reconsideration and requesting a copy of the motion along with the docket sheet showing the filing.

The letter also noted that communication had broken down between Complainant and Respondent.

7. On or about December 6, 2018, Complainant filed an ethics complaint against Respondent. Complainant alleged Respondent had failed to provide his client file after Complainant requested the client file. Complainant provided a copy of an October 23, 2018 letter from Complainant to Respondent about Respondent's failure to file a motion for reconsideration and to file for the return of Complainant's property and non-contraband items. Complainant indicated that these requests were not shown on his docket sheet despite the fact that Respondent had told Complainant's wife that the motion for reconsideration had been filed, and had also told Complainant that he was going to file for the return of the property. The letter also requested a copy of the client file.
8. On or about January 14, 2019, Respondent filed a response to the ethics complaint. Respondent stated he was retained to represent Complainant for the indictment and that the case was resolved by the plea agreement. Respondent said Complainant was denied any alternative sentence and was sentenced to the penitentiary. Respondent stated that he spoke with Complainant and his wife about a motion for reconsideration and the return of items of personal property that were seized during the arrest. Respondent noted Complainant was in poor health due to the explosion that resulted in some of his felony charges. Respondent said he did not have direct contact with Complainant after the sentencing hearing, but spoke

with his wife on a weekly basis about a possible motion for reconsideration and the return of personal property.

9. Respondent stated he received a letter in October of 2018 that was purportedly from Complainant requesting his client file. Respondent said he had been in contact with the Clay County Prosecutor's Office about the return of the personal property, and they were trying to correlate the return of the property, but the state police commander was on leave. Respondent stated that Complainant's wife advised him that Complainant's health had declined and he was in the hospital. Respondent said he "decided that a Motion for compassionate release based upon his health issues was a better option than a Motion to Reconsider." Respondent indicated that he was not in a rush to send Complainant his client file because he wanted to finish the motion and to retrieve Complainant's property.
10. On or about March 5, 2019, Complainant filed a reply. Complainant stated that Respondent was not available when Complainant's wife attempted to return his telephone calls. Complainant said his wife was told that Respondent would return the telephone call, but that never happened. Complainant stated he still had not received his client file, and believed Respondent could make a copy of the client file in order to keep working on the case and return the file to Complainant. Complainant denied being provided a copy of the Motion for Compassionate Release.
11. On or about April 10, 2019, Respondent filed a "Motion," which stated that Complainant was "suffering from AFib, congestive heart failure, and most



recently lung cancer. Due to the recent diagnosis and treatment for the aforementioned lung cancer, [Complainant] must undergo surgery.” The Motion requested the court to reduce or modify the sentence against Complainant.

12. On or about April 11, 2019, the Clay County Circuit Court denied the Motion based upon the motion not being timely filed as required by Rule 35(b)<sup>1</sup> of the West Virginia Rules of Criminal Procedure. Further, it stated the Court had previously denied Complainant’s motion to reconsider.
13. On or about June 21, 2019, Respondent sent correspondence to Disciplinary Counsel indicating that Complainant’s client file had been sent to Complainant. Also, on or about June 21, 2019, Respondent sent correspondence to Complainant informing him that the Clay County Circuit Court had denied his Motion without a hearing. Respondent stated in the letter that he filed the motion due to medical conditions that arose after the 120 day time limit required by Rule 35(b).
14. On or about June 30, 2019, the Clay County Circuit Court entered an Amended Order Denying Motion to Reconsider Sentence stating that April 11, 2019 Order “erroneously set forth that a motion to reconsider had been previously filed, . . .”

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<sup>1</sup> West Virginia Rules of Criminal Procedure.

Rule 35. Correction or reduction of sentence.

- (a) Correction of sentence. – The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time period provided herein for the reduction of sentence.
- (b) Reduction of sentence. – A motion to reduce a sentence may be made, or the court may reduce a sentence without motion within 120 days after the sentence is imposed or probation is revoked, or within 120 days after the entry of a mandate by the supreme court of appeals upon affirmance of a judgment of a conviction or probation revocation or the entry of an order by the supreme court of appeals dismissing or rejecting a petition for appeal of a judgment of a conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

15. On or about July 1, 2019, Disciplinary Counsel sent Complainant a letter asking if he signed a retainer agreement with Respondent, and to provide a copy of such. Further, Complainant was asked if he received the property and contraband items that he wanted Respondent to file to recover for him.
16. On or about July 17, 2019, Complainant wrote that Respondent was going to file for a return of property and non-contraband motion with the court, but failed to do so.
17. On or about July 22, 2019, Disciplinary Counsel wrote to Complainant asking if he recalled signing a retainer agreement with Respondent. Disciplinary Counsel also wrote Respondent on or about July 22, 2019, asking if he had a written fee agreement with Complainant, and to provide a copy of it if one existed, or to explain why there was not one as it has been required since January 1, 2015.
18. On or about July 24, 2019, Complainant provided receipts for Respondent's representation of him. One receipt was dated February 15, 2017, and was for \$1,000.00. The second receipt was dated January 11, 2018, and was for \$6,000.00. Below the copy of the two receipts was a hand written note saying "no written agreement." Complainant also provided a copy of a recent news article that noted Respondent had been suspended 30 days on June 17, 2019.
19. Respondent failed to respond to Disciplinary Counsel's July 22, 2019 letter. Another letter was sent to Respondent on or about August 26, 2019, by certified and regular mail, asking for him to respond by September 5, 2019. Respondent signed the green card, and it was returned to ODC on August 30, 2019.

20. On or about September 4, 2019, Respondent filed a response, noting that he mailed Complainant the entire client file, less his personal notes. Respondent could not locate an employment contract, even after searching his office. Respondent stated he remembered the contract had been signed by Complainant and his wife while Complainant was hospitalized. Respondent provided a blank contract that he would have used in that kind of case.
21. Because Respondent failed to timely file a motion for reconsideration and motion to return property for Complainant, he violated Rules 1.3 and 8.4(d) 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.

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

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

22. Because Respondent failed to communicate with Complainant about the Motion to reconsider, he violated Rule 1.4 of the Rules of Professional Conduct, which provides as follows:

**Rule 1.4. Communication.**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0 (e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

23. Because Respondent failed to have a written fee agreement with Complainant, he violated Rule 1.5(b) of the Rules of Professional Conduct, which provides as follows:

**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 to the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client in writing.

24. Because Respondent failed to respond to Disciplinary Counsel's letter, he violated Rule 8.1(b) of the Rules of Professional Conduct, which provides as follows:

**Rule 8.1. Bar Admission and Disciplinary Matters.**

. . . [A] lawyer . . . in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority . . .

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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 17<sup>th</sup> day of October, 2020, and **ISSUED** this 20<sup>th</sup> day of October, 2020.

  
**Amy C. Crossan, Chairperson**  
Investigative Panel  
Lawyer Disciplinary Board