

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

SCA EFiled: Apr 10 2024
09:54AM EDT

Re: Thomas H. Evans, III. A member of
The West Virginia State Bar

Bar Number 9967
Case ID 72712476

Supreme Court No. 24-92

I.D.No.: 22-01-250, 22-01-0251
23-01-026 & 23-01-030

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Response of Thomas H. Evans, III
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Comes now Thomas H. Evans, III, and pursuant to Rule 2.12 makes his Response to
Formal Charges as follows:

General Statement

- 1a. Rule 2.12 provides that the Office of Disciplinary Counsel may extend the time for filing of this pleading for good cause. On March 28, 2024, a day before the Response was due, counsel for Respondent Thomas H. Evans, III., telephoned the Office of Disciplinary Counsel and spoke with Andrea J. Hinerman, Esquire requesting an extension until April 1, 2024, because counsel had an eye appointment for diabetic retinopathy check and possible intra-ocular injection at WU-St. Joseph's Hospital in Buchanan, WV on March 29, 2024, and knew that with eye dilation and possible intra-ocular injection, counsel could not complete the Response. Additionally, the discovery provided by the Office of Disciplinary Counsel in this matter is 3,751 loose, but fortunately Bates stamped, pages. Counselor Hinerman agreed to the extension request expressing that the reasons did seem to satisfy good cause but cautioning that the Response should begin with a recitation of

the fact that an extension was requested and that the Office of Disciplinary Counsel agreed to the extension.¹

- 1b. Thomas Evans is, as alleged in paragraph 1 of the Statement of Charges, a member fo the West Virginia State Bar, having been admitted on October 6, 2005, and subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.
- 1c. Each of the Responsive paragraphs are intended as responsive to the same numbered paragraphs in the Statement fo Charges.²

RESPONSE TO
COUNTS I-IV

- 2. Respondent Admits in part and denies in part the allegations of paragraph 2. The default judgement entered in 14-C-139 did not void a sale of property; rather, it ordered that the sale commence, the purpose thereof having been to obtain partition amongst heirs to an estate. However, some time thereafter, Court did, indeed, order revision of the resulting deed by which the property had been conveyed. Respondent counsel did reassure Margaret Shields that things would be okay with regard to the resulting litigation because he thought that, ultimately, the partition would still be approved and that the dissatisfied

¹Attorney Hinerman referenced a circumstance in which a delayed response had been extended but in which no recitation of that fact was made resulting in a negative consequence for the Respondent.

²Thus the unconventional numbering of paragraphs in the General Statement herein.

heir's share would be no more than previously estimated. His assurances in that regard were based upon expectations he felt were reasonable at the time.

As to allegations concerning money, Margaret Shields did provide funds to counsel for the resolution of Dale Rife's interests in the property in question; however, Dale Rife and his counsel declined to settle the matter. His comments about paying money into court were intended as an option but not the only option.

3. As to the allegations in paragraph 3, admit in part and deny in part. There was a hearing as alleged, and there is a transcript which speaks for itself. Decisions as to objections and arguments are often strategic calls which should not be taken as erroneous.
4. As to the allegations in paragraph 4, your Respondent does admit to some discussions with Margaret Shields, but he denies that he (A) suggested that he knows unsavory people who would "take care" of Dale Rife, or (B) suggested that he could make a case he was in as a lawyer "go away" if he became judge. He did relate that the case had taken on a rather personal nature, but he was not the originator of that element.
5. As to the allegations in paragraph 5, the property was appraised by the Court's order, and there was not an agreement for him to file any appeal at that stage.
6. As to the allegations in paragraph 6, your Respondent admits.

7. As to the allegations in paragraph 7, this blanket allegation misstates the case as your Respondent admitted a failure to deposit funds into an IOLTA, a failure to issue receipts, and many other facts which do relate directly to the alleged violations and allegations.³
8. As to the allegations in paragraph 8, Respondent admits.
9. As to the allegations in paragraph 9, Respondent acknowledges that the allegations made by Dale Rife in 17-C-116 were as stated, but denies any implication that the value of the real estate in question was the same as had been allegedly paid for the same.
10. The allegations in paragraph 10 are a reasonable summary of the Order referenced therein.
11. The allegations in paragraph 11 are substantially admitted.
12. The allegations in paragraph 12 are substantially admitted.
13. As to the allegations in paragraph 13, Respondent admits the date the notice of intent to appeal was filed; however, it was considerably later that he learned of the appeal.

³ Respondent and the complainants, Margaret Shields and Steve Rife, are extremely familiar with one another and have been good friends over the many years before this matter even began in 2014. This familiarity led to less than arms-length dealings and an informal approach to the underlying matter. Such informality is admittedly ill-advised.

14. As to the allegations in paragraph 14, the first part concerning the conveyance is admitted. The portion concerning “The Court stated that the \$12,000 purchase price for Dale Rife (sic) 1/3 property interest was never made available to Dale Rife” is denied both substantively and for vagueness as it is unclear what Court is being referenced.
15. As to the allegations in paragraph 15, your Respondent admits.
16. As to the allegations in paragraph 16, your Respondent admits.
17. As to the allegations in paragraph 17, your Respondent denies that three year passed between remand and entry of an order vacating the Circuit Court’s prior order, and expressly denies being the party responsible for the passage of time between those events. As to the entry of an Order voiding deeds, that time line is admitted, but again, your Respondent was not the only attorney in this matter, and was not the party responsible for much of the delays between hearings.⁴
18. As to the allegations in paragraph 18, the references to motions and orders is vague, but without admitting the specific contents or any of the factual findings, which were made by a preponderance standard and not a clear and convincing standard.
19. As to the allegations in paragraph 19, while some assertions were made in the disciplinary

⁴ There were circuit court scheduling issues which impacted a great many matters during the time frame of the underlying litigation, and a very great deal of the time which passed in this matter is attributed to none of the parties.

complaint, your Respondent denies the scope and accuracy thereof in part.

20. As to the allegations in paragraph 20, admitted.
21. As to the allegations in paragraph 21, Respondent denies misappropriating any funds.
22. As to the allegations in paragraph 22, admitted.
23. As to the allegations in paragraph 23, admitted.⁵
24. As to the allegations in paragraph 24, admitted, although it omits a good bit of the statement as well.
25. As to the allegations in paragraph 25, admitted, although it omits a good bit of the statement as well.
26. As to the allegations in paragraph 26, admitted, although it omits a good bit of the statement as well. Respondent readily admits that the funds should have been deposited into his IOLTA account and that he should have given a receipt.
27. As to the allegations in paragraph 27, admitted, although it omits a good bit of the

⁵ At least one rescheduling was due to his counsel's needs.

statement as well.⁶

28. As to the allegations in paragraph 28, your Respondent submitted the deed for recording.
29. As to the allegations in paragraph 29, admitted.
30. As to the allegations in paragraph 30, admitted, although it omits portions of the statement.
31. As to the allegations in paragraph 31, your Respondent reported the same in his statement, but as to the accuracy thereof, he is acting on information and belief as most of these matters are simply matters which were told to him.
32. As to the allegations in paragraph 32, admitted.
33. As to the allegations in paragraph 33, admitted.
34. As to the allegations in paragraph 34, deny. The January 30, 2018, order of the Circuit Court made no findings as to the time in which the property was in the Mutters' legal possession.
35. As to the allegations in paragraph 35, the Respondent actually argued that the order

⁶ See footnote 3, above.

voiding the deeds was necessary. He told opposing counsel that it was necessary, and he told the Court the same in the presence of opposing counsel. The Mutters were not parties to the partition suit and were not compelled, at the time seemingly referenced in paragraph 35, to make a conveyance. Respondent could not simply make a deed or “correct the deed”.

36. As to the allegations in paragraph 36, it is true that the Court, in its third incarnation, indeed made such findings.⁷

37. As to the allegations in paragraph 37, Respondent admits in large part the contents. Steve Rife lived out of state. Margaret Shields did not live far away, but was otherwise unable to come to the office at that particular time.

38. As to the allegations in paragraph 38, your Respondent agrees that he did not relate to anyone that he had “screwed up”. However, your Respondent fully intended and continues to intend that no harm befall Margaret Shields as a consequence of the underlying matters.

39. As to the allegations in paragraph 39, Respondent states that he did not ever fully understand the vitriolic fashion in which the matter was pursued. He did relate the lack of involvement that Dale Rife had with the underlying piece of property. Respondent

⁷ By incarnation, Respondent merely means that multiple Judges took responsibilities for the litigation from time to time, from the former Judge McGraw, through Judge Vickers, and finally Judge Kornish. At all times, the Court involved was the 27th Judicial Circuit.

never understood why the lawsuit was brought in the manner that it was. Respondent sought settlement negotiation on multiple occasions. Plaintiff's counsel never communicated a demand.

40. As to the allegations in paragraph 40, this is a statement made in frustration as to the delays encountered which included difficulties with circuit court scheduling, the impact of which exceeded the bounds of this litigation and that he has been blamed for the passage of all that time when the rule is generally that the Plaintiff is responsible to move litigation along. He is by no means skirting his share of responsibility for the time this matter took, but in no way is the age of the matter his sole fault.
41. As to the allegations in paragraph 41, Respondent admits saying what he said in his statement; however, the questions asked of him in no way covered the entire course of communications over the almost decade-long course of events.
42. As to the allegations in paragraph 42, admit. Respondent did not make such statements concerning unsavory people.
43. As to the allegations in paragraph 43, he admits but adds that Respondent said more than just this.
44. As to the allegations in paragraph 44, he denies that the delay is all attributable to him. The Circuit Court itself did not vacate its default judgement order as directed by the West

Virginia Supreme Court until 2018. The partition suit was no longer necessary when the Mutters elected not to purchase the property.

45. As to the allegations in paragraph 45, he admits there was substantial misunderstanding and that communication could have been clearer, but the Supreme Court's ruling was explained as well as the need to address the directives of the Supreme Court Order.
46. As to the allegations in paragraph 46, he admits to violating Rule 1.15 by failing to deposit the sums he was safekeeping for Margaret Shields into a separate "client trust account".
47. As to the allegations in paragraph 47, he denies the same and states that he did inform Dale Rife's counsel. Dale Rife was represented by Dennis S. Morgan, Esquire. Respondent told said counsel that the funds were available and asked what else Mr Rife was seeking. The appraisal had, after all, been made.
48. As to the allegations in paragraph 48, Respondent asserts there is not any explanation of the relevant information at issue.
49. As to the allegations in paragraph 49, Respondent did sign the "*pro se*" answer and did cause a notary to verify a signature which was false. He did these things intending to get the Answer filed, but these actions are within the purview of Rule 8.4. He does assert that he had her permission to sign her name, but there remains the notary issue.

50. As Paragraph 50 merely incorporates paragraph 1 by reference, your Respondent incorporates his Response thereto as if set forth fully and verbatim herein.
51. As to the allegations in paragraph 51, admit.
52. As to the allegations in paragraph 52, admit.
53. As to the allegations in paragraph 53, this is an incorrect assertion as to the contents of the April 1, 2015 order.
54. As to the allegations in paragraph 54, Respondent acknowledges that complainant made those assertions.
55. As to the allegations in paragraph 55, Respondent admits the assertions were made but denies the accuracy thereof.
56. As to the allegations in paragraph 56, your respondent cannot admit or deny what complainant believed and demands proof thereof.
57. As to the allegations in paragraph 57, Respondent cannot admit or deny certain of the assertions as stated due to vagueness, admits that the assertions were indeed made by complainant, but denies the accuracy thereof.

58. As to the allegations in paragraph 58, admits at times during the underlying matters and denies at other times during the underlying matters.
59. As to the allegations in paragraph 59, cannot admit or deny with respect to any decisions made by complainant.
60. As to the allegations in paragraph 60, your respondent admits that the assertion was made but denies the assertion.
61. As to the allegations in paragraph 61, your Respondent denies that any Circuit Court finding as to his diligence or performance is adequate for this matter as the standard of proof was lower in circuit court.
62. As to the allegations in paragraph 62, Respondent denies that Steve rife incurred loss as a result of the Circuit Court order because, due to improper service of process on an out of state party, the matter as to Steven Rife was entirely dismissed.⁸
63. As to the allegations in paragraph 63, admit.
64. As to the allegations in paragraph 64, admit.

⁸ Ironically so, given that the reason for remand of the underlying partition suit was improper service on an out of state party.

65. As to the allegations in paragraph 65, admit.
66. As to the allegations in paragraph 66, admit.⁹
67. As to the allegations in paragraph 67, admit.
68. As to the allegations in paragraph 68, this is an accurate statement as to respondent's state of mind at one point in the underlying litigation.
69. As to the allegations in paragraph 69, admit. The referral was to Robert dunlap's office where Omar Thair Barghouthi was assigned.¹⁰
70. As to the allegations in paragraph 70, that statement is correct as to the matters in the underlying litigation.
- 71 - 74. As to the allegations in paragraphs 71 through 74, your Respondent incorporates by reference all of his responses made herein above, and asserts that complainant Steve Rife's factual allegations are different in many regards than those of Margaret Shields. Thus, he asserts that all the time passage and apparent delay cannot be fairly attributed to him alone. He admits that communications could have and ought to have been much clearer and more formal. He admits that he

⁹ At least one rescheduling was due to his counsel's needs.

¹⁰ It no longer appears that Mr. Bargouthi is employed at Dunlap Law.

caused a notary to make a false verification as alleged. As to advise not to testify, he asserts there is not any explanation of the relevant information at issue.

75. As Paragraph 75 merely incorporates paragraph 1 by reference, your Respondent incorporates his Response thereto as if set forth fully and verbatim herein.
76. As to the allegations in paragraph 76, he neither admits nor denies as he cannot know the mind of the complainant as to the motive for filing.
77. As to the allegations in paragraph 77, Mr. Thompson did represent Dale Rife in the very final stages of 17-C-116.
78. As to the allegations in paragraph 78, the Circuit Court ruling was on a standard of preponderance and cannot be taken as proof herein of the matters thereby asserted.
79. As to the allegations in paragraph 79, Respondent asserts that this perception of why there was so much passage of time does not reflect what actually happened. The Plaintiff in 17-C-116 was represented by counsel the entire course of that litigation, which Respondent did not in any way unfairly impede in the prosecution of the matter.
80. The allegations in paragraph 80 are a reasonable summary of court orders; however, the standard below as to the findings of fact, was preponderance.

81. The allegations in paragraph 81 are a reasonable summary of a portion of the court orders; however, the standard below as to the findings of fact, was preponderance.
82. The allegations in paragraph 82 are a reasonable summary of a portion of the court orders; however, the standard below as to the findings of fact, was preponderance.
83. The allegations in paragraph 83 are a reasonable summary of a portion of the court orders; however, the standard below as to the findings of fact, was preponderance.
84. The allegations in paragraph 84 are a reasonable summary of a portion of the court orders; however, the standard below as to the findings of fact, was preponderance.
85. As to the allegations in paragraph 85, Respondent admits this is true, but also states that he had previously answered Dale Rife's complaint and felt, at the time, that Answer adequately addressed the complaint of Josh Thompson, Esquire.
86. See Answer to paragraph 85, above.
87. See Answer to paragraph 85, above.
88. See Answer to paragraph 85, above.
89. As to the allegations in paragraph 89, admit.

90. As to the allegations in paragraph 90, admit.¹¹
91. As to the allegations in paragraph 91, admit.
92. As to the allegations in paragraph 92, admit.
93. As to the allegations in paragraph 93, admit.
94. As to the allegations in paragraph 94, Respondent agrees that he did not make a written answer specifically to this complaint. As a substantive matter, he has explained his reason therefore and understands that there is an affirmative duty pursuant to Rule 8.1. Although he does not think that this complaint exceeds those which he previously answered, retrospectively he would have answered it separately and certainly understands the duty to do so in the future should he ever receive a similar demand for information. In mitigation, see Disciplinary Counsel's allegation in paragraph 93.
95. As to the allegations in paragraph 95, Respondent reiterates that he was not the prosecuting party in 17-C-116 and that he had stated to the Court in opposing counsel's presence the need for an order to void the deed to the Mutters.
96. As Paragraph 96 merely incorporates paragraph 1 by reference, your Respondent incorporates his Response thereto as if set forth fully and verbatim herein.

¹¹ See footnotes 5 & 9, above.

97. As to the allegations in paragraph 97, admit.
98. As to the allegations in paragraph 98. The Circuit Court's findings were by a preponderance - not by the clear and convincing standard. Respondent denies that the Circuit Court ruling is accurate in several regards.
99. As to the allegations in paragraph 99. The Circuit Court's findings were by a preponderance - not by the clear and convincing standard. Respondent denies that the Circuit Court finding is accurate.
100. The allegations in paragraph 100 are a reasonable summary of a portion of the court orders; however, the standard below as to the findings of fact, was preponderance.
101. The allegations in paragraph 101 are a reasonable summary of a portion of the court orders; however, the standard below as to the findings of fact, was preponderance. Further Respondent disputes the accuracy of some of the Court's findings.
102. As to the allegations in paragraph 102, the conclusion contained therein is not accurate.
103. As to the allegations in paragraph 103, Respondent admits this is true, but also states that he had previously answered Dale Rife's complaint and felt, at the time, that Answer adequately addressed the complaint.
104. As to the allegations in paragraph 104, Respondent admits this is true, but also states that

he had previously answered Dale Rife's complaint and felt, at the time, that Answer adequately addressed the complaint

105. As to the allegations in paragraph 105, Respondent admits this is true, but also states that he had previously answered Dale Rife's complaint and felt, at the time, that Answer adequately addressed the complaint.

106. As to the allegations in paragraph 106, Respondent admits this is true, but also states that he had previously answered Dale Rife's complaint and felt, at the time, that Answer adequately addressed the complaint.

107. As to the allegations in paragraph 107, the Respondent is unaware of what particular response he is supposed to have made to either a Writ of Suggestion or a Writ of Execution. It appears the same were not served on him.

108. As to the allegations in paragraph 108, Respondent is unsure of the source of the speculation asserted therein, denies the truth of that speculation, and otherwise denies such implications as are made against him thereby.

109. As to the allegations in paragraph 109, Respondent denies.

110. As to the allegations in paragraph 110, Respondent admits that the complainant did, in fact, submit a copy of a check.

111. As to the allegations in paragraph 111, Respondent acknowledges that the complainant submitted a copy of what Respondent believes is an unlawfully/improperly recorded *Lis Pendens*.
112. As to the allegations in paragraph 112, admit.
113. As to the allegations in paragraph 113, admit.¹²
114. As to the allegations in paragraph 114, that Respondent did not object to this assertion, that is correct as the same is a reasonable tabulation of the damages ordered below, but not all of those are “sanctions”
115. As to the allegations in paragraph 115, Respondent states that it is counsel who ought to receive such things, and not, as a previous paragraph asserts, a represented party.
116. As to the allegations in paragraph 116, Respondent admits this is true, but also states that he had previously answered Dale Rife’s complaint and felt, at the time, that Answer adequately addressed the complaint. As a substantive matter, he has explained his reason therefore and understands that there is an affirmative duty pursuant to Rule 8.1. Although he does not think that this complaint exceeds those which he previously answered, retrospectively he would have answered it separately and certainly understands the duty to do so in the future should he ever receive a similar demand for information. In

¹² See footnotes 5, 9 & 11, above.

mitigation, see Disciplinary Counsel's allegation in paragraph 93.

117. As to the allegations in paragraph 117, Respondent agrees that he did, in fact, state as alleged because he believed that to be correct.
118. As to the allegations in paragraph 118, admit as well as other expenses, as Respondent is not really sure what the allegation means by "bills" and since the interpretation could be somewhat restrictive, he provides this response just out of caution.
119. As to the allegations in paragraph 119, this is maybe apples and oranges. Respondent asserts that he absolutely had returned \$13,000 which had previously been entrusted to him to Margaret Shields. Thus, when the Circuit Court ordered damages in that amount of Dale Rife, Respondent did not possess Margaret's \$13,000.
120. As to the allegations in paragraph 120, this is not really an accurate assessment of Respondent's statement. Respondent made several factual statements admitting a false notary verification, signing other's names, failure to deposit funds into a lawyer's trust account, and such. He denies that all the delay being attributed solely to him is appropriate. He did not intend to defraud anyone and simply failed to get proper out-of-state service on Dale Rife and then, despite a Supreme Court mandate, the Circuit Court did not void the default judgement until after 17-C-116 was filed, and then the plaintiff's counsel, he, and the court all proceeded at a relatively slow pace with regard to the litigation, but he was not the party prosecuting the action and should not therefore be seen

as the sole cause of the length of the litigation. That being said, he did not deny nor does he currently deny all mistakes and wrong-doing. This matter spiraled out of control on him.

121. As to the allegations in paragraph 121, he incorporates all of this prior answer.
122. As to the allegations in paragraph 95, Respondent reiterates that he was not the prosecuting party in 17-C-116 and that he had stated to the Court in opposing counsel's presence the need for an order to void the deed to the Mutters. Had he the opportunity to revisit this matter, he would have taken it upon himself to set Plaintiff's action for hearing and trial and would take the lead in scheduling the action and pushing it forward. He has learned that such is the better course.
123. To the extent that any portion of this Answer fails to deny an allegation that is not expressly admitted herein, then Respondent hereby denies any such allegation.

II. Mitigation

124. Respondent is in his nineteenth (19th) year of law practice, and although there are four complainants, this is all stemming from one partition suit.
125. The original partition appraisal was accurate, and the partition was an appropriate

resolution to joint tenancy created among siblings whose relationship is extremely acrimonious.

126. The Respondent volunteers and contributes to charitable functions and agencies in and throughout his local communities and has done so for decades.
127. The Respondent serves as a court-appointed counsel in a county which has no public defender office and in neighboring McDowell County where the public defender office is very often conflicted.
128. The litigation at hand was conducted for lifelong friends with whom Respondent conducted business too informally.
129. Your Respondent became overwhelmed by this matter as he has said, and his ability to make the best decisions was compromised.

III. Other Defenses

130. Respondent pleads laches and statute of limitations as any of the complaints contained herein which are time-barred.
131. Respondent pleads lack of adequate proof, lack of adequate notice and lack of adequate factual basis for the complaints made herein.

Wherefore, your Respondent prays that the Statement of Charges be dismissed against him, or alternatively that portions of the statement of charges be dismissed against him and that mitigating factors, including acceptance of his responsibility, be taken into consideration and he be disciplined the least sanction which will serve the purposes of this action.

Thomas H. Evans, III
By Counsel

/s/ Timothy P. Lupardus
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