

IN THE SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA

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LAWYER DISCIPLINARY BOARD,

Petitioner,

vs.

No. 24-92

THOMAS H. EVANS, III,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

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I. STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS AND RECOMMENDATION OF THE HEARING PANEL SUBCOMMITTEE

Formal charges were filed against Thomas H. Evans, III (“Respondent”) with the Clerk of the Supreme Court of Appeals of West Virginia (“Supreme Court”) on or about February 20, 2024, and served upon Respondent’s counsel via certified mail by the Supreme Court Clerk on February 28, 2024. Senior Lawyer Disciplinary Counsel filed her mandatory discovery on or about March 19, 2024. Respondent filed his Answer to the Statement of Charges on or about April 10, 2024. Respondent failed to provide his mandatory discovery by the deadline set during the May 28, 2024 Scheduling Conference of July 8, 2024. On September 16, 2024, and November 6, 2024, respectively, Senior Lawyer Disciplinary Counsel filed a “Motion to Exclude Testimony of Witnesses and Documentary Evidence or Testimony of Mitigating Factors,” “Motion to Add Exhibit To Exhibit Notebook” and “Motion to Allow Testimony by Telephone or Video.” During the November 7, 2024 Prehearing Conference, Respondent had no objections to any of the motions. Additionally, Respondent’s counsel advised that he had a scheduling conflict with the scheduled start date of the hearing in this matter. Thereafter, the Hearing Panel Subcommittee granted Senior Lawyer Disciplinary Counsel’s motions, and it was decided that the hearing would commence on Friday, November 15, 2024.

Thereafter, this matter proceeded to hearing in Beckley, West Virginia, on November 15, 2024. The Hearing Panel Subcommittee was comprised of Timothy E. Haught, Esquire, Chairperson, Margaret E. Lewis, Esquire, and Kelly C. McGhee, Layperson. Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel. Timothy P. Lupardus, Esquire, appeared on behalf of Respondent, who also appeared. The Hearing Panel Subcommittee heard testimony from Margaret Shields, Dale Rife and

Respondent. In addition, ODC Exhibits 1-45 were admitted. ODC also moved to admit ODC Exhibit 46. [Hrg. Tr. 131] There was a motion to strike ODC Ex. 46, which the HPS granted, but then the HPS requested that it be placed under seal. [Hrg. Tr. 72-73, 131-136] Joint Exhibit 1 was also admitted into evidence by Order entered November 19, 2024.

On or about February 25, 2025, the HPS issued its decision in this matter and filed its “Report of the Hearing Panel Subcommittee’s Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions” (hereinafter “Report”) with the Supreme Court. The HPS properly found that the evidence established that Respondent violated Rules 1.3, 1.4(a)(3), 1.4(b), 1.15(a), 1.15(d), 3.4(f), 8.4(c), 8.4(d), and 8.1(b) of the Rules of Professional Conduct (hereinafter “RPC”). The HPS issued the following recommendation as the appropriate sanction: (1) That Respondent’s law license be suspended¹ for a period of three (3) months, with automatic reinstatement of his license to practice law pursuant to the provisions and requirements of Rule 3.31 of the Rules of Lawyer Disciplinary Procedure²; (2) That Respondent be required to take an additional six (6) hours of Continuing Legal Education in the area of legal ethics and law office management during the 2024-2026 reporting period; (3) That Respondent be required to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure; and (4) That upon Respondent’s reinstatement³, he be placed on one (1) year of supervised practice by an active

¹ Rule 3.28 sets forth the duties of suspended lawyers to notify clients among other requirements, including but not limited to the filing of an affidavit about the notification to clients, accounting of client funds, providing an address to reach the lawyer, and the name of all jurisdictions and courts the lawyer is admitted to practice.

² Rule 3.31, which allows for automatic reinstatement without the filing of a reinstatement petition, applies if the HPS determines that Respondent should be suspended for three months or less. However, if the HPS determines that Respondent should be suspended for longer than three months, Rule 3.32 provides the procedure for reinstatement following a suspension that is longer than three months.

³ If Respondent is issued a suspension longer than three (3) months then he would be required to undergo the reinstatement process under Rule 3.32 of the Rules of Lawyer Disciplinary Procedure. Furthermore, it is noted that pursuant to Lawyer Disciplinary Board v. Scotchel, 234 W.Va. 627, 768 S.E.2d 730 (2014), recommendations regarding Respondent’s reinstatement should be made at the time Respondent would seek reinstatement.

attorney in his geographic area in good standing with the West Virginia State Bar and agreed upon by ODC. The goal of the supervised practice will be to improve the quality and effectiveness of Respondent's law practice to the extent that Respondent's sanctioned behavior is not likely to recur.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent is a lawyer practicing in Oceana, which is located in Wyoming County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on October 6, 2005. 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. 22-01-250
Complaint of Margaret A. Shields

On April 1, 2015, a default judgment [in Circuit Court of Wyoming County, Civil Action No. 14-C-139] was entered to void the sale of property owned by siblings, Steve Rife (Complainant in Count II, also known as Stevie Rife), Margaret Shields (Complainant in Count I) and Dale Rife (Complainant in Count IV). At some point in time, the order was vacated, and Respondent was directed to "correct" the deed so that it reflected "3 equal owners." Margaret Shields said it took Respondent over six (6) years to prepare the corrected deed despite the fact that in or about 2015, Respondent had "continually stated he has 'everything under control' and ha[d] filed any and all responses timely, fully and appropriately." Margaret Shields, however, alleged that this was not true and said she learned of many of the instances of Respondent's lack of diligence and communication in an "order of judgment" dated June 15, 2022. Moreover, Margaret Shields alleged that there were "monies initially given to" Respondent in the amount of \$13,000 from a

proposed property sale.⁴ Margaret Shields said that Respondent “stated he had deposited funds to court and intended recipient, Dale Rife, refused this, his portion of sale. Evidently, this is not true either.” [Hrg Tr. 10-42; ODC Ex. 1, Bates 2; See also, ODC Ex. 31; ODC Ex. 40, Bates 3205-3227]

Margaret Shields said she had “thought this matter resolved” until she received notice of default judgment directly from the court due “to not showing for hearing[,] a hearing [she] had not been advised of by counsel.” Margaret Shields said that during an April 2022 hearing, Respondent had advised her not to testify stating “he would provide the court with any information they would need.” Margaret Shields said Respondent told her that he had found a file which contained her signature and had “traced it onto documents submitted to court.” He also told Margaret Shields that “we had grounds to sue him, and he should have presented this case to his insurance company but had not.” Margaret Shields said that during the hearing, Respondent made no objections to any claims against her and did not present any evidence to support her side. [Id.; See also ODC Ex. 43]

Margaret Shields said she asked Respondent “how it had gotten to this point” and Respondent said he had let “this trial become personal due to his interaction/feelings about Dale Rife and his attorney, DJ Morgan.” She said he had also assured her that there would be no repercussions for her, and she would not have judgment against her. She said that he also told her that he could get Judge McGraw to sign anything for him and that he would be assuming Judge McGraw’s position when he retired. “When that did not occur, [Respondent] ran for judge in May 2022. He said when he became judge, he would make this case ‘go away.’” Margaret Shields said

⁴ The amount is also listed as \$12,000 in other instances

that he also told her that “he knows a lot of unsavory people and it would only cost him a couple thousand dollars to have issues with Dale Rife taken care of.” [Id.]

Specifically, Margaret Shields said that for an April 2022 hearing, Respondent also failed to present timely appraisals of the property to both the Court and to herself and that he failed to file an appeal. Margaret Shields said Respondent also failed to communicate with her about these matters. [Id.; See also ODC Ex. 43]

Respondent acknowledged that he was retained in 2014 to represent Margaret Shields and Steve Rife in a partition suit. However, one sibling, Dale Rife, filed an appeal and the case was remanded back to the Circuit Court in Wyoming County, West Virginia. [ODC Ex. 3, Bates 37] Respondent denied any ethical violations and allegations in this complaint. [Id.]

In 2017, Dale Rife filed a civil suit, in the Circuit Court of Wyoming County against Respondent, Margaret Shields, and multiple other defendants. [ODC Ex. 40; ODC Ex. 34; ODC Ex. 43] The 2017 suit, *Dale Rife v. Thomas Hanna Evans, PLLC, et al.*, Civil Action No. 17-C-116, related to certain actions taken by Respondent, and the other defendants during the pendency of Wyoming Circuit Court Civil Action No. 14-C-139. In the 2014 case, Margaret Shields and Steve Rife filed a Petition for Partition Sale against Dale Rife regarding a parcel of land containing a house jointly owned by the three siblings. They each owned a one-third undivided interest in the property bought by the father of the Rifes in 2001 for \$55,000. [ODC Ex. 40, Bates 3205-3227]

At an April 15, 2015 hearing in the 2014 case, the Circuit Court entered Default Judgement against Dale Rife and appointed Commissioners, determined value and granted partition and sale. Complainant and Steve Rife were granted Dale Rife’s interest in the property which was valued at \$12,000. Respondent was appointed Special Commissioner to prepare a deed and convey Dale Rife’s interest to Complainant and Steve Rife. The sale proceeds were directed to be deposited in

an interest-bearing account at First Peoples Bank for the use and benefit of the Clerk of the Circuit Court of Wyoming County and held until application or claim by Dale Rife. [Id.]

On September 2, 2015, the Court entered an Order denying Defendant's [Dale Rife's] Motion for Reconsideration. [Id.] On October 15, 2015, Respondent filed a deed conveying Dale Rife's 1/3 interest in the property to Margaret Shields and Steve Rife. [Id.] On October 16, 2015, Dale Rife filed a Notice of Intent to Appeal. [Id.]

On December 4, 2015, Complainant and Steve Rife sold the property to Timothy and Erma Mutters and transferred title by Deed, prepared by Respondent, to the Mutters. The Court stated that the \$12,000 purchase price for Dale Rife 1/3 property interest was never made available to Dale Rife. [Id.]

On December 28, 2015, Dale Rife perfected his Appeal with the Supreme Court of Appeals of West Virginia. [Id.]

On November 18, 2016, in Supreme Court Case No. 15-0975, this Court reversed the Circuit Court's September 2, 2015 Order Denying [Dale Rife's] Motion for Reconsideration and remanded Civil Action No. 14-C-139 back to Wyoming County Circuit Court with directions to vacate the August 27, 2015 Default Judgment Order. [Id.]

Three years later, on January 30, 2018, the Circuit Court of Wyoming County entered an Order vacating the August 27, 2015 Default Judgment Order against Dale Rife. However, the property in dispute remained in the Mutters' legal possession until January 3, 2022, when the Circuit Court entered an order voiding the October 15, 2015 and December 4, 2015 Deeds. [Id.]

Margaret Shields provided copies of motions and orders filed as well as the Final Order in the matter. Further, Margaret Shields stated that the Court found Respondent's deed to be fraudulent and Respondent was "found liable for \$39,000 in damages." [ODC Ex. 1]

Ms. Shields indicated that neither she nor Steve Rife filed Answers in the 2017 case because both believed Respondent represented them in the 2017 matter, *Dale Rife v. Thomas Hanna Evans, PLLC, et al.*, Circuit Court of Wyoming County, Civil Action No. 17-C-116, as well as the 2014 case. [ODC Ex. 1; See also, ODC Ex. 40, Bates 3199-3200]

Court records indicate that on or about January 19, 2019, Margaret Shields filed a *pro se* Answer, along with a Verification, in Civil Action No. 17-C-116. [ODC Ex. 40, Bates 3199-3200; ODC Ex. 43] The court records include an affidavit dated October 10, 2022, of Margaret Shields in which she lists checks provided to Respondent totaling \$36,860.45. Margaret Shield's affidavit also mentions \$13,000 "still unaccounted for that [Respondent] was entrusted with to give to Dale Rife for [payment] for his property interest but has never tendered to Dale Rife nor returned to [Margaret Sheilds]." [Id.]

Respondent was personally served with an investigative subpoena duces tecum on May 25, 2023, which directed him to appear at the ODC for a sworn statement on June 28, 2023. [ODC Ex. 26]

On September 12, 2023, Respondent appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel, after requesting and receiving an extension of time to appear for his sworn statement. [ODC Ex. 35; See also ODC Exhibits 27, 29, 33]

Respondent explained that the case stems from a very long and heated family feud from years prior. The property in question had been in the Rife family and Margaret Shields wanted to acquire the house because it sat "basically on [Margaret Shields'] property." Additionally, Respondent stated that there was some debate regarding the value of the property because they were basing the value off of an old appraisal. Respondent further added that Dale Rife would "never accept the money." [ODC Ex. 35, Bates 505-511] Respondent stated that over the duration

of the matter, “everyone started pointing fingers at [Respondent]. And [Respondent] ended up in a lawsuit involving a conspiracy to take someone’s property interest.” [ODC Ex. 35, Bates 512]

Additionally, Respondent admitted that he accepted \$13,000 cash from Margaret Shields to be used for the purchase of the property. Respondent admitted that he failed to deposit the money into his bank or provide a receipt to Margaret Shields. Respondent said he placed the cash in a safe in his office while negotiating the case. When the matter “fell apart,” Respondent said he returned the cash to Margaret Shields. [Hrg. Tr. 76-78, 124; ODC Ex. 35, Bates 511-515; 520-521] Respondent also admitted that he did not have a written retainer agreement for Margaret Shields or Steve Rife for his representation in the 2014 partition suit. [Hrg. Tr. 80; ODC Ex. 35, Bates 515-516]

On October 15, 2015, after the Court denied Dale Rife’s motion for reconsideration, Respondent filed the deed conveying Dale Rife’s 1/3 interest in the property to Margaret Shields and Steve Rife. [ODC Ex. 35, Bates 545-546] On October 16, 2015, Dale Rife filed a notice of intent to appeal. However, Respondent stated he received nothing regarding the appeal. [Id.]

On December 4, 2015, Margaret Shields and Steve Rife sold the property to the Mutters, who were friends and fellow church members. Respondent stated that Margaret Shields was “trying to control who was going to be their neighbor.” Respondent prepared the deed transfer to the Mutters at Margaret Shields’s request. The purchase price of Dale Rife’s 1/3 property interest was \$12,000. [Hrg. Tr. 77; ODC Ex. 35, Bates 519, 510] Respondent stated that the Mutters were aware of the history of the house. The Mutters started remodeling the house. Also, they were to make payments to Margaret Shields, who wanted to go ahead and deed the house to them, but eventually, Respondent said, the Mutters “wanted out of it. They didn’t want anything to do with it. They were just kind of over it.” [ODC Ex. 35, Bates 519]

On December 28, 2015, Dale Rife perfected the appeal with the Supreme Court. Respondent stated that he “may have been aware of the appeal when [Respondent] got the scheduling order.” [ODC Ex. 35, Bates 547] On November 18, 2016, this Court entered an Order reversing the denial of the motion for reconsideration and remanded the matter back to Wyoming County Circuit Court with directions to vacate the August 17, 2015 Default Judgment Order. [ODC Ex. 35, Bates 547-548; See also ODC Ex. 31, Bates 421-431]]

On January 30, 2018, the Circuit Court of Wyoming County entered an order vacating the 2015 Judgment Order and finding that the property in dispute remained in the Mutters’ legal possession from December 4, 2015, which was the date of the deed prepared by Respondent, until January 3, 2022, which was when the Circuit Court voided the October 15, 2015 and December 4, 2015 deeds. [Id.] Respondent explained that after he was directed to correct the deed, there were multiple return hearings, during which he would request the judge to enter an order that would void the deeds, so the matter could reset and an amended petition or refile of the partition could be done, but “that never happened.” [ODC Ex. 35; Bates 517]

Respondent clarified that he did not represent Margaret Shields in the 2017 matter filed by Dale Rife, as Respondent was named as a co-defendant. Respondent said that the Court recognized each of them as *pro se* defendants. [ODC Ex. 35, Bates 525-526] Respondent stated that the Answers for the 2017 case were due, and he relayed a message to Margaret Shields and Steve Rife, that since they were *pro se*, they needed to do something with the case, as there was a time limit. Respondent stated that Margaret Shields and Steve Rife “told [Respondent] to file them a *pro se* answer because they didn’t have any means to do it or didn’t know how to do it.” Respondent then acknowledged that he had their permission to sign their names to the pleading and file it. Respondent explained that Margaret Shields and Steve Rife resided too far away to come by his

office to sign their Answers, so, at their request and with their permission, he filed the Answers for them. Respondent was unsure if the employee at his office spoke with Margaret Shields and Steve Rife prior to his notarizing of their signatures on the Answers. [Hrg. Tr. 92-93; ODC Ex. 35, Bates 525-535; ODC Ex. 40, Bates 3199-3204]

Respondent denied advising Margaret Shields that he had “screwed up” the matter or that she should seek malpractice against his insurance company. [ODC Ex. 35, Bates 535] Respondent stated that he never understood the grounds for Dale Rife’s lawsuit because Dale Rife was not deprived of anything. Dale Rife had not attempted to sell or gain possession of the home or even visit the home in more than fifteen (15) years. [ODC Ex. 35, Bates 536] Respondent maintained that the case drug out for many years due to “multiple judges, multiple filings, multiple everything.” [Hrg. Tr. 85-87; ODC Ex. 35, Bates 537] Respondent further denied telling Margaret Shields that the matter would go away, as it is his practice to never make such promises with cases. Respondent stated that he informed Margaret Shields that he “didn’t know what’s going on with it. [Respondent was] trying to push it along, but it’s just stuck.” [ODC Ex 35, Bates 539] Respondent denied Margaret Shields’ allegations that he “knew unsavory people” or that he could get the Judge to sign anything. Respondent insisted that he did not know where Margaret Shields had heard such things. [ODC Ex. 35, Bates 543-544]

Respondent stated that he “simply did what [Respondent] was hired to do. [Respondent] filed a partition. [Respondent] got commissioners appointed. [Respondent] got a house appraised. [Respondent] got it sold. [Respondent] got the deeds entered. [Respondent] sold the house at their direction after that.” Once the appeal was filed, Respondent said he informed the Court what needed to be entered, but the case did not progress. [ODC Ex. 35, Bates 552-553]

Respondent admitted and the HPS found that he failed to act with diligence during his representation of Margaret Shields in violation of Rule 1.3 of the Rules of Professional Conduct, which provides:

Rule 1.3. Diligence.

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

Respondent admitted and the HPS found that he failed to keep Margaret Shields informed as to the status of the matter and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(a)(3) and Rule 1.4(b) of the Rules of Professional Conduct, which provides:

1.4. Communication.

(a) A lawyer shall:

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

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

Respondent admitted and the HPS found that he failed to deposit the \$13,000 (or \$12,000) he received from Margaret Shields for "Dale Rife's 1/3 interest" in a "client's trust account" and instead kept the funds in a safe in his office in violation of Rule 1.15(a) of the Rules of Professional Conduct, which provides:

Rule 1.15. Safekeeping Property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Such separate accounts must comply with State Bar Administrative Rule 10 with regard to overdraft reporting. Other property shall be

identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.⁵

Respondent admitted and the HPS found that he failed to promptly notify Dale Rife of the receipt of funds in which Dale Rife had an interest in violation of Rule 1.15(d) of the Rules of Professional Conduct, which provides:

Rule 1.15. Safekeeping Property.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive upon request by the third person, shall promptly render a full accounting regarding such property.⁶

Respondent admitted and the HPS found that he advised Margaret Shields, who he said was not his client in Civil Action No. 17-C-116, not to testify at an April 2022 hearing in that matter, he violated Rule 3.4(f) of the Rules of Professional Conduct, which provides as follows:

Rule 3.4. Fairness to Opposing Party and Counsel.

A lawyer shall not:

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

⁵ Language identified in BOLD was added to Rule 1.15(a) of the Rules of Professional Conduct in 2015, effective January 1, 2015; otherwise, the language in Rule 1.15(a) pre- and post- 2015 was identical.

⁶ Prior to January 1, 2015, Rule 1.15(d) of the Rules of Professional Conduct was identified as Rule 1.15(b) of the Rules of Professional Conduct. The language contained therein is identical.

Respondent admitted and the HPS found that he prepared a *pro se* Answer in Civil Action No. 17-C-116 for Margaret Shields, and signed the name of Margaret Shields on the *pro se* Answer, Certificate of Service and Verification, thus causing a Notary Public to notarize a false Verification, and then filed the same with a court of record, in violation of Rules 8.4(c) & (d) of the Rules of Professional Conduct, which provide:

Rule 8.4. Misconduct.

It is 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. 22-01-251

Complaint of Stevie A. Rife

Complainant Stevie A. Rife (also known as Steve Rife) is the brother of Complainant Margaret Shields in Count I and Complainant Dale Rife in Count IV. Steve Rife reiterated many of the allegations in Margaret Shields's complaint. [ODC Ex. 7] Steve Rife stated that a default judgment was entered on or about April 1, 2015, to void sale of property owned by the three siblings. Respondent was directed to correct the deed, but this was not completed until January 2022, despite Respondent's assurances that he would do so in a timely manner. [ODC Ex. 7, Bates 134] Steve Rife alleged that Respondent accepted \$13,000 to give to Dale Rife for the sale of his portion of the property. Mr. Rife acknowledged that Dale Rife refused to accept the money. [Id.] Steve Rife further alleged that Respondent informed him and Margaret Shields that Respondent would fully complete any requests for documents, answers, etc., but failed to do so. [Id.]

Steve Rife stated that he believed the matter had been resolved until he received a Notice of Default Judgment directly from the Court due to not showing for a hearing, which he said he was not advised of a hearing by counsel. [Id.]

During a hearing in April 2022, Steve Rife stated that Respondent had advised him not to speak as Respondent would provide the Court with any information. However, Respondent did not “object, present responses, or arguments on [Steve Rife’s] behalf.” Additionally, during a break, Respondent told Steve Rife he had found Steve Rife’s signature in a file and traced it onto documents submitted to Court. [Id.]

Steve Rife indicated that Respondent continually assured him that everything was under control, and Respondent was taking care of everything. [Id.]

Steve Rife stated that the Court requested Respondent to provide information including an appraisal of the property. Steve Rife stated that as the deadline approached for the appraisal, he had not received any communication from Respondent. So, he and Margaret Shields “took it upon themselves to arrange for appraisals and deliver to court.” [Id.] Steve Rife stated that as of the time of writing this complaint, he had received no documents regarding the matter. [Id.]

Steve Rife stated, “throughout this case, [Respondent] has mishandled his duties as indicated in Order of Judgement dated 6/15/22. [Respondent] has been as unresponsive and incomplete with communications, etc. with [Steve Rife] as [Respondent] has been with court.” [Id.] Steve Rife further stated, “due to [Respondent’s] neglect of reasonable duty, misleading and untruthful statements failure to maintain communications, and lack of responses, notifications, ... [Steve Rife] feel[s] that [Respondent] has been the proximate cause of loss to [Steve Rife] and the other defendants. This is supported by the Order of Judgement that included sanctions against [Respondent].” [Id.]

In his timely filed response, Respondent stated that he was retained to represent Steve Rife and his sister, Margaret Shields (Complainant in Count I) in a partition suit. Complainant's brother, Dale Rife (Complainant in Count IV), the adverse party in the suit, appealed the matter to the West Virginia Supreme Court of Appeals, and the case was remanded to Wyoming County Circuit County. A second lawsuit was filed by Dale Rife against Respondent, Steve Rife, Margaret Shields, and others. [ODC Ex. 9] Respondent stated that he did not represent Steve Rife in the 2017 lawsuit, as he was a co-defendant. [Id.]

Respondent was personally served with an investigative subpoena *duces tecum* on May 25, 2023, which directed him to appear at the ODC for a sworn statement on June 28, 2023. [ODC Ex. 26] On September 12, 2023, Respondent appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel, after requesting and receiving an extension of time to appear for his sworn statement. [ODC Ex. 35; See also ODC Exhibits 27, 29, 33]

Respondent reiterated that he did not represent Steve Rife or Margaret Shields in the 2017 lawsuit filed by Dale Rife. [ODC Ex. 35, Bates 525] Respondent stated, "we just thought it was going to fizzle out once [the] judge fixed the partition. Well, he never fixed the partition, and it grew legs." [ODC Ex. 35, Bates 571] Respondent stated that he referred Steve Rife and Margaret Shields to other counsel, namely Mr. Omar Thair Barghouthi and Mr. Robert Dunlap. [Id.] Respondent stated that Steve Rife was out of state and eventually was dismissed. Respondent also noted Steve Rife never paid Respondent to do anything. [ODC Ex. 35, Bates 572]

Respondent admitted and the HPS found that he failed to act with diligence during his representation of Steve Rife in violation of Rule 1.3 of the Rules of Professional Conduct, as provided above.

Respondent admitted and the HPS hat he failed to keep Steve Rife informed as to the status of the matter and failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rule 1.4(a)(3) and Rule 1.4(b) of the Rules of Professional Conduct, as provided above.

Respondent admitted and the HPS found that he prepared a *pro se* Answer in Civil Action No. 17-C-116 for Steve Rife, signed the name of Steve Rife on the *pro se* Answer, Certificate of Service and Verification, thus causing a Notary Public to notarize a false Verification, and then filed the same with a court of record in violation of Rules 8.4(c) & (d) of the Rules of Professional Conduct, as provided above.

Respondent admitted and the HPS found that he advised Steve Rife, who he said was not his client in Civil Action No. 17-C-116, not to testify at an April 2022 hearing in that matter in violation of Rule 3.4(f) of the Rules of Professional Conduct, as provided above.

COUNT III
I.D. No. 23-01-026
Complaint of Joshua T. Thompson, Esq.

Complainant Joshua T. Thompson, Esquire, filed this complaint under his duty to report a violation of the Rules of Professional Conduct, pursuant to Rule 8.3(a) of the West Virginia Rules of Professional Conduct.⁷ [ODC Ex. 11] Mr. Thompson stated that he represented Dale Rife (Complainant in Count IV) in the above-referenced 2017 lawsuit, Civil Action No. 17-C-116, *Dale Rife v. Thomas Hannah Evans, PLLC, et al.*, filed in the Circuit Court of Wyoming County. [ODC Ex. 11, Bates 204] Mr. Thompson stated that Respondent was found civilly liable for negligence, civil conspiracy, fraud, intentional infliction of emotional distress and slander of title. Further, the

⁷ Rule 8.3(a) of the Rules of Professional Conduct provides that “[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.”

Court found that Respondent was responsible for 60% comparative fault for the damages from said liability. [Id.]

Mr. Thompson stated that Respondent and his clients, Margaret Shields (Complainant in Count 1) and Steve Rife (Complainant in Count II), deprived his client, Dale Rife (Complainant in Count IV) “ of his real property for over seven (7) years through fraudulent schemes.” Specifically, from October 15, 2015, when Respondent prepared and filed a Deed conveying Dale Rife’s 1/3 property interest to Margaret Shields and Steve Rife based upon Judge McGraw’s Order entered August 27, 2015, until January 3, 2022, when Judge Kornish entered an order Voiding Deeds in Civil Action 14-C-139. [Id.]

The Court noted that on December 4, 2015, Respondent prepared and filed a second Deed transferring the property in dispute from Margaret Shields and Michael Shields⁸ to the Mutters. Furthermore, the Court noted that the \$12,000 purchase price for Dale Rife’s 1/3 property interest was never made available to Dale Rife. On November 18, 2016, the Supreme Court reversed the Circuit Court’s Default Judgment Order in Civil Action 14-C-139 and remanded the matter back to the Circuit Court.

On January 30, 2018, Judge McGraw entered an Order Vacating Default Judgment in Civil Action No. 14-C-139. [ODC Ex. 11; ODC Ex. 40, Bates 3205-3227, 3228-3260] The Court further found that Respondent was “dilatory in responding to discovery, responded partially, inadequately, and took nearly two-and-a-half years to respond.” [Id.] The Court further noted that Respondent’s conduct contributed to the delay in restoring Dale Rife’s property rights. [Id.]

⁸ Presumably, the husband of Margaret Shields.

The Court granted \$13,000 in sanctions against Respondent on behalf of Dale Rife and \$23,867.50 in attorneys fees and costs split among Respondent and Margaret Shields, an award which covered Dale Rife's reasonable attorney fees and costs incurred after the Supreme Court of Appeals reversed judgment against Dale Rife in Civil Action No. 14-C-139. The Court also awarded \$10,000 in property loss damage to Dale Rife split among Respondent, Margaret Shields and the Mutters and \$10,000 for pain and suffering, intentional infliction of emotional distress, and punitive damages to Dale Rife also split among Respondent and Margaret Shields. [Id.]

The Court also found that Margaret Shields and Steve Rife did not file *pro se* Answers on their own behalf in the matter, Civil Action No. 17-C-116, and that they thought that Respondent represented them. [Id.]

By letter dated January 31, 2023, the ODC sent Respondent a copy of the complaint and directed him to file a verified response within twenty (20) days. This letter was sent to Post Office Box 70, Oceana, WV, 24870. [ODC Ex. 12] Respondent failed to file a response.

By letter dated March 7, 2023, the ODC sent Respondent a second letter to the same address, by first class and certified mail, directing him to file a verified response to the complaint by March 21, 2023. On March 23, 2023, the ODC received the green card back. It had been signed by Jennifer Cook, an employee in Respondent's office. The letter sent by first class mail was not returned. [ODC Exhibits 13, 14] Respondent did not respond to this letter.

Respondent was personally served with an investigative subpoena duces tecum on May 25, 2023, which directed him to appear at the ODC for a sworn statement on June 28, 2023. [ODC Ex. 26]

On September 12, 2023, Respondent appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel, after requesting and receiving an extension of time to appear for his sworn statement. [ODC Ex. 35; See also ODC Exhibits 27, 29, 33]

Respondent admitted that he did not file a written response to this complaint. [ODC Ex. 35, Bates 578] Respondent explained that he responded “in detail” to the complaint of “Mr. Rife” which is repetitive, as it was the same complaint. [Id.] Respondent stated that this case has “consumed [Respondent’s] life for the last couple of years and not in a good way.” Therefore, Respondent stated that he became “overwhelmed” and felt like he “had already answered it.” [ODC Ex. 35, Bates 579]

Respondent admitted and the HPS found that he failed to comply with the Office of Lawyer Disciplinary Counsel’s lawful requests for information in violation of Rule 8.1(b) of the Rules of Professional Conduct, which provides:

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.

Respondent admitted and the HPS found that he engaged in dilatory conduct in representing Margaret Shields, Steve Rife and/or himself which contributed to the delay in restoring Dale Rife’s property rights in violation of Rule 8.4(d) of the Rules of Professional Conduct, as provided above.

COUNT IV
I.D. No. 23-01-030
Complaint of Dale Rife

Complainant Dale Rife is the brother of Margaret Shields (Complainant in Count I) and Steve Rife (Complainant in Count II). [Hrg. Tr. 43-75; ODC Ex. 15] Dale Rife stated that the Circuit Court of Wyoming County in Civil Action No. 17-C-116 entered an Order finding Respondent guilty of negligence, civil conspiracy, fraud, intentional infliction of emotional distress and slander of title. [ODC Ex. 15, Bates 268] Additionally, Dale Rife stated, Respondent was sanctioned \$13,000 because Respondent ‘never made any effort to restore [Dale Rife’s] property rights after WV Supreme Court on November 18, 2016, reversed default finding made by Wyoming County Court.” [ODC Ex. 15, Bates 269] Dale Rife stated that Respondent was also ordered to pay \$14,320.50 for legal fees, \$5,800 property loss and \$6,000 for intentional infliction of emotional distress, for a total of \$39,120.50 owed to Dale Rife. [Id.] Dale Rife stated that the Court’s Order stated that Respondent showed a pattern of neglect, willful and repeated disregard of Dale Rife’s property rights, and a willful and repeated disregard for court orders and deadlines. [Id.] Additionally, Dale Rife alleged that Respondent failed to provide a Declarations page showing his professional liability insurance. Therefore, Dale Rife was unable to file a claim against Respondent’s insurance for damages. [Id.]

By letter dated January 31, 2023, the ODC sent Respondent a copy of the complaint and directed him to file a verified response within twenty (20) days. This letter was sent to Post Office Box 70, Oceana, WV, 24870. [ODC Ex. 16] Respondent failed to provide a written response to this complaint.

By letter dated March 7, 2023, the ODC sent Respondent a second letter to the same address, by first class and certified mail, directing him to file a verified response to the complaint by March 21, 2023. On March 27, 2023, the ODC received the green card back. It had been signed

by Jennifer Cook, an employee in Respondent's office. The letter sent by first class mail was not returned. [ODC Exhibits 17, 18] Respondent failed to provide a response.

In a supplemental letter, Dale Rife stated that his counsel, Joshua T. Thompson (Complainant in Count III), served a Writ of Execution and Writ of Suggestion upon Respondent. Complainant alleged that Respondent ignored both requests and never responded to either. [ODC Ex. 20] Additionally, Dale Rife noted that Joshua T. Thompson, Esquire (Complainant in Count III) learned that Respondent had only \$94 in his bank account and "it is believed that someone at the bank tipped-off [Respondent] and he withdrew money from his bank account to prevent the writ of suggestion from being executed." [Id.]

Further, Dale Rife stated that the \$13,000 in sanctions against Respondent should have been deposited into an escrow account to be sent to Complainant, but he never received it. [Id.] Dale Rife also provided a copy of a check received from Respondent's account at Summit Community Bank for \$96.55, to be applied toward the judgement awarded to Dale Rife. [ODC Ex. 21] Dale Rife also provided a copy of the Notice of Lis Pendens lien he filed against Respondent's personal residence. [ODC Ex. 21, Bates 354]

Respondent was personally served with an investigative subpoena *duces tecum* on May 25, 2023, which directed him to appear at the ODC for a sworn statement on June 28, 2023. [ODC Ex. 26] On September 12, 2023, Respondent appeared for a sworn statement at the Office of Lawyer Disciplinary Counsel, after requesting and receiving an extension of time to appear for his sworn statement. [ODC Ex. 35; See also ODC Exhibits 27, 29, 33] Respondent did not object to Dale Rife's allegation that the Circuit Court of Wyoming County issued sanctions against him totaling \$39,120.50. [ODC Ex. 35, Bates 587] Respondent stated that Dale Rife's attorney received a declaration page for his insurance, with the limits, the company and the address during the

pendency of the 2017 case, as this information was provided to the court. [ODC Ex. 35, Bates 588] Respondent acknowledged that he did not provide a written response to this complaint for the same reasons as above – it was the same complaint that was filed previously. [Id.] Respondent stated that he had not been served with the Writ of Execution or Writ of Suggestion filed by Dale Rife and/or Joshua T. Thompson, Esquire [Complainant in Count III]. [ODC Ex. 35, Bates 589] Further, Respondent denied removing any money from his account, other than to pay bills. [Id.] As for the \$13,000 awarded to Complainant, Respondent reiterated that the money had been returned to Margaret Shields prior to the court order. [ODC Ex. 35, Bates 590] Respondent denied committing any fraud or stealing anyone’s money or violating any Rules of Professional Conduct. [ODC Ex. 35, Bates 597]

Respondent admitted and the HPS found that he failed to comply with the Office of Lawyer Disciplinary Counsel’s lawful requests for information in violation of Rule 8.1(b) of the Rules of Professional Conduct, as provided above.

Respondent admits that he engaged in dilatory conduct in representing Margaret Shields, Steve Rife and/or himself which contributed to the delay in restoring Dale Rife’s property rights in violation of Rule 8.4(d) of the Rules of Professional Conduct, as provided above.

II. SUMMARY OF ARGUMENT

This Court has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139, 451 S.E.2d 440 (1994). The HPS found that the clear and convincing evidence established that Respondent committed violations of Rules 1.3, 1.4(a)(3), 1.4(b), 1.15(a), 1.15(d), 3.4(f), 8.4(c), 8.4(d), and 8.1(b) of the Rules of Professional

Conduct (hereinafter “RPC”) of the Rules of Professional Conduct. In addition, ODC respectfully submits to this Honorable Court that the clear and convincing evidence supports finding that Respondent committed the violations of the Rule of Professional Conduct to which he admitted had been violated.⁹ Moreover, ODC respectfully submits to this Honorable Court that the HPS’ recommended sanction of a ninety (90) days suspension, among other sanctions, is proper in consideration of the proven and admitted charges, the fact that the HPS found that Respondent’s misconduct was both knowing and intentional, and in consideration of the analysis of the HPS regarding the existence of both aggravating and mitigating factors in this matter.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This Honorable Court’s April 17, 2025 Order indicated that this matter will be set for oral argument under Rule 19 of the Rules of Appellate Procedure.

IV. ARGUMENT

A. STANDARD OF PROOF

In lawyer disciplinary matters, a *de novo* standard of review applies to questions of law, questions of application of the law to the facts, and questions of appropriate sanction to be imposed. Roark v. Lawyer Disciplinary Board, 207 W. Va. 181, 495 S.E.2d 552 (1997); Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994). The Supreme Court of Appeals gives respectful consideration to the Lawyer Disciplinary Board's recommendations as to questions of law and the appropriate sanction, while ultimately exercising its own independent judgment. McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381.

⁹ See, Joint Exhibit 1, pp. 14-15.

Substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. McCorkle, Id.; Lawyer Disciplinary Board v. Cunningham, 195 W. Va. 27, 464 S.E.2d 181 (1995). At the Supreme Court level, "[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board." Cunningham, 464 S.E.2d at 189; McCorkle, 192 W. Va. at 290, 452 S.E.2d at 381.

The charges against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. *See*, Syl. Pt. 1, Lawyer Disciplinary Board v. McGraw, 194 W. Va. 788, 461 S.E.2d 850 (1995). "Stipulations or agreements made in open court by the parties in a trial of a case and acted upon are binding and a judgment founded thereon will not be reversed." Syl. Pt. 3, Matter of Starcher, 202 W.Va. 55, 501 S.E.2d 772 (1998) *citing* Syl. Pt. 1, Butler v. Smith's Transfer Corporation, 147 W.Va. 402, 128 S.E.2d 32 (1962). "In a disciplinary proceeding against a judge, in which the burden of proof is by clear and convincing evidence, where the parties enter into stipulations of fact, the facts so stipulated will be considered to have been proven as if the party bearing the burden of proof has produced clear and convincing evidence to prove the facts so stipulated." Syl. Pt. 4, Matter of Starcher, 202 W.Va. 55, 501 S.E.2d 772 (1998). The Court has also noted that the same rule would apply to pre-trial stipulations. Matter of Starcher, 202 W.Va. at 61, 501 S.E.2d at 778. Furthermore, the Supreme Court has also held that "[s]tipulations or agreements made in open court by the parties in the trial of a case and acted upon are binding and a judgment founded thereon will not be reversed." Syl. Pt. 3, Lawyer Disciplinary Board v. Cavendish, 226 W.Va. 327, 700 S.E.2d 779 (2010).

Finally, the Supreme Court of Appeals is the final arbiter of formal legal ethic charges and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law. Syl. Pt. 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. Pt. 7, Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994).

**B. ANALYSIS OF SANCTION UNDER RULE 3.16 OF THE
RULES OF LAWYER DISCIPLINARY PROCEDURE**

Syl. Point 4 of Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d. 722 (1998) holds: Rule 3.16 of the Rules of Lawyer Disciplinary Procedure provides that when imposing a sanction after a finding of lawyer misconduct, the Court shall consider: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. A review of the extensive record in this matter indicates that Respondent has transgressed all four factors set forth in Jordan.

1. Whether Respondent has violated a duty owed to a client, to the public, to the legal system or to the legal profession.

Respondent engaged in misconduct in violation of the Rules of Professional Conduct and therefore violated duties owed to his clients, the public, the legal system and legal profession. The evidence clearly and convincingly demonstrated that Respondent committed multiple violations of the Rules of Professional Conduct, including: (1) failing to act with reasonable diligence and promptness in representing his clients, Margaret Shields and Steve Rife; (2) failing to communicate effectively with his clients, Margaret Shields and Steve Rife, so that they could make informed decision regarding the representation; (3) failing to safeguard property by keeping client funds in a safe in his office rather than in a client trust account as required by the Rules of

Professional Conduct; (4) failing to notify clients and third parties (Dale Rife) of funds received in which the client or third party has an interest; (5) advising Margaret Shields and Steve Rife, whom Respondent said at one point were not his clients, not to testify at an April 22, 2022 hearing; (5) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and which conduct was prejudicial to the administration of justice; and (6) failing to timely respond to lawful requests for information from the ODC. Moreover, in the Agreed Joint Stipulations and at the hearing in this matter, Respondent admitted that he had committed those violations of the Rules of Professional Conduct in the underlying matters. [Joint Ex. 1; Hrg. Tr. 76-130]

Lawyers owe duties of candor, loyalty, diligence and honesty to their clients. A lawyer also has a fiduciary duty to a client and third parties. The evidence in this case establishes by clear and convincing proof that Respondent violated his duties owed to his clients, to the public, to the legal system, and to the legal profession. Indeed, lawyers are officers of the court and must act in a manner to maintain the integrity of the Bar and the profession and Respondent's admitted conduct in this matter fell short of all these stated obligations.

2. Respondent acted intentionally and knowingly.

The most culpable mental state is that of intent when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his conduct, both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *ABA Model Standards for Imposing Lawyer Sanctions*, Definitions (1992). In this case, Respondent stipulated

that he knowingly and intentionally violated duties owed to his clients, the profession, the public and to the legal system. Furthermore, Respondent intentionally did not respond to requests for information from ODC and knowingly did not undertake certain actions after the case involving the initial sale of the house to the Mutters was remanded to the Circuit Court of Wyoming County in 2015 which resulted in, among other things, a six (6) year delay in the restoration of Dale Rife's property rights to the house he had inherited from his father. [ODC Ex. 32; ODC Ex. 40, Bates 3205-3227, 3228-3260] Respondent testified that "I mean, I did. I – I know better. You know, like I've practiced long enough at that time even to know that, you know, it's my responsibility to get things moving, if it's my case especially, and to get everything filed and – and get it on track... And it just took on a life of its own." [Hrg. Tr. 85-86]

3. The amount of actual or potential caused by the lawyer's misconduct.

Respondent stipulated that there was potential and actual injury to Respondent's clients, the public, the judicial system and to the reputation and integrity of the profession from Respondent's actions in this matter. The matters in which Respondent represented Margaret Shields began in 2014 and were not resolved until April 2023 when their father's house was finally sold by partition sale after multiple lawsuits had been filed by the parties against each other. [ODC Ex. 31, ODC Ex. 32; ODC Ex. 40, Bates 3205-3227, 3228-3260]. At the hearing, Margaret Shields testified that she did not receive back the \$13,000 in cash she paid to Respondent which was to be paid to Dale Rife as his portion of the initial partition sale. [Hrg. Tr. 15-16, 36-37] Ms. Shields also testified that she did not receive a receipt for her cash payment to Respondent [Hrg. Tr. 37] However, Margaret Shields also testified at an April 27, 2022 evidentiary hearing, in the Circuit Court of Wyoming County, in Civil Action No. 14-C-139 and 17-C-11, that Respondent returned

those funds to her. [ODC Ex. 43, Bates 3324]. Furthermore, Respondent maintained that he returned the cash to Margaret Shields. [Hrg. Tr. 125; ODC Ex. 35, Bates 511]

Respondent's actions negatively impacted his client's faith in lawyers and the legal system. Margaret Shields testified that "I hope I never need another lawyer all the days of my life. I never really wanted to face another judge or courthouse or lawyer or I – I – that part of my life I'd like to just put in a box." [Hrg. Tr. 29-30]. She further stated that her "life has been impacted." [Hrg. Tr. 30]. She also testified that "I have not seen justice done properly. I have not." [Hrg. Tr. 31]. Finally, she also indicated that she was "nervous" when she saw Respondent in town. [Hrg. Tr. 32-33]. Dale Rife testified that his dealings with Respondent "doesn't reflect positively" on his opinion of lawyers and that "[m]y dealings with [lawyers] have been less than candid, and I would not categorize those as what I expect from an attorney who's licensed, who has taken an oath to uphold the administration of justice." [Hrg. Tr. 52-53]. As result of Respondent's conduct, Dale Rife has had to pursue multiple lawsuits and the partition sale of his father's home was delayed by nearly ten (10) years. Furthermore, while Mr. Rife testified that he finally received his portion from the partition sale from Margaret Shields, Respondent has not satisfied the judgment issued against him by the Circuit Court. [Hrg. Tr. 49-52]

4. The existence of any aggravating factors.

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the Scott Court held "that aggravating factors in a lawyer disciplinary proceeding 'are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.'" Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E.2d 550, 557(2003) *quoting ABA Model Standards for Imposing Lawyer Sanctions*, 9.21 (1992).

The parties stipulated to aggravating factors, including but not limited to: substantial experience in the practice of law; pattern of misconduct; and multiple offenses. [Joint Ex. 1] The Supreme Court has held that “lawyers who engage in the practice of law in West Virginia have a duty to know the Rules of Professional Conduct and to act in conformity therewith.” Lawyer Disciplinary Board v. Ball, 219 W.Va. 296, 633 S.E.2d 241 (2006). Respondent has been licensed to practice law since 2005.

Rule 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that a pattern of misconduct constitutes an aggravating factor. The record in this matter demonstrates that Respondent engaged in a pattern and practice of failing to sufficiently communicate with his clients so that they could make informed decisions about their case and that he neglected their cases. The record also reflects that Respondent had a pattern and practice of failing to timely comply with lawful requests for information from ODC. Finally, the evidence establishes that Respondent committed multiple offenses in these matters. The Scott Court noted that the *ABA Model Standards for Imposing Lawyer Sanctions* also recognized “multiple offenses” as an aggravating factor in a lawyer disciplinary proceeding. Scott, 213 W.Va. at 217, 579 S.E.2d at 558.

5. The existence of any mitigating factors.

In addition to adopting aggravating factors in Scott, the Scott court also adopted mitigating factors in a lawyer disciplinary proceedings and stated that mitigating factors “are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E.2d 550, 557 (2003) *quoting* *ABA Model Standards for Imposing Lawyer Sanctions*, 9.31 (1992).¹⁰ It should be clear that

¹⁰ The Scott Court held that mitigating factors which may be considered in determining the appropriate sanction to be imposed against a lawyer for violating the Rules of Professional Conduct include: (1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or to rectify consequences of misconduct; (5) full and free disclosure to disciplinary board or

mitigating factors were not envisioned to insulate a violating lawyer from discipline. In this case, the parties stipulated to mitigating factors, including but not limited to: absence of disciplinary record; imposition of other penalties or sanctions; and remorse.

However, it is noted that Respondent was issued one prior admonishment by the Investigative Panel on June 11, 2022, in I.D. No. 21-03-278. [ODC Ex. 45, Bates 3708-3712] Respondent was admonished for violating Rule 8.1(b) of the Rules of Professional Conduct for failing to respond to ODC's requests for information. In that matter, Respondent failed to timely respond to ODC's requests of information and a subpoena was issued for his appearance to provide a sworn statement. [Id.] The Supreme Court of Appeals of West Virginia does consider prior Investigative Panel admonishments to be aggravating. See, e.g., Lawyer Disciplinary Board v. Sturm, 237 W.Va. 115, 785 S.E.2d 821 (2016); Lawyer Disciplinary Board v. Grindo, 231 W.Va. 365, 745 S.E.2d 256 (2013).

The Circuit Court of Wyoming County also issued a sanctions order against Respondent in the amount of \$13,000 plus \$26,120.50 which included "60% of the compensatory damages'; punitive damages', and attorneys' fees and costs...." [ODC Ex. 40, Bates 3258-3260] Finally, Respondent stated that "[b]ut at the end of the day, I meant no harm to anyone. I – I truly was trying to protect everyone in this case in some form or fashion." [Hrg. Tr. 128].

C. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal

cooperative attitude toward proceedings; (6) inexperience in the practice of law; (7) character or reputation; (8) physical or mental disability or impairment; (9) delay in disciplinary proceedings; (10) interim rehabilitation; (11) imposition of other penalties or sanctions; (12) remorse; and (13) remoteness of prior offenses.

Ethics v. Morton, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. In Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court stated:

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Moreover, a principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

Absent any aggravating or mitigating circumstances, Standard 4.12 of the *ABA Model Standards for Imposing Lawyer Sanctions* provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client and Standard 4.42 provides that suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Standard 7.2 provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. It is noted that Respondent entered into Agreed Joint Stipulations whereby he has agreed to a three (3) month suspension from the practice of law, among other sanctions. [See also, Joint Exhibit 1]. The Supreme Court has held that “[s]tipulations or agreements made in open court by the parties in the trial of a case and acted

upon are binding and a judgment founded thereon will not be reversed.” Syl. Pt. 3, Lawyer Disciplinary Board v. Cavendish, 226 W.Va. 327, 700 S.E.2d 779 (2010).

Respondent’s lack of diligence in representing his clients and lack of meaningful communication in this matter clearly rises to suspension level misconduct. The case law in West Virginia concerning misconduct for failure to provide competent representation, failure to act with reasonable diligence and failure to effectively communicate with clients has resulted in the suspension of attorneys’ law licenses. *See* Lawyer Disciplinary Board v. Munoz, 240 W.Va. 42, 807 S.E.2d 290 (2017) (three month suspension for failure to file *habeas* petitions, failure to communicate with clients and failure to be truthful in response to ODC along with his denial about requesting continuances in his own criminal case); Lawyer Disciplinary Board v. Sturm, 237 W.Va. 115, 785 S.E.2d 821 (2016) (ninety (90) day suspension for failure to file *habeas* petition, failure to communicate with client and issues with depositing and timely refunding retainer); Lawyer Disciplinary Board v. Conner, 234 W.Va. 648, 769 S.E.2d 25 (2015) (ninety day suspension for failure to meet multiple deadlines, failure to communicate with clients, failure to perform legal services, failure to keep clients informed, failure to appear before the Supreme Court and lack of compliance with ODC requests); Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994) (three month suspension for failure to act with reasonable diligence, failure to communicate effectively with clients, and failure to respond to disciplinary authorities’ repeated requests for information); Lawyer Disciplinary Board v. Thompson, 238 W.Va. 745, 798 S.E.2d 871 (2017) (three month suspension for failure to provide competent representation, engaging in conduct that was prejudicial to the administration of justice and knowingly disobeying obligations under the rules of a tribunal); Lawyer Disciplinary Board v. Arbuckle, No. 17-0520 (W. Va. April 4, 2018) (three month suspension for failure to file proper documents with Public Defender Services, failure to diligently represent client and failure to communicate with client); Lawyer Disciplinary Board v. Sullivan, 230 W.Va. 460, 740 S.E.2d 55 (2013) (thirty (30) day suspension

for failing to assist a client in correcting criminal sentencing order, failure to communicate with client and failure to respond to ODC); Lawyer Disciplinary Board v. Simmons, 219 W.Va. 223, 632 S.E.2d. 909 (2006) (the Supreme Court of Appeals of West Virginia Court, while expressing concern about the effectiveness of short suspensions, nonetheless, suspended an attorney for twenty (20) days for failure to act with reasonable diligence, failure to appear for court hearings on numerous occasions, and failure to communicate effectively with his clients).

Furthermore, in Committee on Legal Ethics v. Mullins, the Supreme Court of Appeals of West Virginia stated that “[m]isconduct or malpractice consisting of negligence or inattention, in order to justify a suspension or annulment, must be such as to show the attorney to be unworthy of public confidence and an unfit or unsafe person to be entrusted with the duties of a member of the legal profession or to exercise its privileges.” Mullins, 159 W.Va. 647, 652, 226 S.E.2d 427, 430 (1976) (indefinite suspension for failure to act with reasonable diligence, failure to communicate effectively with clients, and failure to respond to the disciplinary authorities repeated requests for information, including failure to appear at the disciplinary hearing), *quoting* Syllabus pt. 1, In Re Damron, 131 W.Va. 66, 45 S.E.2d 741 (1947). *See also*, Lawyer Disciplinary Board v. Keenan, 189 W.Va. 37, 427 S.E.2d 471 (1993) (indefinite suspension for failure to provide competent representation, failure to act with reasonable diligence, failure to communicate effectively with his clients, and failure to return unearned fees); Lawyer Disciplinary Board v. Burgess, No. 23030 (WV 4/25/96) (unreported) (two year suspension with one year suspension deferred while respondent undergoes a one-year period of supervision following reinstatement for violations of Rules of Professional Conduct 1.1, 1.3, 1.4 (a) and (b), 1.16(a)(3), 1.16(d); 8.1(b); and 8.4 (c) and (d)); Lawyer Disciplinary Board v. Holmstrand, No. 22523 (WV 5/30/96) (unreported) (one year suspension and psychiatric evaluation ordered for multiple violations of Rules of Professional Conduct 1.3, 1.4(a), 3.3(a)(1)(4) and 8.4(c) and (d)); Lawyer Disciplinary Board v. Farber, No. 32598 (WV 1/26/06) (unreported) (indefinite suspension and a psychological

counseling ordered to determine fitness to practice law for violating Rules of Professional Conduct 1.1, 1.3, 1.4, and 8.1(b), including failure to appear at the disciplinary hearing).

Moreover, this case is more aligned with those cases involving mishandling of client funds in which this Court has imposed a sanction less than annulment rather than those cases in which the Court held that “absent compelling extenuating circumstances, misappropriation or conversion by a lawyer of funds entrusted to his/her care warrants disbarment.” Lawyer Disciplinary Board v. Greer, No. 23-82, ___ W. Va. ___, ___ S.E.2d ___, 2024 WL 4784407, at *6 (W. Va. Nov. 14, 2024); Syl. Pt. 9, in part, Lawyer Disciplinary Board v. Scotchel, 234 W. Va. 627, 768 S.E.2d 730 (2014); Syl. Pt. 4, in part, Lawyer Disciplinary Board v. Coleman, 219 W. Va. 790, 639 S.E.2d 882 (2006); Lawyer Disciplinary Board v. Wheaton, 216 W. Va. 673, 684, 610 S.E.2d 8, 19 (2004); Syl. Pt. 5, in part, Office of Disciplinary Counsel v. Jordan, 204 W. Va. 495, 513 S.E.2d 722 (1998); Lawyer Disciplinary Board v. Kupec, 202 W. Va. 556, 569, 505 S.E.2d 619, 632 (1998) (Kupec I).

In Kupec I, this Court recognized that the term misappropriation can mean the misuse of another's funds or the “unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended ... including not only stealing but also unauthorized temporary use for [the] lawyer's own purpose, whether or not he derives any gain or benefit from therefrom.” Kupec I, 202 W. Va. at 568, 505 S.E.2d at 631 (quoting Black's Law Dictionary (6th ed.1990)). Here, the evidence is insufficient to establish that there was “unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which [it was] intended.” Respondent testified in his sworn statement and at the hearing that the funds were returned to Ms. Shields and Ms. Shields has inconsistently testified over the years about the return of the funds. Testimony from Respondent and misconduct to which Respondent has admitted to is that the funds were placed in a safe in his office rather than deposited into a bank account.

Despite the eventual unclear answer as to whether the cash was returned in this case, the evidence does establish that Respondent mishandled funds that did not belong to him which is more akin to the cases where attorneys were disciplined for mishandling client funds rather than circumstances in which attorneys were found to have misappropriated client funds such as in Lawyer Disciplinary Board v. Haught, 233 W. Va. 185, 757 S.E.2d 609 (2014). Mr. Haught received a one-year suspension after he was found to have violated Rules 1.15(c), 8.4(c) and (d) after depositing \$11,402.50 in client funds into his IOLTA account and then immediately withdrawing the same. Mr. Haught had also placed client funds in a safe in his office, at the request of his clients, rather than properly depositing the client funds into a trust account. Mr. Haught also lied to the ODC about how he handled those funds, and lied to ODC about the identity of his clients in a real estate transaction. While Mr. Haught was found to have mishandled client funds, he was not found to have converted these funds for his personal use. Haught, 233 W. Va. at 195, 757 S.E.2d at 619. The Supreme Court also issued a reprimand to an attorney in Lawyer Disciplinary Board v. Niggemyer, No. 31665 (W.Va. May 11, 2005) (unreported). In that case, Mr. Niggemyer was found to have violated Rules 1.3 (lack of diligence), 1.4(a) (communication, failure to keep the client informed about the status of a case), 1.15(a) (safekeeping funds or property of clients or third parties), 1.15(b) (promptly delivering funds or property to clients or third parties), 1.15(d) (properly maintaining an IOLTA account), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d) (engaging in conduct prejudicial to the administration of justice) stemming from his mishandling of a client's settlement funds.

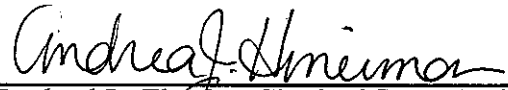
Respondent's actions in this case clearly rise to such a level to establish that Respondent is unworthy of public confidence and unfit to be entrusted with the duties or privileges of a licensed member of the legal profession and should be sanctioned accordingly. The sanction of suspension is necessary to deter other lawyers from engaging in similar conduct and to restore the faith of the victims in this case and of the general public in the integrity of the legal profession.

V. CONCLUSION

In reaching its recommendation as to sanctions, the Hearing Panel Subcommittee considered the evidence, the facts and recommended sanction, the aggravating factors and mitigating factors. For the reasons set forth above, the Hearing Panel Subcommittee recommended the following sanctions: (1) That Respondent's law license be suspended for a period of three (3) months, with automatic reinstatement of his license to practice law pursuant to the provisions and requirements of Rule 3.31 of the Rules of Lawyer Disciplinary Procedure; (2) That Respondent be required to take an additional six (6) hours of Continuing Legal Education in the area of legal ethics and law office management during the 2024-2026 reporting period; (3) That Respondent be required to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure; and (4) That upon Respondent's reinstatement, he be placed on one (1) year of supervised practice by an active attorney in his geographic area in good standing with the West Virginia State Bar and agreed upon by ODC. The goal of the supervised practice will be to improve the quality and effectiveness of Respondent's law practice to the extent that Respondent's sanctioned behavior is not likely to recur.

Accordingly, the Office of Lawyer Disciplinary Counsel urges that this Honorable Court uphold the sanctions recommended by the Hearing Panel Subcommittee.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel



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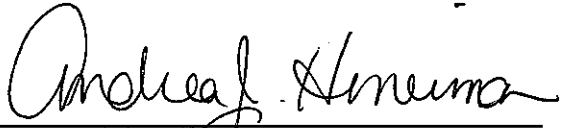
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CERTIFICATE OF SERVICE

This is to certify that I, Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 2nd day of June, 2025, served a true copy of the foregoing "**Brief of the Lawyer Disciplinary Board**" upon Timothy P. Lupardus, counsel for Respondent Thomas H. Evans, III, electronically via File & Serve Xpress and e-mail, to the following address:

office@luparduslaw.com



Andrea J. Hinerman