

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

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**In Re:** SCOTT A. CURNUTTE, a licensed member  
of The West Virginia State Bar

**Bar No.:** 5780  
**I.D. Nos.:** 22-02-028  
22-01-133  
22-03-226  
23-02-082

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**STATEMENT OF CHARGES**

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**To:** Scott A. Curnutte  
Post Office Box 1605  
Elkins, West Virginia 26241

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

1. Scott A. Curnutte (hereinafter "Respondent") is a lawyer practicing in Elkins, which is located in Randolph County, West Virginia. Respondent, having passed the Bar Exam, was admitted to The West Virginia State Bar on September 23, 1991. 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. 22-02-028**  
**Complaint of Terry L. McFarlan**

2. In a notarized complaint, received by the Office of Lawyer Disciplinary Counsel (“ODC”) on February 3, 2022, Terry L. McFarlan stated that he retained Respondent to represent him in a property dispute.
3. Ultimately a civil action to clear title to real estate was filed by Respondent on Mr. McFarlan’s behalf against Hollis Vance. Mr. McFarlan said that a settlement was reached via mediation on July 8, 2019, wherein both parties agreed to have a new survey done on the Vance property on the north side of Mr. McFarlan’s home, and resurvey another part of Mr. McFarlan’s property, and split the bill of the survey equally.
4. Mr. McFarlan stated that the survey was done, and the two properties at issue were split up into four parcels, “A-B-C-D,” where Mr. McFarlan was to receive ownership of parcels “B and C,” and parcels “A and D” were to go to the Vances.
5. According to Mr. McFarlan, new deeds were written by Respondent and opposing counsel, Frank Bush, respectively, and recorded.
6. Thereafter, Mr. McFarlan said that he believed that one of the deeds had not been correctly written due to what was reflected in tax department records. Mr. McFarlan said that Respondent agreed, wrote a revised deed, and sent it to Mr. Bush for review.

7. According to Mr. McFarlan, Mr. Bush would not have his clients execute a new deed. Mr. McFarlan asserted that years had passed, and he still did not have a proper deed for where his home sat, which was parcel "C," nor did Mr. Vance have a correct deed for parcel "D."
8. Mr. McFarlan said that he had called Respondent's office on many occasions and Respondent had not responded.
9. Mr. McFarlan alleged that Respondent would not resolve the situation.
10. By letter dated February 7, 2022, the ODC advised Respondent that it had opened a complaint regarding the matter and expected Respondent's verified response to the complaint within twenty days of his receipt of the letter.
11. In his response to the complaint, received by the ODC on March 10, 2022, Respondent said that the matter was "the most complicated and convoluted property case any of the attorneys were ever involved in." He stated that after he was contacted by Mr. McFarlan, he came to believe that Mr. Vance owned an interest in the parcel Mr. McFarlan thought he owned, and that Mr. McFarlan owned the parcel Mr. Vance thought he owned. Respondent said that Mr. Vance, by counsel Frank Bush, disputed his analysis, and Respondent filed suit.
12. To complicate matters, Respondent said that there were competing surveys about the bounds of the parcels regarding who owned what and there were competing claims of adverse possession of disputed validity.
13. Respondent stated that at a mediation, a "complicated settlement" was reached where the parties agreed to swap the parcels each party thought they owned, and

also swap ownership of parcels owned by the parties which were not part of the disputed parcels.

14. After Mr. McFarland's surveyor delivered the new survey, Respondent said that Mr. Bush prepared deeds, which were ultimately executed and recorded in the office of the County Clerk of the Randolph County Commission.
15. Later, however, Respondent said that the Assessor notified the parties of his belief that those deeds did not accomplish the purpose they were intended to accomplish. Therefore, Respondent said he prepared revised deeds which he believed did accomplish that purpose and forwarded them to Mr. Bush.
16. After review, Respondent said that Mr. Bush took the position that the deeds Respondent prepared did not reflect the agreement of the parties at mediation. After several communications, Respondent said he agreed with Mr. Bush and accordingly prepared a third set of proposed deeds and forwarded them to Mr. Bush. Mr. Bush again apparently found the deeds unacceptable.
17. In response to a request from ODC, Mr. Bush asserted that a settlement offer had been made on behalf of his client to Mr. McFarlan by and through Respondent that would fully and completely resolve the case, but Respondent had not responded.
18. By letter dated September 30, 2022, the ODC asked Respondent to provide a status update regarding the matter. Respondent was also advised that Lawyer Disciplinary Counsel considered the request a lawful demand for information within the meaning of Rule 8.1(b) of the Rules of Professional Conduct.
19. Respondent did not provide a response to the request of the ODC.

20. On or about December 12, 2022, Lawyer Disciplinary Counsel requested that a subpoena be issued for Respondent's appearance at the ODC to provide a sworn statement regarding this complaint, and subsequently mailed the same to the Sheriff of Randolph County for service upon Respondent.
21. On February 9, 2023, Respondent appeared at the ODC to provide a sworn statement.
22. Regarding the McFarlan complaint, Respondent stated that he had spoken about the case with Mr. Bush within the last six weeks to finalize the deeds. Respondent said that he would provide the ODC with an update when that occurred. He further stated that he was "hoping to get [the matter] wrapped up within a very short period of time."
23. Respondent did not dispute that Mr. Bush had previously conveyed to him a settlement offer, and that Respondent had not responded.
24. By letter dated April 19, 2023, the ODC asked Respondent to provide a status update on the matter, in writing, within twenty days of his receipt of the letter. Respondent was also advised that Lawyer Disciplinary Counsel considered the request a lawful demand for information within the meaning of Rule 8.1(b) of the Rules of Professional Conduct.
25. Respondent did not provide a response to the request of the ODC.
26. By letter dated May 25, 2023, sent to Respondent via certified and regular mail, the ODC again asked that Respondent provide a status update on the matter, in writing, no later than June 23, 2023. The "green card" was returned to the ODC on

or about June 1, 2023, indicating that the letter had been received by Krista Curnutte.

27. Respondent did not provide a response to the request of the ODC.
28. By letter dated September 21, 2023, sent to Respondent via certified and regular mail, the ODC once again asked Respondent to provide a status update on the matter. The letter indicated that it was a final request for information and stated that if a response was not received by October 27, 2023, the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board at its December meeting for appropriate action. The “green card” was returned to the ODC on or about October 16, 2023, indicating that the letter had been received by Krista Curnutte.
29. Respondent did not provide a response to the request of the ODC.
30. Because Respondent has neglected Mr. McFarlan’s case and failed to take appropriate action in the matter, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides as follows:

**Rule 1.3. Diligence.**

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

31. Because Respondent failed to keep Mr. McFarlan informed as to the status of the matter and failed to respond to his requests for information, Respondent has violated Rule 1.4(a)(3) and Rule 1.4(a)(4) of the Rules of Professional Conduct which provides as follows:

**Rule 1.4. Communication.**

(a) A lawyer shall:

\* \* \*

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

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

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

**Rule 3.2. Expediting Litigation.**

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

33. Because Respondent failed to comply with the Office of Lawyer Disciplinary Counsel's lawful requests for information, he has 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:

\* \* \*

(b) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

**COUNT II**

**I.D. No. 22-01-133**

**Complaint of John R. Lambert**

34. In a notarized complaint, received by the ODC on April 11, 2022, John R. Lambert, by his Power of Attorney Carolyn Channell, stated that Respondent had

been hired six years ago to represent Mr. Lambert regarding the estate of his late wife.

35. Mr. Lambert contended that his wife's sister had taken his wife to various lawyers while she was heavily sedated and had his wife "sign everything over to her." Upon his wife's passing, Mr. Lambert said his wife's sister inherited everything he owned.
36. Mr. Lambert said he retained Respondent right away, and Respondent had assured him that he could handle the case and "get [Mr. Lambert's] life back."
37. Mr. Lambert stated that they went to court on August 2, 2019, and everything was to be settled. However, he alleged that was the last time he talked to Respondent.
38. Mr. Lambert alleged that Respondent refused to do anything and would not set up an appointment with him or talk to him on the phone.
39. By letter dated April 29, 2022, the ODC advised Respondent that it had opened a complaint regarding the matter and expected Respondent's verified response to the complaint within twenty days of his receipt of the letter.
40. After receiving no response from Respondent, by letter dated May 31, 2022, sent via certified and regular mail, the ODC advised Respondent that if it did not hear from Respondent by June 14, 2022, a subpoena may be issued for him to appear at the office to give 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.



41. The “green card” was returned to the ODC on or about June 3, 2022, indicating that the letter had been received by Krista Curnutte.
42. In his response to the complaint, received by the ODC on June 6, 2022, Respondent said that he was retained by Mr. Lambert to challenge certain transactions by his former wife before she died. He stated that he filed a Petition for Elective Share before the Tucker County Commission on or about March 24, 2016. Despite various pleadings being filed and hearings noticed, Respondent said that each hearing was canceled sua sponte by the County Commission.
43. Respondent stated that in June 2018, the County Commission, through the Prosecuting Attorney, indicated that it did not intend to proceed and insisted the parties file a joint notice of removal to Circuit Court. Respondent said that he prepared such a notice but could not get opposing counsel to respond to requests to sign it. Accordingly, in November 2018, Respondent said he moved unilaterally to transfer the case to Circuit Court.
44. Because the Circuit Court did not set a scheduling conference, Respondent stated that in February 2019 he noticed a status hearing for the following month. Following the status hearing, Respondent said that the Circuit Court entered a scheduling order. The cases were then essentially bifurcated at the request of counsel.
45. Respondent asserted that on August 2, 2019, the Circuit Court conducted an evidentiary hearing regarding the assets within the augmented estate for purposes of calculating Mr. Lambert’s elective share. He said that the Court directed the

parties to submit proposed orders by September 12, 2019. Respondent said that he did so, but opposing counsel did not.

46. On January 3, 2020, the Circuit Court entered its Order Delineating the Augmented Estate, in which Respondent said Mr. Lambert prevailed on every single disputed issue.
47. Respondent stated that the other “half” of an elective share proceeding was satisfying the elective share, once the augmented estate is identified and the monetary amount of the elective share is calculated. He said that other beneficiaries of the will must give up bequests and devises pro rata to satisfy the surviving spouse’s elective share.
48. Respondent said that he had repeatedly contacted opposing counsel with a proposal to satisfy Mr. Lambert’s elective share, without a substantive response.
49. Respondent stated that during the pendency of the matter, his records reflected over two hundred phone and office conferences with Mr. Lambert or Ms. Channell or both, involving either Respondent or his staff.
50. On or about December 12, 2022, Lawyer Disciplinary Counsel requested that a subpoena be issued for Respondent’s appearance at the ODC to provide a sworn statement regarding this complaint, and subsequently mailed the same to the Sheriff of Randolph County for service upon Respondent.
51. On February 9, 2023, Respondent appeared at the ODC to provide a sworn statement.

52. Regarding the Lambert complaint, Respondent stated that he had recently spoken with opposing counsel regarding the resolution of the case. He advised Lawyer Disciplinary Counsel that he anticipated the case concluding within the next couple months and he would let the ODC know once the matter was resolved.
53. By letter dated April 19, 2023, the ODC asked Respondent to provide a status update regarding the matter, in writing, within twenty days of his receipt of the letter. Respondent was also advised that Lawyer Disciplinary Counsel considered the request a lawful demand for information within the meaning of Rule 8.1(b) of the Rules of Professional Conduct.
54. Respondent did not provide a response to the request of the ODC.
55. By letter dated May 25, 2023, sent to Respondent via certified and regular mail, the ODC again asked Respondent to provide a status update on the matter, in writing, no later than June 23, 2023. The “green card” was returned to the ODC on or about June 1, 2023, indicating that the letter had been received by Krista Curnutte.
56. Respondent did not provide a response to the request of the ODC.
57. By letter dated September 21, 2023, sent to Respondent via certified and regular mail, the ODC once again asked Respondent to provide status update on the matter. The letter indicated that it was a final request for information and stated that if a response was not received by October 27, 2023, the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board at its December meeting for

appropriate action. The “green card” was returned to the ODC on or about October 16, 2023, indicating that the letter had been received by Krista Curnutte.

- 58. Respondent did not provide a response to the request of the ODC.
- 59. Because Respondent failed to make reasonable efforts consistent with the stated and agreed upon objectives of Mr. Lambert, he has violated Rule 3.2 of the Rules of Professional Conduct, as previously stated.
- 60. Because Respondent failed to comply with the Office of Lawyer Disciplinary Counsel’s lawful requests for information, he has violated Rule 8.1(b) of the Rules of Professional Conduct, as previously stated.

### **COUNT III**

**I.D. No. 23-03-226**

#### **Complaint of Edwin A. Orrillo**

- 61. In a notarized complaint, received by the ODC on June 2, 2022, Edwin A. Orrillo stated that Respondent, his court-appointed lawyer, had not communicated with him despite being his attorney for over six months.
- 62. Mr. Orrillo alleged that he had a court date and was supposed to receive the discovery in his case, but had heard nothing from Respondent.
- 63. Mr. Orrillo further alleged that Respondent would not answer his phone calls and had not visited him at the jail.
- 64. By letter dated June 9, 2022, the ODC advised Respondent that it had opened a complaint regarding the matter and expected Respondent’s verified response to the complaint within twenty days of his receipt of the letter.

65. After receiving no response from Respondent, by letter dated July 11, 2022, sent via certified and regular mail, the ODC advised Respondent that if it did not hear from Respondent by July 22, 2022, a subpoena may be issued for him to appear at the office to give 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.
66. Respondent did not provide a response.
67. On or about December 12, 2022, Lawyer Disciplinary Counsel requested that a subpoena be issued for Respondent's appearance at the ODC to provide a sworn statement regarding this complaint, and subsequently mailed the same to the Sheriff of Randolph County for service upon Respondent.
68. On February 9, 2023, Respondent appeared at the ODC to provide a sworn statement.
69. Regarding the Orrillo complaint, Respondent did not deny that he had not filed a response to the complaint, despite acknowledging receipt of the letter(s) from the ODC.
70. Respondent attributed his failure to respond to the ODC to "prioritizing workload."
71. Respondent acknowledged that a failure to respond to a complaint can be the subject of separate disciplinary proceedings.
72. He stated that Mr. Orrillo had been indicted along with multiple defendants on federal charges, and that in cases like that he typically waits until the full

discovery is provided and a plea offer from the government is tendered to schedule a meeting with the client to go over everything. Respondent said that the last person to be arrested in the case was July 28, 2022, and the government had never tendered a plea offer, which was unusual.

- 73. Respondent acknowledged that he had received the discovery but did not bring it to Mr. Orrillo to review it with him. He said that he had explained to Mr. Orrillo that he desired a plea offer be tendered before meeting with him, who was housed in the eastern panhandle at the time.
- 74. Respondent stated that he no longer represented Mr. Orrillo as of December 9, 2022.
- 75. Respondent disputed that he had not answered calls from Mr. Orrillo.
- 76. Because Respondent failed to comply with the Office of Lawyer Disciplinary Counsel's lawful requests for information, he has violated Rule 8.1(b) of the Rules of Professional Conduct, as previously stated.

**COUNT IV**  
**I.D. No. 23-02-082**  
**Complaint of Adam T. Kramer**

- 77. In a notarized complaint, received by the ODC on March 6, 2023, Adam T. Kramer stated that on Friday, April 29, 2022, he attended mediation facilitated by Respondent at his office in Elkins.
- 78. The mediation had been ordered by the presiding Family Court regarding the modification of a parenting plan.

79. Mr. Kramer said that the parties ultimately agreed to a settlement, and Respondent said he would memorialize the mediation agreement over the weekend, and it would be ready sometime early the following week. Mr. Kramer said that Respondent went on to state that writing up the agreement was “the most important part of his job.”
80. After not receiving the agreement, Mr. Kramer said he contacted his attorney at the time, Philip Isner, to inquire and express concern. Mr. Kramer alleged that weeks passed and Mr. Isner’s office said they had not heard back from Respondent regarding the matter.
81. Mr. Kramer stated that several weeks later, the other party backed out of the agreement. Mr. Kramer attributed this to Respondent’s failure to complete the paperwork.
82. Mr. Kramer said that by letter dated December 8, 2022, hand-delivered to Respondent’s office, he requested a full refund of the money that had been paid to Respondent to mediate the matter. Mr. Kramer said that Respondent did not respond and would not answer his calls.
83. By letter dated March 22, 2023, the ODC advised Respondent that it had opened a complaint regarding the matter and expected Respondent’s verified response to the complaint within twenty days of his receipt of the letter.
84. After receiving no response from Respondent, by letter dated April 24, 2023, sent via certified and regular mail, the ODC advised Respondent that if it did not hear from Respondent by May 15, 2023, a subpoena may be issued for him to appear at

the office to give 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.

85. The certified letter was returned to the ODC on or about May 8, 2023, marked refused for postage due. The letter sent to Respondent via regular mail was not returned to sender.
86. Respondent did not provide a response to the complaint.
87. By letter dated May 25, 2023, sent to Respondent via certified and regular mail, the ODC asked Respondent for a response to Mr. Kramer's complaint, in writing, no later than June 23, 2023. The "green card" was returned to the ODC on or about June 1, 2023, indicating that it had been received by Krista Curnutte.
88. Respondent did not provide a response to the complaint.
89. By letter dated September 21, 2023, sent to Respondent via certified and regular mail, the ODC once again asked Respondent to provide a response to the complaint of Mr. Kramer. The letter indicated that it was a final request for information and stated that if a response was not received by October 27, 2023, the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board at its December meeting for appropriate action. The "green card" was returned to the ODC on or about October 16, 2023, indicating that it had been received by Krista Curnutte.
90. Respondent failed to provide a response Mr. Kramer's complaint.



91. Rule 43 of the Rules of Practice and Procedure for Family Court states, in part, “Within five days of the conclusion of mediation, the mediator shall reduce any mediated agreement to writing on the required form; prepare a Mediation Outcome Report on the required form; file the agreement with the circuit clerk; send copies of the agreement to the parties; and send a copy of the report to the court.”
92. Because Respondent failed to comply in any way with Rule 43 of the Rules of Practice and Procedure for Family Court following the conclusion of the mediation over which he presided as the mediator, Respondent has violated Rule 3.4 of the Rules of Professional Conduct, which provides:

**Rule 3.4. Fairness to Opposing Party and Counsel.**

A lawyer shall not:

\* \* \*

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

93. Because Respondent failed to comply with the Office of Lawyer Disciplinary Counsel’s lawful requests for information, he has violated Rule 8.1(b) of the Rules of Professional Conduct, as previously stated.
94. Because Respondent engaged in dilatory conduct by failing to prepare a report following the mediation over which he presided or otherwise report to the court the outcome of the mediation, Respondent has violated Rule 8.4(d) 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.

### **POTENTIAL AGGRAVATING FACTORS**

95. Rule 9.22(a) of the ABA Model Standards for Imposing Lawyer Sanctions indicates that prior disciplinary offenses constitute an aggravating factor. On November 17, 2020, the Supreme Court of Appeals suspended Respondent from the practice of law for a period of ninety days with automatic reinstatement in a separate disciplinary proceeding. In addition, Respondent has exhibited a pattern and practice of failing to respond to the requests of the ODC as exhibited in the cases charged in this Statement of Charges.

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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 5<sup>th</sup> day of December, 2023,  
and **ISSUED** this the 5 day of December, 2023.



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**C. David Morrison, Chairperson *Pro tem***  
Investigative Panel  
Lawyer Disciplinary Board

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**CERTIFICATE OF SERVICE**

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This is to certify that I, Renée N. Frymyer, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 27<sup>th</sup> day of December, 2023, served a true copy of the foregoing **"STATEMENT OF CHARGES"** upon Respondent Scott A. Curnutte, by mailing the same via United States Mail, with sufficient postage, and electronically via File and Serve Xpress, to the following addresses:

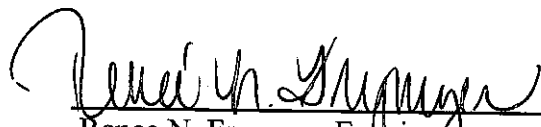
Scott A. Curnutte, Esquire  
Curnutte Law Office  
Post Office Box 1605  
Elkins, WV 26241  
[sacurnu@gmail.com](mailto:sacurnu@gmail.com)

And upon the Hearing Panel Subcommittee via United States Mail at the following addresses:

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