

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

SCA EFiled: Aug 10 2024  
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Transaction ID 74012578

**Re:** BRIAN W. BAILEY, a member of  
The West Virginia State Bar

**Bar No.:** 9816  
**I.D. Nos:** 22-05-046  
22-05-358  
23-06-157  
23-05-304  
23-02-376

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**RESPONSE TO STATEMENT OF CHARGES**

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1. The Respondent ADMITS the allegation as set forth in paragraph #1.

**COUNT I  
I.D. No. 22-0546:  
Complaint of Tesla Lewis**

2. The Respondent ADMITS the allegation as set forth in paragraph #2.
3. The Respondent ADMITS this; but would add that he filed a "Petition to Contest the Validity of the Will" on July 24, 2019, in Upshur County Circuit Court case number 19-C-29; thus, his representation of Ms. Lewis began significantly prior to February 2020.
4. The Respondent has turned over the entirety of the file to Ms. Lewis; and therefore, lacks sufficient information and belief to respond to this allegation.
5. To the best of respondent's recollection for the reasons incorporated in number 4 above, the respondent would admit this allegation.
6. The Respondent would ADMIT this allegation in part, and DENY in part, because

Ms. Queen initiated the vast majority of the communication with Ms. Lewis, with respect to telephone calls about the case status.

7. On July 6, 2020, Ms. Lewis texted Ms. Queen: "Any word since things are opening back up?" Ms. Queen responded, "There has been some talk back and forth amongst attorneys, but Brian has let them know that there is no negotiation. nothing new yet. But, should be soon. Criminal and abuse and neglect cases were at the top of the food chain to get resolved." (It should be noted that this text exchange occurred at 10:27 A.M., and 10:58 A.M., respectively.) Ms. Lewis then responded at 11:04 A.M. with "Thank you! Just wanted to check and see. I figured they would be first"

- A. Ms. Lewis texted on July 18, 2020, in reference to dogs at the property being in the animal shelter, as well as on July 20, 2020, August 9, 2020, August 10, 2020, August 11, 2020, August 12, 2020; all to which she received a reply; one time during which Ms. Queen was even on vacation.
- B. On August 18, 2020, Ms. Lewis asked "Any word on a Court date?"
- C. On September 22, 2020, September 26, 2020, and October 22, 2020, October 30, 2020, October 31, 2020, November 1, 2020, December 17, 2020, and December 30, 2020. Each time, Ms. Lewis received a response from Ms. Queen, and on December 30, 2020, at 11:42A.M., the "Notice of Scheduling Conference" was screenshot and sent to Ms. Lewis by text message, indicating that "You won't appear for this, but we will have court dates after the scheduling conference."

8. The Respondent would DENY the implication that counsel purposefully delayed her case; it should be noted that this period of time was during the height of the COVID-19 pandemic, which had pointed out to Ms. Lewis in various text messages. The Respondent is without any information and belief as to any actions taken by Ms. Lewis' aunt to purportedly get a scheduling conference set; the Respondent finds this dubious because he would have to be available to participate in the scheduling conference.
9. The Respondent ADMITS discovery motions were never filed. In all actuality, it was an oversight. Ms. Queen and I had reviewed the discovery requests, discussed the responses and found that one "request" would merit a denial based upon case information.
10. The Respondent ADMITS this was the response; but, would also include that various documents had been provided to Mr. O'Brien in this case and Ms. Queen was under the assumption that discovery had been provided. The Respondent and Mr. O'Brien often communicated via email; therefore, communications were typically shared with Ms. Queen but not always. In other words, this was not intended to mislead or "lie" to Ms. Lewis.
11. The Respondent is without information and belief as to the timeline of the "Motion for Summary Judgement," however, it should be noted that counsel filed a "Response in Opposition to the Motion for Summary Judgment," as well as advising the Petitioner's Aunt on September 23, 2021, as set forth; and further, it should be noted that Ms. Queen was out of the office with COVID at

this time, and that her mother passed away on September 24, 2021 from COVID; wherefore, counsel was handling the entirety of the office work load at that particular point in time, which mainly involved the Respondent being in Court on an every day basis.

12. See #11 above.

13. See #11 above.

14. The Respondent DENIES this timeline, noting that the Civil Case Information Statement, Notice of Appearance, and Petition for Preliminary Injunction, and Motion for Preliminary Injunction Hearing, as well as the attachments thereto were filed on July 24, 2019. The history of the relationship of Ms. Lewis and Steven Casto was received by counsel on July 23, 2019, as well as a separate email with witness information provided on August 2, 2019. The Respondent denies the allegation that no attempt was made to contact the hospice nurse, as Ms. Queen was advised that they would not with speak with our office, unless subpoenaed for Court.

15. The Respondent DENIES the allegation as set forth its in entirety, and strongly disputes this allegation.

16. The Respondent ADMITS this, but in mitigation notes that Ms. Queen's late husband had started chemotherapy on November 18, 2021, following a stage IV colorectal cancer diagnosis. Within 24 hours, he had a severe reaction to the medications, and within 48 hours, he suffered two (2) cardiac arrests requiring him to be life flighted to Ruby Memorial Hospital in Morgantown.

17. The Respondent ADMITS this allegation, based upon a review of his records.
18. The Respondent ADMITS this allegation, but in the context of the circumstances as set forth in #16 above. Ms. Queen advised by text message “I’m sorry, I will see about getting some info. I’ve been back and forth to Morgantown with my husband who was flown there last week.” This is provided for completeness in the context of Ms. Lewis’ allegation.
19. The Respondent is without information and belief to admit or deny this allegation; however, is in the process of retrieving telephone records for this time period at the time of this pleading.
20. The Respondent had advised Ms. Campbell on September 23, 2021 at 12:51 P.M. by email, that a hearing date was upcoming, and that mediation deadlines had been extended until the end of November 2021; Ms. Campbell was advised that the “Motion for Summary Judgment” had been filed by Steptoe, and that counsel would be responding next week. Furthermore, she was advised that a hearing was set for the end of October for the motion. It should be noted that Ms. Campbell has access to the local court docket, as she notes multiple times in this complaint, because she is employed by a local attorney.
21. The Respondent is without any knowledge as to the allegations of what occurred subsequent to her apparently obtaining another attorney.
22. The Respondent only expressed displeasure with counsel’s services after

the adverse result to her, and therefore, would deny the substantive allegations. It should be noted that she had appeared at the outset when the matter of the validity of the will was argued before the Upshur County Commission on November 21, 2019 at 2 P.M.

23. The Respondent ADMITS the allegation based upon the transcript obtained.
24. The Respondent DENIES the allegation, because he both filed a “Motion in Opposition to the Motion for Summary Judgment” on October 7, 2021, and argued the substantive case at the subsequent summary judgment hearing, where it was noted that medical representatives would be able to testify to Mr. Casto’s mental condition in the days leading up to his death, as set forth in the initial complaint at Trial.
25. The Respondent ADMITS this allegation.
26. The Respondent ADMITS this allegation.
27. The Respondent DENIES this allegation, because he met with Ms. Lewis at the office on September 13, 2019 at 2:30 P.M. and on December 2, 2019, and as noted above as well as Ms. Queen’s voluminous conversations, counsel also contact with Ms. Campbell, the aunt of the petitioner.
28. The Respondent ADMITS the allegation in part; but notes that the plan was to subpoena the necessary witnesses for Trial, if the matter could not be resolved by way of mediation, as the deadline had been extended.
29. The Respondent DENIES the allegations as set forth regarding documents, court dates, and objectives of the suit, as there had been extensive

messaging, requests for Ms. Lewis to contact Ms. Queen, or to accept a telephone call, as well as various notices of hearings and pleadings sent by text messaging. It should be also noted that Ms. Queen met with Ms. Lewis after regular office hours frequently, and accepted and responded to text messages every day of the week, including on weekends and vacations to accommodate Ms. Lewis' nurse shift schedule.

30. The Respondent ADMITS this allegation.
31. The Respondent ADMITS this allegation.
32. The Respondent ADMITS this allegation.
33. The Respondent ADMITS this allegation.
34. The Respondent ADMITS this allegation.
35. The Respondent ADMITS this allegation.
36. The Respondent ADMITS this allegation.
37. The Respondent ADMITS this allegation.
38. The Respondent ADMITS this allegation in part, but it should be noted that Ms. Queen had frequent and ongoing contact with Ms. Lewis, which was conveyed to counsel.
39. The Respondent ADMITS this allegation.
40. The Respondent ADMITS this allegation.
41. To the best of respondent's information and belief, without the case file, he would ADMIT this allegation.
42. The Respondent ADMITS this allegation, and believes that these facts were

the most difficult to overcome with to Ms. Lewis' will challenge; for the challenge was denied by the County Commission, as overseen by the Fiduciary Commissioner.

43. The Respondent ADMITS this allegation.
44. The Respondent ADMITS the background provided by Ms. Lewis, to the best of his information and belief, which was provided in the original petition filed by counsel.
45. The Respondent attempted to speak with the hospice nurse, but was advised a subpoena would be necessary, for which counsel's office was in the process of preparing for the upcoming trial.
46. Ms. Lewis paid a \$200.00 filing fee to the Upshur County Circuit Clerk via our office for filing purposes on July 30, 2019. Ms. Lewis paid her \$1,000.00 retainer fee in two payments; \$250.00 on July 30, 2019, and \$750.00 on August 9, 2019. In January/February 2020 an additional petition was filed before the Circuit Court. Ms. Lewis paid \$100.00 in service fees to the Upshur County Circuit Clerk, via our office for document service on January 18, 2020, and \$100.00 toward her new filing and the retainer on the second filing along with two additional payments of \$250.00 on February 10, 2020, and \$650.00 on March 6, 2020. The notation on the invoice dated August 9, 2019, "Retainer paid in full" was for the original filing. An additional petition was created in January/February of 2022 as a result of the ruling with the Upshur County Commission and the dismissal from the Upshur County



Circuit Court Judge.

47. The Respondent adamantly DENIES this allegation. It was explained to Ms. Lewis that if we were to use a debit or credit card, an additional amount would have to be charged to cover our service fees. Otherwise, she could pay by cash or check, to which she responded she did not use checks. Furthermore, we did not demand more money because we were sympathetic to Ms. Lewis' circumstances.
48. The Respondent is without specific information and believe to respond to this allegation specifically as the case file was turned over to Ms. Lewis; however, based upon the best of counsel's recollection, he DENIES this allegation.
49. The Respondent denies the characterization of the estate as a large estate...
50. The Respondent ADMITS that Mr. O'Brien argued that point at the summary judgment hearing.
51. The Respondent DENIES the allegation, and would set forth that his typical process is to bear down and prepare for Trial as it approaches, as necessary.
52. The Respondent DENIES Ms. Lewis' disapproval of the Respondent's approach on the case. The Respondent anticipated Mediation and Trial in this particular case. The Home Health Nurse could not speak on capacity at the time, without a subpoena, in which was part of preparations for upcoming Court dates.
53. The Respondent ADMITS that Steptoe and Johnson has more resources than

a sole practitioner; particularly one whose sole legal assistance was out of the office to unforeseen family medical emergencies.

54. The Respondent does not recall receiving the letter from the Office of Disciplinary Counsel dated December 14, 2022.
55. See number 54 above.
56. The Respondent did not receive the follow-up pleading from the Office of Disciplinary Counsel dated January 12, 2023, and so far as counsel knows, no attempts were made to deliver the certified mail, therefore, counsel otherwise lacks information and belief to respond to this allegation.
57. The Respondent is without sufficient information and belief to either ADMIT or DENY number 57.
58. See number 56 above.
59. The Respondent ADMITS this allegation.
60. The Respondent ADMITS this allegation, and immediately contacted the Office of Disciplinary Counsel after receipt of the e-mail from ODC.
61. The Respondent ADMITS this allegation.
62. The Respondent ADMITS this allegation.
63. The Respondent ADMITS this allegation.
64. The Respondent ADMITS this allegation, but notes that billing (in part) is available through counsel's software.
65. The Respondent DENIES the inability to represent Ms. Lewis. A number of extenuating circumstances transpired during this timeframe where several

continuances were granted with COVID restrictions, Court delays, and interoffice circumstances far beyond control.

66. The Respondent's assistant Ms. Queen texted Ms. Lewis on July 29, 2019, at 9:46 A.M. as follows: "Good morning. How would you like for me to set this contract for payment up?" At 11:54 A.M., Ms. Lewis responded, "Is this for the \$1,000?" At this point, the Respondent does not recall exactly what was set up in writing; however, due to the passage of time, is unable to locate it at this point.
67. The Respondent did not receive the letter referenced on April 3, 2023 from the Office of Disciplinary Counsel.
68. See number 67 above.
69. The Respondent did not receive an email from the Petitioner on May 5, 2023; otherwise, he would have responded to Ms. Halkias. (Counsel checked his email records during the preparation of this pleading.)
70. The Respondent ADMITS this allegation; and recalls being served in the Courthouse.
71. The Respondent ADMITS this allegation.
72. The Respondent is without sufficient information to ADMIT or DENY this allegation.
73. The Respondent is without sufficient information to ADMIT or DENY this allegation.
74. The Respondent is without sufficient information to ADMIT or DENY this

allegation.

75. The Respondent ADMITS this allegation.
76. The Respondent ADMITS this allegation.
77. The Respondent ADMITS this allegation.
78. The Respondent ADMITS this allegation.
79. The Respondent ADMITS this allegation, but it should be noted that the respondent keeps careful tabs on Court-appointed billing.
80. The Respondent ADMITS these allegations in part, but would reiterate that he was going to do the necessary trial prep work as Trial approached, but for the granting of summary judgment.
81. The Respondent is without sufficient information to either ADMIT or DENY this allegation.
82. Ms. Lewis' case was brought before the Court with a "Petition for Preliminary Injunction" where the circumstances of the case were provided on July 24, 2019, opposing parties filed a motion to dismiss in which a response was prepared September 11, 2019, met with Ms. Lewis on September 13, 2019, prior to Court on "Motion to dismiss." Circuit Court Judge dismissed the case and referred the case to the Upshur County Commission and the Fiduciary Commissioner, Attorney Daya Wright. On November 21, 2019, at 2:00 p.m., the Will was reviewed by the Upshur County Commission and Fiduciary commissioner; into which, those parties refuted the final "Will" to be overturned and ordered to Probate. During the next several months,

communications transpired between all parties. Ms. Lewis was involved in all communications and Court proceedings to include the meeting with the County Commission. On November 22, 2019, Ms. Lewis was asked by text message, "Do you plan on us representing you, or someone else? The reason I ask is, I was going to get some documents prepared if you were." Ms. Lewis replied, "I was planning on you guys."

A new Petition was completed on February 7, 2020, to return the case back to Upshur County Circuit Court. On March 23, 2020, COVID emerged. The State Supreme Court imposed a judicial emergency order from March 23 – April 10 and then, on April 3, extending the order through May 1, 2020. Courts slowly eased back into more regular activities after May 2020; however, ten months later, courts were still not functioning at full capacity. At the start of 2021, courts were still operating on a limited basis and "Emergency Matters" such as Abuse and Neglect, Domestic Violence matters and Criminal cases were at the forefront.

83. Ms. Lewis contacted our office on July 22, 2019, a "Petition" was filed in the Circuit Court of Upshur County by July 24, 2019, after receiving a detailed description of her relationship with Mr. Casto and all responses to Court documents were answered, with the exclusion of the Discovery/ Interrogatories filed by Steptoe and Johnson.

84. Ms. Lewis and Ms. Queen communicated over 600 text messages; multiple phone calls requested by Ms. Queen, also verified in text messages,

emails with Ms. Lewis, and emails with Ms. Campbell. Ms. Queen often accommodated Ms. Lewis' schedule by meeting her after hours, on weekends, and those times are also verified by text messages, by date and timestamp. Communication in this particular section indicates, "to keep the client reasonably informed about the status of the matter." Typically responses were fairly immediate, seven days a week; on the off chance that a text did not receive a response, it was simply an oversight; however, that was extremely rare.

85. The Respondent ADMITS this allegation.
86. The Respondent ADMITS this allegation and notes he primarily uses his business account.
87. The Respondent DENIES he failed to schedule hearings. The respondent notified Ms. Campbell of a hearing scheduled for late October in an email dated September 23, 2021, at 12:51 pm. At that time, he requested, "Have Tesla contact us for more information." There was no text to Ms. Queen in September or October of 2021. Ms. Lewis did have the respondent's email address and had the availability to contact the respondent directly by email if Ms. Lewis was unable to reach the office, Ms. Queen, or by stopping by the office. Ms. Queen's mother passed away in the early morning hours of September 24, 2021, and she had been caring for her mother during this time. Both Ms. Queen and her mother had COVID and under quarantine orders. The respondent admits that there was a breakdown regarding

“discovery,” and communicating regarding “her right to appeal.” However, in light of the circumstances, multiple scheduling continuances transpired in regard to COVID, and notification was provided to Ms. Campbell that a hearing was being scheduled for a particular timeframe and as it is clearly indicated, Ms. Campbell had a clear perception of most other deadlines as she referenced each of those in her emails.

88. Ms. Queen communicated with Ms. Lewis with over 600 text messages, various phone calls, office visits during and after hours, on weekends, and was more than accommodating due to Ms. Lewis’ work schedule. Ms. Queen did not advise Ms. Lewis that documentation was “in hand,” regarding the hospice nurse.
89. Again, Ms. Lewis was provided information that the hearing would be held at the end of October and requested that Ms. Campbell have Ms. Lewis “contact us for more information.” The respondent did note, to the Judge, that Ms. Lewis had not abandoned the case to his knowledge.

## **COUNT II**

**I.D. No. 22-05-358**

### **Complaint of Robert L. Moats**

90. The Respondent ADMITS the allegation as set forth in paragraph #2.
91. Robert L. Moats hired the respondent to represent him in a criminal and an Abuse and Neglect matter.
92. Mr. Moats was advised that a retainer for his criminal and Abuse and Neglect case would be \$3,000.00. Mr. Moats advised that he could pay

\$500.00 up front and the remainder with \$200.00 weekly for 13 weeks.

93. The Respondent ADMITS this allegation.

94. The Respondent DENIES this allegation. Mr. Moats knew that Ms. Queen knew his soon to be ex-wife and her family at his first appointment in the respondent's office. Ms. Queen at no time stopped taking Mr. Moat's payments. Mr. Moat's changed his address for his bank card which would not allow his payment to automatically withdraw. Mr. Moat's texted Ms. Queen on March 6, 2021, at 7:41 a.m., "Good Morning, I hate to bother you but just wondering why my payment wouldn't go through on the 3<sup>rd</sup>, the money is in the bank." Ms. Queen responded at 7:59 a.m., same date, "I don't know. I will check into that and let you know. It's probably something on our end. No worries, we will figure it out." Again, on March 10, 2021, the payment had still not gone through. On March 19, 2021, at 11:50 a.m. a screenshot of the computer billing system was sent advising Mr. Moats, "It won't let me process. Perhaps that's why it wasn't going through to begin with. Did you change your zip code maybe?" Mr. Moats responded at 11:52, "Yes omg I forgot." On April 1, 2021, at 11:33 a.m., Mr. Moat's texted, "Well she is pissed now..." Ms. Queen responded, "Why?" Mr. Moats responded, "Thanks for telling me Heather was your lawyers secretary is what I got." Mr. Moats was informed by Ms. Queen that she did not discuss anybody's information with anyone. Mr. Moats advised, "Smh its not like it wasn't on the news." (In reference to his case) Ms. Queen stated at 11:36 a.m., "What?! I absolutely



do not do that. These are closed proceedings, and I don't gossip." Mr. Moats indicated, "It was all over Facebook and the news and in the paper, people knew about it b4 I did." Mr. Moats also added, "I'm not worried about it honestly, they're not a part of my life anymore." Mr. Moats continued, "She just doesn't want everyone to know what she's doing to me."

The automatic payments were as follows; March 19, 2021, \$200.00, March 24, 2021, payment for \$200.00 DECLINED, March 31, 2021, payment for \$200.00 DECLINED, payment for April 7, 2021 for \$200.00 DECLINED, payment for April 8, 2021 for \$200.00 DECLINED, payment for April 14, 2021 for \$200.00, payment for April 14, 2021, \$200.00, payment April 21, 2021, \$200.00, payment for April 28, 2021, for \$200.00 REFUNDED. Text message from Mr. Moats on April 27, 2021, at 7:48 a.m., "Any chance that can cancel my payment for this week? I took the weekend off and ended up running myself short on pay today." Ms. Queen responded at 7:55 a.m., "Sure, That's no problem. I just have to remember to do it before midnight. Send me another text in one hour. I'm scheduling right now...I can do it when I'm finished." At 10:43 a.m., Mr. Moats sent another text "Please remember to stop my payment for tomorrow." Ms. Queen advised on April 28, 2021, at 5:04 a.m., "I rescheduled that payment for next Wednesday, but it came out & I refunded it." Mr. Moats again requested his payment be "skipped" on May 5, 2021. On May 3, 2021, at 6:49 a.m., Mr. Moat's texted, "Morning, I know I am getting to be a pain in your ass but just wanted to see if it'd be possible to

skip this week payment also.” Electronically, those payments were set to be withdrawn weekly starting February 10, 2021, and continue through May 5, 2021; however, the invoices that were left unpaid did not get regenerated. Mr. Moats paid \$1,700.00 of his \$3,000.00 retainer for (2) two cases – Criminal and Abuse and Neglect.

95. The Respondent DENIES this allegation. Mr. Moats advised that he needed assistance with the Criminal and Abuse and Neglect case. Mr. Moats stated specifically that he was giving everything to his ex-wife and selling the home on a land contract so there should be nothing to the hearing. A courtesy e-mail was sent to Shannon Daughtery, the Family Court Judges assistant on March 22nd, 2021, at 2:51 p.m. “Can you tell me when the Moats hearing is set for tomorrow? He is on the road and one of our clients on another case, so I told him I would check with you for him. Thank you!” Ms. Daughtery replied, “It’s at 1030 by teams. Do you need a link sent?” Ms. Queen responded, “He will need a link sent to him. His email address is [robertmoats24@yahoo.com](mailto:robertmoats24@yahoo.com). Thank you very much.” At no point was the respondent requested to preside over his divorce proceedings.
96. On June 24, 2021 at 12:50 p.m., Ms. Queen sent a text message stating; “Brian is going to review the video today. Prosecution to remain silent. PSI – which is the investigation on your background. They are still offering one count – carries 5-25, sex offender Eval, extended supervision, no contact direct or indirect, dismiss the other 3 counts. That’s the jest of it. Of course

you'll have to register. Is mom willing to cooperate and speak kind? Brian will know more once the video is reviewed as to what can possibly get accomplished with bartering these allegations and such. He would of course request that you be out on home confinement. I'm pretty sure it's mandatory sentence so HC would be the alternative to jail of course. That would be a work release HC." On June 29, 2021, Ms. Queen advised Mr. Moats by text message, "I was just getting ready to call you. Your hearing is being continued. I would say you will still have to appear but after multiple attempts at asking for discovery, we just got parts of it yesterday. We can't resolve this case without the state's discovery period so... We just prolong it till we get it." On November 8, 2021, Ms. Queen conversed with Mr. Moats by text messages regarding his reference letters for his PSI and advised him of his court date time. Mr. Queen stated, "I can go over everything with you later this evening via phone if you want." On November 9, 2021, starting at 7:21 a.m., Mr. Moats and Ms. Queen began exchanging text messages. Mr. Moats was sent the following, "just make sure you arrive a little early so Brian can go over your plea. He's in court already but I assume he will come over and get this letter between his 830 and when you come. If not, I'll leave it between the doors." Ms. Queen met with Mr. Moat's on January 25, 2022, went over psych evaluation and discovery. On January 26, 2022, Mr. Moat's texted, "I never heard from probation, I'm going thru the papers you gave me yesterday and there's a couple of things on here that aren't true and a few things I don't

understand. Ms. Queen replied, "Okay. Come by and talk to me about them tomorrow. I talked to Joe. He didn't get your psych eval so that's why the pre-sentence didn't get finished. I took him a copy and hand delivered it."

97. The Respondent DENIES this allegation. The Respondent fully detailed the plea to Mr. Moats and asked if he understood what the Court was offering to which Mr. Moats advised he understood. The Judge presiding over these cases always asks the Defendant if the Attorney went over the plea prior to moving forward.
98. The Respondent ADMITS this allegation.
99. The Respondent cannot ADMIT nor DENY this allegation. Communications with Mr. Moats' Power of Attorney, Crystal Linger continued for a period of time.
100. Ms. Linger was advised that "the paperwork would be filed closer to the (30) thirty-day mark."
101. The Respondent DENIES knowledge of a certified letter from Mr. Moats.
102. The Respondent DENIES knowledge of the complaint.
103. The Respondent DENIES receiving a complaint to respond.
104. The Respondent DENIES knowledge of complaint.
105. The Respondent ADMITS this allegation.
106. The Respondent ADMITS this allegation.
107. The Respondent ADMITS this allegation.
108. The Respondent ADMITS this allegation.

109. The Respondent ADMITS this allegation.
110. The Respondent ADMITS this allegation.
111. The Respondent ADMITS this allegation. After further review, detailed billing is provided.
112. The Respondent made omissions regarding his case. The Respondent continued sentencing to ensure that discovery was provided to Mr. Moats. Mr. Moats had full disclosure of the State's case against him. Mr. Moats also admitted to the allegations as set forth in the case and documentation of Mr. Moats' interview was previously provided. The Respondent DENIES this allegation.
113. The Respondent ADMITS this allegation.
114. The Respondent ADMITS this allegation.
115. The Respondent ADMITS this allegation.
116. The Respondent ADMITS this allegation.
117. The Respondent DENIES in part and ADMITS in part. Respondent did not file a motion for reconsideration. Mr. Moats' did not employ the respondent to represent his divorce proceedings. Mr. Moats' hired the respondent for his Criminal and Abuse and Neglect Proceedings. The Respondent DENIES that evidence was not shared with Mr. Moats. Various meetings were held with Mr. Moats' and evidence was provided and reviewed with him during the duration of the case.

118. The Respondent DENIES that Mr. Moats was NOT provided concise detail regarding his case. Mr. Moats would often lash out as a result of information shared with him and often responded aggressively in nature. Text messages with Ms. Queen can provide documentation of various conversations regarding said information. Mr. Moats also provided very flirtatious and inappropriate statements to Ms. Queen.

119. The Respondent ADMITS in part and DENIES in part. Mr. Moats continued communications with the Respondent's office. Multiple meetings were held, Discovery was reviewed, the psychological evaluation was discussed, and Mr. Moats' was provided copies of his discovery for further review at his own discretion. Mr. Moats' court proceedings were prolonged until complete discovery was provided to the Respondent's office. Mr. Moats' made full omissions to his charges before law enforcement and officers of the Court. The Respondent ADMITS that Mr. Moats' reconsideration was not filed; however, without malice intent.

120. The Respondent DENIES this allegation. Mr. Moat's was informed regarding updates in his case, including all information on Discovery, evaluations and various questions that Mr. Moats' expressed. Often, extensive explanations were provided to Mr. Moat's so that he could understand procedures and expectations fully because he often expressed uncertainty within the legal system's procedures.

121. The Respondent ADMITS this allegation.

122. Deny in part, Admit in part. The respondent did not keep the funds provided in a designated "client's trust account," however, does have billing records.
123. The Respondent ADMITS this allegation. The Respondent would also note that Mr. Moats' was provided a full copy of his case file while the case was ongoing, with the exclusion of his Abuse and Neglect Proceedings (Psychological evaluation.)
124. The Respondent DENIES this allegation. Ms. Queen met with Mr. Moat's on a regular basis. Ms. Queen kept Mr. Moat's informed regarding Court dates and upcoming requirements for the Court. Ms. Queen was subjected to vulgar statements by Mr. Moats in text messages in which she attempted to politely revert back to regular conversation. Ms. Queen was accommodating with his payment issues, such as changing his due dates, refunding payments when he was unable to manage all his bills, and spent long periods of time trying to assist Mr. Moats in the process moving forward. Ms. Queen also tried to assist with getting the proper information so he could virtually attend his hearing by "zoom" for his divorce.

### **COUNT III**

**I.D. No. 22-06-157**

#### **Complaint of Clifford Ellis, Jr.**

125. The Respondent ADMITS the allegation as set forth in paragraph #1.
126. The Respondent ADMITS this allegation.
127. The Respondent DENIES this allegation.

128. The Respondent DENIES this allegation. The Respondent habitually goes over case information with the Client prior to any Court proceedings to refresh the facts. Mr. Ellis encountered many obstacles with his particular court case that neither law enforcement nor prosecution chose to act on. Mr. Ellis had no grounds for a venue change nor qualifiable conflicts with the Judge; therefore, proceedings continued. Mr. Ellis had unrealistic requests upon the Respondent and could not make said objections to Mr. Ellis' requests.
129. Mr. Ellis was provided documentation to sign, a deed. This deed was provided to Mr. Ellis in various fashions; however, stated he did not receive the deed, even when sent by text message and was easily downloadable and printer friendly. Mr. Ellis prolonged the execution of the deed and the case as he requested an in-person meeting in exchange of money for the deed. The opposing attorney denied said "in-person meeting" as it was not ordered by the Judge.
130. The Respondent DENIES knowledge of certified complaint.
131. The Respondent ADMITS a response was not filed, as complaint was not received.
132. The Respondent DENIES knowledge of certified complaint.
133. The Respondent has no knowledge of incidents at the Upshur County Courthouse on May 26, 2023, to ADMIT or DENY said allegation.
- 134.



135. The Respondent ADMITS this allegation. At this time, Mr. Ellis had become Extremely unmanageable. His long-time girlfriend expressed his Obsessiveness regarding the property and the case in which it was creating serious issues in their home. The Respondent learned of the ODC complaint and was concerned to move forward with any further representation at that time.
136. The Respondent ADMITS this allegation.
137. The Respondent ADMITS this allegation.
138. The Respondent ADMITS this allegation.
139. The Respondent ADMITS this allegation.
140. The Respondent ADMITS this allegation.
141. The Respondent ADMITS this allegation in part. A phone call was placed to Plaintiff's counsel's assistant regarding corrections. A prior deed was completed by Respondent's office that had no errors; however, Plaintiff's counsel refused to execute deed provided by Respondent. Plaintiff's clients preferred their counsel complete the deed, which only prolonged the execution.
142. The Respondent ADMITS this allegation.
143. The Respondent ADMITS this allegation.
144. The Respondent ADMITS this allegation.
145. The Respondent ADMITS this allegation. Mr. Ellis continued to argue that he wanted to meet in person for the exchange in fear that compensation would

not be provided for the deed. Mr. Ellis and Ms. Hurley have a long-standing faltering relationship that continued to explode with violence and distrust therefore, concerns were high on resolution of the case.

146. The Respondent ADMITS this allegation.
147. The Respondent ADMITS this allegation.
148. The Respondent ADMITS this allegation.
149. The Respondent ADMITS this allegation.
150. The Respondent ADMITS this allegation.
151. The Respondent ADMITS this allegation.
152. The Respondent ADMITS this allegation.
153. The Respondent ADMITS this allegation.
154. The Respondent ADMITS this allegation.
155. The Respondent ADMITS this allegation.
156. The Respondent ADMITS this allegation.
157. The Respondent ADMITS this allegation.
158. The Respondent ADMITS this allegation.
159. The Respondent ADMITS this allegation.
160. The Respondent ADMITS this allegation.
161. The Respondent ADMITS this allegation.
162. The Respondent ADMITS this allegation.
163. The Respondent ADMITS this allegation.
164. The Respondent ADMITS this allegation. The Respondent sent an email

to counsel (Mr. Tissue) on March 13, 2023, at 5:25 p.m., which stated, “2 issues coming down the pipe on this Deed/Transaction, one easy, one maybe more difficult. Mr. Ellis has advised me he won’t sign the deed unless it reflects 5/8’, which is feet, instead of 5/8”, which is inch. This is with respect to rebar on the property description. Should be an easy fix; I’m sure it’s just a typo. The other thing is he is demanding that he meet with Browning to exchange the deed for money. I’m not sure if this is logistically possible, but when I spoke with him last week, that was his demand. It would seem to me like finally we can put this thing to rest if we make these arrangements.” Mr. Tissue responded on March 17, 2023, at 11:24 a.m., “Attached is the revised Deed, correcting the typographical mistake. I will confer with my client regarding your client’s request to exchange the deed and money in person. This is not a requirement of the Court. However, I will recommend to my client that he agrees to do this so we can conclude this matter. However, your client is not in charge of the case.” March 21, 2023, at 10:10 a.m., Mr. Tissue sends another email stating, “We have the corrected deed at your request and you have indicated that it is acceptable. I have spoken with my clients and I can understand why they do not want to meet with your client to close out this matter. As I have previously stated, as soon as you send us the executed deed, we will send the check to you immediately. If your client continues to insist on something that is not require by law or by the judge to close this matter, I will have no alternative but to file a renewed motion for

contempt, at which time I will request significant attorney fees and anything else the Judge will impose on your client for his intransigence.”

- 165. The Respondent ADMITS this allegation.
- 166. The Respondent ADMITS this allegation.
- 167. The Respondent ADMITS this allegation. Mr. Ellis had filed a complaint against the respondent. The corrected deed had been sent, in more than one capacity to Mr. Ellis and Ms. Hurley. The bottom line was, Mr. Ellis did not want to exchange the Deed without an in-person meeting.
- 168. The Respondent ADMITS this allegation.
- 169. Mr. Ellis requested some type of communication on nearly a daily basis. Each conversation with Mr. Ellis was the same. Mr. Ellis demanded that an “in-person” exchange transpire with the deed and money, and Mr. Tissue had clearly advised that he was not bound to the Courts in this accommodation.
- 170. The Respondent ADMITS this allegation.
- 171. The Respondent ADMITS this allegation.
- 172. The Respondent ADMITS this allegation. Mr. Ellis had basically become unmanageable at this point and communications with Mr. Ellis would quickly escalate when attempting to provide any explanation.
- 173. On March 19, 2023, at 4:03 p.m., a scanned copy of the corrected deed was sent to Ms. Hurley’s cell phone. It was explained to Ms. Hurley that if the deed was not received through the U.S. Postal Service that it could also be printed off from the scanned copy. Ms. Hurley expressed her frustration with

their mail service and phone lines on numerous occasions. The first copy was mailed March 21, 2023. Ms. Hurley advised on March 31, 2023 via text, at 2:00 p.m., “We still have not received the deed.” March 31, 2023, at 2:00 p.m., Ms. Queen advised, “I mailed another copy.”

174. The Respondent has no knowledge of this allegation to ADMIT or DENY.
175. The Respondent DENIES this allegation. Mr. Tissue sent the corrected deed on March 17, 2023. The corrected deed was electronically sent to Ms. Hurley on March 19, 2023, and the first copy mailed on March 21, 2023. Emails with Mr. Tissue can verify the dates of those communications.
176. The Respondent ADMITS this allegation. Mr. Ellis had access to this deed from March 19, 2023. The deed was available for execution.
177. The Respondent ADMITS this allegation.
178. The Respondent ADMITS this allegation in part regarding Judge’s statement, and DENIES in part that the deed was provided to Mr. Ellis and Ms. Hurley; however, they claim they did not receive the U.S. Postal Service delivery.
179. The Respondent ADMITS this allegation in part of Mr. Tissue’s testimony, DENIES part that “his attorney’s not been helping me. I mean, he’s not done nothing for me.” An extensive amount of time was spent on this case in particular (over 200 hours); however, Mr. Ellis refused to understand the constraints of acceptable requests when opposing counsel denied his request for an in-person meeting, as it was not ordered by the Court.

180. The Respondent ADMITS this allegation.
181. The Respondent ADMITS this allegation.
182. The Respondent ADMITS this allegation.
183. The Respondent ADMITS this allegation.
184. The Respondent ADMITS this allegation.
185. The Respondent ADMITS this allegation.
186. The Respondent DENIES that the errors in the deed were not addressed.  
The Respondent completed a deed with the correct information originally.  
The Plaintiff's desired to have their attorney complete a new deed.  
Considerable frustration occurred on-going throughout this case  
due to current and prior history amongst parties.
187. The Respondent DENIES this allegation. This case progressed slowly as  
settlement negotiations could not be established. Extreme hostility lingered  
amongst parties for an extensive amount of time. Various property views  
completed, with the surveyor and law enforcement due to serious safety  
concerns, attempted mediation failures, and despite extreme measures to  
find closure to this case, Mr. Ellis was unsatisfied.
188. The Respondent DENIES this allegation. Communication with Mr. Ellis and  
Ms. Hurley were often and regular until the end when Mr. Ellis continued  
making unrealistic demands regarding an "in-person" exchange. Mr. Hurley  
denies receiving the deed; however, a scanned copy was sent over that was  
available to be printed and signed. Mr. Hurley also wanted contempt charges

filed against opposition; however, the circumstances were not appropriate to do so. In all honesty, his frustration grew because of unmerited requests that were not appropriate for court filings.

189. The Respondent ADMITS this allegation.

190. The Respondent ADMITS this allegation.

191. The Respondent ADMITS this allegation.

192. The Respondent DENIES this allegation. A deed was completed by the respondent's office that was correct. In a text message from Ms. Hurley dated, February 28, 2023 at 11:43 a.m., a series of text messages were exchanged where Ms. Hurley types, "Ok, well he told the judge yesterday that the deed you fixed was perfect with no mistakes and Tissue had 4 or 5 and still trying to screw it up." Communications with Mr. Tissue prompted the changes needing to be made. Mr. Ellis and Ms. Hurley had access to the deed once corrected. Mr. Ellis and Ms. Hurley live several hours from the respondent's office; therefore, provided a scanned document for immediate access to the file. Ms. Queen has hundreds of text messages with Ms. Hurley where communication was provided back and forth between parties.

193. The Respondent DENIES this allegation. At a certain point in the duration of this case, Mr. Ellis refused to understand the procedures in the case. At multiple points we had this case resolved but due to small changes that Mr. Ellis requested; the case continued to be prolonged. May 31, 2022, the deed could have been executed; however, there was a corner piece of the

property that Mr. Ellis wanted to keep and as a result, additional resources were required, prolonging the case yet another year. Mr. Ellis often became enraged when Mr. Tissue refused to meet in person and often demanded that contempt be filed against him as a result, however, that was never ordered by the Judge.

The same conversations were happening repeatedly to finalize the case. Ms. Hurley often apologized for Mr. Ellis' behavior.

194. The Respondent DENIES this allegation. Mr. Tissue insisted on completing the deed after the respondent's office had already completed a deed without error. An email was sent to Mr. Tissue on May 31, 2022, at 12:01 p.m., by Ms. Queen stating, "Would your clients be able to meet for the exchange of the deed, payment and the agreement for motion to dismiss tomorrow? We can send all the paperwork for you to look over today and get this resolved now that the remainder of the issues are resolved, except for our clients who have noted the survey boats have been removed by Mr. Browning, which means a criminal issue according to the conversation had in Magistrate Court. So, the sooner we can get this resolved, probably the better this point."

#### **COUNT IV**

**I.D. No. 23-05-304**

#### **Complaint of Roger K. Stobart**

185. The Respondent ADMITS the allegation as set forth in paragraph #1
186. The Respondent ADMITS the allegation.



187. The Respondent ADMITS the allegation.
188. The Respondent DENIES this allegation. Without knowledge of failed communications.
189. The Respondent DENIES this allegation. On receipt dated October 12, 2021, Tracking No. 9505 5103 4941 1285 6856 23, a copy of the Appeal was mailed to Mr. Stobart in Welch, West Virginia.
190. The Respondent DENIES this allegation. The Respondent is without knowledge of letter on April 12, 2023.
191. The Respondent DENIES this allegation. Without knowledge of letter on May 15, 2023.
192. The respondent received a letter on April 29, 2022, requesting and update. At that time, no update was available.
193. The Respondent DENIES this allegation. Without knowledge of letter dated July 14, 2022.
194. The Respondent DENIES this allegation. Without knowledge of letter on September 23, 2022. The Respondent did however prepare and sent a disengagement letter to the Client on December 13, 2022.
195. The Respondent provided case information in his appeal. The Respondent ADMITS not sending the entirety of the case file in its entirety after review.
196. The Respondent DENIES this allegation. The respondent communicated with Mr. Stobart, completed the Appeal, Petitioner's brief, reviewed Respondent's brief, reviewed Memorandum Decision Dismissing appeal,

and reviewed Mandate Certifying Supreme Court Decision.

197. The Respondent DENIES any knowledge of this allegation.
198. The Respondent Admits this allegation, according to documentation.
199. The Respondent ADMITS this allegation. The Respondent did not receive certified notice of certified letter; however, did receive standard mail containing complaint.
200. The Respondent ADMITS this allegation.
201. The Respondent ADMITS this allegation.
202. The Respondent admits to receiving letters from Mr. Stobart; however, not to the extent of what is claimed. The Respondent reviewed letter sent from Mr. Stobart on November 10, 2021, and again April 2022. A letter was sent to Mr. Stobart on December 13, 2022, along with mailings regarding his appeal that were never returned to the Respondent's office.
203. The Respondent ADMITS this allegation.
204. The Respondent ADMITS this allegation.
205. The Respondent ADMITS this allegation.
206. The Respondent DENIES this allegation as he has no knowledge of this mail correspondence.
207. The Respondent ADMITS this allegation as no record of this document was received.
208. The Respondent DENIES this allegation as he has no knowledge of

this mail correspondence.

209. The Respondent ADMITS this allegation.

210. The Respondent ADMITS this allegation.

211. The Respondent ADMITS this allegation after the fact, as it was oversight. The Respondent would also like to note that anytime an email has been received from Ms. Halkias regarding some type of complaint, those emails are typically addressed the same day or within 24 hours, by phone call or email correspondence.

212. The Respondent ADMITS this allegation.

213. The Respondent DENIES knowledge of this correspondence.

214. The Respondent ADMITS in part; however, did not receive Mail correspondence.

193. The Respondent has discussed these issues with the mail carrier.

Staff from the Post Office indicated that any Certified Mail is delivered prior to business hours, therefore, when we are not in the office prior to 9:00 a.m., those mailings are returned to the post office. We are in an attempt to remedy this situation by placing an exterior box outside our office for any type of delivery that we are unable to accept.

194. The Respondent DENIES these allegations. Mr. Stobart was mailed all documents pertaining to his appeal and when updates were available, they were addressed with Mr. Stobart. (Receipts for mailings)

215. The Respondent DENIES these allegations in part. The mail

circumstances have been an on-going issue and should have been addressed prior to this breakdown; however, all issues were addressed immediately once brought to the Respondent's attention whether by regular mail or by email. At no point were these issues left unresolved purposely.

## **COUNT V**

**I.D. No. 23-02-376**

### **Complaint of Lisa J. Thomas**

- 216. The Respondent ADMITS this allegation as set forth in paragraph #1.
- 217. The Respondent ADMITS this allegation.
- 218. The Respondent had no knowledge of this prior to this filing as the Respondent had not seen Ms. Thomas' complaint.
- 219. The Respondent ADMITS that the door remains locked with a note to "call for an appointment" or send an email when unavailable. The Respondent's voicemail has been problematic; however, was recently remedied.
- 220. The Respondent ADMITS in part. Ms. Thomas sent several emails that did in fact go to SPAM; however, we made several attempts to contact Ms. Thomas also. Ms. Thomas' case had many moving parts including a Deed that had been signed by all parties, minus one. This case could have been resolved prior to filing in Circuit Court; however, Ms. Thomas' husband and opposing party had a verbal confrontation which resulted in the Deed not being signed by the remaining party.

221. The Respondent has no knowledge of this allegation.
222. The Respondent ADMITS in part, Denies in part. The onset of Ms. Thomas' Case began approximately (6) six years ago; however, Mrs. Thomas did not Pay the \$3,000.00 at that time. To the best of the Respondent's knowledge, Payment was made in June 2022.
223. The Respondent DENIES this allegation as no complaint was received.
224. The Respondent ADMITS this allegation as the complaint was not received.
225. The Respondent DENIES receiving correspondence.
226. The Respondent ADMITS this allegation.
227. The Respondent ADMITS this allegation.
228. The Respondent ADMITS this allegation after the fact, as it was oversight. The Respondent would also like to note that anytime an email has been received from Ms. Halkias, those emails are typically addressed the same day or within 24 hours, by phone call or email correspondence.
229. The Respondent ADMITS this allegation.
230. The Respondent DENIED receiving this mail correspondence.
231. The Respondent ADMITS this allegation as not receiving the complaint.
232. The Respondent completed an extensive amount of research for Ms. Thomas, numerous office meetings, a deed that was never executed and the end result was completing a complaint to be filed in Circuit Court. The

Respondent made various attempts to reach Ms. Thomas over time also and as a result, the documents were left unfiled.

233. The Respondent ADMITS in part and DENIES in part. The Respondent spent a significant amount of time on Ms. Thomas' case.

234. The Respondent ADMITS this allegation.

235. The Respondent ADMITS this allegation.

236. The Respondent ADMITS this allegation.

237. The Respondent has returned all documents to Ms. Thomas. The Respondent has also returned the \$3,075.00 retainer and filing fee to Ms. Thomas on June 10, 2024. Ms. Thomas' case has also been resolved without the need for an attorney through fiduciary services.

238. The Respondent ADMITS and DENIES this allegation. The Respondent had a Breakdown in communication with Ms. Thomas.

239. The Respondent was unaware of ODC's request for additional information.

#### RESPONDENT'S REMARKS

During the course of many years of practicing law, there was never a time more difficult than the COVID era. Unfortunately, this time frame required multiple changes within the court system, scheduling constraints, illness, and unprecedented times. Also, during this time the respondent practiced law in Gilmer, Randolph, Upshur, and Lewis counties, Family Court in Upshur and Lewis counties and had taken on several civil cases, beyond serving as the Mental Hygiene Commissioner for Upshur and Lewis Counties. Pre-Covid, the workload was quite manageable. Operations were like fairly smooth in our small

office comprised of the Respondent and Legal Assistant, Ms. Queen. Unfortunately, Ms. Queen was struck with many hard-pressed obstacles far beyond her control. Ms. Queen was the caregiver of her mother for many years and her husband who became ill with colorectal, stage four cancer, then succumbing to COVID. Ms. Queen experienced great sadness and depression with both losses within a six-month timeframe. Ms. Queen handled the majority of communications with Clients as the Respondent spent most days in Court proceedings and preparing motions and orders thereafter. The Respondent and Ms. Queen have always had a very close-knit relationship with our clients and strived to provide the most compassion to those who had also fallen on hard times. At no point was any malicious intent purposely created in the duration of this practice.

Since the institution of these complaints, the Respondent has decreased practicing counties, eliminated any retained civil work and focused mainly on criminal, abuse and neglect and Mental Hygiene proceedings.

The Respondent accepts responsibility for any mistakes made as noted in this answer. In mitigation, the Respondent went through a period of time where the workload was extreme, and without Ms. Queen's assistance very unmanageable. Hiring additional staff to perform Ms. Queen's work duties was not feasible in her absence as training another individual would have been nearly impossible, and frankly would have been unaffordable to the respondent. The Respondent and Ms. Queen frequently worked between 10-16-hour days, including weekends, to ensure the best possible outcomes for our clients.


The Respondent understands that the mistakes made in these cases were frustrating to our clients, however, not every story is as it is painted, unfortunately. The Respondent is hopeful that through documentation that a reasonable disposition can be reached at the conclusion of these proceedings. The Respondent can and will continue to take steps to learn from this experience and remedy the issues outlined in this case moving forward.

**/s/ Brian W. Bailey**



**AFFIDAVIT OF RESPONDENT**

I, Brian W. Bailey, the Respondent in the above-styled action, hereby certifies that a true copy of the foregoing "Response to Statement of Charges" was upon the Office of Disciplinary Counsel, 4700 MacCorkle Avenue, SE #1200C, Charleston, WV, on this the **10<sup>th</sup>** day of **August, 2024**, and that the Answers and Responses thereto filed are true and accurate to the best of my knowledge, unless upon information and belief, and filed via File and Serve Xpress; email correspondence; and through U.S. mail, postage prepaid.

  
\_\_\_\_\_  
Brian W. Bailey, Atty. at Law, Respondent

STATE OF WEST VIRGINIA,

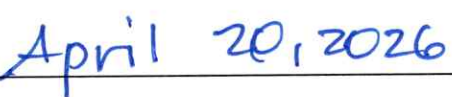
COUNTY OF UPSHUR, TO-WIT:

The foregoing instrument was acknowledged before me on this the **10<sup>th</sup>** day of **August, 2024** by Brian W. Bailey, Atty. at Law, Respondent.



My commission expires:

  
\_\_\_\_\_  
Notary Public

  
\_\_\_\_\_  
April 20, 2026