

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

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LAWYER DISCIPLINARY BOARD,

Petitioner,

v.

No. 24-129

BENJAMIN R. FREEMAN,

Respondent.

BRIEF OF THE OFFICE OF LAWYER DISCIPLINARY COUNSEL

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I. STATEMENT OF THE CASE

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

This is a lawyer disciplinary proceeding against Benjamin R. Freeman (hereinafter “Respondent”) arising as the result of a Statement of Charges issued against him by the Investigative Panel of the Lawyer Disciplinary Board and filed with the Supreme Court of Appeals of West Virginia on March 7, 2024. A hearing was held on this matter on July 16, 2024. The Hearing Panel Subcommittee (hereinafter “HPS”) was comprised of Charles R. Steele, Esquire, Chairperson, Nicole A. Cofer, Esquire, and Margaret Chapman Pomponio, Layperson. Lauren Hall Knight, Lawyer Disciplinary Counsel, appeared on behalf of the ODC, and Respondent appeared *pro se*. The HPS heard testimony from: Marcus L. Young, Emily C. Stern, Esquire, Marjorie L. Allison, and Respondent. Joint Exhibit 1 and ODC Exhibits 1-164 were admitted into evidence without objection.

On January 14, 2025, the HPS presented to the Court its Report of the Hearing Panel Subcommittee (hereinafter “Report”) in which it recommended that Respondent’s license to practice law be suspended for 18 months, and that he be required to comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure, promptly surrender all papers and property in his possession to which his clients are entitled, complete 12 hours of CLE devoted solely to office management/ethics prior to petitioning for reinstatement, and reimburse the Lawyer Disciplinary Board the costs of these proceedings. On February 5, 2025, the ODC filed its objection to the recommendation of the HPS. On February 10, 2025, the Supreme Court of Appeals entered an Order directing the parties to brief this matter and setting forth that this matter would be scheduled for oral argument pursuant to Rule 19 of the Rules of Appellate Procedure.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE HEARING PANEL
SUBCOMMITTEE

Respondent was admitted to the West Virginia State Bar on October 10, 2001, and he is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent currently operates a solo law practice in Hurricane, which is located in Putnam County, West Virginia. Prior to opening his law practice in 2017, Respondent worked at the Office of the West Virginia Attorney General for two years and prior to that, Respondent worked at the Kanawha County Prosecuting Attorney's Office for nearly 14 years. [Hrg. Tr. 52-54]. Respondent's law practice consists primarily of abuse and neglect and criminal cases in Putnam and Kanawha County. [Hrg. Tr. 56, 58]. Respondent testified that he is responsible for everything at his office, including checking his post office box, calendaring filing deadlines, and answering phone calls. [Hrg. Tr. 58-59].

COUNT I
I.D. No. 22-05-312
Complaint of Marcus L. Young

Respondent was appointed on June 7, 2022, to represent Complainant Marcus L. Young (hereinafter "Mr. Young") in post-conviction *habeas corpus* proceedings in the Circuit Court of Kanawha County and file an amended petition for *habeas corpus* relief on Mr. Young's behalf no later than 120 days following the entry of this order. [ODC Ex. 14, Bates 56-58]. Mr. Young filed an ethics complaint against Respondent on August 19, 2022, wherein he alleged that Respondent had failed to meet him or otherwise communicate with him since his appointment. [ODC Ex. 1]. By letter dated August 30, 2022, the ODC sent Respondent a copy of the complaint and directed him to file a verified response within 20 days. [ODC Ex. 2]. By letter received by the ODC on November 7, 2022, Respondent provided a response to the complaint wherein he attributed his

delay in communicating with Mr. Young, in part, to his demanding schedule and stated that he has been working on Mr. Young's amended petition, as well as obtaining necessary documents and transcripts. [ODC Ex. 4]. By letter dated March 21, 2023, the ODC requested that Respondent provide additional information within 20 days, including a copy of all correspondence he sent to Mr. Young as well as whether he had met with Mr. Young or otherwise communicated with him and if he had filed any motions to extend the filing deadline set forth by the Court. [ODC Ex. 15]. Respondent failed to respond to these inquiries, and he was served with an investigative subpoena *duces tecum* which directed him to appear at the ODC on August 30, 2023, to provide a sworn statement regarding this matter. [ODC Ex. 23]. At his sworn statement, Respondent acknowledged that he had not met with Mr. Young in person, and that he received a couple letters from Mr. Young to which he did not respond. [ODC Ex. 161, Bates 2854-56].¹

~~The records from the West Virginia Division of Corrections and Rehabilitation (hereinafter~~
"WVDOCR") admitted into the record show that between June 7, 2022, and October 24, 2023, Mr. Young attempted to call Respondent 31 times, and that none of these calls were accepted by Respondent. [ODC Ex. 30, Bates 111-15].² The court records admitted into the record show that the Court wrote a letter to Respondent on August 17, 2023, requesting that he advise the Court

¹ The Itemized Statement of Legal Services submitted by Respondent to Public Defender Services (hereinafter "PDS") on October 5, 2023, set forth that Respondent did 14.4 hours of work in Mr. Young's case, including: (1) an initial review of Mr. Young's case on June 17, 2022; (2) a meeting with the Court's law clerk to obtain documents on July 15, 2022; (3) additional investigation, research, and document review on July 2, 2023, July 3, 2023, and August 25, 2023; (4) drafting the amended petition on August 26, 2023, and September 8, 2023; (5) a one hour meeting with Mr. Young on September 16, 2023, and an approximately 30 minute meeting with Mr. Young on September 30, 2023; and (6) drafting the amended petition and appendix and preparing for filing on October 1, 2023, and October 5, 2023. [ODC Ex. 37].

² Although Respondent testified that he spoke to Mr. Young on the phone at some point, after reviewing the call detail report from the WVDOCR which indicated that he did not accept any phone calls from Mr. Young between June 15, 2022, and October 25, 2023, Respondent acknowledged that he may not have spoken to Mr. Young "during this period." [Hrg. Tr. 73-74].

within 14 days if he cannot represent Mr. Young and file a motion to withdraw as counsel. [ODC Ex. 25, Bates 97]. Respondent did not file a written response to this letter, nor did he file any motions to extend the filing deadlines set forth in the Order Appointing Counsel and Setting Briefing Schedule entered by the Court on June 7, 2022. Respondent ultimately filed an amended petition for *habeas corpus* relief on February 29, 2024. [ODC Ex. 40]. Mr. Young wrote a letter to the Court on April 17, 2024, wherein he stated that Respondent had not communicated with him and filed an amended petition that did not include all the claims that he wished to present to the Court. [ODC Ex. 164, Bates 2928]. Thereafter, the Court entered an Order on June 10, 2024, relieving Respondent as counsel and appointing new counsel to file a second amended petition on Mr. Young's behalf. [ODC Ex. 164, Bates 2930-32].

At the disciplinary hearing, Mr. Young testified that Respondent failed to answer any of ~~his phone calls or respond to any of his letters throughout the duration of his case.~~ [Hrg. Tr. 11, 22]. Mr. Young confirmed that Respondent met with him at MOCC on September 16, 2023, and September 30, 2023, testifying that this was the first contact that Respondent had with him. [Hrg. Tr. 12-13, 23]. Mr. Young testified that his meeting with Respondent on September 16, 2023, was brief, approximately ten to fifteen minutes. [Hrg. Tr. 12]. Mr. Young testified that on September 30, 2023, Respondent brought a draft amended petition for him to review, and that he did not meet with him again following this meeting. [Hrg. Tr. 13]. Mr. Young testified that he sent a letter to Respondent on January 3, 2024, wherein he informed him that he did not want him to file the amended petition in his case as he did not have his trial transcript, and that Respondent did not respond to this letter. [Hrg. Tr. 14-15]. Mr. Young testified that he felt let down by how Respondent handled his case, and when asked if his experience with Respondent negatively impacted his opinion of lawyers and the legal system, he answered that it made him believe that lawyers do not

care about the interests of their clients. [Hrg. Tr. 17]. Respondent acknowledged that until their initial meeting on September 16, 2023, he had not consulted with Mr. Young regarding the substantive issues in his case or informed him that he was not going to adhere to the filing deadlines set forth by the Court. [Hrg. Tr. 78].

The HPS properly found that Respondent violated the following Rules of Professional Conduct: (1) Rule 1.3 by failing to act with reasonable diligence and promptness in his representation of Mr. Young; (2) Rules 1.4(a)(3) and 1.4(a)(4) by failing to keep Mr. Young informed as to the status of his case and failing to respond to Mr. Young's attempts to communicate with him; (3) Rules 3.4(c) and 8.4(d) by failing to comply with his obligations pursuant to the Order Appointing Counsel and Setting Briefing Schedule entered by the Circuit Court of Kanawha County on June 7, 2022; and (4) Rule 8.1(b) by failing to comply with the ODC's lawful request for information.

COUNT II
I.D. No. 22-01-355
Complaint of the Office of Lawyer Disciplinary Counsel

This complaint was opened by the ODC on September 21, 2022, after receiving a referral from the Court regarding Respondent's failure to timely perfect appeals on behalf of his clients in two unrelated abuse and neglect appeals: *In re* K.H., No. 22-0408, and *In re* B.S., M.S., and H.S., No. 22-0413. [ODC Ex. 44]. Regarding *In re* K.H., Respondent, on behalf of his client, M.H., filed a notice of appeal on May 24, 2022. [ODC Ex. 70, Bates 885-900]. Respondent failed to comply with the deadlines to perfect the appeal set forth in the scheduling order and Notice of Intent to Sanction. [ODC Ex. 70, Bates 913]. Regarding *In re* B.S., M.S., and H.S., Respondent, on behalf of his client, M.S., filed a notice of appeal on May 25, 2022. [ODC Ex. 71, Bates 942-52]. Respondent failed to comply with the deadlines to perfect this appeal set forth in the scheduling

order and Notice of Intent to Sanction. [ODC Ex. 71, Bates 966]. The Court issued Rules to Show Cause in *In re* K.H., and *In re* B.S., M.S., and H.S., on September 15, 2022, directing Respondent to appear before the Court on November 1, 2022, to show cause as to why he should not be held in contempt for his failure to perfect these appeals. [ODC Ex. 70, Bates 913; ODC Ex. 71, Bates 966]. Respondent ultimately filed the briefs and appendices in these matters on October 7, 2022, and the Rules to Show Cause were dismissed as moot on October 20, 2022. [ODC Ex. 70, Bates 931; ODC Ex. 71, Bates 985].

Emily Stern, Staff Attorney at the Office of the Clerk, testified at the disciplinary hearing in this matter regarding her duties which include referring matters to the ODC at the direction of the Court. [Hrg. Tr. 26-27]. Ms. Stern testified as to Respondent's failure to comply with the deadlines set forth in the scheduling orders and notices of intent to sanction in *In re* K.H. and *In re* B.S., M.S., and H.S. [Hrg. Tr. 29-30, 32-33]. Ms. Stern further testified that to her knowledge

Respondent did not file any motions requesting the Court to extend the deadlines set forth in its orders prior to when he perfected these appeals on October 7, 2022. [Hrg. Tr. 31, 34]. Ms. Stern testified that dismissal is a potential outcome when a party fails to properly perfect an appeal. [Hrg. Tr. 49]. Ms. Stern further testified that Respondent's failure to adhere to the scheduling deadlines in these cases necessitated extra work in that additional orders had to be prepared, and these matters had to be presented to the Court. [Hrg. Tr. 48]. Ms. Stern also testified that delays in abuse and neglect cases can delay permanency for the children involved. [Hrg. Tr. 48].

At the disciplinary hearing, Respondent acknowledged that he did not disagree with Ms. Stern's testimony and testified that he did not dispute that he received the orders she discussed in her testimony. [Hrg. Tr. 148, 158-59]. Respondent testified that he represented M.H. and M.S. in the underlying abuse and neglect proceedings, and that both clients directed him to appeal the final

order of the circuit court terminating their parental rights. [Hrg. Tr. 154]. Respondent testified regarding the difficulties he encountered in handling the abuse and neglect appeals discussed herein, including difficulties communicating with his clients and obtaining necessary reports and orders. [Hrg. Tr. 153-54]. Respondent testified that he did not advise the Court of these difficulties because he was busy with other cases and got behind. [Hrg. Tr. 155-57].

The HPS properly found that Respondent violated the following Rules of Professional Conduct: (1) Rule 1.3 by failing to act with reasonable diligence and promptness in timely perfecting an appeal on behalf of his client; (2) Rule 3.2 by failing to make reasonable efforts to expedite the appeal consistent with his client's interests; (3) Rule 3.4(c) by failing to comply with his obligations pursuant to orders, notices, and rules issued by the Supreme Court of Appeals of West Virginia; (4) Rule 8.4(d) by failing to properly expedite his client's appeal and failing to

~~comply with the orders of the Supreme Court of Appeals of West Virginia.~~

COUNT III
I.D. No. 23-01-091
Complaint of Marjorie L. Allison

Complainant Marjorie L. Allison (hereinafter "Ms. Allison") filed the above-referenced complaint against Respondent on March 13, 2023, in which she alleged that she hired Respondent on or about August 19, 2021, to petition the family court to obtain visitation of her great niece. [ODC Ex. 72, Bates 996]. That same day, Ms. Allison paid Respondent a retainer of \$2,200.00, by personal check, for his representation in this matter. [ODC Ex. 72, Bates 998]. Ms. Allison alleged that she provided Respondent with the opposing party's address, however, after several months, Respondent was unable to locate the opposing party to effectuate service, and after several more months passed and nothing happened in her case, she requested that Respondent refund her money. [ODC Ex. 72, Bates 997]. Ms. Allison stated that Respondent agreed to refund her money

but failed to do so. [ODC Ex. 72, Bates 997]. Respondent failed to file a response to this complaint, and he was personally served with an investigative subpoena *duces tecum* which directed him to appear at the ODC on August 30, 2023, to provide a sworn statement regarding this matter. [ODC Ex. 82].

At his sworn statement, Respondent stated that he encountered issues finding the opposing party in order to effectuate service, so there was “no point” in filing the petition. Respondent stated that after going “back and forth” with Ms. Allison he agreed to send her a refund check, even though he performed work in her case because he did not want a bad client review. Respondent stated that he thought he had previously sent Ms. Allison a full refund, but he found no record of the check being cashed, so he planned to send her another check. [ODC Ex. 161, Bates 2869-70].

Respondent stated that he maintains a client trust account and office operating account at City National Bank. [ODC Ex. 161, Bates 2846-47].

~~When asked if the \$2,200.00 check from Ms.~~
Allison was deposited into his client trust account, Respondent stated that it was and that when he felt that he had done roughly ten hours of work, he transferred the funds to his general account. [ODC Ex. 161, Bates 2871]. Following his sworn statement Respondent submitted an unsigned fee agreement and time sheet for his representation of Ms. Allison. The unsigned fee agreement set forth that Respondent was hired to “institute and pursue a matter in family court regarding visitation,” and that Ms. Allison would pay a \$2,200.00 retainer which would be billed against at a rate of \$250.00 per hour. [ODC Ex. 86, Bates 1052-53].³ The time sheet reflected that Respondent performed 8.7 billable hours of work in Ms. Allison’s case. [ODC Ex. 86].⁴

³ Respondent agreed that the \$2,200.00 paid by Ms. Allison was a legal fee paid in advance to be billed against at a rate of \$200.00 per hour. [Hrg. Tr. 103, 105].

⁴ Respondent noted on the time sheet that he did not charge Ms. Allison for a one-hour initial consultation. According to the time sheet, Respondent earned \$1,740.00 of the \$2,200.00 paid by Ms. Allison by the time

The bank records admitted into the record show that, contrary to the testimony he provided in his sworn statement, Respondent did not deposit the \$2,200.00 check from Ms. Allison into his client trust account. [ODC Ex. 96, Bates 1175]. These records revealed that Respondent deposited Ms. Allison's retainer into his operating account, an account which contained Respondent's personal funds and was used for Respondent's personal use. [ODC Ex. 96, Bates 1168]. Prior to depositing Ms. Allison's \$2,200.00 check, the balance of Respondent's operating account on August 23, 2021, was -\$632.65, and the deposit of Ms. Allison's \$2,200.00 check brought the balance of this account to \$1,567.35. [ODC Ex. 96, Bates 1241]. That same day, Respondent received a wire transfer credit from Creed Capital, LLC, in the amount of \$493.73 for payment of a PDS billing invoice which brought the balance of this account to \$2,061.08. [ODC Ex. 96, Bates 1241; Hrg. Tr. 125].⁵ That same day, Respondent also withdrew \$200.00 cash from this account, ~~wrote a \$1,350.00 check to City National Bank, and had four charges from PayPal for retired~~ payments which totaled \$192.24. [ODC Ex. 96, Bates 1157, 1241]. According to the time sheet provided by Respondent, the only work he performed in Ms. Allison's case prior to depositing her \$2,200.00 check into his operating account was a one-hour meeting on August 19, 2021, and a review of her case on August 20, 2021, for eight tenths of an hour. [ODC Ex. 86, Bates 1054].

At the disciplinary hearing, Respondent agreed that the \$2,200.00 paid by Ms. Allison was a legal fee paid in advance to be billed against at a rate of \$200.00 per hour. [Hrg. Tr. 103, 105]. Respondent testified that he "almost never" used his IOLTA account. [Hrg. Tr. 111]. Respondent

he was discharged. [ODC Ex. 86, Bates 1054-56].

⁵ This account was frequently overdrawn. In 2021, Respondent was assessed \$6,156.00 in return items fees and \$1,404.00 in overdraft item fees. [ODC Ex. 96, Bates 1290]. In 2022, Respondent was assessed \$3,924.00 in return item fees and \$792.00 in overdraft item fees. [ODC Ex. 96, Bates 1426]. In 2023, Respondent was assessed \$2,736.00 in return item fees and \$9,648.00 in overdraft item fees. [ODC Ex. 96, Bates 1595].

testified that he did not know his IOLTA account was closed until he received the Statement of Charges, and that this account was closed due to having a negative balance after being assessed direct deposit fees. [Hrg. Tr. 106-08]. Respondent acknowledged that although he did not remember at the time, he deposited the \$2,200.00 check from Ms. Allison into his business account instead of his IOLTA account. [Hrg. Tr. 114, 120]. Respondent acknowledged that his testimony at his sworn statement regarding his handling of this fee was not accurate. [Hrg. Tr. 116-17]. Respondent explained that it had been a couple of years since he worked on Ms. Allison's case, and he had not reviewed bank records at that time. [Hrg. Tr. 117, 120]. Respondent confirmed that the above-referenced PayPal charges were for personal spending. [Hrg. Tr. 127]. Respondent testified that the above-referenced \$1,350.00 check to City National Bank was a personal loan payment. [Hrg. Tr. 128].

~~Respondent testified that Ms. Allison provided him with an address to serve the opposing~~
party, and that he did not recall the exact issue with this address which caused him not to file the petition in her case. [Hrg. Tr. 135-36]. Regarding his email to Ms. Allison in which he advised her that he was going to have to refile her petition because it was never served, and that he would contact the sheriff to straighten out any problems, Respondent testified that this email was a mistake, and he did not know why he would have provided this incorrect information to Ms. Allison. [ODC Ex. 94, Bates 1142; Hrg. Tr. 137-39]. Respondent presented Ms. Allison with a refund check in the amount of \$2,200.00 at the disciplinary hearing and apologized to her for any misunderstandings regarding the filing and service of her petition. [Hrg. Tr. 216].

Ms. Allison testified that Respondent informed her at the August 19, 2021, meeting that he would file the petition for sibling visitation that day. [Hrg. Tr. 201-02]. Ms. Allison testified that in November of that year she asked Respondent to withdraw the petition as she believed that she

may have resolved the matter with the opposing party. [Hrg Tr. 202-03]. Ultimately, the matter remained unresolved and shortly after Thanksgiving Ms. Allison requested that Respondent file the petition. [Hrg. Tr. 203]. Ms. Allison testified that Respondent advised her that he would file the petition again, but that he needed the opposing party's address. [Hrg. Tr. 203]. Ms. Allison testified that she provided Respondent with the opposing party's address over the phone, and that she did not hear anything from Respondent after that. [Hrg. Tr. 204]. Ms. Allison acknowledged that she reached out to Respondent by email to request an update on October 18, 2022, and November 26, 2022. [Hrg. Tr. 209; ODC Ex. 94, Bates 1137]. After receiving no response, Ms. Allison sent an email to Respondent on December 12, 2022, requesting that he refund her money. [Hrg. Tr. 209-10; ODC Ex. 88, Bates 1088]. Ms. Allison testified that her opinion of lawyers is not good after her experience with Respondent. [Hrg. Tr. 213].

~~The HPS properly found that Respondent violated the following Rules of Professional~~
Conduct: (1) Rule 1.4(a)(3) by failing to keep Ms. Allison reasonably informed about the status of her case; (2) Rules 1.15(a) and 1.15(c) by failing to keep the funds provided to him in advance by Ms. Allison in a separate account designated as "client's trust account," and instead depositing client funds into his operating account before those fees were earned or the expenses were incurred; (3) Rules 8.4(c) and 8.4(d) by accepting a fee for legal services and wrongfully commingling, misappropriating, and converting funds belonging to his client to his own use; (4) Rules 8.1(a), 8.4(c), and 8.4(d) by knowingly making a false statement of material fact at his sworn statement; and (5) Rule 8.1(b) by failing to comply with the ODC's lawful request for information.

COUNT IV
I.D. No. 23-06-199
Complaint of Office of Lawyer Disciplinary Counsel

This complaint was opened by the ODC on May 15, 2023, after receiving a referral from

the Court regarding Respondent's failure to timely perfect an appeal on behalf of his client in an abuse and neglect appeal: *In re* A.B. and J.S., No. 23-140. [ODC Ex. 99]. Respondent failed to file a response to this complaint. Respondent, on behalf of his client, A.S., filed a notice of appeal on March 10, 2023, in which he requested that transcripts be produced for purposes of appeal. [ODC Ex. 118, Bates 2207-29]. Respondent did not submit an appellate transcript request form, and by scheduling order entered on March 14, 2023, the Court directed Respondent to submit a completed and signed appellate transcript request form by March 24, 2023, and set the deadline to perfect the appeal as May 1, 2023. [ODC Ex. 118, Bates 2230-31]. Respondent failed to comply with the deadlines set forth in the scheduling order, and the Court issued a Rule to Show Cause on May 12, 2023, directing Respondent to appear before the Court on September 6, 2023, to show cause as to why he should not be held in contempt for his failure to perfect this appeal. [ODC Ex. 118, Bates 2238-39]. Respondent ultimately perfected this appeal on September 5, 2023, and the Rule to Show Cause was dismissed as moot the same day. [ODC Ex. 118, Bates 2259].

At the disciplinary hearing, Ms. Stern testified as to Respondent's failure to comply with the deadlines set forth in the scheduling order in *In re* A.B. and J.S. [Hrg. Tr. 35]. Ms. Stern further testified that Respondent did not file any motions requesting the Court to extend the deadlines set forth in its scheduling order prior to when he perfected the appeal on September 5, 2023. [Hrg. Tr. 37]. Respondent acknowledged that he did not disagree with Ms. Stern's testimony and testified that he did not dispute that he received the orders she discussed in her testimony. [Hrg. Tr. 148, 158-59]. Respondent testified that he represented A.S. in the underlying abuse and neglect proceedings, and that A.S. directed him to appeal the final order of the circuit court terminating her parental rights. [Hrg. Tr. 154].

The HPS properly found that Respondent violated the following Rules of Professional

Conduct: (1) Rule 1.3 by failing to act with reasonable diligence and promptness in timely perfecting an appeal on behalf of his client; (2) Rule 3.2 by failing to make reasonable efforts to expedite the appeal consistent with his client's interests; (3) Rule 3.4(c) by failing to comply with his obligations pursuant to orders, notices, and rules issued by the Supreme Court of Appeals of West Virginia; (4) Rule 8.4(d) by failing to properly expedite his client's appeal and failing to comply with the orders of the Supreme Court of Appeals of West Virginia; and (5) Rule 8.1(b) by failing to comply with the ODC's lawful request for information.

COUNT V
I.D. No. 23-06-308
Complaint of Garland L. Murray

Respondent was appointed on April 26, 2023, to represent Complainant Garland L. Murray (hereinafter "Mr. Murray") in post-conviction *habeas corpus* proceedings in the Circuit Court of Kanawha County and file an amended petition for *habeas corpus* relief on Mr. Murray's behalf

[ODC Ex. 140, Bates 2607]. Mr. Murray filed an ethics complaint against Respondent on July 21, 2023, wherein he alleged that Respondent had not communicated with him. [ODC Ex. 119]. By letter received from the ODC on September 13, 2023, Respondent provided a response to the complaint wherein he stated that he had several discussions with Mr. Murray by phone regarding the substance of his amended petition, and that he had filed motions to extend the filing deadline and planned to meet with Mr. Murray that week.⁶ [ODC Ex. 124, Bates 2281].

The court records admitted into evidence show that Respondent filed a motion to extend the filing deadline on August 14, 2023. [ODC Ex. 140, Bates 2614-16]. The Court entered an order granting this motion on August 18, 2023, and ordered that the amended petition be filed on or

⁶ The verification for his response to Mr. Murray's complaint was received by the ODC on October 16, 2023. [ODC Ex. 129].

before September 11, 2023, and that the parties appear at a final omnibus evidentiary hearing on December 8, 2023. [ODC Ex. 140, Bates 2617]. Respondent filed a second motion to extend the filing deadline on September 12, 2023. [ODC Ex. 140, Bates 2618-20]. The Court entered an order granting this motion on September 19, 2023, and ordered that the amended petition be filed on or before October 1, 2023, and that the parties appear at a final omnibus evidentiary hearing on December 20, 2023. [ODC Ex. 140, Bates 2624].⁷ Respondent did not comply with the filing deadline set forth in this order nor did he attend the hearing on December 20, 2023. The Court entered an order on December 21, 2023, appointing a new attorney to represent Mr. Murray and stating that Respondent failed to appear at the hearing on December 20, 2023, and failed to abide by the scheduling order as well as the deadlines set forth in prior court orders. [ODC Ex. 140, Bates 2650-51].

~~At the disciplinary hearing, Respondent testified that Mr. Murray's case is a "habeas of a~~
habeas," which means that he can only argue ineffective assistance of counsel, and despite advising him of the same, Mr. Murray insisted on arguing additional issues. [Hrg. Tr. 171-72]. Respondent testified that despite completing Mr. Murray's petition, he delayed filing it because he knew if he filed what Mr. Murray wanted him to file it would be unsuccessful. [Hrg. Tr. 178, 180]. Respondent confirmed that he received the order which set his deadline to file the amended petition in this case as October 1, 2023, and ordered the parties to appear for a final evidentiary hearing before the Court on December 20, 2023. [Hrg. Tr. 177]. Respondent acknowledged that he did not

⁷ The court records further show that the Court lodged three letters from Mr. Murray on November 29, 2023, and Respondent was advised by Judge Abraham's administrative assistant that these letters and Mr. Murray's concerns would be addressed at the hearing scheduled for December 20, 2023. [ODC Ex. 140, Bates 2636-42]. The Court entered an order on December 4, 2023, for Mr. Murray to be transported from MOCC to the Circuit Court of Kanawha County for the December 20, 2023, hearing. [ODC Ex. 140, Bates 2646].

comply with the filing deadline set forth in this order, and that he did not file any motions to extend the deadline. [Hrg. Tr. 178]. Despite acknowledging that he received the order scheduling a final omnibus evidentiary hearing for December 20, 2023, Respondent testified he did not know that a hearing was held in this matter. [Hrg. Tr. 186, 189-91]. Respondent also did not recall seeing the order removing him as counsel in this case, testifying that he learned that he was removed from Mr. Murray's case at his disciplinary hearing. [Hrg. Tr. 190-92].

The HPS properly found that Respondent violated the following Rules of Professional Conduct: (1) Rule 1.3 by failing to act with reasonable diligence and promptness in his representation of Mr. Murray; and (2) Rules 3.4(c) and 8.4(d) by failing to meet his obligations pursuant to orders issued by the Circuit Court of Kanawha County.

COUNT VI
I.D. No. 23-06-431

~~Complaint of Office of Lawyer Disciplinary Counsel~~

This complaint was opened by the ODC on October 24, 2023, after receiving a referral from the Court regarding Respondent's failure to timely perfect an appeal on behalf of his client in an abuse and neglect appeal: *In re* L.T., L.T., and J.T., No. 23-516. [ODC Ex. 141]. Respondent on behalf of his client, M.T., filed a notice of appeal on August 22, 2023. [ODC Ex. 150, Bates 2683-95]. Respondent failed to comply with the deadlines to perfect the appeal and file a Certificate of Service set forth in the scheduling order and Notice of Intent to Sanction, and the Court issued a Rule to Show Cause on October 20, 2023, directing Respondent to appear before the Court on January 9, 2024, to show cause as to why he should not be held in contempt for his failure to file a Certificate of Service and perfect the appeal. [ODC Ex. 2724-25]. By letter dated November 14, 2023, the ODC provided Respondent with a copy of the Rule to Show Cause Order and directed him to provide a verified response within 20 days. [ODC Ex. 142]. Respondent failed

to file a response in this matter. Respondent ultimately perfected this appeal on November 13, 2023, and the Rule to Show Cause was dismissed as moot on November 15, 2023. [ODC Ex. 150, Bates 2735].

At the disciplinary hearing, Ms. Stern testified as to Respondent's failure to comply with the deadlines set forth in the scheduling order and notice of intent to sanction. [Hrg. Tr. 39-40]. Ms. Stern further testified that to her knowledge Respondent did not file any motions requesting the Court to extend the deadlines set forth in its orders prior to when he perfected the appeal on November 13, 2023. [Hrg. Tr. 42]. Respondent acknowledged that he did not disagree with Ms. Stern's testimony and testified that he did not dispute that he received the orders she discussed in her testimony. [Hrg. Tr. 148, 158-59]. Respondent testified that he represented M.T. in the underlying abuse and neglect proceedings, and that M.T. directed him to appeal the final order of ~~the circuit court terminating her parental rights. [Hrg. Tr. 154]. Respondent testified that M.T.~~ asked him to withdraw this appeal, and shortly before the disciplinary hearing on this matter Respondent received an order from the Court withdrawing and dismissing this appeal. [Hrg. Tr. 163-64].

The HPS properly found that Respondent violated the following Rules of Professional Conduct: (1) Rule 1.3 by failing to act with reasonable diligence and promptness in timely perfecting an appeal on behalf of his client; (2) Rule 3.2 by failing to make reasonable efforts to expedite the appeal consistent with his client's interests; (3) Rule 3.4(c) by failing to meet his obligations pursuant to orders, notices, and rules issued by the Supreme Court of Appeals of West Virginia; (4) Rule 8.4(d) by failing to properly expedite his client's appeal and failing to comply with the orders of the Supreme Court of Appeals of West Virginia; and (5) Rule 8.1(b) by failing to comply with the ODC's lawful request for information.

COUNT VII
I.D. No. 24-06-034
Complaint of Office of Lawyer Disciplinary Counsel

This complaint was opened by the ODC on January 23, 2024, after receiving a referral from the Court regarding Respondent's failure to timely perfect an appeal on behalf of his client, T.B., in an abuse and neglect appeal: *In re* A.B., No. 23-400. [ODC Ex. 151]. Respondent was court appointed to represent T.B. for purposes of appeal by the Circuit Court of Kanawha County on September 25, 2023. [ODC Ex. 159, Bates 2816-17]. Respondent failed to comply with the deadlines to perfect the appeal set forth by the Court. The Court issued a Rule to Show Cause on January 18, 2024, directing Respondent to appear before the Court on February 20, 2024, to show cause as to why he should not be held in contempt for his failure to perfect the appeal. [ODC Ex. 159, Bates 2835-36]. Thereafter, the Court issued a Corrected Contempt Order on February 22, 2024, holding Respondent in contempt for his failure to perfect the appeal and otherwise comply with orders of the Court. [ODC Ex. 156]. In considering the sanction to be imposed, the Court denied Respondent eligibility for any court-appointed cases until the ODC's investigation into this matter and any resulting disciplinary action are fully concluded. [ODC Ex. 156, Bates 2759].

At the disciplinary hearing, Ms. Stern testified as to Respondent's failure to comply with the deadlines set forth in the amended scheduling order and the November 13, 2023, order extending the deadline to perfect the appeal to November 27, 2023. [Hrg. Tr. 43-45]. Ms. Stern testified as to Respondent's failure to comply with the deadline set forth in the Rule to Show Cause. [Hrg. Tr. 47]. Respondent acknowledged that he did not disagree with Ms. Stern's testimony and testified that he did not dispute that he received the orders she discussed in her testimony. [Hrg. Tr. 148, 158-59].

The HPS properly found that Respondent violated the following Rules of Professional

Conduct: (1) Rule 1.3 by failing to act with reasonable diligence and promptness in timely perfecting an appeal on behalf of his client; (2) Rule 3.2 by failing to make reasonable efforts to expedite the appeal consistent with his client's interests; (3) Rule 3.4(c) by failing to meet his obligations pursuant to orders, notices, and rules issued by the Supreme Court of Appeals of West Virginia; and (4) Rule 8.4(d) by failing to properly expedite his client's appeal and failing to comply with the orders of the Supreme Court of Appeals of West Virginia.

II. SUMMARY OF ARGUMENT

The HPS found that the evidence established by clear and convincing evidence that Respondent committed multiple violations of the Rules of Professional Conduct.⁸ The HPS also found that Respondent intentionally, knowingly, and negligently violated duties owed to his clients, the public, the legal system, and the legal profession, and that his actions caused potential and actual harm.⁹ ~~The HPS made an inappropriate recommendation that Respondent's license to practice law be suspended for 18 months as Respondent was found to have accepted a fee for legal services and wrongfully commingled, misappropriated, and converted funds belonging to his client to his own use, made a knowingly false statement to Disciplinary Counsel regarding his handling of this fee, failed to comply with multiple court orders, failed to respond to numerous letters from the ODC, and failed to communicate with his clients. Moreover, the sanction recommended by the HPS is inconsistent with prior sanctions imposed in cases where a lawyer engaged in the knowing misappropriation of client funds as this Honorable Court has previously held that absent~~

⁸ 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 also* Syl. Pt. 1, *Law. Disciplinary Bd. v. McGraw*, 194 W. Va. 788, 461 S.E.2d 850 (1995).

⁹ The HPS also found that Respondent acted "carelessly if not knowingly" in committing some of the ethical violations discussed herein.

compelling extenuating circumstances, misappropriation or conversation of funds entrusted to a lawyer's care warrants disbarment. Respondent has not demonstrated any compelling extenuating circumstances to justify a lesser sanction, and annulment of Respondent's license to practice law is necessary to deter other lawyers from engaging in similar conduct and to restore the public's confidence in the integrity of the Bar.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to the Order of this Honorable Court entered on February 10, 2025, this matter will be scheduled for oral argument under Rule 19 of the Rules of Appellate Procedure.

IV. ARGUMENT

A. STANDARD OF REVIEW

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 regarding the appropriate sanction~~ to be imposed. Syl. Pt. 1, *Roark v. Law. Disciplinary Bd.*, 201 W. Va. 181, 495 S.E.2d 552 (1997) (citing Syl Pt. 3, *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286, 452 S.E.2d 377 (1994)). Further, substantial deference is to be given to the HPS's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. *McCorkle*, 192 W. Va. at 289, 452 S.E.2d at 380. Moreover, "[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 HPS. *Law. Disciplinary Bd. v. Cunningham*, 195 W. Va. 27, 34-35, 464 S.E.2d 181, 188-89 (1995) (citing *McCorkle*, 192 W. Va. at 290, 452 S.E.2d at 381).

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

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. *See also* Syl. Pt. 4, *Office of Disciplinary Counsel v. Jordan*, 204 W. Va. 495, 513 S.E.2d. 722 (1998). The record in this matter indicates that Respondent has transgressed all four of these factors.

1. Respondent violated duties owed to his clients, to the public, to the legal system, and to the legal profession.

The findings made by the HPS that Respondent violated duties owed to his clients, to the public, to the legal profession, and to the legal system were supported by the reliable, probative, and substantial evidence on the record. Respondent owed ethical duties to his clients including the duty of candor, loyalty, diligence, and competence. *Law. Disciplinary Bd. v. Blyler*, 237 W. Va.

325, 341, 787 S.E.2d 596, 612 (2016). Respondent violated duties owed to Mr. Young by failing to communicate with him until September 16, 2023, more than one year and three months after Respondent was appointed to represent him in the underlying proceedings. The phone records from the WVDOCR admitted into the record confirm that Respondent did not answer any of Mr. Young's phone calls from June 7, 2022, through October 24, 2023. [ODC Ex. 30, Bates 111-15]. Respondent acknowledged that he received letters from Mr. Young throughout this period to which he failed to respond. [Hrg. Tr. 77].¹⁰ Moreover, Respondent's PDS billing records confirm a lack of communication with Mr. Young throughout this period. [ODC Ex. 37]. After meeting with Mr.

¹⁰ By letters dated March 21, 2023, April 20, 2023, and August 31, 2023, Disciplinary Counsel requested that Respondent provide copies of any letters he sent to Mr. Young. Respondent did not submit any letters in response to this request, nor did he submit any letters to be introduced as evidence in his disciplinary proceedings.

Young on September 16, 2023, and September 30, 2023, Respondent's communication with Mr. Young deteriorated once again. Even if Respondent met with Mr. Young a third time in October, the record is void of any further communication with Mr. Young from this time until Respondent was removed as counsel in his case on June 10, 2024.¹¹ Respondent also failed to diligently represent Mr. Young by failing to adhere to the filing deadline set forth by the Court. Respondent violated duties owed to Mr. Murray by failing to adhere to the filing deadline set forth by the Court and by failing to appear on Mr. Murray's behalf at the final omnibus evidentiary hearing on December 20, 2023. Respondent also violated duties owed to his clients in the underlying abuse and neglect appeals by failing to act with reasonable diligence in those matters.

Respondent violated duties owed to Ms. Allison by failing to keep her reasonably informed about the status of her case and by improperly depositing advance legal fees into his operating ~~account and spending these funds prior to being earned. One of the highest duties imposed upon a~~ lawyer is safekeeping funds that are entrusted into his or her care as a legal professional and keeping those funds secure and separate from the lawyer's own property. All legal fees paid in advance should be deposited into the client trust account and withdrawn by the lawyer as fees are earned and expenses incurred. At the disciplinary hearing, Respondent acknowledged that the \$2,200.00 paid to him by Ms. Allison was a legal fee paid in advance to be billed against at a rate of \$200.00 per hour. Notwithstanding the foregoing, Respondent deposited these funds into his operating account on August 23, 2021, an account which had a balance of -\$632.65 at the time and used these funds to pay personal expenses prior to earning the same. Respondent's conduct

¹¹ A hearing was held in this matter on February 15, 2024, however there is no indication from the record that Respondent communicated with Mr. Young at any point before this hearing or after it concluded.

breached his fiduciary duty, and the misappropriation of the advance legal fees paid by Ms. Allison breached his duty of trust.

Regarding Respondent's duties to the public, to the legal system, and to the legal profession:

Lawyers also owe duties to the public who rely on lawyers to protect their interests. The general public deserves lawyers with the highest standards of honesty and integrity. As officers of the court, lawyers owe duties to the legal system whereby they must conduct themselves within the bounds of the law and abide by the rules of substance and procedure which afford the administration of justice. As to the legal profession, lawyers owe an ethical duty to maintain the integrity of the profession.

Blyler, 237 W. Va. at 341, 787 S.E.2d at 612. Respondent violated duties owed to the public by failing to maintain the standards of honesty and integrity upon which the public relies. The public expects lawyers to be honest and public confidence in integrity of officers of the court is

undermined when lawyers engage in dishonest conduct. Here, the HPS found that Respondent made a knowingly false statement at his sworn statement by stating that the \$2,200.00 check from Ms. Allison was deposited into his IOLTA account and that when he felt that he had done roughly ten hours of work, he transferred the funds to his general account. [ODC Ex. 161, Bates 2871].¹²

Respondent violated duties owed to the legal system by engaging in conduct that was prejudicial to the administration of justice and that involved dishonesty, deceit, and misrepresentation.

Lawyers, as officers of the court, are expected to operate within the bounds of the law and must abide by the rules of substance and procedure which shape the administration of justice.

Respondent fell short of this expectation by failing to comply with the scheduling deadlines set

¹² The terms "IOLTA account" and "client trust account" are used interchangeably in reference to the same bank account. Respondent testified at his sworn statement that he maintained one client trust account which is the account at City National Bank labeled "IOLTA Account." [ODC Ex. 161, Bates 2846-47].

forth by numerous court orders in the underlying matters. Respondent also violated duties to the legal profession by failing to maintain the integrity of the profession.

2. Respondent acted intentionally, knowingly and negligently.

The record reflects that Respondent acted intentionally, knowingly and negligently when he committed the ethical violations discussed herein. Regarding the evaluation of a lawyer's mental state, "the most culpable mental state is that of intent, which consists of conduct by the lawyer with a conscious objective or purpose to achieve a particular result." *Blyler*, 237 W. Va. at 341, 787 S.E.2d at 612. The next most culpable mental state is knowledge, which occurs when the lawyer is aware of the nature of the acts or the potential consequences of the conduct but does not have a conscious effort to attain a particular result. *Id.* Finally, the least culpable mental state is negligence, which involves a failure to be aware of substantial risks. *Id.*

The HPS did not make a finding regarding Respondent's mental state when he testified falsely at his sworn statement, however the record reflects that Respondent acted intentionally. Respondent's contention that his false statements to Disciplinary Counsel were inadvertent and that he may have been "thinking about something else" is not compelling based upon a review of the record. Respondent testified that he "almost never" used his IOLTA account. [Hrg. Tr. 111, 116]. The bank records confirm this, revealing only one instance of Respondent depositing client funds into this account from July 1, 2021, through the last statement date of December 31, 2021. [ODC Ex. 96, Bates 1175]. Moreover, Respondent testified that he did not even know his IOLTA account was closed until he received the Statement of Charges which was served on him on March 19, 2024. [Hrg. Tr. 106-07]. It is implausible that Respondent was "thinking about something else" when he made these false statements to Disciplinary Counsel as the record clearly shows it was a rare occurrence for Respondent to deposit client funds into his IOLTA account. Notably, Respondent's false recounting at his sworn statement of his handling of the funds paid to him by

Ms. Allison complied with his obligations under the Rules of Professional Conduct. Respondent's unwillingness to take accountability for knowingly providing a false statement at his sworn statement to conceal the improper handling of the funds paid to him by Ms. Allison is very concerning.

The HPS properly found that Respondent acted knowingly by failing to keep Ms. Allison's legal fees paid in advance in a client trust account separate from his own property and by spending these funds prior to earning them. Rule 1.0(f) of the Rules of Professional Conduct states that a person's knowledge may be inferred from the circumstances. Respondent deposited these funds into his operating account, an account which had a negative balance at the time and later contained his own money. [Hrg. Tr. 120, 125; ODC Ex. 96, Bates 1157, 1241]. Respondent then promptly used the funds provided to him by Ms. Allison for personal spending, including making a personal loan payment. [Hrg. Tr. 128; ODC Ex. 96, Bates 1157, 1241].

The HPS found that Respondent acted "with extreme carelessness if not knowingly," by failing to communicate with Mr. Young until more than one year and three months after he was appointed to represent him in the underlying proceedings. The record shows that Respondent acted knowingly in this regard as he was aware that Mr. Young had sent him letters and that Mr. Young filed an ethics complaint against him on August 19, 2022, wherein he alleged that Respondent failed to answer his phone calls and respond to his letters. [Hrg. Tr. 77-78]. Despite an awareness of the same, Respondent's lack of communication persisted until September 16, 2023, and Mr. Young was left in the dark regarding the status of his case for more than a year.

The HPS found that Respondent acted "carelessly if not knowingly" by failing to appear on Mr. Murray's behalf at the final omnibus evidentiary hearing December 20, 2023, and by failing to comply with the filing deadline set forth by the Circuit Court of Kanawha County. The record shows that Respondent acted knowingly in this regard as he testified that he received the

September 19, 2023, Order which set the deadline to file the amended petition in Mr. Murray's case as October 1, 2023, and ordered the parties to appear for a final evidentiary hearing before the Court on December 20, 2023. [Hrg. Tr. 177]. Respondent testified that he did not comply with this Order due to ongoing disagreements with Mr. Murray, and that he did not file any motions to extend the filing deadline set forth in this Order. [Hrg. Tr. 178]. Respondent's contention that he was unaware that a hearing was held in this matter on December 20, 2023, is not compelling for several reasons. Most importantly, Respondent acknowledged that he received the Order which ordered the parties to appear for a final evidentiary hearing before the Court on December 20, 2023. [Hrg. Tr. 177]. Moreover, Respondent was advised by Judge Abraham's assistant on November 28, 2023, that the concerns raised in Mr. Murray's letters to the Court would be addressed at the December 20, 2023, hearing, and Respondent was sent a copy of the December 4, 2023, Order for Mr. Murray to be transported from MOCC to the December 20, 2023, hearing.

[ODC Ex. 140, Bates 2636, 2646].

The HPS found that Respondent acted "carelessly if not knowingly" by failing to comply with the Court's scheduling deadlines set forth in the underlying abuse and neglect appeals. The record shows that Respondent acted knowingly in this regard as he testified that he did not dispute that he received the orders in these matters. [Hrg. Tr. 158-59]. Accordingly, Respondent was aware of the deadlines set forth by the Court and he knowingly disregarded these deadlines because he was busy with other cases. [Hrg. Tr. 155-57].

The HPS properly found that Respondent acted knowingly in his multiple acts of failing to respond to the ODC's lawful requests for information. Respondent testified that he was not going to dispute that the ODC sent him all the letters in the record and that he should have responded. [Hrg. Tr. 162]. The HPS also properly found that Respondent acted negligently by providing Ms. Allison with incorrect information regarding her case when he advised her by email that he would

need to refile her petition, despite never having filed it. Respondent testified that he inadvertently provided this incorrect information to Ms. Allison and that he may have been attempting to respond to another email. Although the record is void of any attempts to rectify any misunderstanding caused by this email, the record is also void of any facts which would tend to show that Respondent knowingly or intentionally provided this incorrect information to Ms. Allison.

3. There is actual and potential injury.

The findings made by the HPS that actual and potential injuries resulted from Respondent's misconduct were supported by the reliable, probative, and substantial evidence on the record. Injury is defined as harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. American Bar Association, *Annotated Standards for Imposing Lawyer Sanctions, Second Edition, Definitions* (2019). The level of injury can range from serious injury to little or no injury. *Id.* Furthermore, potential injury is the harm to a client, the public, the

legal system, or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Id.*

Respondent's misconduct caused harm to his clients, the public, the legal system and the legal profession. Respondent caused undue delay in the resolution of Mr. Young and Mr. Murray's cases by failing to comply with the deadlines set forth by the Court. Moreover, Mr. Young and Ms. Allison testified that Respondent's conduct had a negative impact on their opinion of lawyers. Respondent's failure to keep the legal fees paid in advance by Ms. Allison in a client trust account separate from his own property led to these funds being spent by Respondent prior to being earned. Ms. Allison was deprived of the unearned fees to which she was entitled for more than 18 months until Respondent ultimately provided her with a refund check at his disciplinary hearing. By failing

to comply with the deadlines set forth in the underlying abuse and neglect appeals, Respondent placed an administrative burden on the Office of the Clerk and delayed permanency for the children involved in these matters.

As the legal profession is largely self-governing, it is vital that lawyers abide by the rules of substance and procedure which regulate the legal system. Respondent's noncompliance with these rules as exhibited in the record is clearly detrimental to the legal system and legal profession. Every time a lawyer converts or misappropriates funds there is damage to the public's perception of attorneys and the public's confidence in the ability of attorneys to abide by the rule of law is undermined, and this is a breach of trust that reflects poorly on the entire legal profession. Finally, Respondent's failure to comply with the deadlines set forth by the Court caused potential injury in that it could have resulted in the dismissal of the underlying abuse and neglect appeals.

~~4. The existence of aggravating factors.~~

The existence of any aggravating or mitigating factors shall be considered in determining the appropriate sanctions to be imposed upon Respondent. Aggravating factors are "any considerations or factors that may justify an increase in the degree of discipline to be imposed." Syl. Pt. 4, *Law. Disciplinary Bd. v. Scott*, 213 W.Va. 209, 579 S.E.2d 550 (2003). The HPS correctly found that his substantial experience in the practice of law, pattern of misconduct, and commission of multiple offenses were aggravating factors present in this matter. Respondent has substantial experience in the practice of law as he has been practicing law since 2001. The record clearly establishes a pattern of misconduct. Respondent failed to comply with the filing deadlines set forth by the Court in five unrelated abuse and neglect appeals. Respondent also failed to comply with the filing deadlines set forth in Mr. Young and Mr. Murray's *habeas* cases. Moreover, Respondent had a pattern of failing to respond to lawful requests for information from the ODC

as the record establishes that Respondent failed to respond to 13 letters from the ODC. The record also establishes that Respondent has committed multiple offenses.

5. The existence of mitigating factors.

Mitigating factors are “any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” *Scott*, 213 W. Va. at 214, 579 S.E.2d at 555 (quoting American Bar Association, *Standards for Imposing Lawyer Sanctions*, Standard 9.31 (1992)). The HPS correctly found that his absence of a prior disciplinary record, remorse, and the imposition of other penalties or sanctions were mitigating factors present in this matter.¹³

C. THE RECOMMENDED SANCTION IS INCONSISTENT WITH DISCIPLINARY SANCTIONS FOR THE SAME OR SIMILAR VIOLATIONS

The HPS found clear and convincing evidence that Respondent committed numerous violations of the Rules of Professional Conduct including: six violations of Rule 1.3 (diligence); two violations of Rule 1.4(a)(3) (communication); one violation of Rule 1.4(a)(4) (communication); one violation of Rule 1.15(a) (safekeeping property); one violation of Rule 1.15(c) (safekeeping property); four violations of Rule 3.2 (expediting litigation); six violations of Rule 3.4(c) (fairness to opposing party and counsel); one violation of Rule 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter); four violations of Rule 8.1(b) (knowingly failing to respond to a lawful demand for information from a

¹³ The fact that Respondent reimbursed Ms. Allison above and beyond the unearned portion of his fee by providing a full refund at the disciplinary hearing in this matter does not justify a reduction in the discipline to be imposed. *See* Syl. Pt. 8, *Law. Disciplinary Bd. v. Battistelli*, 206 W. Va. 197, 523 S.E.2d 257 (1999). This refund was not timely and was made after the institution of disciplinary proceedings. While Respondent promptly agreed to refund the bulk of Ms. Allison’s retainer after she discharged him on December 12, 2022, and testified that he attempted to mail Ms. Allison a refund check on two separate occasions, Respondent neglected to take any remedial measures after Disciplinary Counsel advised him by letter dated December 20, 2023, that Ms. Allison did not receive the second refund check, nor did he respond to this letter when directed to follow up regarding this matter.

disciplinary authority); two violations of Rule 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and eight violations of Rule 8.4(d) (conduct that is prejudicial to the administration of justice). The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syl. Pt. 3, *Committee on Legal Ethics v. Tatterson*, 173 W. Va. 613, 319 S.E.2d 381 (1984). Any discipline imposed should not only “appropriately punish the respondent attorney, but also [...] 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.” Syl. Pt. 3, *Committee on Legal Ethics v. Walker*, 178 W. Va. 150, 358 S.E.2d 234 (1987). Moreover, the primary 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, 364, 326 S.E.2d 705, 710 (1984).

~~This Court has consistently held that the general rule is that “absent compelling extenuating~~
circumstances, misappropriation or conversion by a lawyer of funds entrusted to his/her care warrants disbarment.” *Law. Disciplinary Bd. 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, *Law. Disciplinary Bd. v. Scotchel*, 234 W. Va. 627, 768 S.E.2d 730 (2014); Syl. Pt. 4, in part, *Law. Disciplinary Bd. v. Coleman*, 219 W. Va. 790, 639 S.E.2d 882 (2006); *Law. Disciplinary Bd. 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); *Law. Disciplinary Bd. v. Kupec*, 202 W. Va. 556, 569, 505 S.E.2d 619, 632 (1998) (*Kupec* I). Moreover, this Court has held that “[m]isappropriation of funds by an attorney involves moral turpitude; it is an act infected with deceit and dishonesty and will result in disbarment in the absence of compelling extenuating circumstances justifying a lesser sanction.” *Committee on Legal Ethics v. Hess*, 186 W. Va. 514, 517, 413 S.E.2d 169, 172 (quoting

Attorney Grievance Commission v. Ezrin, 312 Md. 603, 608-09, 541 A.2d 966, 969 (1988)). Here, the record is void of any compelling extenuating circumstances which would justify a lesser sanction than disbarment.

In *Kupec I*, this Court recognized that 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 HPS found that Respondent knowingly misappropriated and converted funds belonging to Ms. Allison to his own use. Respondent acknowledged that the \$2,200.00 paid to him by Ms. Allison was a legal fee paid in advance to be billed against at a rate of \$200.00 per hour.

~~This was also the intent expressed in the unsigned fee agreement provided by Respondent.~~

Notwithstanding the foregoing, Respondent deposited these funds into his operating account on August 23, 2021, an account which had a balance of -\$632.65 at the time and used these funds to pay personal expenses prior to earning the same, including making a \$1,350.00 personal loan payment to City National Bank that same day. Respondent acknowledged that he had not earned these funds prior to depositing them into his operating account. Moreover, the time sheet submitted by Respondent reflected that he only worked on Ms. Allison's case for one and eight tenths of an hour and earned \$360.00 prior to depositing her \$2,200.00 check into his operating account.

This Court has stated that the "penalty for a misappropriation offense must be consistent with the level of intent by the lawyer and the level of injury." *Law. Disciplinary Bd. v. Kupec*, 204 W. Va. 643, 648, 515 S.E.2d 600, 605 (1999) (*Kupec II*). The American Bar Association Standards for Imposing Lawyer Sanctions (hereinafter "ABA standards") classify misappropriation offenses

according to the level of intent and the level of the injury. This Court found in *Kupec II* that disbarment is appropriate in cases of knowing conversion with injury or potential injury to the owner of entrusted funds. *Kupec II*, 204 W. Va. at 648-49, 515 S.E.2d at 605-06 (quoting *Kupec I*, 202 W. Va. at 569, 505 S.E.2d at 632). The HPS found that “Respondent deposited client funds [into] his business checking account with the rationale that he would earn those fees in the future,” and that although the “actual intent to defraud the client may have been absent – though the action in and of itself – particularly considering the pre-earned use of the client’s money for his own use – was intentional and worthy of punishment.” The HPS further found that Respondent “ultimately earned \$1,740.00 in the case prior to being discharged by Ms. Allison,” and that “Respondent testified that he estimated that he would earn the entirety of this fee upon completion of Ms. Allison’s matter...”

~~As discussed above, absent any aggravating or mitigating circumstances, the ABA~~
standards provide that disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client. American Bar Association, *Annotated Standards for Imposing Lawyer Sanctions, Second Edition*, Standard 4.11 (2019). The funds at issue belonged to Ms. Allison as they were legal fees paid in advance which had yet to be earned by Respondent. Respondent converted the funds belonging to Ms. Allison to his own use by depositing these funds into his operating account and spending these funds for personal use prior to earning the same.¹⁴ While Respondent’s intention may have been to earn the entirety of

¹⁴ The record shows that the balance of Respondent’s operating account on August 23, 2021, was -\$632.65, and that the deposit of Ms. Allison’s \$2,200.00 check brought the balance of this account to \$1,567.35. That same day, Respondent received a wire transfer credit from Creed Capital, LLC, in the amount of \$493.73 for payment of a PDS billing invoice which brought the balance of this account to \$2,061.08. [ODC Ex. 96, Bates 1157, 1241]. On August 23, 2021, Respondent had four charges from PayPal for retried payments which totaled \$192.24, and he made a \$1,350.00 payment to City National Bank for a personal loan, among other transactions. [ODC Ex. 96, Bates 1157, 1241; Hrg. Tr. 127-28].

the fee at some point in the future, the record reflects that he knowingly deposited these funds into his operating account and knowingly converted them to his own personal use prior to earning the same. Respondent's conduct in doing so constitutes misappropriation regardless of the fact that he intended to earn these funds at a later date. As previously stated, misappropriation includes not only stealing but also unauthorized temporary use for the lawyer's own purpose. The HPS properly found that Respondent accepted a fee for legal services and wrongfully commingled, misappropriated, and converted funds belonging to his client to his own use, and that Respondent acted knowingly by failing to keep the legal fees paid in advance by Ms. Allison in a client trust account separate from his own property and by spending these funds prior to earning them. The record shows that Respondent's conduct in this regard was deliberate, and despite the fact that his intention may have been to earn the entirety of the fee by the conclusion of Ms. Allison's case, ~~this does not negate that Respondent had requisite knowing intent to convert client funds to his~~ own use.

Regarding injury, the HPS found that Respondent's failure to keep the legal fees paid in advance by Ms. Allison in a client trust account separate from his own property led to these funds being spent by Respondent prior to being earned, and that Ms. Allison was deprived of these funds for more than 18 months until Respondent ultimately provided her with a refund check at his disciplinary hearing. The refund Ms. Allison was owed was approximately \$460.00 based upon the time sheet Respondent provided to the ODC which reflected that he earned \$1,740.00 of the \$2,200.00 advance legal fees paid by Ms. Allison.¹⁵ The record shows that Ms. Allison suffered injury as she was deprived of the funds to which she was owed for more than 18 months because

¹⁵ Notwithstanding the foregoing, Respondent advised Ms. Allison on or about December 12, 2022, shortly after he was discharged, that he would refund the bulk of her retainer. [ODC Ex. 88, Bates 1088].

these funds were not held in trust, rather they were spent by Respondent prior to being earned.

It is because this Honorable Court has held that absent compelling extenuating circumstances, misappropriation or conversion by a lawyer of funds entrusted to his care warrants disbarment that the ODC must ask that the same be upheld herein. *See Law. Disciplinary Bd. v. Wheaton*, 216 W. Va. 673, 610 S.E.2d 8 (2004) (Respondent lawyer failed to deposit monies into a trust account and converted those funds for his own personal use; law license was annulled); *Law. Disciplinary Bd. v. Brown*, 223 W. Va. 554, 678 S.E.2d 60 (2009) (Respondent lawyer converted approximately \$8,000 from his client trust account to his own use; law license was annulled); *Law. Disciplinary Bd. v. Albertson*, No. 12-1225 (2014) (unreported) (Respondent lawyer wrongfully commingled, misappropriated, and converted client funds to his own personal use; law license was annulled); *Law. Disciplinary Bd. v. Kohout*, 238 W. Va. 668, 798 S.E.2d 192 (2016) (Respondent lawyer failed to keep legal fees in his trust account and paid a filing fee from an account that did not have sufficient funds in one case, and failed to pay medical bills from a settlement received in a second case; law license was annulled, and he was ordered to make full restitution to a client); *Law. Disciplinary Bd. v. Greer*, No. 23-82, ___ W. Va. ___, ___ S.E.2d ___, 2024 WL 4784407 (W. Va. Nov. 14, 2024) (Respondent lawyer wrongfully commingled, misappropriated, and converted funds belonging to a third party; law license was annulled).

This case is distinguishable from those involving mishandling of client funds in which this Court has imposed a lesser sanction than annulment. In *Lawyer Disciplinary Board v. Harris*, Mr. Harris accepted \$50,000 in legal fees from a client, deposited these funds into his IOLTA account, and withdrew the entire fee by way of periodic telephone transfers that “bore no apparent relationship to any work performed...” *Law. Disciplinary Bd. v. Harris*, ___ W. Va. ___, 914 S.E.2d 249, 270 (2025). This Court found that Mr. Harris, despite doing little to no work, retained

and consumed the entire retainer paid by his client, and “engineered billing entries and file materials designed to justify retention of the entirety of the fee.” *Id.* at 271. In determining the appropriate sanction, this Court found that Mr. Harris’s conduct did not constitute the type of misappropriation or conversion of client funds that warranted annulment as it involved an “unreasonable and mishandled fee” rather than “undisputed client monies held in trust—such as settlement funds or sale proceeds.” *Id.* at 272-73. The Court imposed a two-year suspension in this case, finding that this misconduct warranted a one-year suspension as the baseline, but that the aggravating factors present in this case, including substantial experience in the practice of law, prior discipline, dishonest or selfish motive, and lack of remorse, warranted a variance. *Id.* at 273-74. In the instant matter, it is undisputed that the funds paid by Ms. Allison were advance legal fees. As such, these funds belonged to Ms. Allison until earned by Respondent. It is likewise undisputed that Respondent improperly deposited the advance legal fees paid by Ms. Allison into his operating account and spent these funds prior to earning the same. [Hrg. Tr. 114, 120]. Unlike in *Harris*, these funds were never in an IOLTA account as required by Rule 1.15(c), rather they were deposited into Respondent’s operating account and used to pay Respondent’s personal expenses almost immediately.

In *Lawyer Disciplinary Board v. Thorn*, Mr. Thorn was found to have violated numerous Rules of Professional Conduct by failing to communicate with clients and diligently work on their cases, failing to perform work in matters in which he already received fees, failing to make appropriate refunds, failing to respond to the ODC, and failing to address *habeas corpus* directives from the circuit court in one matter. *Law. Disciplinary Bd. v. Thorn*, 236 W. Va. 681, 783 S.E.2d 321 (2016). In this case, it was determined the timeframe of the violations and complaints was, for the most part, related to Mr. Thorn’s depression, which was considered by the Court as a mental

disability for purposes of mitigation. *Thorn*, 236 W. Va. at 698-99, 783 S.E.2d at 338-39. Moreover, Mr. Thorn was found to have acted negligently in his representation of his clients. *Thorn*, 236 W. Va. at 697, 783 S.E.2d at 337. This case is distinguishable from the instant case in that although “Mr. Thorn exhibited a pattern and practice of misconduct on multiple occasions in terms of communication, lack of diligence, and failing to respond to the ODC,” the HPS determined that “it was an anomaly in Mr. Thorn’s seventeen years of practice which coincided with a mental disability which appears to be resolved.” *Thorn*, 236 W. Va. at 697, 783 S.E.2d at 337. In the instant case, Respondent argued no such mitigation and, for the most part, Respondent’s mental state in committing the underlying misconduct was intentional and knowing.

In *Lawyer Disciplinary Board v. Morgan*, Mr. Morgan admitted to violating numerous Rules of Professional Conduct by failing to appear at several hearings, accepting fees for legal ~~services and failing to provide those services, failing to deposit retainers into a separate account~~ from his own property, failing to respond to communications from his clients, and failing to respond to the ODC’s lawful requests for information. *Law. Disciplinary Bd. v. Morgan*, 228 W. Va. 114, 119-20, 717 S.E.2d 898, 903-04 (2011). In this case, Mr. Morgan had only one bank account which he would deposit legal fees into which resulted in these funds being commingled. *Morgan*, 228 W. Va. at 122, 717 S.E.2d at 906. Although the instant case is not a situation where Respondent accepted fees and failed to provide services as was the case in *Morgan*, the record in this case is clear that Respondent knowingly misappropriated and converted funds belonging to Ms. Allison to his own use.

In *Lawyer Disciplinary Board v. Atkins*, Mr. Atkins admitted to violating Rules 1.3, 1.4, 1.15(d), and 5.3 of the Rules of Professional Conduct. The HPS also found that Mr. Atkins violated Rules 1.15(a) for failing to hold client funds in an account designated as a “client’s trust account,”

8.1(a) for knowingly making a false statement of material fact, and 8.4(c) and 8.4(d) for wrongfully misappropriating and converting funds belonging to his client or a third party to his own use. The HPS found that Mr. Atkins acted negligently in supervising his non-lawyer staff, which resulted in \$14,807.55 of client funds being transferred to the law firm's operating account for use by the law firm. The Court adopted the findings of the HPS, apart from the HPS's recommended sanction, and imposed a nine-month suspension. *Law. Disciplinary Bd v. Atkins*, 243 W. Va. 246, 842 S.E.2d 799 (2020). This case stands in stark contrast to the instant case, as the HPS in *Atkins* found that his negligent supervision of his staff resulted in funds being misappropriated from his client account for use in the operation of his law practice. In the instant case, Respondent's conduct amounted to a knowing misappropriation.

In *Lawyer Disciplinary Board v. Haught*, Mr. Haught 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. *Law. Disciplinary Bd v. Haught*, 233 W. Va. 185, 757 S.E.2d 609 (2014). At his disciplinary hearing, Mr. Haught testified that he was counsel for the Haught Family Trust and an envelope was kept in his office safe which contained large amounts of cash belonging to the Haught Family Trust and additional funds belonging to the Trust were also kept in his IOLTA account. *Haught*, 233 W. Va. at 194, 757 S.E.2d at 618. According to Mr. Haught, because his clients, the Blizards, asked that the \$11,402.50 be held in cash in the safe, he transferred \$11,402.50 from the Haught Family Trust envelope in the safe to a new envelope in the safe marked as belonging to the Blizards, and in return, the \$11,402.50 he deposited into his IOLTA account was considered to be funds of the Haught Family Trust. *Id.* Although Mr. Haught was found to have mishandled client funds, he was notably not found to have converted these funds for his personal use. *Haught*, 233 W. Va. at 195, 757 S.E.2d at 619. Conversely, in the instant case,

Respondent was found to have knowingly misappropriated and converted funds belonging to Ms. Allison to his own use.

Respondent's conduct in knowingly making a false statement to Disciplinary Counsel at his sworn statement in an attempt to conceal his mishandling of funds paid to him by Ms. Allison is extremely serious. Lawyers have faced substantial sanctions for similar conduct. *See Law. Disciplinary Bd v. Haught*, 233 W. Va. 185, 757 S.E.2d 609 (2014) (one-year suspension after lawyer failed to properly deposit client funds, 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); *Law. Disciplinary Bd v. Grindo*, 243 W. Va. 130, 842 S.E.2d 683 (2020) (two-year suspension after lawyer overbilled PDS then lied to PDS and the ODC); *Law. Disciplinary Bd v. Atkins*, 243 W. Va. 246, 842 S.E.2d 799 (2020) (nine-month suspension after lawyer failed to safeguard client funds and knowingly made a false statement during his sworn statement regarding the same).

Respondent's repeated failure to comply with the Court's orders alone warrants a substantial sanction. *See Law. Disciplinary Bd. v. Conner*, 234 W. Va. 648, 769 S.E.2d 25 (2015) (ninety-day suspension followed by two years of supervised practice, in part, for failing to timely perfect an appeal on behalf of her client and being held in contempt by the Supreme Court following the issuance of a rule to show cause); *Law. Disciplinary Bd. v. Fittro*, No. 20-0542 (W. Va. April 15, 2021) (six-month suspension stayed for lawyer to complete two years of supervised practice for failing to comply with the scheduling order in a criminal appeal and being held in contempt by the Supreme Court following the issuance of a rule to show cause); *Law. Disciplinary Bd. v. DeVore*, No. 22-599 (W. Va. May 12, 2023) (six-month suspension after being held in contempt by the Supreme Court for failing to file a brief as a guardian *ad litem* in an appeal of an abuse and neglect matter); *Law. Disciplinary Bd. v. Willett*, No. 21-1032 (W. Va. January 18, 2023) (indefinite suspension with right to petition for reinstatement after one year for failing to

perfect an appeal and being held contempt by the Supreme Court and failing to appear at his disciplinary hearing). Unlike the lawyers in the preceding cases, the Court issued Rules to Show Cause in five unrelated abuse and neglect appeals for Respondent's failure to timely perfect appeals on behalf of his clients. Although Respondent was only held in contempt in one of those cases, the record and Ms. Stern's testimony reflects that Respondent failed to comply with at least one, and typically two court orders (the scheduling order and the notice of intent to sanction) in each of these cases, prior to the issuance of a Rule to Show Cause. This highlights Respondent's blatant disregard for these orders.

Respondent's failure to communicate with Mr. Young and comply with the filing deadlines set forth by the Court in Mr. Young and Mr. Murray's *habeas* cases is also extremely serious and indicative of Respondent's pattern of disregarding court orders. Lawyers have received considerable sanctions for similar conduct. *See Law. Disciplinary Bd. v. Hollandsworth*, No. 14-0022 (W. Va. September 18, 2014) (ninety-day suspension followed by one year of probation with supervised practice for failing to communicate with his client and pursue his client's petition for writ of *habeas corpus* and disregarding the circuit court's instructions); *Law. Disciplinary Bd. v. Sturm*, 237 W. Va. 115, 785 S.E.2d 821 (2016) (ninety-day suspension followed by two years of supervised practice, in part, for failing to timely file her client's petition for writ of *habeas corpus*, failing to respond to her client's requests for information, failing to deposit all of the retainer fee into a client trust account, and failing to file a criminal appeal in another matter); *Law. Disciplinary Bd. v. Hinerman*, No. 21-0614 (W. Va. September 20, 2022) (ninety-day suspension followed by two years of supervised practice for failing to communicate with clients in two *habeas* cases and failing to respond to requests for information from the ODC). Despite Respondent's contention that he was overwhelmed with cases, the record shows that he made no efforts to mitigate this issue by seeking Court intervention in the form of a motion to withdraw as counsel nor did he file

any motions requesting the Court to extend the deadlines set forth in the orders that he knowingly failed to comply with.

Absent any aggravating or mitigating circumstances, the ABA standards provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or engages in a pattern of neglect causes injury or potential injury to a client. American Bar Association, *Annotated Standards for Imposing Lawyer Sanctions, Second Edition*, Standard 4.42 (2019). Similarly, suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule and causes injury or potential injury to a client or causes interference or potential interference with a legal proceeding. American Bar Association, *Annotated Standards for Imposing Lawyer Sanctions, Second Edition*, Standard 6.22 (2019). As the Court has previously noted, “there is no ‘magic formula’ ... to determine how to weigh the host of mitigating and aggravating circumstances to arrive at an appropriate sanction; ~~each case presents different circumstances that must be weighed against the nature and gravity of~~ the lawyer’s misconduct.” *Law. Disciplinary Bd. v. Sirk*, 240 W. Va. 274, 282, 810 S.E. 2d 276, 284 (2018). Respondent has demonstrated a pattern of ignoring the ethical standards to which he vowed to adhere when he became a member of the Bar. Moreover, Respondent knowingly misappropriated and converted to his own benefit legal fees which were paid to him in advance and entrusted to him in a professional and fiduciary capacity. In addition to knowingly misappropriating and converting legal fees paid in advance to his own use, Respondent made a knowingly false statement to Disciplinary Counsel to conceal this conduct. Respondent failed to comply with court orders and failed to timely perfect appeals on behalf of his clients in five unrelated abuse and neglect appeals. Respondent failed to adequately communicate with Mr. Young and Ms. Allison. Respondent failed to respond to the ODC’s requests for information.

Respondent's conduct demonstrates a disregard for the legal system and profession and has a dramatic impact on the public's confidence in the integrity of the Bar.

For the public to have confidence in our disciplinary and legal systems, Respondent must receive a substantial sanction. "Disbarment of an attorney to practice law is not used solely to punish the attorney but is for the protection of the public and the profession." Syl. Pt. 2, *In re Daniel*, 153 W. Va. 839, 173 S.E.2d 153 (1970). Based on the seriousness and scope of Respondent's misconduct and the aggravating and mitigating factors present, annulment of Respondent's law license is an appropriate sanction. Moreover, this sanction would serve to deter other lawyers from engaging in similar conduct and to restore the public's confidence in the integrity of the Bar.

V. CONCLUSION

For the reasons set forth above, the ODC recommends that: (1) Respondent's law license be annulled; (2) Respondent be ordered to comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; and (3) Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Respectfully submitted,
Office of Lawyer Disciplinary Counsel



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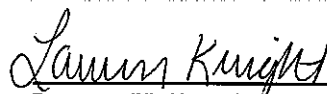
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CERTIFICATE OF SERVICE

This is to certify that I, Lauren Hall Knight, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 29th day of May, 2025, served a true copy of the foregoing **"BRIEF OF THE OFFICE LAWYER DISCIPLINARY COUNSEL"** upon Respondent Benjamin R. Freeman, Esquire, electronically via File and Serve Xpress and email, to the following address:

bfreeman@freemanlawwv.com



Lauren Hall Knight, Esquire