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

In Re: DAVID R. TYSON, a member of
The West Virginia State Bar

Bar No.: 3828

I.D. Nos.: 17-06-346, 19-06-361
19-06-365, 19-06-370
& 20-06-054

STATEMENT OF CHARGES

**DO NOT REMOVE
FROM FILE**

To: David R. Tyson, Esquire
929 - 4th Avenue, Suite 300
Huntington, West Virginia 25701

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. David R. Tyson (hereinafter "Respondent") is a lawyer practicing in Huntington, which is located in Cabell County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on September 30, 1980. 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. 17-06-346

Complaint of the Office of Lawyer Disciplinary Counsel

2. On or about July 31, 2017, the Office of Lawyer Disciplinary Counsel sent Respondent correspondence via United States Mail in which he was notified that a

complaint had been opened against him in the name of the Office of Lawyer Disciplinary Counsel based upon a review of billing vouchers he had submitted for payment to the Public Defender Services Corporation (hereinafter “PDS”) on multiple days. Respondent was provided a copy of vouchers which reflected as follows:

- a. On August 17, 2015, Respondent billed the PDS for 19.5 hours for 8 separate vouchers submitted between August 21, 2015 and November 17, 2015;
 - b. On November 13, 2015, Respondent billed the PDS for 20.3 hours for 9 separate vouchers submitted between November 23, 2015 and April 25, 2016;
 - c. On November 19, 2015, Respondent billed the PDS for 18.2 hours for 7 separate vouchers submitted between November 23, 2015 and January 15, 2016;
 - d. On May 16, 2016, Respondent billed the PDS for 18.4 hours for 7 separate vouchers submitted between May 18, 2016 and October 18, 2016;
 - e. On August 23, 2016, Respondent billed the PDS for 23.9 hours for 10 separate vouchers submitted between August 23, 2016 and March 23, 2017; and
 - f. On February 24, 2017, Respondent billed the PDS for 19.6 hours for 7 separate vouchers submitted between March 6, 2017 and May 23, 2017.
3. In the July 31, 2017 correspondence, Respondent was asked to review and address the billing vouchers he had submitted for payment to the PDS, as set forth above, in his response to the complaint.

4. On or about August 22, 2017, the Office of Lawyer Disciplinary Counsel received correspondence via United States Mail from Timothy C. Bailey, Esquire, in which he noted his appearance as counsel to Respondent and in which he requested an extension of time until September 21, 2017 to respond to the complaint. The request for an extension of time was granted.
5. Thereafter, on or about September 19, 2017, the Office of Lawyer Disciplinary Counsel received correspondence via United States Mail from Mr. Bailey in which he requested an additional extension of time until October 31, 2017 to respond to the complaint. The request for an extension of time was granted.
6. On or about October 31, 2017, the Office of Lawyer Disciplinary Counsel received a copy of Respondent's response to the complaint via United States Mail.
7. In his response, Respondent, through counsel, acknowledged that he had made billing errors in the vouchers he submitted to PDS, but asserted that his billing errors were unintentional. Respondent stated that PDS did not address any concerns about his vouchers prior to the complaint being filed by ODC, and that he would have cooperated with PDS and rectified any errors.
8. In response to ODC's inquiries about the specific dates listed in the complaint, Respondent stated as follows:
 - a. Respondent noted that he had errors on five of the vouchers submitted on August 17, 2015, which reduced his billable hours from 19.5 hours to 11.8 hours;

- b. Respondent noted that one of the vouchers submitted on November 13, 2015 was submitted twice and that PDS did not pay him twice, which reduced his billable hours from 20.3 hours to 16.1 hours;
 - c. Respondent noted that he had an error on one of the vouchers submitted on November 19, 2015, which reduced his billable hours from 18.2 hours to 17.2 hours;
 - d. Respondent noted that he had errors on three of the vouchers submitted on May 16, 2016, which reduced his billable hours from 18.4 hours to 15.6 hours;
 - e. Respondent noted that the vouchers submitted on August 23, 2016 did not contain any errors, and thus his 23.9 billable hours submitted were correct; and
 - f. Respondent noted that he had errors on two of the vouchers submitted on February 24, 2017, including a voucher that contained a billing error that Respondent had previously reported to PDS, which reduced his billable hours from 19.6 hours to 11.6 hours.
9. Respondent stated that the billing errors were unintentional and that he would cooperate with PDS to rectify the errors.
10. On or about December 13, 2017, the Office of Lawyer Disciplinary Counsel sent correspondence to Dana F. Eddy, Executive Director of the PDS, in which it requested information concerning specific vouchers Respondent had submitted in a number of cases.

11. On or about December 29, 2017, the Office of Lawyer Disciplinary Counsel received correspondence from Director Eddy dated December 27, 2017 in which Director Eddy stated “[a]s of the date of December 15, 2017, no payment of any amount for any purpose has been received from David R. Tyson.”
12. On or about January 4, 2018, the Office of Lawyer Disciplinary Counsel sent correspondence to the Circuit Courts of Wayne County and Cabell County, West Virginia, in which it requested copies of the docket sheets and all payment vouchers Respondent had submitted in a number of cases.
13. On or about January 9, 2018, the Office of Lawyer Disciplinary Counsel received copies of the “Order Approving Payment of Appointed Counsel Fees and Expenses” for Respondent in various cases in which he was appointed counsel from the Circuit Court of Cabell County, West Virginia.
14. On or about January 10, 2018, the Office of Lawyer Disciplinary Counsel received copies of the “Order Approving Payment of Appointed Counsel Fees and Expenses” for Respondent in various cases in which he was appointed counsel from the Circuit Court of Wayne County, West Virginia.
15. On or about January 11, 2018, the Office of Lawyer Disciplinary Counsel received documents from PDS in response to its December 13, 2017 correspondence.
16. Also, on or about January 11, 2018, the Office of Lawyer Disciplinary Counsel served Lori J. Paletta-Davis, Esquire, Administrative Counsel with the Administrative Office of the Courts, Supreme Court of Appeals of West Virginia, with an Investigative

Subpoena *Duces Tecum*. The Investigative Subpoena *Duces Tecum* requested, in pertinent part, any and all Mental Health Commissioner billing records for Respondent.

17. On or about March 26, 2018, the Office of Lawyer Disciplinary Counsel received copies of the “Mental Hygiene Commissioner Billing Forms” for Respondent in various cases in which he was appointed Mental Hygiene Commissioner in cases in Wayne County, West Virginia.
18. On or about January 25, 2019, the Office of Lawyer Disciplinary Counsel sent correspondence to Director Eddy in which it requested a list of attorneys who had billed PDS for fifteen (15) or more hours a day from January 25, 2017 to the present day, as well as requested the PDS annual report that contained the total number of hours billed per attorney in 2018.
19. On or about January 30, 2019, the Office of Lawyer Disciplinary Counsel received correspondence from PDS in response to its January 25, 2019 request for information. PDS’s correspondence provided a list of all attorneys who had billed PDS for fifteen (15) or more hours a day from January 25, 2017 to January 29, 2019. The January 30, 2019 correspondence also noted that PDS was unable to provide the annual report that contained the total number of hours billed per attorney in 2018, as such report was not yet completed.

20. On or about February 14, 2019, the Office of Lawyer Disciplinary Counsel sent correspondence to Director Eddy in which it requested, in pertinent part, additional billing records for Respondent.
21. On or about March 22, 2019, the Office of Lawyer Disciplinary Counsel received vouchers from PDS in response to its February 14, 2019 correspondence.
22. On or about March 27, 2019, the Office of Lawyer Disciplinary Counsel sent Respondent's counsel, Mr. Bailey, correspondence in which it informed him that it had received additional information from PDS regarding Respondent's billing vouchers that he had submitted for payment to PDS, and in which it requested that Respondent explain his time based vouchers which reflected as follows:
 - A. On February 27, 2017, Respondent billed the PDS for 18.1 hours;
 - B. On March 10, 2017, Respondent billed the PDS for 18.0 hours;
 - C. On April 12, 2018, Respondent billed the PDS for 18.1 hours;
 - D. On September 20, 2018, Respondent billed the PDS for 19.7 hours;
 - E. On October 15, 2018, Respondent billed the PDS for 24.4 hours;
 - F. On November 16, 2018, Respondent billed the PDS for 20.1 hours;
 - G. On November 19, 2018, Respondent billed the PDS for 25.1 hours;
 - H. On December 6, 2018, Respondent billed the PDS for 27.0 hours; and
 - I. On December 17, 2018, Respondent billed the PDS for 24.7 hours.

23. On or about April 2, 2019, the Office of Lawyer Disciplinary Counsel received correspondence via facsimile from Respondent in which he acknowledged receipt of the March 27, 2019 correspondence to Mr. Bailey.
24. On or about April 4, 2019, the Office of Lawyer Disciplinary Counsel sent correspondence to Ms. Paletta-Davis in which it requested, in pertinent part, information regarding whether Respondent was compensated for providing legal services as a guardian *ad litem* for the family court system, or for providing legal services to the mental hygiene system from January 25, 2017 to the present day.
25. On or about April 8, 2019, the Office of Lawyer Disciplinary Counsel received, via United States Mail, a copy of Respondent's April 2, 2019 correspondence as noted above.
26. On or about April 9, 2019, the Office of Lawyer Disciplinary Counsel received correspondence from Timothy C. Bailey, Esquire, in which he advised that he was no longer Respondent's counsel in his disciplinary matter. Thereafter, on or about April 11, 2019, the Office of Lawyer Disciplinary Counsel received correspondence via facsimile from Respondent in which he requested an extension of time to respond to the Office of Lawyer Disciplinary Counsel's March 27, 2019 correspondence. The request for an extension of time was granted telephonically by the Office of Lawyer Disciplinary Counsel.
27. On or about April 30, 2019, the Office of Lawyer Disciplinary Counsel received a copy of Respondent's response to its March 27, 2019 correspondence.

28. In his response, Respondent acknowledged that he had made multiple billing errors in the vouchers he submitted to PDS, but asserted that his billing errors were unintentional. Respondent stated that he was preparing amended vouchers that reflected the proper time he spent on his cases, and that he looked forward to working with PDS to fix the problem and to repay PDS the amount it deemed appropriate from his amended voucher submissions.
29. In response to ODC's inquiries about the specific dates listed in the March 27, 2019 correspondence, Respondent stated as follows:
- a. Respondent noted that his hours billed on February 27, 2017 were 18.1 hours, but after review, the time should be reduced by 7.5 hours to total 10.6 hours;
 - b. Respondent noted that his hours billed on March 10, 2017 were 18.0 hours, but after review, the time should be reduced by 6.3 hours to total 11.7 hours;
 - c. Respondent noted that his hours billed on April 12, 2018 were 18.1 hours, but after review, the time should be reduced by 7.8 hours to total 10.3 hours;
 - d. Respondent noted that his hours billed on September 20, 2018 were 19.7 hours, but after review, the time should be reduced by 8.0 hours to total 11.7 hours;
 - e. Respondent noted that his hours billed on October 15, 2018 were 24.4 hours, but after review, the time should be reduced by 12.3 hours to total 12.1 hours;
 - f. Respondent noted that his hours billed on November 16, 2018 were 20.1 hours, but after review, the time should be reduced by 11.1 hours to total 9.0 hours;

- g. Respondent noted that his hours billed on November 19, 2018 were 25.1 hours, but after review, the time should be reduced by 14.7 hours to total 10.4 hours;
 - h. Respondent noted that his hours billed on December 6, 2018 were 27.0 hours, but after review, the time should be reduced by 16.2 hours to total 10.8 hours; and
 - i. Respondent noted that his hours billed on December 17, 2018 were 24.7 hours, but after review, the time should be reduced by 12.5 hours to total 12.2 hours.
30. On or about May 28, 2019, the Office of Lawyer Disciplinary Counsel received documents responsive to its April 4, 2019 inquiry to Ms. Paletta-Davis in which it requested, in pertinent part, information regarding whether Respondent was compensated for providing legal services as a guardian *ad litem* for the family court system, or for providing legal services to the mental hygiene system from January 25, 2017 to the present day. Keith R. Hoover, Administrative Counsel, Supreme Court of Appeals of West Virginia, responded on behalf of the Court and the Office of Lawyer Disciplinary Counsel was informed that Respondent was not compensated for providing legal services as a guardian *ad litem* for the family court system, or for providing legal services to the mental hygiene system from January 25, 2017 to the present day.
31. Thereafter, on or about October 31, 2019, the Office of Lawyer Disciplinary Counsel received D. Scott Bellomy, Esquire's Notice of Appearance as counsel on Respondent's behalf.

32. On or about November 16, 2020, Respondent, with Mr. Bellomy, appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel in Charleston, West Virginia. Respondent acknowledged that mistakes in his billing occurred and testified that he believed that he submitted corrected, amended vouchers to PDS.
33. On or about December 11, 2020, the Office of Lawyer Disciplinary Counsel received from PDS via electronic mail Respondent's Fiscal Years 2017 through 2020 Totals. In 2017, Respondent submitted a total of 2,556.7 hours to PDS for 213 claims, with a total amount billed of \$132,498.21. In 2018, Respondent submitted a total of 1,753.6 hours to PDS for 199 claims, with a total amount billed of \$92,649.84. In 2019, Respondent submitted a total of 3,491.2 hours to PDS for 330 claims, with a total amount billed of \$176,853.83. In 2020, to date, Respondent submitted a total of 1,275.0 hours to PDS for 141 claims, with a total amount billed of \$68,542.84.
34. Because Respondent charged unreasonable fees by charging over twenty-four (24) hours on four (4) different dates in various cases wherein he was court appointed to represent indigent clients, along with charging fifteen (15) hours or more on an additional eleven (11) days, he violated Rule 1.5(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.5. Fees.

- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. 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 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.

35. Because Respondent submitted false billing statements to Circuit Courts, Respondent violated Rule 3.3(a)(1) 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 fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

36. Because Respondent committed criminal acts of fraudulent schemes in violation of W.Va. Code § 61-3-24d,¹ Respondent violated Rule 8.4(b) of the Rules of Professional Conduct, which provides as follows:

¹ West 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.”

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;

37. Because Respondent submitted false billings to the PDS and circuit court judges which he knew were not "for actual and necessary time," he violated Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice

COUNT II

I.D. No. 19-06-365

Complaint of the Office of Lawyer Disciplinary Counsel

38. On or about August 26, 2019, the Office of Lawyer Disciplinary Counsel sent Respondent correspondence via United States Mail in which he was notified that a complaint had been opened against him in the name of the Office of Lawyer Disciplinary Counsel based on documents received from PDS on August 23, 2019. Respondent was informed that PDS notified the Office of Lawyer Disciplinary Counsel that he had billed an excessively high number of hours for July and August

of 2019, and that PDS denied payment on all of his vouchers submitted for that time period. Respondent was further informed that he had billed PDS for at least 1,723 hours between January 1, 2019 and July 1, 2019, and that PDS stated that it would deny payment on all of Respondent's future vouchers until his billing issues were resolved. Respondent was provided a copy of vouchers which reflected as follows:

- a. On July 1, 2019, Respondent billed the PDS for 18.6 hours for 10 separate vouchers submitted between July 1, 2019 and August 5, 2019;
- b. On July 2, 2019, Respondent billed the PDS for 20.0 hours for 11 separate vouchers submitted between July 2, 2019 and August 5, 2019;
- c. On July 3, 2019, Respondent billed the PDS for 16.6 hours for 11 separate vouchers submitted between July 17, 2019 and August 8, 2019;
- d. On July 5, 2019, Respondent billed the PDS for 11.4 hours for 9 separate vouchers submitted between July 26, 2019 and August 8, 2019;
- e. On July 6, 2019, Respondent billed the PDS for 17.2 hours for 10 separate vouchers submitted between July 12, 2019 and August 8, 2019;
- f. On July 8, 2019, Respondent billed the PDS for 20.3 hours for 13 separate vouchers submitted between July 12, 2019 and August 16, 2019;
- g. On July 9, 2019, Respondent billed the PDS for 23.9 hours for 13 separate vouchers submitted between July 12, 2019 and August 8, 2019;
- h. On July 10, 2019, Respondent billed the PDS for 27.1 hours for 11 separate vouchers submitted between July 12, 2019 and August 7, 2019;

- i. On July 11, 2019, Respondent billed the PDS for 16.8 hours for 12 separate vouchers submitted between July 15, 2019 and August 15, 2019;
- j. On July 12, 2019, Respondent billed the PDS for 14.3 hours for 7 separate vouchers submitted between July 15, 2019 and August 8, 2019;
- k. On July 13, 2019, Respondent billed the PDS for 10.4 hours for 7 separate vouchers submitted between July 15, 2019 and August 8, 2019;
- l. On July 14, 2019, Respondent billed the PDS for 14.6 hours for 11 separate vouchers submitted between July 15, 2019 and August 8, 2019;
- m. On July 15, 2019, Respondent billed the PDS for 19.2 hours for 11 separate vouchers submitted between July 15, 2019 and August 2, 2019;
- n. On July 16, 2019, Respondent billed the PDS for 17.0 hours for 9 separate vouchers submitted between July 17, 2019 and August 7, 2019;
- o. On July 17, 2019, Respondent billed the PDS for 18.4 hours for 8 separate vouchers submitted between July 18, 2019 and July 31, 2019;
- p. On July 18, 2019, Respondent billed the PDS for 20.0 hours for 7 separate vouchers submitted between July 18, 2019 and August 7, 2019;
- q. On July 19, 2019, Respondent billed the PDS for 22.7 hours for 11 separate vouchers submitted between July 22, 2019 and August 5, 2019;
- r. On July 20, 2019, Respondent billed the PDS for 13.5 hours for 11 separate vouchers submitted between July 26, 2019 and August 8, 2019;

- s. On July 21, 2019, Respondent billed the PDS for 12.8 hours for 10 separate vouchers submitted between July 25, 2019 and August 8, 2019;
- t. On July 22, 2019, Respondent billed the PDS for 16.1 hours for 11 separate vouchers submitted between July 25, 2019 and August 8, 2019;
- u. On July 23, 2019, Respondent billed the PDS for 12.2 hours for 4 separate vouchers submitted between July 25, 2019 and July 29, 2019;
- v. On July 24, 2019, Respondent billed the PDS for 14.7 hours for 8 separate vouchers submitted between July 26, 2019 and August 2, 2019;
- w. On July 25, 2019, Respondent billed the PDS for 13.7 hours for 6 separate vouchers submitted between July 26, 2019 and July 31, 2019;
- x. On July 26, 2019, Respondent billed the PDS for 17.2 hours for 8 separate vouchers submitted between July 26, 2019 and August 2, 2019;
- y. On July 27, 2019, Respondent billed the PDS for 12.0 hours for 7 separate vouchers submitted between July 30, 2019 and August 8, 2019;
- z. On July 28, 2019, Respondent billed the PDS for 12.2 hours for 8 separate vouchers submitted between July 30, 2019 and August 8, 2019;
- aa. On July 29, 2019, Respondent billed the PDS for 14.4 hours for 7 separate vouchers submitted between July 30, 2019 and August 8, 2019;
- bb. On July 30, 2019, Respondent billed the PDS for 15.1 hours for 9 separate vouchers submitted between July 31, 2019 and August 15, 2019;

- cc. On July 31, 2019, Respondent billed the PDS for 15.0 hours for 6 separate vouchers submitted between August 1, 2019 and August 8, 2019;
- dd. On August 1, 2019, Respondent billed the PDS for 20.4 hours for 5 separate vouchers submitted between August 1, 2019 and August 5, 2019;
- ee. On August 2, 2019, Respondent billed the PDS for 11.7 hours for 6 separate vouchers submitted between August 5, 2019 and August 8, 2019;
- ff. On August 3, 2019, Respondent billed the PDS for 16.0 hours for 8 separate vouchers submitted between August 5, 2019 and August 15, 2019;
- gg. On August 4, 2019, Respondent billed the PDS for 11.0 hours for 5 separate vouchers submitted between August 5, 2019 and August 9, 2019;
- hh. On August 5, 2019, Respondent billed the PDS for 18.7 hours for 9 separate vouchers submitted between August 5, 2019 and August 15, 2019;
- ii. On August 6, 2019, Respondent billed the PDS for 22.1 hours for 8 separate vouchers submitted between August 7, 2019 and August 16, 2019;
- jj. On August 7, 2019, Respondent billed the PDS for 17.1 hours for 6 separate vouchers submitted between August 7, 2019 and August 12, 2019;
- kk. On August 8, 2019, Respondent billed the PDS for 16.3 hours for 7 separate vouchers submitted between August 9, 2019 and August 16, 2019; and
- ll. On August 9, 2019, Respondent billed the PDS for 11.8 hours for 3 separate vouchers submitted between August 9, 2019 and August 12, 2019.

39. On or about September 19, 2019, the Office of Lawyer Disciplinary Counsel received from PDS documents that Respondent had given PDS via correspondence dated September 16, 2019. The documents included the following: correspondence dated September 13, 2019 in which Respondent discussed his vouchers submitted during July and August 2019; correspondence from Circuit Court Judges in Wayne County and Cabell County, West Virginia; Respondent's time sheets from July 1, 2019 through August 21, 2019; and docket sheets from certain cases of Respondent's in Wayne County, West Virginia.
40. On or about October 2, 2019, the Office of Lawyer Disciplinary Counsel sent Respondent correspondence via United States Mail in which he was notified that the August 26, 2019 correspondence had been returned to sender marked "unclaimed." The Office of Lawyer Disciplinary Counsel enclosed the August 26, 2019 correspondence and its attachments to the October 2, 2019 correspondence and requested that Respondent file his verified response to the complaint on or before October 30, 2019.
41. Also, on or about October 2, 2019, the Office of Lawyer Disciplinary Counsel sent Director Eddy correspondence in which it requested a copy of Respondent's billing records from January 1, 2019 through June 30, 2019.
42. On or about October 18, 2019, the Office of Lawyer Disciplinary Counsel received from PDS Respondent's billing records from January 1, 2019 through June 30, 2019,

in response to its October 2, 2019 correspondence. In pertinent part, the vouchers received reflected as follows:

- a. On January 3, 2019, Respondent billed the PDS for 15.9 hours for 9 separate vouchers submitted between January 3, 2019 and March 15, 2019;
- b. On January 4, 2019, Respondent billed the PDS for 21.1 hours for 12 separate vouchers submitted between January 4, 2019 and September 25, 2019;
- c. On January 7, 2019, Respondent billed the PDS for 17.5 hours for 11 separate vouchers submitted between January 7, 2019 and April 23, 2019;
- d. On January 8, 2019, Respondent billed the PDS for 17.5 hours for 8 separate vouchers submitted between January 9, 2019 and March 26, 2019;
- e. On January 10, 2019, Respondent billed the PDS for 21.0 hours for 11 separate vouchers submitted between January 10, 2019 and September 25, 2019;
- f. On January 14, 2019, Respondent billed the PDS for 20.3 hours for 10 separate vouchers submitted between January 15, 2019 and March 26, 2019;
- g. On January 15, 2019, Respondent billed the PDS for 21.0 hours for 13 separate vouchers submitted between January 16, 2019 and September 25, 2019;
- h. On January 16, 2019, Respondent billed the PDS for 33.7 hours for 16 separate vouchers submitted between January 16, 2019 and September 25, 2019;
- i. On January 17, 2019, Respondent billed the PDS for 19.7 hours for 13 separate vouchers submitted between January 17, 2019 and March 26, 2019;

- j. On January 19, 2019, Respondent billed the PDS for 16.0 hours for 7 separate vouchers submitted between January 23, 2019 and March 14, 2019;
- k. On January 22, 2019, Respondent billed the PDS for 17.2 hours for 11 separate vouchers submitted between January 23, 2019 and March 15, 2019;
- l. On January 24, 2019, Respondent billed the PDS for 25.4 hours for 12 separate vouchers submitted between January 28, 2019 and March 26, 2019;
- m. On January 30, 2019, Respondent billed the PDS for 16.7 hours for 7 separate vouchers submitted between January 30, 2019 and March 15, 2019;
- n. On February 6, 2019, Respondent billed the PDS for 16.9 hours for 9 separate vouchers submitted between February 6, 2019 and March 26, 2019;
- o. On February 21, 2019, Respondent billed the PDS for 16.0 hours for 8 separate vouchers submitted between February 21, 2019 and March 15, 2019;
- p. On February 26, 2019, Respondent billed the PDS for 17.5 hours for 9 separate vouchers submitted between February 26, 2019 and March 15, 2019;
- q. On February 27, 2019, Respondent billed the PDS for 18.7 hours for 6 separate vouchers submitted between February 28, 2019 and March 15, 2019;
- r. On February 28, 2019, Respondent billed the PDS for 21.4 hours for 10 separate vouchers submitted between February 28, 2019 and May 8, 2019;
- s. On March 13, 2019, Respondent billed the PDS for 19.5 hours for 9 separate vouchers submitted between March 13, 2019 and May 8, 2019;

- t. On April 5, 2019, Respondent billed the PDS for 16.7 hours for 10 separate vouchers submitted between April 8, 2019 and June 26, 2019;
- u. On May 27, 2019, Respondent billed the PDS for 15.0 hours for 10 separate vouchers submitted between May 28, 2019 and June 26, 2019;
- v. On June 4, 2019, Respondent billed the PDS for 15.4 hours for 7 separate vouchers submitted between June 4, 2019 and June 28, 2019;
- w. On June 10, 2019, Respondent billed the PDS for 15.4 hours for 9 separate vouchers submitted between June 11, 2019 and September 25, 2019;
- x. On June 11, 2019, Respondent billed the PDS for 21.3 hours for 12 separate vouchers submitted between June 11, 2019 and September 25, 2019;
- y. On June 14, 2019, Respondent billed the PDS for 20.9 hours for 9 separate vouchers submitted between June 14, 2019 and June 28, 2019;
- z. On June 16, 2019, Respondent billed the PDS for 15.2 hours for 7 separate vouchers submitted between June 21, 2019 and September 25, 2019;
- aa. On June 19, 2019, Respondent billed the PDS for 15.8 hours for 8 separate vouchers submitted between June 19, 2019 and September 25, 2019;
- bb. On June 20, 2019, Respondent billed the PDS for 18.3 hours for 8 separate vouchers submitted between June 26, 2019 and September 25, 2019;
- cc. On June 21, 2019, Respondent billed the PDS for 18.9 hours for 11 separate vouchers submitted between June 21, 2019 and September 25, 2019;

- dd. On June 24, 2019, Respondent billed the PDS for 24.3 hours for 12 separate vouchers submitted between June 24, 2019 and September 25, 2019; and
- ee. On June 25, 2019, Respondent billed the PDS for 17.5 hours for 8 separate vouchers submitted between June 25, 2019 and June 28, 2019.
43. On or about October 31, 2019, the Office of Lawyer Disciplinary Counsel received Mr. Bellomy's notice of appearance as counsel on Respondent's behalf. Mr. Bellomy confirmed that the Office of Lawyer Disciplinary Counsel granted his telephonic request for an extension of time to file a response to the complaint on Respondent's behalf, and that the response was due by November 25, 2019.²
44. Thereafter, on or about November 25, 2019, Mr. Bellomy requested another extension of time, which was granted, to file a response to the complaint on Respondent's behalf. The response was due by December 13, 2019.
45. On or about December 13, 2019, the Office of Lawyer Disciplinary Counsel received a copy of Respondent's response to the complaint. Respondent included with his response his time sheets from July 1, 2019 through August 21, 2019, and correspondence from Circuit Court Judges in Wayne County and Cabell County, West Virginia.
46. In his response, Respondent, through counsel, acknowledged that he had made billing errors in the vouchers he submitted to PDS, but asserted that his billing errors were

² On or about October 29, 2019, the Office of Lawyer Disciplinary Counsel received Mr. Bellomy's Notice of Appearance and request for an extension of time to file a response to the complaint via facsimile.

unintentional. Respondent noted that PDS upgraded its voucher entry system in July 2019 and, as a result, early in July 2019, Respondent and his staff recognized that there was a significant difficulty accessing the system. Respondent stated that as a result of the new voucher entry system, he experienced a number of failed voucher entries, an inability to modify line items, and an inability to delete pending vouchers.

47. Respondent stated that as a result of the difficulty he experienced with the new voucher entry system, he and his staff instituted a secondary system for tracking time spent on cases, and thus, both he and his staff kept track of all billable time. Respondent asserted that he and his staff worked to merge their notations daily, and upon completion of such merger, Respondent noted his files. Respondent stated that he would then have a final list of time for each day to be submitted.
48. Respondent maintained that there were instances in which hours were compiled on both his list and his staff's, which Respondent had forgotten to note, and as a result, there were some vouchers that were submitted to PDS that contained twice the amount of billable hours as were accurate. Respondent stated that the vouchers that were double billed have been modified in PDS's entry system, and he identified those numbered vouchers as follows:

- | | |
|-------------|-------------|
| a. 20182055 | r. 20185879 |
| b. 20182605 | s. 20185701 |
| c. 20185017 | t. 20183960 |
| d. 20183963 | u. 20184098 |

e.	20185849	v.	20184447
f.	20185414	w.	20184134
g.	20185418	x.	20185709
h.	20185013	y.	20185116
i.	20185002	z.	20185249
j.	20186267	aa.	20185871
k.	20183464	bb.	20185559
l.	20185024	cc.	20185401
m.	20185693	dd.	20186457
n.	20184842	ee.	20186060
o.	20186046	ff.	20186287
p.	20183692	gg.	20185540
q.	20183711		

Respondent maintained that the aforementioned vouchers were modified to reduce certain line items by 50%, and that the vouchers have been corrected and re-submitted at PDS's request since the complaint was filed by the Office of Lawyer Disciplinary Counsel.

49. Respondent further asserted that, as a result of a system error, several cases were billed twice. Respondent maintained that in July of 2019, his staff called PDS to report an inability to delete pending vouchers that had been entered but not submitted, and that PDS assured his staff that they would remove the particular vouchers from

the system. Respondent stated that the vouchers were not deleted, and thus, the system reflected that Respondent experienced the “temporal impossibility” of having billed for more than twenty-four (24) hours in a single day on the numbered vouchers as follows:

- | | | | |
|----|----------|----|----------|
| a. | 20186547 | e. | 20183458 |
| b. | 20183467 | f. | 20183457 |
| c. | 20184674 | g. | 20183452 |
| d. | 20183461 | | |

50. Respondent stated that he subsequently instituted internal controls to prevent such billing errors from occurring.
51. On or about October 26, 2020, the Office of Lawyer Disciplinary Counsel sent Director Eddy correspondence in which it requested the following: the total number of hours Respondent submitted to PDS in 2019; the total number of Respondent’s hours that were denied payment by PDS; the date on which the authority to approve or deny voucher payments shifted from the Courts to PDS; and whether a specific court case ever has more than one OVS number assigned to it by PDS.
52. On or about November 2, 2020, the Office of Lawyer Disciplinary Counsel sent Mr. Bellomy a copy of Respondent’s billing records from January 1, 2019 through June 30, 2019.
53. Also on or about November 6, 2020, the Office of Lawyer Disciplinary Counsel received from PDS via electronic mail monthly calendars from July 2018 through

March 2020, which depicted the number of hours Respondent submitted to PDS. The calendar listings through August 2019 demonstrate Respondent's pattern and practice of billing that, when taken in sum total and accounting for the fact that he also had privately retained clients, indicate fraudulent and unreasonable billings. Specifically, the calendars reflected as follows:

- a. July 2018 - Respondent billed the PDS for hours for all 31 days of the month, with 10 days billed for 9 to 18 hours, and 0 days billed for 18 or more hours;
- b. August 2018 - Respondent billed the PDS for hours for all 31 days of the month, with 19 days billed for 9 to 18 hours, and 0 days billed for 18 or more hours;
- c. September 2018 - Respondent billed the PDS for hours for all 30 days of the month, with 11 days billed for 9 to 18 hours, and 2 days billed for 18 or more hours;
- d. October 2018 - Respondent billed the PDS for hours for 30 of the 31 days of the month, with 17 days billed for 9 to 18 hours, 1 day billed for 18 or more hours, and 1 day billed for 24 or more hours;
- e. November 2018 - Respondent billed the PDS for hours for all 30 days of the month, with 14 days billed for 9 to 18 hours, 3 days billed for 18 or more hours, and 1 day billed for 24 or more hours;

- f. December 2018 - Respondent billed the PDS for hours for 29 of the 31 days of the month, with 7 days billed for 9 to 18 hours, 5 days billed for 18 or more hours, and 2 days billed for 24 or more hours;
- g. January 2019 - Respondent billed the PDS for hours for all 31 days of the month, with 13 days billed for 9 to 18 hours, 5 days billed for 18 or more hours, and 2 days billed for 24 or more hours³;
- h. February 2019 - Respondent billed the PDS for hours for 27 of the 28 days of the month, with 12 days billed for 9 to 18 hours, and 2 days billed for 18 or more hours;
- i. March 2019 - Respondent billed the PDS for hours for all 31 days of the month, with 8 days billed for 9 to 18 hours, and 1 day billed for 18 or more hours;
- j. April 2019 - Respondent billed the PDS for hours for all 30 days of the month, with 19 days billed for 9 to 18 hours, and 0 days billed for 18 or more hours;
- k. May 2019 - Respondent billed the PDS for hours for all 31 days of the month, with 29 days billed for 9 to 18 hours, and 0 days billed for 18 or more hours;

³ The documents the Office of Lawyer Disciplinary Counsel received from PDS on or about October 18, 2019 indicated that Respondent had billed the PDS for 21.0 hours on January 15, 2019, but the updated documents received on or about November 6, 2020 noted that Respondent had actually billed the PDS for 21.6 hours on January 15, 2019.

- l. June 2019 - Respondent billed the PDS for hours for all 30 days of the month, with 23 days billed for 9 to 18 hours, and 4 days billed for 18 or more hours, and 1 day billed for 24 or more hours⁴;
- m. July 2019 - Respondent billed the PDS for hours for 30 of the 31 days of the month, with 18 days billed for 9 to 18 hours, and 0 days billed for 18 or more hours⁵;
- n. August 2019 - Respondent billed the PDS for hours for 16 of the 31 days of the month, with 8 days billed for 9 to 18 hours, and 0 days billed for 18 or more hours⁶;
- o. September 2019 - Respondent billed the PDS for hours for 13 of the 30 days of the month, with all 13 days billed for under 9 hours;
- p. October 2019 - Respondent billed the PDS for hours for 13 of the 31 days of the month, with all 13 days billed for under 9 hours;
- q. November 2019 - Respondent billed the PDS for hours for 16 of the 30 days of the month, with all 16 days billed for under 9 hours;

⁴ The documents the Office of Lawyer Disciplinary Counsel received from PDS on or about October 18, 2019 indicated that Respondent had billed the PDS for 15.4 hours on June 4, 2019, but the updated documents received on or about November 6, 2020 noted that Respondent had actually billed the PDS for 13.1 hours on June 4, 2019.

⁵ The documents the Office of Lawyer Disciplinary Counsel received from PDS on or about August 23, 2019 indicated that Respondent had billed the PDS for hours for 29 of the 31 days of the month, with 20 days billed for 9 to 18 hours, 8 days billed for 18 or more hours, and 1 day billed for 24 or more hours.

⁶ The documents the Office of Lawyer Disciplinary Counsel received from PDS on or about August 23, 2019 indicated that Respondent had billed the PDS for hours from August 1, 2019 through August 9, 2019, with 6 days billed for 9 to 18 hours, and 3 days billed for 18 or more hours.

- r. December 2019 - Respondent billed the PDS for hours for 14 of the 31 days of the month, with all 14 days billed for under 9 hours;
 - s. January 2020 - Respondent billed the PDS for hours for 21 of the 31 days of the month, with all 21 days billed for under 9 hours;
 - t. February 2020 - Respondent billed the PDS for hours for 19 of the 29 days of the month, with all 19 days billed for under 9 hours;
 - u. March 2020 - Respondent billed the PDS for hours for 21 of the 31 days of the month, with 2 days billed for 9 to 18 hours, and 0 days billed for 18 or more hours;
 - v. April 2020 - Respondent billed the PDS for hours for 8 of the 30 days of the month, with all 8 days billed for under 9 hours;
 - w. May 2020 - Respondent billed the PDS for hours for 21 of the 31 days of the month, with all 21 days billed for under 9 hours; and
 - x. June 2020 - Respondent billed the PDS for hours for 18 of the 30 days of the month, with all 18 days billed for under 9 hours.
54. On or about November 16, 2020, Respondent, with Mr. Bellomy, appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel in Charleston, West Virginia. Respondent acknowledged that mistakes in his billing occurred and testified that he believed that he submitted corrected, amended vouchers to PDS.
55. On or about November 23, 2020, the Office of Lawyer Disciplinary Counsel sent correspondence to the Circuit Courts of Wayne County and Cabell County, West

Virginia, in which it requested copies of the docket sheets and all payment vouchers Respondent had submitted in a number of cases.

56. On or about November 25, 2020, the Office of Lawyer Disciplinary Counsel sent correspondence to the Cabell County Magistrate Court, West Virginia, in which it requested copies of the docket sheets and all payment vouchers Respondent had submitted in a number of cases.
57. On or about November 30, 2020, the Office of Lawyer Disciplinary Counsel received copies of the “Order Approving Payment of Appointed Counsel Fees and Expenses” for Respondent in various cases in which he was appointed counsel from the Circuit Court of Cabell County, West Virginia.
58. On or about December 3, 2020, the Office of Lawyer Disciplinary Counsel received copies of the case history sheets for various cases for which Respondent was appointed counsel from the Cabell County Magistrate Court, West Virginia.
59. On or about December 7, 2020, the Office of Lawyer Disciplinary Counsel received copies of the “Order Approving Payment of Appointed Counsel Fees and Expenses” for Respondent in various cases in which he was appointed counsel from the Circuit Court of Wayne County, West Virginia.
60. On or about December 11, 2020, the Office of Lawyer Disciplinary Counsel received from PDS via electronic mail Respondent’s Fiscal Years 2017 through 2020 Totals. In 2017, Respondent submitted a total of 2,556.7 hours to PDS for 213 claims, with a total amount billed of \$132,498.21. In 2018, Respondent submitted a total of

1,753.6 hours to PDS for 199 claims, with a total amount billed of \$92,649.84. In 2019, Respondent submitted a total of 3,491.2 hours to PDS for 330 claims, with a total amount billed of \$176,853.83. In 2020, to date, Respondent submitted a total of 1,275.0 hours to PDS for 141 claims, with a total amount billed of \$68,542.84.

61. From January 1, 2019 through June 30, 2019, because Respondent charged unreasonable fees by charging over twenty-four (24) hours on three (3) different dates in various cases wherein he was court appointed to represent indigent clients, along with charging fifteen (15) hours or more on an additional twenty-five (25) days, he violated Rule 1.5(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.5. Fees.

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. 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 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.

62. From January 1, 2019 through June 30, 2019, because Respondent submitted false billing statements to Circuit Courts, Respondent violated Rule 3.3(a)(1) 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 fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

63. Because Respondent committed criminal acts of fraudulent schemes in violation of W.Va. Code § 61-3-24d,⁸ Respondent violated Rule 8.4(b) 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;

64. Because Respondent submitted false billings to the PDS and circuit court judges which he knew were not "for actual and necessary time," he violated Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

⁸ West 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."

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice

COUNT III

I.D. No. 19-06-361

Complaint of Williard E. Bays (I)

- 65. Respondent represented Willard E. Bays (hereinafter “Complainant Bays”) in a criminal matter in the Cabell County Magistrate Court, West Virginia.
- 66. On or about August 21, 2019, Complainant Bays filed an ethics complaint against Respondent with the Office of Lawyer Disciplinary Counsel. Complainant Bays alleged that he hired Respondent to represent him on two misdemeanor possession charges and a capias for failure to appear before the Cabell County Magistrate Court. Complainant Bays alleged that he agreed to pay Respondent \$7,000.00 for his representation, but instead, Respondent charged him \$10,000.00 for his representation. Complainant Bays further alleged that Respondent failed to provide him with an accounting of his case and failed to reimburse him the \$3,000.00 Complainant Bays asserted that he was owed.
- 67. On or about August 21, 2019, the Office of Lawyer Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response within twenty (20) days.

68. On or about August 26, 2019, the Office of Lawyer Disciplinary Counsel received correspondence from Complainant Bays dated August 19, 2019 that he had also sent to Anita R. Casey, Executive Director of The West Virginia State Bar. Complainant Bays alleged that he had hired Respondent to represent Jamie Bias in 2018 on various charges in the Cabell County Magistrate Court, and that he paid Respondent either \$3,000.00 or \$3,500.00. Complainant further alleged that Ms. Bias was in a drug treatment program in Ohio and failed to appear for court in West Virginia, and thus, a capias was issued for her arrest. Complainant Bays alleged that Respondent was supposed to address the capias with the Court and request a continuance during the time Ms. Bias was receiving drug treatment.
69. Complainant Bays alleged that, at some point, Ms. Bias began using drugs again and incurred new criminal charges. Complainant Bays further alleged that Respondent agreed to represent Ms. Bias for all of her pending charges for either \$7,000.00 or \$7,500.00, and thus, Complainant Bays paid Respondent twice to represent Ms. Bias.
70. On or about August 29, 2019, the Office of Lawyer Disciplinary Counsel received correspondence from Respondent via facsimile in which he acknowledged receipt of Complainant Bays's complaint, and in which he requested an extension of ten (10) days to respond to the complaint.
71. Also on or about August 29, 2019, the Office of Lawyer Disciplinary Counsel sent Respondent correspondence in which it granted his request for an extension of time to respond to Complainant Bays's complaint. Respondent was directed to file a

response to the complaint by September 25, 2019.

72. On or about September 19, 2019, the Office of Lawyer Disciplinary Counsel received a copy of Respondent's response to the complaint. In the response, Respondent stated that Complainant Bays contacted his law firm on or about August 26, 2018 to retain Respondent's representation on various cases in the Cabell County Magistrate Court. Respondent asserted that his fee agreement provided that Respondent would represent Complainant Bays on the pending charges for \$10,000.00⁹. Respondent further asserted that his fee agreement provided that Respondent would prepare other legal documents for Complainant Bays, including a Durable Power of Attorney, a Living Will, and a Last Will & Testament, and that each document required several revisions. Respondent noted that Complainant Bays failed to execute the aforementioned documents, as he neglected to appear for several appointments with Respondent.
73. In his response, Respondent acknowledged that Complainant Bays retained him to represent Ms. Bias on various charges in the Cabell County Magistrate Court. Respondent stated that the agreed upon fee was \$6,000.00, and that he earned his fee and achieved a favorable result for Ms. Bias.
74. On or about October 15, 2019, the Office of Lawyer Disciplinary Counsel received Complainant Bays's reply to Respondent response. Complainant Bays reiterated his allegations set forth in his complaint.

⁹ The fee agreement, signed and dated June 26, 2018 by Complainant Bays and Respondent, provided that Complainant Bays would pay Respondent \$10,000.00 for his representation. Thus, it appears that Complainant Bays retained Respondent on or about June 26, 2018, as opposed to August 26, 2018.

75. Thereafter, on or about February 3, 2020, the Office of Lawyer Disciplinary Counsel sent Respondent correspondence in which it requested that Respondent provide a fee agreement for Complainant Bays's representation, if any, and provide a copy of Respondent's billing records for work performed on Complainant Bays's matters.
76. On or about February 11, 2020, the Office of Lawyer Disciplinary Counsel received correspondence from Complainant Bays in which he included a copy of the check he paid Respondent dated June 26, 2018 in the amount of \$10,000.00.
77. On or about March 4, 2020, the Office of Lawyer Disciplinary Counsel sent Respondent, via certified and United States Mail, correspondence in which it referenced its February 3, 2020 correspondence, noted that Respondent had failed to respond to the same, and requested that Respondent provide a response by March 16, 2020.
78. On or about March 12, 2020, the Office of Lawyer Disciplinary Counsel received correspondence from Complainant Bays in which he included a copy of the docket sheets in his criminal cases in the Cabell County Magistrate Court.
79. On or about April 20, 2020, the Office of Lawyer Disciplinary Counsel received correspondence from Respondent in which he provided a copy of his billing records that showed dates and work performed on Complainant Bays's behalf in his criminal matters in the Magistrate Court of Cabell County.
80. On or about November 16, 2020, Respondent, with Mr. Bellomy, appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel in Charleston, West

Virginia. Respondent produced Complainant Bays's client file, which contained a fee agreement executed by Complainant Bays and Respondent on June 26, 2018. In the fee agreement, the parties agreed to the fee of \$10,000.00 for Respondent's representation, and it was noted that Respondent would represent Complainant Bays in his criminal matters as well as would prepare wills and a power of attorney for Complainant Bays. Although the client file contained work product and documents regarding Complainant Bays's criminal matters, it did not contain any work product or documents regarding Complainant Bays's estate planning.

81. Furthermore, Respondent was questioned about his billing records that he provided to the Office of Lawyer Disciplinary Counsel on or about April 20, 2020 in which Respondent billed 12.9 hours at a rate of \$225, for a total of approximately \$2,902.50. Respondent testified that the information provided in his billing records was the work he remembered he had performed on Complainant Bays's behalf and that he did not have additional time sheets or accounting of work performed.
82. Because Respondent charged Complainant Bays \$10,000.00 to represent him in his criminal matters as well as prepare his wills and a power of attorney, because Respondent's billing records produced only accounted for approximately \$2,902.50 of work performed in Complainant Bays's criminal matters, and because Respondent failed to provide proof of any work performed or accounting of work performed for Complainant Bays's estate planning, Respondent charged Complainant Bays an unreasonable fee in violation of Rule 1.5(a) of the Rules of Professional Conduct,

which provides as follows:

Rule 1.5. Fees.

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. 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 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.

COUNT IV

I.D. No. 20-06-054

Complaint of Willard E. Bays (II)

83. Respondent represented Jamie B. Bias in a criminal matter in the Cabell County Magistrate Court, West Virginia.
84. On or about February 11, 2020, Willard E. Bays (hereinafter "Complainant Bays") filed an ethics complaint against Respondent on behalf of Ms. Bias with the Office of Lawyer Disciplinary Counsel. Complainant Bays alleged that he hired Respondent to represent Ms. Bias, his ex-girlfriend, on three misdemeanor charges in the Cabell

County Magistrate Court. Complainant Bays included with his complaint correspondence dated August 19, 2019 that he had also sent to Anita R. Casey, Executive Director of The West Virginia State Bar. Complainant Bays alleged that he had hired Respondent to represent Ms. Bias in 2018 on various charges in the Cabell County Magistrate Court, and that he paid Respondent either \$3,000.00 or \$3,500.00. Complainant further alleged that Ms. Bias was in a drug treatment program in Ohio and failed to appear for court in West Virginia, and thus, a capias was issued for her arrest. Complainant Bays alleged that Respondent was supposed to address the capias with the Court and request a continuance during the time Ms. Bias was receiving drug treatment.

85. Complainant Bays further alleged that Ms. Bias subsequently began using drugs again, was arrested and incurred additional criminal charges. Complainant Bays alleged that Respondent agreed to represent Ms. Bias on all of her pending charges for either \$7,000.00 or \$7,500.00, which Respondent paid. Thus, Complainant Bays alleged that he paid Respondent twice to represent Ms. Bias and should be refunded for the initial fee he paid Respondent in 2018.
86. On or about February 14, 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.
87. On or about March 9, 2020, the Office of Lawyer Disciplinary Counsel received correspondence from Complainant Bays in which he included a copy of the docket

sheets in Ms. Bias's criminal cases in the Cabell County Magistrate Court.

88. After receiving no response from Respondent, on or about March 19, 2020, the Office of Lawyer Disciplinary Counsel additional correspondence via certified and regular U.S. mail directing Respondent to file a response by March 30, 2020. The March 19, 2020 correspondence advised Respondent that his failure to respond to the complaint could result in a subpoena being issued for his appearance at the Office of Lawyer Disciplinary Counsel for a sworn statement, or the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board.
89. On or about March 24, 2020, the Office of Lawyer Disciplinary Counsel received a copy of Respondent's response to the complaint. In the response, Respondent stated that Complainant Bays retained him to represent Ms. Bias on drug charges in the Cabell County Magistrate Court. Respondent further stated that was also retained by Complainant Bays to represent Ms. Bias on additional charges stemming from alleged criminal activity in 2016. Respondent asserted that on or about August 1, 2018, he provided a Notice of Appearance to the Cabell County Magistrate Court and filed a Motion to Set Aside the Capias resulting from Ms. Bias's 2016 charges.
90. Respondent stated that the Court scheduling a hearing for October 18, 2018, at which Respondent appeared on Ms. Bias's behalf and represented to the Court that Ms. Bias was unable to attend the hearing because she was in a drug treatment program in Ohio. The Court rescheduled the hearing for October 27, 2018 and December 5, 2018,

at which times Respondent again appeared on Ms. Bias's behalf and again represented to the Court that Ms. Bias was unable to attend the hearings because she remained in drug treatment.

91. Respondent stated that he was informed that Ms. Bias was discharged from drug treatment in January 2019, and thus, a capias was issued by the Magistrate Court of Cabell County with bond being reset. Respondent asserted that Ms. Bias's bond was paid on or about May 22, 2019 and that a hearing was held on or about May 23, 2019, at which time Respondent filed a Motion to Dismiss the capias and Ms. Bias's underlying criminal charges. Respondent stated that the Court granted his motion and the 2016 criminal matter was concluded. Respondent asserted that Complainant Bays then retained his services to represent Ms. Bias on her 2019 drug charges at an agreed upon fee of \$6,000.00, and that he earned his fee and achieved a favorable result for Ms. Bias.
92. On or about April 9, 2020, the Office of Lawyer Disciplinary Counsel received Complainant Bays's reply to Respondent response. Complainant Bays reiterated his allegations set forth in his complaint.
93. On or about November 16, 2020, Respondent, with Mr. Bellomy, appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel in Charleston, West Virginia. Respondent produced Ms. Bias's client file, which did not contain either a fee agreement or billing records for Respondent's representation of Ms. Bias. Respondent acknowledged that he did not execute a fee agreement with Ms. Bias, and

further acknowledged that he did not have an accounting of the work he performed for Ms. Bias, but noted that he represented her through the conclusion of her criminal matters and was able to get the State to dismiss a felony charge against her. Respondent stated that Complainant Bays paid him \$3,500.00 to represent Ms. Bays.

94. Because Respondent charged Complainant Bays at least \$3,500.00 to represent Ms. Bias in her criminal matters, and because Respondent failed to provide proof of any work performed or accounting of work performed for Ms. Bias's criminal matters, Respondent charged Complainant Bays an unreasonable fee in violation of Rule 1.5(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.5. Fees.

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. 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 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.

95. Because Respondent failed to communicate the scope of the representation and the basis or rate of the fee and expenses for which Ms. Bias would be responsible with Ms. Bias in writing, before or within a reasonable time after commencing the representation, and because Respondent had never represented Ms. Bias previously, Respondent 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 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.

COUNT V
I.D. No. 19-06-370
Complaint of Angela C. Robertson

96. Respondent represented Angela C. Robertson (hereinafter “Complainant Robertson”) in her divorce in the Cabell County Family Court, West Virginia.
97. On or about August 29, 2019, Complainant Robertson filed an ethics complaint against Respondent with the Office of Lawyer Disciplinary Counsel. Complainant Robertson alleged that she paid Respondent \$2,000.00 as a retainer fee, plus court costs totaling \$225.00, to represent her in her divorce. Complainant Robertson alleged that she had difficulty communicating with Respondent, and that Respondent’s office informed her that she needed to pay additional funds for the cost of the legal work in

her matter. Complainant Robertson further alleged that after approximately six months, she contacted Respondent's office to check on her case's status, and learned that her husband had not yet been served with a petition for divorce. Complainant Robertson asserted that she is entitled to a refund of the total fees she paid Respondent, \$3,225.00, as she did not receive any documents of Respondent's work product, nor had her husband been served with a petition for divorce.

98. On or about August 29, 2019, the Office of Lawyer Disciplinary Counsel sent Respondent a copy of the complaint and directed him to file a response within twenty (20) days.
99. On or about September 12, 2019, the Office of Lawyer Disciplinary Counsel received a copy of Respondent's response to the complaint. In the response, Respondent stated that he met with Complainant Robertson on or about January 17, 2019 for an initial consultation in which she discussed her intentions to divorce her husband due to his erratic and, at times, violent behavior. Also on or about January 17, 2019, Complainant Robertson signed a fee agreement. Respondent stated that his legal assistant, Todd Chapman, provided Complainant Robertson with the necessary documentation that she should complete and return. Respondent further stated that, Complainant Robertson called his office on several occasions thereafter and asked what to do about her husband. Respondent said he explained to her that until she returned the paperwork or provided the information required therein to his office, Respondent could not obtain service, filing or a hearing date in her divorce.

100. Respondent maintained that in early February 2019, Complainant Robertson returned to his office with the paperwork, which was half-completed. Respondent stated that he and Complainant Robertson met and completed the paperwork. Respondent further stated that during their meeting, Complainant Robertson inquired of Respondent about not going through the divorce process, but rather filing for separation instead, as she was concerned about her financial situation should she get divorced. Respondent maintained that he advised Complainant Robertson about alternate options, such as filling for separation as well as Complainant Robertson filing for Guardianship/Conservatorship over her husband due to his extreme illness and inability to care for himself.
101. Respondent stated that during a meeting with Complainant Robertson that occurred in late March 2019, Complainant Robertson advised Respondent that she wished to abandon her divorce action, and also abandon any plan to file for separation. Respondent maintained that he advised Complainant Robertson that she could file for Guardianship/Conservatorship over her husband due to his incapacity to care for himself or manages his own affairs. Respondent stated that he requested that Complainant Robertson sign another fee agreement for the matter to make her intentions clear, which she did on or about March 22, 2019. Respondent stated that Complainant Robertson's balance from the previous two domestic proceedings that had been changed at her request was to be applied to the preparation and filing of the Guardianship/Conservatorship matter.

102. Respondent stated that he prepared a Petition for a Guardianship/Conservatorship along with the necessary financial affidavit for Complainant Robertson. Respondent further stated that he was waiting for Complainant Robertson to return her husband's doctor's certification so that the matter could be filed, but that Complainant Robertson never provided him with the same. Respondent added that it was his understanding from conversations with Complainant Robertson that her husband was doing better and that she no longer wished to pursue any of the various legal proceedings she and Respondent discussed.
103. On or about October 24, 2019, Complainant Robertson filed a reply to Respondent's response to her complaint. Complainant Robertson refuted Respondent's assertion that he informed her that she could not go forward in her divorce without completion of the paperwork she was given. Complainant Robertson added that she had a difficult time communicating with Respondent because he would not return her telephone calls.
104. Complainant Robertson stated that she called Respondent's office in early June 2019 and left a voice mail in which she requested that Respondent proceed with her divorce. Complainant Robertson maintained that Respondent was untruthful when he stated that she changed her mind about pursuing a divorce from her husband.
105. Complainant Robertson stated that she paid Respondent a total of \$3,225.00, and that he failed to file her divorce action, as she requested he do.

106. On or about November 16, 2020, Respondent, with Mr. Bellomy, appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel in Charleston, West Virginia. Respondent produced Complainant Robertson's file, which included the two fee agreements she and Respondent executed, as well as notes and a signed "Financial Statement," a signed "Petition for the Appointment of a Guardian/Conservator," and a signed "Petition for Divorce."
107. Because Respondent failed to abide by Complainant Robertson's decisions concerning the objectives of representation in this matter, in that he failed to file a petition for divorce on her behalf, he violated Rule 1.2(a) of the Rules of Professional Conduct, which states, in pertinent part:

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer.

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

108. Because Respondent failed to act with reasonable and promptness in representing Complainant Robertson, in that he failed to file a petition for divorce on her behalf, he violated Rule 1.3 of the Rules of Professional Conduct, which states:

Rule 1.3. Diligence.

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

109. Because Respondent failed to keep Complainant Robertson reasonably informed about the status of the matter, in that he failed to communicate with her about the status of her divorce proceeding, he violated Rule 1.4(a)(3) of the Rules of Professional Conduct, which states as follows:

Rule 1.4. Communication.

(a) A lawyer shall:

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

110. Because Respondent charged an unreasonable fee or an unreasonable amount for expenses in that he charged Complainant Robertson \$3,000.00 for his representation of her in her divorce proceeding and/or in her guardianship/conservatorship proceeding without ever filing a petition for divorce or a petition for guardianship/conservatorship on her behalf, and in that he charged Complainant Robertson \$225.00 in court costs, Respondent violated Rule 1.5(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.5. Fees.

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. 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 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.

* * *

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 15th day of December, 2020, and
ISSUED this 17th day of December, 2020.


Amy C. Crossan, Chairperson
Investigative Panel
Lawyer Disciplinary Board