

**BEFORE A HEARING PANEL SUBCOMMITTEE  
OF THE LAWYER DISCIPLINARY BOARD  
STATE OF WEST VIRGINIA**

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

**Bar No.:** 9816  
**Supreme Court No.:** 24-363  
**I.D. Nos.:** 22-05-046  
22-05-358  
23-06-157  
23-05-304  
23-02-376

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**REPORT OF HEARING PANEL SUBCOMMITTEE**

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**I. PROCEDURAL HISTORY**

Formal charges were filed against Brian W. Bailey with the Clerk of the Supreme Court of Appeals on or about June 27, 2024, and served upon Respondent via certified mail by the Clerk on July 1, 2024. Disciplinary Counsel filed her mandatory discovery on or about July 22, 2024. Respondent requested and was granted a ten (10) day extension to file his Answer to Statement of Charges, and same was filed on or about August 10, 2024. Respondent failed to file his mandatory discovery. Disciplinary Counsel filed a Motion to Exclude Testimony of Witnesses And or Documentary Evidence or Testimony of Mitigating Factors, and a Motion to Allow Office of Lawyer Disciplinary Counsel's Witnesses to Testify by Telephone or Video/TEAMS or In Person Per the Witnesses' Discretion on November 20, 2024. The Hearing Panel Subcommittee (hereinafter "HPS") granted both motions at the telephonic prehearing held on December 30, 2024.

Thereafter, this matter proceeded to hearing at the Offices of Lawyer Disciplinary Counsel (hereinafter "ODC"), located at 4700 MacCorkle Avenue, SE, Suite 1200, in Charleston, West Virginia, on January 14, 2025. The HPS was comprised of David A. Wandling, Esquire

Chairperson; Chip E. Williams, Esquire; and Cynthia Tawney, Layperson. Kristin P. Halkias, Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel. Brian W. Bailey, Respondent, appeared *pro se*. The Hearing Panel Subcommittee heard testimony from Robert K. Stobart, Tesla Lewis, Jacqueline Campbell, Clifford Ellis, Jr., and Respondent. In addition, ODC Exhibits 1-89 and Joint Exhibit 1 were admitted into evidence.

Based upon the evidence and the record, the Hearing Panel Subcommittee submits to the the following Proposed Findings of Fact, Conclusions of Law and Recommended Sanctions regarding the final disposition of this matter.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Brian Wayne Bailey, (hereinafter "Respondent") is a lawyer practicing in Buckhannon, West Virginia, which is located in Upshur County, West Virginia. Respondent, having passed the Bar Exam, was admitted to The West Virginia State Bar on January 12, 2005. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

### **COUNT I**

**I.D. No. 22-05-046**

#### **Complaint of Tesla Lewis**

2. In her verified complaint filed on or about February 11, 2022, Complainant Tesla Lewis stated that she retained Respondent in 2019 to contest the validity of the will of Ms. Lewis' longtime friend, Stephen McWhorter Casto (hereinafter "Mr. Casto"). [Jt. Ex. 1].
3. Basic background: Ms. Lewis and Mr. Casto developed a grandfather granddaughter relationship dating back to her elementary school days cemented by their shared love of animals and farm life. Together, they raised and cared for many animals on his property

and were very close. Mr. Casto was not married and had no children, and Ms. Lewis, who is a registered nurse, significantly assisted Mr. Casto in his personal and medical care.

In November 2018, Mr. Casto appointed Ms. Lewis as his durable and medical power of attorney, and executed a will naming Ms. Lewis as the sole beneficiary of his estate. He passed in July 2019. Two days prior to his passing, Mr. Casto executed a new will at the prompting of his neighbors and unbeknownst to Ms. Lewis, leaving his estate to them. Ms. Lewis said that on the same day he signed the new will, a hospice nurse had determined he was not competent to sign documents for hospice care, and that since Ms. Lewis was his medical power of attorney, the nurse had asked Ms. Lewis to sign the hospice documents. Ms. Lewis noted there were significant discrepancies in Mr. Casto's signatures between November and July, and that there was documentation in his hospice records about his competency, or lack thereof. [ODC Ex. 4;Hrg. Tr. at p. 45].

4. Respondent did not execute a written fee agreement with Ms. Lewis, nor did he discuss an hourly rate with her. [Hrg. Tr. at 48].
5. Ms. Lewis said Ms. Queen advised her to pay with cash, and that Ms. Lewis made cash payments to Ms. Queen. [Hrg. Tr. at 48].
6. Ms. Lewis paid at least Two Thousand Three Hundred Dollars (\$2,300.00) to Respondent, having paid Respondent Two Hundred Dollars (\$200.00) for her filing fee to the Upshur County Circuit Clerk on July 30, 2019; a One Thousand Dollar (\$1,000.00) retainer fee paid in two payments, Two Hundred Fifty Dollars (\$250.00) on July 30, 2019, and Seven Hundred Fifty Dollars (\$750.00) on August 9, 2019; One Hundred Dollars (\$100.00) on January 18, 2020; One Hundred Dollars (\$100.00) toward her new filing and the retainer on the second filing; Two Hundred Fifty Dollars (\$250.00) on February 10, 2020; and Six

Hundred Fifty Dollars (\$650.00) on March 6, 2020. The August 9, 2019 invoice notes “retainer paid in full”. [ODC Ex. 4; Respondent’s Answer #46; Jt. Ex 1].

7. Respondent filed the Petition to Contest Validity of a Will in Upshur County Circuit on February 25, 2020, Case Number 20-C-19. [ODC Ex. 1 at 15; Jt. Ex. 1].
8. Ms. Lewis testified that time was of the essence in the matter because both her and Mr. Casto’s animals were on the farm and in urgent need of food, water, and general care. [Hrg. Tr. at 56-58].
9. Two of the four respondents in the matter retained the same counsel, William O’Brien (hereinafter “Mr. O’Brien”), an attorney with Steptoe and Johnson, and he filed their answer June 2, 2020. [ODC Ex. 1 at 15; Jt. Ex. 1].
10. The remaining two respondents failed to file an answer in the civil action, and Respondent did not file a Motion for Default Judgment in response. [ODC Ex. 1 at 15; Respondent’s Answer; Jt. Ex. 1].
11. Ms. Lewis’ stated that her main form of communication with Respondent was via texting his secretary, Heather Queen (hereinafter “Ms. Queen”). [Jt. Ex. 1].
12. Ms. Lewis said Respondent “has never called or texted [her] personally,” and that all her “communication with his office was through his secretary, other than speaking to him at the previous hearings.”[ODC Ex. 1 at 12].
13. Ms. Lewis testified at the hearing that when she called Respondent’s office, no one answered the phone, and that she stopped by the office “quite a few different times”, but the office door was locked. [Hrg. Tr. at pp.53, 57-58].

14. In an email dated August 2, 2019, Ms. Lewis provided a list of potential witnesses, including a hospice nurse who declared the deceased was not competent when the will was signed. [ODC Ex. 1. At 43; Jt. Ex. 1].
15. During his representation of Ms. Lewis, Respondent never contacted the potential witnesses identified to him by Ms. Lewis. [Hrg. Tr. at 231].
16. During his representation of Ms. Lewis, Respondent never sought or obtained Mr. Casto's medical or hospice records. [Hrg. Tr. at 231].
17. During his representation of Ms. Lewis, Respondent never sought or obtained subpoenas for any records or witnesses. [Hrg. Tr. at 231].
18. Respondent never personally informed Ms. Lewis that he failed to obtain any records, talk to any witnesses, or investigate her case during his representation. [Hrg. Tr. at 88-91].
19. Ms. Lewis texted Ms. Queen several times from May 2020 until December 2020 inquiring about a date for the scheduling conference and status updates. [Jt. Ex. 1].
20. Respondent said that Ms. Lewis had been offered Ten Thousand Dollars (\$10,000.00) to settle the case, but rejected the offer. [Jt. Ex. 1].
21. Although Ms. Queen texted Ms. Lewis that the opposing party had offered Ten Thousand Dollars (\$10,000.00) in May of 2020, Respondent never personally discussed with Ms. Lewis settlement or mediation, including its advantages or disadvantages, and never discussed demands or counter offers. [Hrg. Tr. at 59, 61; ODC Ex. 3 at 81].
22. Ms. Lewis believed Respondent delayed her case by failing to request a hearing date for a scheduling conference in a timely manner. She testified that the scheduling conference was ultimately scheduled because her aunt, Jackie Campbell (hereinafter "Ms. Campbell"), who works for another lawyer in the area, contacted the court and asked that a hearing be

scheduled. The hearing was promptly set within a few weeks for January 12, 2021. [ODC Ex. 1; Hrg. Tr. at p. 55].

23. Ms. Queen texted a screenshot of the “Notice of Scheduling Conference” to Ms. Lewis on December 30, 2020, that a scheduling conference was set for January 12, 2021. [Respondent’s Answer #7; Jt. Ex. 1].
24. Mr. O’Brien filed Combined Discovery and Requests for admissions to Petitioner on June 1, 2021. [ODC Ex. 1 at 15; Jt. Ex.1].
25. Respondent did not discuss the Combined Discovery Requests with Ms. Lewis, and Respondent did not submit responses or discovery in the matter on behalf of Ms. Lewis. Respondent admitted this was an oversight. [ODC Ex. 1 at 15,51; Respondent’s Answer #9; Jt. Ex. 1].
26. Ms. Lewis discovered in December 2021 that Mr. O’Brien had filed discovery requests for admission on May 27, 2021, but Respondent had failed to submit responses or any discovery in her case. Respondent never brought the discovery requests to her attention, or sought her assistance with their completion. [Hrg. Tr. at p. 63].
27. Respondent and Ms. Queen reviewed discovery requests and found that one request would merit a denial based upon case information. [Respondent’s Answer #9; Jt. Ex. 1].
28. When Ms. Lewis contacted Respondent’s office on July 7, 2021, to inquire about the status of her case, Ms. Queen provided Ms. Lewis with incorrect information regarding discovery. Ms. Queen told Ms. Lewis that “[d]iscovery was provided to O’Brien months ago we have not heard a word from any of them for months.” [Respondent’s Answer #10; Jt. Ex. 1].

29. Ms. Campbell testified that Ms. Queen's misrepresentation regarding discovery made her believe that "[W]e were on schedule. I mean, the discovery was sent in. We were going to wait for mediation. And, you know, the trial wasn't until that following February." [Hrg. Tr. at 116].
30. Mr. O'Brien filed a "Motion for Summary Judgment" against Ms. Lewis on August 19, 2021. [ODC Ex.1 at 15; Jt. Ex. 1].
31. Ms. Campbell emailed Respondent on August 30, 2021, inquiring about a status update. Respondent responded the same day and did not mention the Motion for Summary Judgment pending. Ms. Campbell asked Respondent to send a copy of the discovery to Ms. Lewis, which never happened. [ODC Ex. 1 at 23; Jt. Ex. 1].
32. Ms. Campbell emailed Respondent on September 23, 2021, asking for a status update, noting the mediation deadline of September 30, 2021. Respondent responded the same day, advising that the mediation deadline had been extended by mutual agreement until the end of November 2021. [ODC Ex. 1 at 41; Jt. Ex. 1].
33. In the email from September 23, 2021, Respondent first mentioned the pending Motion for Summary Judgment to Ms. Campbell, and said a "hearing is set for around the end of October on it." He said, "Have Tesla contact us for more information." [ODC Ex. 1 at 41; Jt. Ex. 1].
34. Ms. Lewis promptly contacted Respondent's office but was unable to reach him. [Hrg. Tr. at p.69].
35. Respondent never discussed with Ms. Lewis the contents or significance of the Motion for Summary Judgment. [Hrg. Tr. at 66-67].

36. Respondent did not personally contact Ms. Lewis about the hearing, and never provided Ms. Lewis with the date and time of the hearing. [Jt. Ex. 1].
37. Upon hearing about the summary judgment motion, Ms. Campbell said she relied on Ms. Queen's misrepresentation and "wasn't concerned about it because our discovery had been sent in, and I know the other party had an expensive attorney. And honestly, I just figured they were just doing motions just to make it look good." She said she would have "definitely" been scared and worried if she had known Respondent had failed to respond to discovery. [Hrg. Tr. at 117].
38. Respondent filed a "Response in Opposition to the Motion for Summary Judgement" on October 7, 2021. [ODC Ex. 1 at 15; Jt. Ex. 1].
39. Respondent did not discuss with Ms. Lewis the "Response in Opposition to the Motion for Summary Judgement" he filed on her behalf. [Hrg. Tr. at 66].
40. Respondent did not provide Ms. Lewis with a copy of his Response to the Motion for Summary Judgement filed on her behalf. [ODC Ex. 60 at 1055; Jt. Ex. 1].
41. A hearing was held on October 25, 2021, on the "Motion for Summary Judgement" and Ms. Lewis was not in attendance. The Court noted that both respondents opposing Ms. Lewis' petition were present in person, and inquired as to Ms. Lewis' whereabouts. [ODC Ex. 1 a 47; Jt. Ex. 1].
42. During the hearing, Judge Hall asked Respondent why Ms. Lewis was not present and Respondent answered, "Your Honor, I'm not sure, with respect to that". [ODC Ex. 1 at 63; Jt. Ex. 1].



43. Respondent informed the Court “it is not my perception that... Ms. Lewis has abandoned the case. I’ve certainly been in touch with her...I guess, her aunt, who works at a local law office over here, follows up with me about it.” [ODC Ex. 1 at 63].
44. Ms. Lewis said she did not attend the hearing because she had not been provided notice by Respondent. [Hrg. Tr. at 70-72].
45. Ms. Lewis testified that she would have been at the hearing had she known, and would have liked to have attended the hearing. [Hrg. Tr. at 71].
46. Ms. Lewis testified that she would have liked to have discussed the hearing and the Motion with Respondent prior to the hearing. [Hrg. Tr. at 71-72]
47. During the summary judgment hearing, Judge Hall said he was curious about the medical experts and witnesses, and he asked Respondent if any of the witnesses would say Mr. Casto was confused. Respondent answered, “I’m gathering that they will...” Judge Hall said, “the sound of it is, you don’t even know that.” [ODC. Ex. 1 at 61; Jt. Ex. 1].
48. During the hearing, Mr. O’Brien argued to the Court, “There’s been no evidence presented from any medical person, Nurse or doctor, or any facility. There’s no evidence of that in the record. That’s why we’re here on summary judgement, Your Honor”. [ODC Ex. 1 at 65; Jt. Ex. 1].
49. The Court advised Respondent that the “interrogatories that weren’t answered...that’s problematic...the Court is likely to deem those as admitted, by operation...they haven’t been answered”, and “that’s going to have operation of law...that’s going to be problematic to your case”. The Court further advised that “this is a dispositive motion, and this is the time to present it to the court...” The Court also noted that the only argument around Respondent’s failure to answer discovery would be to show good cause, and that “the

Court's not heard any indication that they weren't responded to for good cause." [ODC Ex. 1 at 62-68; Jt. Ex. 1].

50. Ms. Lewis believes that her not attending the hearing hindered her case "tremendously" based on the transcript of the hearing showing that Respondent failed to present any evidence in response to the motion. [ODC Ex. 1].
51. Respondent admitted that he did not notify Ms. Lewis of the hearing date, nor did he proffer or provide any affidavits or evidence in support of Ms. Lewis' case during the hearing. Respondent acknowledged that Ms. Lewis would have attended the hearing had she been advised of it, and that her presence at the hearing might have impacted the outcome of the summary judgement motion. [ODC Ex. 60 at 1056-59; Jt. Ex. 1].
52. Ms. Lewis texted Ms. Queen on November 19, 2021, asking for a status update and expected to be given a hearing date, but Ms. Queen did not respond. [ODC Ex. 1 at 19-21; Respondent's Answer at #16; Jt. Ex. 1].
53. On November 22, 2021, Ms. Campbell emailed Respondent to check on the status of the case, and he never responded to her email. [Respondent's Answer at #17; Jt. Ex. 1].
54. Ms. Lewis again texted Ms. Queen on November 24, 2021, asking for updates and Ms. Queen said she would "see about getting some info." [Respondent's Answer at #18; Jt. Ex. 1].
55. Respondent did not notify Ms. Lewis that the judge had granted the respondents' "Motion for Summary Judgment" and dismissed Ms. Lewis' case on November 17, 2021. [ODC Ex. 60 at 1060-1061; Hrg. Tr. at 72; Jt. Ex. 1].
56. Respondent admitted to neither notifying Ms. Lewis of the dismissal of her case, nor discussing appeal rights with her. [ODC Ex. 60 at 1051-54; Hrg. Tr. at 94; Jt. Ex. 1].

57. On December 14, 2021, Ms. Lewis discovered that a hearing had been held on October 25, 2021, without her knowledge or attendance, which left her just a few days to file an appeal. [Hrg. Tr. at 122].
58. With only a few days to file an appeal from the dismissal, Ms. Lewis retained Ms. Campbell's employer, who prepared the notice of appeal for her the next morning and sent it overnight via FedEx. Ms. Lewis said that although it was not an area of law Ms. Campbell's employer routinely practiced, upon his review of her file, he believed her chances of winning were very slim given Respondent's lack of timely responses, notices and discovery. [Hrg. Tr. at 72, 122].
59. Retaining the services of another lawyer cost One Thousand Seven Hundred Dollars (\$1,700.00) in addition to the Two Thousand Three Hundred Dollars (\$2,300.00) already paid to Respondent. [Hrg. Tr. at 127].
60. By letter dated February 23, 2022, ODC sent Respondent a copy of the complaint and directed him to file a verified response within twenty (20) days. [ODC Ex. 2; Jt. Ex. 1].
61. In his verified response provided March 5, 2022, Respondent said that Ms. Lewis' case was a complicated one in which he appeared for multiple court appearances, "despite being paid the sum of one thousand dollars (\$1,000) for 2 <sup>1</sup>/<sub>2</sub> years of work." [ODC Ex. 3; Jt. Ex. 1].<sup>1</sup>
62. Respondent said the case began with much sympathy on his part for Ms. Lewis, who had been removed as a recipient of the Estate of a longstanding friend of hers by the execution of a "deathbed" will. He said it appeared as though, and that he "certainly argued and so

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<sup>1</sup> Ms. Lewis' payment receipts show she paid Respondent Two Thousand Three Hundred Dollars (\$2,300.00).

attempted to plead throughout the case, that Mr. Casto was subjected to undue influence by the ultimate recipients of the bounty of his Estate.” [Jt. Ex. 1].

63. Respondent said that Mr. Casto’s estate was not a large estate. [ODC Ex. 3 at 76].
64. Respondent did not discuss the size of the estate with Ms. Lewis. [Hrg. Tr. at 49].
65. Respondent never sought or obtained an appraisal or value of Mr. Casto’s property and its contents. [Hrg. Tr. at 231].
66. Ms. Lewis said that the estate was in excess of 146 acres and Ms. Campbell testified that she believed the value was over Six Hundred Thousand Dollars (\$600,000.00). [Hrg. Tr. at 123].
67. Respondent noted that he works as a solo practitioner, who attempts to do his best with the help of “one very loyal legal assistant.” [Jt. Ex. 1].
68. Respondent believed there was a “mismatch in resources” in Ms. Lewis’ case, and he did it with “very little input from Ms. Lewis.” [Jt. Ex. 1].
69. Respondent never personally initiated contact or communication with Ms. Lewis during his representation. [Hrg. Tr. at 58].
70. Respondent never shared his concerns regarding the “mismatch in resources” with Ms. Lewis, and Ms. Lewis testified that she would have “[m]ost definitely” liked to know that information during her representation to allow her the opportunity to retain alternative counsel. [ODC Ex. 4 at 87; Hrg. Tr. at 62].
71. Respondent said that he believed he would have had to admit the request for admissions anyway, and that his not responding, and them being deemed admitted, would “be immaterial”. [ODC Ex. 3 at 77].

72. Respondent turned over the file to Ms. Lewis in December 2022 and did not retain a copy. [Jt. Ex. 1].
73. Ms. Lewis discovered Respondent had never obtained Mr. Casto's medical records, so she sought permission from Mr. Casto's brother who lives in Ohio, and obtained the records herself. [Hrg. Tr. at 51].
74. On March 28, 2022, Ms. Lewis filed a reply to Respondent's response to her complaint. [ODC Ex. 4].
75. By letter dated December 14, 2022, ODC provided Respondent with a copy of Ms. Lewis' reply to his response, and requested a response within twenty (20) days, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure. [ODC Ex. 5; Jt. Ex. 1].
76. Respondent did not respond to the December 14, 2022 ODC request. [Jt. Ex. 1].
77. By letter dated January 12, 2023, sent via certified and regular mail, ODC again provided Respondent with a copy of Ms. Lewis' reply to his verified response, and requested that he provide a written response within twenty (20) days of his receipt, and that it was considered a lawful request for information pursuant to Rule 8.1(b) of the Rules of Professional Conduct. The certified letter was returned to ODC as unclaimed on February 2, 2023. [ODC Ex. 6; Jt. Ex. 1].
78. Respondent again failed to respond to the ODC request. [Jt. Ex. 1].
79. By Memorandum Decision filed January 18, 2023, the Supreme Court of Appeals of West Virginia found that petitioner had not submitted evidence below of coercion and affirmed the circuit court's granting of summary judgment. [ODC Ex. 8 at 172; Jt. Ex. 1].

80. Disciplinary Counsel emailed Respondent on February 24, 2023, advising him that ODC had sent him two separate requests for responses, one sent via certified mail, that was returned to ODC. Disciplinary Counsel had attempted to call Respondent's office, but the mailbox was full, and she was unable to leave a message, which prompted the email. She asked Respondent to contact her as soon as possible to discuss the matter. Disciplinary Counsel had a phone conversation with Respondent on February 24, 2023. [ODC Ex. 9; Jt. Ex. 1].
81. By letter dated February 27, 2023, ODC provided Respondent with copies of Ms. Lewis' most recent correspondence, and asked that he provide the following documents to ODC: a response to Ms. Lewis' correspondence; a copy of their fee agreement; and a copy of his billing invoices which show the hours billed and amounts paid by Ms. Lewis. Respondent was directed to provide a written response within twenty (20) days of his receipt of the letter, and that it was considered a lawful request for information pursuant to Rule 8.1(b) of the Rules of Professional Conduct. [ODC Ex. 10; Jt. Ex. 1].
82. By correspondence dated March 13, 2023, Respondent filed a response wherein he reiterated his previous answers, and added that "it was highly unlikely in retrospect...that [Ms. Lewis] would have prevailed in this case." He agreed with Ms. Lewis that having the hospice nurse testify would have been their best argument, and he asserted that he "attempted to raise" that issue with the court during the motion for summary judgement. [ODC Ex. 11; Jt. Ex. 1].

83. Respondent explained that his work circumstances changed during the pendency of the case, and that he became the only Mental Hygiene Commissioner for two counties when there had previously been three.<sup>2</sup> He said he went from doing fifty (50) mental hygiene cases a year to nearly five hundred (500) in 2021 and more than that in 2022. [Jt. Ex. 1].
84. Respondent said that his “lone employee”, Ms. Queen, lost both her mother and her husband within a six (6) month period during the fall of 2021 through February of 2022, and that his normal office procedures were interrupted. Respondent admitted to being “quite overstretched.” [Hrg. Tr. at 219-220; Jt. Ex. 1].
85. Ms. Lewis testified that she was aware of Ms. Queen’s family situation and that she did not reach out to Ms. Queen during that time period because she did not want to bother her. [Hrg. Tr. at 85-85].
86. Respondent did not provide the billing information requested by ODC in its letter of February 27, 2023. [Jt. Ex. 1].
87. Ms. Lewis replied by correspondence dated March 20, 2023, wherein she reported that Respondent never advised her that he was too busy to represent her. Ms. Lewis questioned Respondent’s assertion that he attempted to argue that the hospice nurse had necessary information concerning Mr. Casto’s competence, stating that “[Respondent] never subpoenaed the hospice records. [Respondent] never spoke with the hospice nurse.” (emphasis not added). [ODC Ex. 12; Jt. Ex. 1].
88. Neither Ms. Lewis nor ODC received billing invoices and a copy of a fee agreement as requested by ODC in its February 27 2023 correspondence. [ODC Ex. 12; Jt. Ex. 1].

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<sup>2</sup> Respondent explained that one Mental Hygiene Commissioner retired and another changed positions, leaving him the only one.

89. By letter dated April 3, 2023, ODC sent Respondent a letter providing a copy of Ms. Lewis' latest response, and again requesting a response thereto, a copy of the fee agreement with Ms. Lewis, and a copy of his billing invoices, within twenty (20) days of receipt, and that it was considered a lawful request for information pursuant to Rule 8.1(b) of the Rules of Professional Conduct. [ODC Ex. 13; Jt. Ex. 1].
90. Respondent again failed to respond to ODC's request for information. [Jt. Ex. 1].
91. Disciplinary counsel sent an email to Respondent on May 3, 2023, notifying him that she had tried calling and that no one had answered, and that his mailbox was full. He was to respond to her by May 5, 2023, or he would be scheduled for a sworn statement. [ODC Ex. 14; Jt. Ex. 1].
92. A subpoena duces tecum was issued by the Supreme Court of Appeals of West Virginia on May 8, 2023.[ODC Ex. 15; Jt. Ex. 1].
93. By letter dated May 26, 2023, ODC notified Respondent that she had received confirmation that he had been served the subpoena duces tecum and was expected to appear at ODC's office on June 14, 2023, for a sworn statement. [ODC Ex. 17; Jt. Ex. 1].
94. Respondent's IOLTA account is located at Citizens Bank of Weston. [ODC Ex. 60 at 1011; ODC Ex. 87; Jt. Ex. 1].
95. An investigative subpoena duces tecum was issued by the Supreme Court of Appeals for copies of all bank statements, cancelled checks (front and back), deposit slips, checks deposited in the account (front and back) and any other documentation with respect to any and all business, operating, trust, or IOLTA accounts maintained by Respondent for the



time period of January 1, 2019 through the present. Date of Appearance inspection scheduled August 3, 2023. [ODC Ex. 85 at 1480; Jt. Ex. 1].

96. Respondent's IOLTA account is located in Citizens Bank of Weston. [ODC Ex. 1011; ODC Ex. 87; Jt. Ex. 1].
97. Susan Thompson, AVP, with Citizens United Bank of Weston, received the subpoena on July 24, 2023.<sup>3</sup> [ODC Ex. 85; Jt. Ex. 1].
98. The bank statements for the time period of January 2019 through July 2023 for Respondent's IOLTA TRUST ACCOUNT, account number 358692, were delivered to ODC on July 31, 2023. [ODC Ex. 87; Jt. Ex. 1].
99. Per the January 14, 2019 bank statement, Respondent's IOLTA account number 358692 had a balance of One Thousand Two Hundred Thirty-Nine Dollars and Ninety-Two Cents (\$1,239.92). [ODC Ex. 87 at 1488; Jt. Ex. 1].
100. No deposits or withdrawals were made to Respondent's IOLTA account number 358692 until a withdrawal of One Thousand Two Hundred Dollars (\$1,200.00) was made by Respondent on January 14, 2020, leaving a balance of Thirty-Nine Dollars and Eighty-One Cents (\$39.81), which was reflected in the February 13, 2020 bank statement.<sup>4</sup> [ODC Ex. 87 at 1488-1512; Jt. Ex. 1].
101. Beginning with the March 13, 2020 bank statement, Respondent's IOLTA account number 358692 carried the same balance of \$39.81 until July 13, 2023, which was the last statement provided by Citizens Bank pursuant to the investigative subpoena. [ODC Ex. 87 at 1515-1555; Jt. Ex. 1].

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<sup>3</sup> By correspondence dated July 28, 2023, Ms. Thompson provided an itemized bill for \$362.25 for researching and printing Respondent's IOLTA and operating account bank records.

<sup>4</sup> There were de minimis adjustments to the account due to interest payments.

102. Respondent never deposited Ms. Lewis' payments into his IOLTA account. [Jt. Ex.1].
103. Respondent appeared at the ODC on June 14, 2023, and provided testimony in a sworn statement. Respondent said that he is a solo practitioner, and is also the Mental Hygiene Commissioner for both Lewis and Upshur Counties. [ODC. Ex. 60 at 1004; Jt. Ex. 1].
104. Respondent said 40% of his time devoted to his Mental Hygiene Commissioner cases where he bills the state and is always on call. Respondent testified that his mental hygiene cases increased from 50 to 500 in a year. He is paid per case through the Supreme Court. [ODC Ex. 60 at 1005-6; Jt. Ex. 1].
105. Respondent said he also takes both state and federal criminal appointments, in addition to a few civil and family court matters. [ODC Ex. 60 at 1007; Jt. Ex. 1].
106. Respondent's legal assistant, Heather Queen, has worked for him since 2015. He said she's a "secretary, paralegal, does a lot of my communications with clients...", and he relies heavily upon her. Ms. Queen responds to client emails and phone calls, and handles the office bills. Respondent noted that Ms. Queen lost her mother in September 2021, and her husband in February 2022. [ODC Ex. 60 at 1009-14; Jt. Ex. 1].
107. Respondent admitted to not using his IOLTA account "other than to keep it active, as is required." [ODC Ex. 60 at 1012; Jt. Ex. 1].
108. Respondent testified that if a client paid him a retainer, he would "put it into my business account, typically." [ODC Ex. 60 at 1012; Jt. Ex. 1].
109. Respondent testified that he does not keep track of billable hours in his retained cases, that he gets the money up front, and does not sent out billing invoices. [ODC Ex. 60 at 1011-1016; Jt. Ex. 1].

110. Respondent has CLIO billing software that he uses for his appointed cases and to store client contact information. [ODC Ex. 60 at 1015; Jt. Ex. 1].
111. Respondent testified that Ms. Queen maintains communication with their clients through her cell phone, and that people call and text her “all hours of the day and the weekends even and she will respond to them, typically, pretty quickly.” [ODC Ex. 60 at 1018; Jt. Ex. 1].
112. Respondent testified that during the first couple weeks of the month, he is “slammed with court from, effectively, all day until four, usually four or after the courthouse closes”, and that Wednesdays are “pretty well booked up all day.” [ODC Ex. 60 at 1018-19; Jt. Ex. 1].
113. Respondent testified that he does not typically execute fee agreements with his clients, and that he did not execute a fee agreement with Ms. Lewis. [ODC Ex. 60 at 1012-13; 1015-16; 1044-45; Jt. Ex. 1].
114. Respondent explained that prior to filing Ms. Lewis’ petition in circuit court, he had contested the will before the County Commission on Ms. Lewis’ behalf, where they were “shot...down very quickly”. He filed the petition in Upshur County Circuit Court in February 2020. [ODC Ex. 60 at 1046-7; Jt. Ex. 1].
115. Respondent admitted to not speaking with witnesses or subpoenaing records in Ms. Lewis’ case, and expressed regrets for not complying with the discovery requests. Respondent said he had believed they would work it out in mediation, but the summary judgement motion was granted prior to the mediation. [ODC Ex. 60 at 1047-49; Jt. Ex. 1].
116. Respondent admitted that he did not discuss the discovery requests he had received from the opposing party with Ms. Lewis, and that he did not file responses on her behalf. He testified that he was unaware that Ms. Queen had informed Ms. Lewis they had provided

discovery. Respondent believed this to be a miscommunication or misunderstanding on Ms. Queen's part. [ODC Ex. 60 at 1053-54; Jt. Ex. 1].

117. Respondent said that his "contact in this case was with Ms. Campbell, not with Ms. Lewis", and he did not have any reason to dispute Ms. Lewis' assertion that her aunt had contacted the court and requested the scheduling conference. [ODC Ex. 60 at 1049-51; Jt. Ex. 1].
118. Respondent acknowledged that he and Ms. Queen were not regularly sending out updates regarding the case when he received an email from Ms. Campbell on August 30, 2021, asking for a status update. [ODC Ex. 60 at 1054-55; Jt. Ex. 1].
119. By letter dated March 19, 2024, Ms. Lewis contacted ODC requesting a status update on her complaint, wherein she reiterated her previous issues and concerns. [Jt. Ex. 1].
120. Ms. Lewis testified that this case meant more to her than just a lawsuit, that she had so many worries about the animals left on the farm and all the cherished memories she shared with Mr. Casto. She believes they sold all the animals while the case was dragging on, and was never able to see her sheep again. She was left "incredibly sad" by the outcome. Ms. Lewis now thinks differently about lawyers and the whole court process, as well. [Hrg. Tr. 73-74].
121. Because Respondent failed to file necessary motions in Ms. Lewis' case, failed to timely respond to discovery requests and requests for admissions, failed to investigate and develop the case, and failed to involve Ms. Lewis in the development of the matter to her detriment, Respondent has violated Rule 1.1 of the Rules of Professional Conduct, which provides as follows:

**Rule 1.1 Competence.**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

122. Because Respondent failed to act with reasonable diligence and promptness in his representation of Ms. Lewis in the underlying causing irreparable harm to Ms. Lewis, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides as follows:

**Rule 1.3 Diligence.**

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

123. Because Respondent failed to personally discuss with Ms. Lewis the settlement offer made by opposing counsel, as well as the advantages and disadvantages to settling, to permit her to make an informed decision regarding settlement, failed to keep Ms. Lewis informed as to the status of her case, failed to respond to Ms. Lewis' attempts to communicate with him, and failed to notify her of her case being dismissed, Respondent violated Rules 1.4(a)(1)<sup>5</sup>, 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, which provide:

**Rule 1.4. Communication.**

(a) A lawyer shall:

(1) promptly inform the client of any decisions or circumstance with respect to which the client's informed consent, as defined by Rule 1.0(e), is required by these Rules;<sup>6</sup>

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

<sup>5</sup> This rule violation was not contained in the Statement of Charges. However, a lawyer may be disciplined for an uncharged rule violation if the uncharged violation is within the scope of the misconduct alleged in the formal charge, and if the lawyer is given: (1) clear and specific notice of the alleged misconduct supporting the uncharged rule violation; and (2) an opportunity to respond. Syllabus, *Larimer v. Board of Disciplinary Action*, 233 W.Va. 639, 760 S.E.2d 453 (2014).

Rule 1.0(e) of the Rules of Professional Conduct states: "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

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

124. Because Respondent failed to execute a written fee agreement memorializing the scope of the representation and the basis or rate of the fee and expenses, Respondent violated Rule 1.5(b) of the Rules of Professional Conduct, which provides:

**Rule 1.5 Fees.**

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(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing.

125. Because Respondent failed to keep the funds provided to him in advance by Ms. Lewis in a separate account designated as “client’s trust account,” and provided no billing records regarding when the payments and expenses were earned and incurred, Respondent has violated Rules 1.15(a) and 1.15(c) of the Rules of Professional Conduct, as set forth below:

**Rule 1.15. Safekeeping Property.**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account designated as a “client’s trust account” in an institution whose accounts are federally insured and maintained in the state where the lawyer’s office is situated, or in a separate account elsewhere with the consent of the client or third person. Such separate accounts must comply with State Bar Administrative Rule 10 with regard to overdraft reporting. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

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(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

126. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute when he failed to schedule hearings, failed to promptly respond to discovery,

and failed to notify Ms. Lewis of her right to appeal in a timely manner, and his refusal to take appropriate action on behalf of his client caused potential harm to Ms. Lewis and required additional judicial resources to be allocated in order to address the consequences of his failures to act, he violated Rules 3.2 and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

**Rule 3.2. Expediting litigation.**

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

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

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(d) engage in conduct that is prejudicial to the administration of justice.

127. Because Respondent had direct supervisory authority over his secretary assistant Heather Queen, and failed to make reasonable efforts to ensure that her conduct toward and communication with Ms. Lewis was compatible with Respondent's professional obligations as a lawyer, Respondent is in violation of Rule 5.3(b) of the Rules of Professional Conduct, which provides:

**Rule 5.3. Responsibilities Regarding Nonlawyer Assistance.**

With respect to a nonlawyer employed or retained by or associated with a lawyer:

\* \* \*

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

128. Because Respondent made a false statement to the Court during the Summary Judgment hearing held October 25, 2021, when questioned directly by the judge regarding Ms. Lewis' whereabouts, Respondent knew that he had failed to provide notice of the hearing to Ms. Lewis and that her absence at the hearing was due to his failure to provide notice, he has violated Rule 3.3(a)(1) of the Rules of Professional Conduct, which provides:

**Rule 3.3. Candor Toward the Tribunal.**

(a) A lawyer shall not knowingly:

1. make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

**COUNT II**

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

**Complaint of Robert L. Moats**

129. In his verified complaint received by the ODC on September 23, 2022, Complainant Robert L. Moats (hereinafter "Mr. Moats"), said he hired Respondent to represent him in a criminal matter and a divorce. Respondent said he was hired by Mr. Moats to represent him in a criminal and Abuse and Neglect matter. [Respondent's Answer; Jt. Ex. 1].
130. In his complaint, Mr. Moats said "it took days to get a message answered or a phone call", and that Respondent failed to go over the discovery with him. He said he had not been advised by Respondent what he had agreed to in his plea deal and that Respondent had never shared some of his documents with him. He said he asked him to file a reconsideration but he never did. [ODC Ex. 20].
131. Respondent said that Mr. Moats was advised that a retainer for his criminal and Abuse and Neglect case would be Three Thousand Dollars (\$3,000.00), and that he could pay Five



Hundred Dollars (\$500.00) initially, and the remainder to be paid Two Hundred Dollars (\$200.00) weekly for 13 weeks. [Jt. Ex. 1].

132. On June 24, 2021 at 12:50 p.m., Ms. Queen sent a text message to Mr. Moats advising that Respondent would be reviewing the video that day which said:

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 (sic) 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. [Respondent's Answer; Jt. Ex. 1].

133. Ms. Queen responded to a text from Mr. Moats on June 29, 2021, where she acknowledged she was just getting ready to call to notify him that the hearing has been continued. [Respondent's Answer; Jt. Ex. 1].

134. On November 8, 2021, Ms. Queen texted with Mr. Moats regarding his reference letters and advised she "can go over everything with you later this evening via phone if you want." [Respondent's Answer; Jt. Ex. 1].

135. Ms. Queen texted Mr. Moats on November 9, 2021, asking Mr. Moats to arrive a little early before the hearing, that Respondent was in court already and that she expected him to "come over and get this letter between his 830 and when you come. If not, I'll leave it between the doors." [Respondent's Answer; Jt. Ex. 1].

136. Ms. Queen met with Mr. Moats on January 25, 2022 and "went over psych evaluation and discovery." [Respondent's Answer; Jt. Ex. 1].

137. Mr. Moats asked Respondent to file a Motion to Reconsider after the sentencing hearing and Respondent said he would file the motion. [Jt. Ex. 1].

138. Mr. Moats' power of attorney, Crystal Linger, was informed by Respondent's office that the "paperwork would be filed closer to the (30) thirty-day mark".<sup>7</sup> [Jt. Ex. 1].
139. On August 1, 2022, Mr. Moats sent Respondent a certified letter attempting to end their attorney-client relationship and to be given his case file and documents. Despite multiple attempts at delivery, the letter was returned as unclaimed on August 26, 2022. [ODC Ex. 20 at 406; Jt. Ex. 1].
140. By letter dated September 29, 2022, the ODC advised Respondent that it had opened a complaint based upon the conduct alleged by Mr. Moats and asked that he file a response thereto within twenty (20) days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure. [ODC Ex. 21; Jt. Ex. 1].
141. Respondent did not file a response within the time period directed. [Jt. Ex. 1].
142. By letter dated October 28, 2022, sent via certified and U.S. mail, the ODC again notified Respondent that the complaint had been opened and asked that he file a response by November 7, 2022. The certified letter was returned to ODC as unclaimed on December 3, 2022. [ODC Ex. 22; ODC Ex. 26; Jt. Ex. 1].
143. In his verified response, dated October 31, 2022, Respondent admitted to not seeing the ODC complaint or Mr. Moats' correspondence addressed to him in August 2022. [Jt. Ex. 1].
144. By way of background, Respondent explained that Mr. Moats had pleaded guilty to the felony charge of Sexual Abuse in the First Degree on November 9, 2021, prior to Respondent's involvement. In January 2021, Mr. Moats was indicted on two counts each of Sexual Abuse in the First Degree and Sexual Abuse by a Parent, Guardian, Custodian

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<sup>7</sup> Crystal Linger was appointed as Robert Moats' Power of Attorney effective April 1, 2022.

- or Person in a Position of Trust, and retained Respondent to represent him. Respondent said Mr. Moats had already confessed to the West Virginia State Police and declined a polygraph examination before retaining Respondent. He said Mr. Moats was facing 30-90 years in prison. [Jt. Ex. 1].
145. Respondent denied communication problems and said that his assistant communicated with Mr. Moats regularly via text messages. [Jt. Ex. 1].
146. Respondent said he prepared a Motion for Reconsideration for Mr. Moats, and that “if this did not get filed”, he accepted responsibility for not filing it. [Jt. Ex. 1].
147. There is no Motion for Reconsideration filed in Mr. Moats’ criminal matter. [ODC Ex. 31 at 467-8; Jt. Ex. 1].
148. Respondent provided a printout of \$800 in payments made to him by Mr. Moats between February 10, 2021 and March 19, 2021. [Jt. Ex. 1].
149. By letter received January 6, 2023, Mr. Moats replied to Respondent’s response, wherein he said that was his first communication with Respondent since his sentencing on March 15, 2022. Respondent had included the police report in his response, and Mr. Moats said that was the first time he was able to read the report and that he would have liked the opportunity to correct the false information contained therein had he seen the report in advance. [Jt. Ex. 1].
150. Paragraphs 92-101 are incorporated by reference.
151. Paragraphs 103-112 are incorporated by reference.
152. Respondent admitted in his sworn statement that he did not have a fee agreement with Mr. Moats. [ODC Ex. 60 at 1041; Jt. Ex. 1].
153. Respondent did not deposit Mr. Moats’ payments into his IOLTA account. [ODC Ex. 87].

154. During the sworn statement, ODC requested Respondent provide Mr. Moats with a copy of his file, and to provide a confirmation notice to ODC within two weeks. [ODC Ex. 60 at 1042-3; Jt. Ex. 1].
155. Respondent failed to notify ODC that he provided Mr. Moats with a copy of his file. [Jt. Ex. 1].
156. Because Respondent failed to file the requested motion in Mr. Moats' criminal matter despite Mr. Moat's request that he do so, Respondent has violated Rule 1.1, as previously stated, and Rule 1.2(a) of the Rules of Professional Conduct, which states:

**Rule 1.2. Scope of representation.**

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued... [Jt. Ex. 1].

157. Because Respondent failed to execute a written fee agreement with Mr. Moats memorializing the scope of the representation and the basis or rate of the fee and expenses, Respondent violated Rule 1.5(b) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].
158. Because Respondent failed to keep the funds provided to him in advance by Mr. Moats in a separate account designated as "client's trust account," and provided no billing records regarding when the payments and expenses were earned and incurred, Respondent has violated Rules 1.15(a) and 1.15(c) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].

159. Because Respondent failed to return Mr. Moats' documents and case file to him upon Mr. Moats' termination of representation, he has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides:

**Rule 1.16. Declining or Terminating Representation.**

\* \* \*

d) Upon termination of representation, a lawyer shall take such steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. [Jt. Ex. 1].

160. Because he failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].

**COUNT III  
I.D. No. 23-06-157  
Complaint of Clifford Ellis, Jr.**

161. In his verified complaint received by the ODC on April 17, 2023, Complainant Clifford Ellis, Jr. (hereinafter "Mr. Ellis"), said he hired Respondent to represent him in a civil matter involving a land dispute. [Jt. Ex. 1].
162. In his complaint, Mr. Ellis alleged communication and preparation issues with Respondent. [Jt. Ex. 1].
163. For background purposes: Mr. Ellis, who is a resident of Mingo County, bought a hunting cabin with his girlfriend, Beverly Hurley (hereinafter "Ms. Hurley), in Upshur County, West Virginia. A neighbor constructed a new building, a portion of which appeared to be located on Mr. Ellis' property. The neighbor initially filed suit against Mr. Ellis regarding

the right-of-way, and Mr. Ellis sought Respondent's representation to respond to the suit, and counter, because Mr. Ellis' deed indicated no right-of-way. Ultimately, the parties agreed that Mr. Ellis's neighbor would pay him Three Thousand Five Hundred Dollars (\$3,500.00) for a portion of the property. [Hrg. Tr. at 143].

164. Mr. Ellis testified that Respondent agreed to represent him for a Three Thousand Dollar (\$3,000.00) flat fee, and that included a jury trial, if necessary. [Hrg. Tr. at 145].
165. Mr. Ellis' representation began when he made his first payment to Respondent, which was made on February 21, 2019, to Ms. Queen. Ms. Queen provided Mr. Ellis with a receipt that shows he made a Two Hundred Dollar (\$200) payment, and had a balance of Two Thousand Eight Hundred Dollars (\$2,800), for his Three Thousand Dollar (\$3,000.00) bill retainer. [Hrg. Tr. at 144-45; ODC Ex. 89 at 2004].
166. Mr. Ellis testified that he would receive a payment receipt invoice if he paid in person at Respondent's office, which he usually paid in cash. If he wired payments, he said he did not usually receive a receipt/invoice from Respondent, but he kept his personal receipt of the payment. Mr. Ellis provided receipts invoices for the following twenty-one (21) payments made to Respondent during his representation, for a total of Five Thousand Two Hundred Fifty Dollars (\$5,250.00), which is Two Thousand Two Hundred Fifty Dollars (\$2,250.00) above the Three Thousand Dollar (\$3,000.00) flat fee amount.<sup>8</sup> [Hrg. Tr. at 147-8; ODC Ex. 89]:

/	/19	\$200.00 (cash)	amount due \$2,800.00
/	/2019	\$300.00,	amount due \$0.00 <sup>9</sup>
/	/2019	\$200.00 (cash),	amount due \$0.00

<sup>8</sup> These are the minimum payments made by Mr. Ellis, and the accounting system is inconsistent, and there are wired payments that could very well be additional. Mr. Ellis paid an additional \$900.00 to Respondent during his representation. ODC Ex. 89 at 207-208, 210-211, 213-214, 216-217, 219-220, 222-223, 225-226, 228-229, 231-232, 234-235, 237-238, 240-241, 243-244, 246-247, 249-250, 252-253, 255-256, 258-259, 261-262, 264-265, 267-268, 270-271, 273-274, 276-277, 279-280, 282-283, 285-286, 288-289, 291-292, 294-295, 297-298, 300-301, 303-304, 306-307, 309-310, 312-313, 315-316, 318-319, 321-322, 324-325, 327-328, 330-331, 333-334, 336-337, 339-340, 342-343, 345-346, 348-349, 351-352, 354-355, 357-358, 360-361, 363-364, 366-367, 369-370, 372-373, 375-376, 378-379, 381-382, 384-385, 387-388, 390-391, 393-394, 396-397, 399-400, 402-403, 405-406, 408-409, 411-412, 414-415, 417-418, 420-421, 423-424, 426-427, 429-430, 432-433, 435-436, 438-439, 441-442, 444-445, 447-448, 450-451, 453-454, 456-457, 459-460, 462-463, 465-466, 468-469, 471-472, 474-475, 477-478, 480-481, 483-484, 486-487, 489-490, 492-493, 495-496, 498-499, 501-502, 504-505, 507-508, 510-511, 513-514, 516-517, 519-520, 522-523, 525-526, 528-529, 531-532, 534-535, 537-538, 540-541, 543-544, 546-547, 549-550, 552-553, 555-556, 558-559, 561-562, 564-565, 567-568, 570-571, 573-574, 576-577, 579-580, 582-583, 585-586, 588-589, 591-592, 594-595, 597-598, 600-601, 603-604, 606-607, 609-610, 612-613, 615-616, 618-619, 621-622, 624-625, 627-628, 630-631, 633-634, 636-637, 639-640, 642-643, 645-646, 648-649, 651-652, 654-655, 657-658, 660-661, 663-664, 666-667, 669-670, 672-673, 675-676, 678-679, 681-682, 684-685, 687-688, 690-691, 693-694, 696-697, 699-700, 702-703, 705-706, 708-709, 711-712, 714-715, 717-718, 720-721, 723-724, 726-727, 729-730, 732-733, 735-736, 738-739, 741-742, 744-745, 747-748, 750-751, 753-754, 756-757, 759-760, 762-763, 765-766, 768-769, 771-772, 774-775, 777-778, 780-781, 783-784, 786-787, 789-790, 792-793, 795-796, 798-799, 801-802, 804-805, 807-808, 810-811, 813-814, 816-817, 819-820, 822-823, 825-826, 828-829, 831-832, 834-835, 837-838, 840-841, 843-844, 846-847, 849-850, 852-853, 855-856, 858-859, 861-862, 864-865, 867-868, 870-871, 873-874, 876-877, 879-880, 882-883, 885-886, 888-889, 891-892, 894-895, 897-898, 900-901, 903-904, 906-907, 909-910, 912-913, 915-916, 918-919, 921-922, 924-925, 927-928, 930-931, 933-934, 936-937, 939-940, 942-943, 945-946, 948-949, 951-952, 954-955, 957-958, 960-961, 963-964, 966-967, 969-970, 972-973, 975-976, 978-979, 981-982, 984-985, 987-988, 990-991, 993-994, 996-997, 999-1000.

<sup>9</sup> Most likely the invoice for Mr. Ellis' March 2019 payment, but could be an additional payment. ODC Ex. 89 at 207-208, 210-211, 213-214, 216-217, 219-220, 222-223, 225-226, 228-229, 231-232, 234-235, 237-238, 240-241, 243-244, 246-247, 249-250, 252-253, 255-256, 258-259, 261-262, 264-265, 267-268, 270-271, 273-274, 276-277, 279-280, 282-283, 285-286, 288-289, 291-292, 294-295, 297-298, 300-301, 303-304, 306-307, 309-310, 312-313, 315-316, 318-319, 321-322, 324-325, 327-328, 330-331, 333-334, 336-337, 339-340, 342-343, 345-346, 348-349, 351-352, 354-355, 357-358, 360-361, 363-364, 366-367, 369-370, 372-373, 375-376, 378-379, 381-382, 384-385, 387-388, 390-391, 393-394, 396-397, 399-400, 402-403, 405-406, 408-409, 411-412, 414-415, 417-418, 420-421, 423-424, 426-427, 429-430, 432-433, 435-436, 438-439, 441-442, 444-445, 447-448, 450-451, 453-454, 456-457, 459-460, 462-463, 465-466, 468-469, 471-472, 474-475, 477-478, 480-481, 483-484, 486-487, 489-490, 492-493, 495-496, 498-499, 501-502, 504-505, 507-508, 510-511, 513-514, 516-517, 519-520, 522-523, 525-526, 528-529, 531-532, 534-535, 537-538, 540-541, 543-544, 546-547, 549-550, 552-553, 555-556, 558-559, 561-562, 564-565, 567-568, 570-571, 573-574, 576-577, 579-580, 582-583, 585-586, 588-589, 591-592, 594-595, 597-598, 600-601, 603-604, 606-607, 609-610, 612-613, 615-616, 618-619, 621-622, 624-625, 627-628, 630-631, 633-634, 636-637, 639-640, 642-643, 645-646, 648-649, 651-652, 654-655, 657-658, 660-661, 663-664, 666-667, 669-670, 672-673, 675-676, 678-679, 681-682, 684-685, 687-688, 690-691, 693-694, 696-697, 699-700, 702-703, 705-706, 708-709, 711-712, 714-715, 717-718, 720-721, 723-724, 726-727, 729-730, 732-733, 735-736, 738-739, 741-742, 744-745, 747-748, 750-751, 753-754, 756-757, 759-760, 762-763, 765-766, 768-769, 771-772, 774-775, 777-778, 780-781, 783-784, 786-787, 789-790, 792-793, 795-796, 798-799, 801-802, 804-805, 807-808, 810-811, 813-814, 816-817, 819-820, 822-823, 825-826, 828-829, 831-832, 834-835, 837-838, 840-841, 843-844, 846-847, 849-850, 852-853, 855-856, 858-859, 861-862, 864-865, 867-868, 870-871, 873-874, 876-877, 879-880, 882-883, 885-886, 888-889, 891-892, 894-895, 897-898, 900-901, 903-904, 906-907, 909-910, 912-913, 915-916, 918-919, 921-922, 924-925, 927-928, 930-931, 933-934, 936-937, 939-940, 942-943, 945-946, 948-949, 951-952, 954-955, 957-958, 960-961, 963-964, 966-967, 969-970, 972-973, 975-976, 978-979, 981-982, 984-985, 987-988, 990-991, 993-994, 996-997, 999-1000.

4. No invoice, 4/9/2019	\$300.00 <sup>10</sup>
5. Invoice #65, 5/14/2019	\$300.00 (cash), amount due \$0.00
6. Invoice #70, 6/6/2019	\$300.00 (cash), amount due \$0.00
7. Invoice #85, 8/14/2019	\$200.00 (cash), amount due \$0.00
8. Invoice #86, 8/14/2019	\$200.00, amount due \$0.00 <sup>11</sup>
9. Invoice #94, 9/17/2019	\$200.00 (cash), amount due \$0.00
10. Invoice #100, 10/17/2019	\$200.00 (check), amount due \$0.00 <sup>12</sup>
11. Invoice #107, 11/26/2019	\$150.00 (cash), amount due \$0.00
12. Invoice #109, 12/18/2019	\$200.00, amount due \$0.00 <sup>13</sup>
13. Invoice #114, 1/15/2020	\$200.00 (cash), amount due \$0.00
14. No invoice, 2/25/2020	\$200.00 (cash) <sup>14</sup>
15. No invoice, 4/17/2020	\$400.00 (wire) <sup>15</sup>
16. No invoice, 6/24/2020	\$400.00 (wire) <sup>16</sup>
17. No invoice, 8/3/2020	\$200.00 (wire) <sup>17</sup>
18. No invoice, 8/3/2020	\$200.00 (wire) <sup>18</sup>
19. No invoice, 10/6/2020	\$400.00 (wire) <sup>19</sup>
20. No invoice, 1/8/2021	\$250.00 (wire) <sup>20</sup>
21. No invoice, 1/20/2021	\$250.00 (wire) <sup>21</sup>

Total payments      \$5,250.00

167. Mr. Ellis made several individual payments with the hope to pay his bill in full as soon as possible. He said he cannot read and write and “can’t keep up with stuff. She [Ms. Queen] was supposed to stop it when it got there,” but she never advised him that he had paid his balance in full long before his last payment. The invoices do not show a balance owed or total paid after the initial payment on February 21, 2019 . Mr. Ellis sought the assistance

<sup>10</sup> Wire transaction #51370251816. [ODC Ex. 89 at 2009].

<sup>11</sup> Most likely the invoice for Mr. Ellis’ July 15, 2019 \$200.00 wire because the invoice does not indicate “cash” payment, but could also be an additional payment of \$200.00. [ODC Ex. 89 at 2012, 2014].

<sup>12</sup> Most likely the invoice for Mr. Ellis’ October 15, 2019 wire because the invoice indicates “check”, but could be an additional payment. [ODC Ex. 89 at 2016-2017].

<sup>13</sup> Most likely the invoice for Mr. Ellis’ December 13, 2019 wire because the invoice does not indicate “cash” payment, but could be an additional payment. [ODC Ex. 89 at 2019-2020].

<sup>14</sup> With the February 25, 2020 payment, Mr. Ellis’ payments totaled at least \$3,150.00, which means his flat fee was paid in full, plus an additional \$150.00, although there is no mention of that on any invoice. [ODC Ex. 89 at 2022]

<sup>15</sup> Wire transaction #5141773444. [ODC Ex. 89 at 2023].

<sup>16</sup> Wire transaction #26623582468. [ODC Ex. 89 at 2024].

<sup>17</sup> Wire transaction #26623595327. [ODC Ex. 89 at 2025].

<sup>18</sup> Wire transaction #26623595531 [ODC Ex. 89 at 2025].

<sup>19</sup> Wire transaction #27035786430. [ODC Ex. 89 at 2026].

<sup>20</sup> Wire transaction #27259191145. [ODC Ex. 89 at 2027].

<sup>21</sup> Wire transaction #272508050913. [ODC Ex. 89 at 2028].

of his granddaughter to calculate his payments and realized he had significantly overpaid Respondent. [Hrg. Tr. at 148-49].

168. Mr. Ellis testified that they attended two mediations during his case for which he paid out of pocket at the time of the mediations, and Respondent left in the middle of both of them. [Hrg. Tr. at 153, 185].

169. Respondent never asked Mr. Ellis for additional money above the Three Thousand Dollar (\$3,000.00) flat fee. [Hrg. Tr. at 149].

170. Mr. Ellis requested a refund from Ms. Queen for the amount he overpaid, and Ms. Queen "said she would tell [Respondent]", but she never got back with him, and he never received a refund for his overpayment. [Hrg. Tr. at 149-150].

171. In his sworn statement, Respondent admitted that he did not have a written fee agreement with Mr. Ellis, and he could not recall how much money Mr. Ellis paid him. He believed Mr. Ellis made regular payments of Two Hundred dollars (\$250.00) each month, for a total of "either \$2,300.00 or \$3,000.00". [ODC Ex. 60 at 1020; Jt. Ex. 1].

172. Mr. Ellis provided record of having paid Respondent Five Thousand Four Hundred Fifty Dollars (\$5,450.00). [ODC Ex. 89; Jt. Ex. 1].<sup>22</sup>

173. Respondent did not deposit Mr. Ellis' payments into his IOLTA account located at Citizens Bank of Weston. [Jt. Ex. 1].

174. Mr. Ellis testified that during his representation, he regularly tried calling Respondent's office and no one answered or ever returned his calls. He said, "I made a whole file of calling and no answers. And went and knocked on the door, no answers...the judge's

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<sup>22</sup> This figure was based on Mr. Ellis' summary. [ODC Ex. 89].



secretary said, they're in there. They answer it when I call. So you've got the right number."

[Hrg. Tr. at 160].

175. Mr. Ellis visited Respondent's office to make payments to Ms. Queen, but did not meet with Respondent during those visits. He "would come by and say howdy and keep it moving." [Hrg. Tr. at 192].
176. Mr. Ellis testified that there was a bench trial in the matter and both parties had initially agreed to pay him Seven Thousand Five Hundred Dollars (\$7,500.00) for the portion of his property. Ms. Queen prepared the deed to execute the order. [Hrg. Tr. at 154-56].
177. Despite the initial award, Mr. Ellis never received the payment and, eventually, the parties went back to court for a hearing. Mr. Ellis did not understand why, and Respondent did not explain it to him. Mr. Ellis said that during court, Respondent agreed with the other party that "the property wasn't worth" the Seven Thousand Five Hundred Dollars (\$7,500.00) previously agreed to, which confused Mr. Ellis because Respondent "was agreeing with the other party," and did not seem to be on his side. Mr. Ellis said Respondent agreed to reduce the amount Respondent was to receive to Three Thousand Five Hundred Dollars (\$3,500.00) without discussing it with him. The other party was to prepare the new deed. [Hrg. Tr. at 153-157].
178. Per emails provided by Respondent, Ms. Queen was the main source of information and communication to Mr. Ellis and Ms. Hurley, who appeared eager to complete the transaction, and that the delay and mistakes were making them frustrated and paranoid. [ODC Ex. 53; Jt. Ex. 1].

179. The judge ordered the deed to be executed and the matter to be resolved within thirty (30) days of its Order of November 16, 2022. The deed, which was prepared by the opposing party, was sent to Respondent on December 7, 2022. [ODC Ex. 50 at 643].
180. Mr. Ellis had not received the new deed as of January 2, 2023. [ODC Ex. 53 at 678].
181. On January 2, 2023, Ms. Hurley asked Ms. Queen if she had sent a copy of both of the deeds, to which Ms. Queen indicated they had been “picked up either Friday or Saturday” so she should get them mid-week. [Jt. Ex. 1].
182. On January 10, 2023, Ms. Hurley alerted Ms. Queen to the incorrect property description in the deed, where 5/8’ versus 5 8” had been incorrectly used, and Ms. Hurley also had a question about the deed using “And” for their names, and whether it would go directly to Mr. Ellis if something happened to her, because she did not “know the law on it.”<sup>23</sup> [Jt. Ex. 1].
183. Respondent never personally answered Ms. Hurley’s questions.
184. Respondent waited almost seven weeks before he mentioned the corrections to opposing counsel on February 24, 2023, the last business day before the hearing on the opposing party’s Motion for Contempt. [ODC Ex.
185. He did not notify opposing counsel of the issues with the deed until February 24, 2023, after opposing counsel had filed the first contempt petition. [ODC Ex. 50 at 639].
186. Ms. Hurley texted Ms. Queen on February 21, 2023, and asked if they had received the deed from Plaintiff’s counsel and informed Ms. Queen that that their office voicemail box was full. Ms. Queen said they had not received the deed, that she was “not impressed with

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<sup>23</sup> Although pointed out by Mr. Ellis and Ms. Hurley on January 10, 2023, an email shows that Respondent mentioned it to Mr. Tissue on March 13, 2023, that it was corrected by Mr. Tissue on March 17, 2023, but Mr. Ellis never received the corrected deed.

the antics yesterday though,” and that she did not have an update “because tissue (sic) doesn’t talk to me if you remember.” [ODC Ex. 53 at 676; Jt. Ex. 1].

187. Ms. Queen texted a pdf to Ms. Hurley on February 24, 2023, and said she was mailing it out that day, for them to sign and return. [Jt. Ex. 1].
188. On February 28, 2023, Ms. Hurley informed Ms. Queen that they had received the deed, but plaintiff’s counsel still had not fixed the 5 8’ versus 5 8” description mistake, and that Mr. Ellis and Respondent had discussed the two parties meeting up to do the execution and payment. [Jt. Ex. 1].
189. Two weeks later on March 13, 2023, Respondent emailed Mr. Tissue notifying him of the 5/8’ versus 5/8” issue. [Jt. Ex. 1].
190. On March 17, 2023, Ms. Queen indicated she was mailing out the corrected deed. [Jt. Ex. 1].
191. As of March 31, 2023, Ms. Hurley had notified Ms. Queen via text that they had still not received the deed. [ODC Ex. 53 at 673; Jt. Ex. 1].
192. On March 31, 2023, Ms. Hurley notified Ms. Queen that they still had not received the deed, and Ms. Queen said she mailed another copy. Ms. Hurley again expressed concern about whether they would actually receive the money upon deed execution, and they thought it should be easy for everyone just to execute it at the lawyers’ offices. [Jt. Ex. 1].
193. On April 3, 2023, Ms. Hurley texted Ms. Queen that they had not received the documents. Ms. Queen did not respond. [Jt. Ex. 1].
194. Ms. Queen emailed Plaintiff’s counsel on April 5, 2023, indicating she had “mailed the...deed out upon receipt,” but that Mr. Ellis had yet to receive it. Ms. Queen indicated

she was mailing another copy to Mr. Ellis and would have them sign it as quickly as possible. [Jt. Ex. 1].

195. On April 6, 2023, Ms. Hurley again texted Ms. Queen and simply sent "?", to which Ms. Queen responded that she had "texted the deed, and now I've mailed it twice. I have no idea beyond that." [Jt. Ex. 1].
196. Ms. Queen said she had emailed Mr. Tissue to alert him to the "mail issues." Ms. Hurley expressed concerns since Mr. Tissue had messed up the deed twice now, and Ms. Hurley offered for them to come to Respondent's office or Plaintiffs' counsel's office and sign the deed, and then leave the office for a bit to allow the Plaintiff's to produce the money, and then Respondent would give them the executed deed. Significant frustration was exhibited. [Jt. Ex. 1].
197. The initial Petition for Contempt, filed by the plaintiffs in Mr. Ellis' matter on January 27, 2023, asked the Court to hold Mr. Ellis and Beverly Hurley in contempt for failing to abide by the Order and Amended Order of the Court, entered on October 18, 2022 and November 16, 2022, respectively. Mr. Ellis had been ordered to convey the 0.011 acre tract/encroachment, by deed, to the Plaintiffs for consideration of Three Thousand Five Hundred Dollars (\$3,500.00) within thirty (30) days of entry of the Order. [ODC Ex. 50 at 638-641; Jt. Ex. 1].
198. The Petition stated that on December 7, 2022, Plaintiffs' counsel, Philip Tissue, Esq., mailed to Respondent a deed prepared in accordance with the Court's Amended Order, with Plaintiffs' counsel requesting Respondent execute the deed and return it to him for recording. He said the Three Thousand Five Hundred Dollar (\$3,500.00) check would be sent as soon as he received the executed deed. [ODC Ex. 50 at 638-641; Jt. Ex. 1].

199. Plaintiffs' counsel contacted Respondent on January 3, 2023, inquiring about the status of the deed. By date of the petition, January 27, 2023, Mr. Tissue had not received the deed from Respondent. Plaintiffs' counsel requested Mr. Ellis be responsible for court costs in the amount of Five Hundred Dollars (\$500.00). [Jt. Ex. 1].
200. The court scheduled a hearing on the contempt petition for Monday, February 27, 2023.
201. On Friday, February 24, 2023, Respondent contacted Mr. Tissue regarding changes suggested by his client more than a month earlier, advising of small changes to the proposed deed (i.e. the marital status of his clients and a revision to an error in the property description). [Jt. Ex. 1].
202. The renewed Petition for contempt stated that the proposed changes were "immediately" agreed to, although it was noted that these "could have been corrected months prior, when the deed was presented to Defendants' counsel in December, by simple communication with Plaintiffs' counsel." [ODC Ex. 50 at 639; Jt. Ex. 1].
203. Plaintiffs' counsel dropped the Petition for Contempt in good faith after his communication with, and assurances from, Respondent, and the corrections were implemented. [Jt. Ex. 1].
204. Respondent failed to communicate further with Plaintiffs' counsel until March 13, 2023, at which time Respondent informed him that there was another typographical error in the description, where 5 8' should have been 5 8", which was corrected by Plaintiffs' counsel on March 17, 2023. At that time, Respondent also indicated to Mr. Tissue that Mr. Ellis now wished for the closing to be conducted in person, which the plaintiffs did not wish to do. [Jt. Ex. 1].
205. Mr. Ellis never received a corrected deed in the mail that he could sign and execute. As late as April 6, 2023, Ms. Hurley notified Ms. Queen that they still had not received the

corrected deed, and she offered for them to meet in person just to get it executed and resolved due to how frustrating the situation had become. [ODC Ex. 53 at 671].

- 206. Mr. Ellis was unable to reach Respondent thereafter. [Hrg. Tr. at 160].
- 207. Mr. Ellis believed that Respondent represented to the other party that Mr. Ellis was the problem. [Hrg. Tr. at 157].
- 208. By letter dated April 21, 2023, the ODC advised Respondent that it had opened a complaint based upon the conduct alleged by Mr. Ellis and asked that he file a response thereto within twenty (20) days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure. [ODC Ex. 45; Jt. Ex. 1].
- 209. Respondent did not file a response within the time period as directed. [Jt. Ex. 1].
- 210. Mr. Tissue filed the Renewed Petition for Contempt and Request for Attorney's Fees and Penalties Against the Defendant in the Circuit Court of Upshur County on May 15, 2023. [Jt. Ex. 1].
- 211. Plaintiffs' counsel said they had not heard from Respondent for more than a month and a half after agreeing to drop the initial contempt petition, and filed their Renewed motion as a result, this time requesting the Court hold Mr. Ellis responsible for court costs of One Thousand Five Hundred Dollars (\$1,500.00) at a minimum, and fined Two Thousand Dollars (\$2,000.00) for "contumaciously refusing to comply with the Court's orders". [Jt. Ex. 1].
- 212. Respondent did not notify Mr. Ellis of the Renewed Motion for Contempt. [Hrg. Tr. at 171].
- 213. The contempt matter was set for hearing on June 5, 2023, by Order dated May 16, 2023, and sent to Respondent at that time. [Jt. Ex. 1].

214. Respondent did not inform Mr. Ellis of the June 5, 2023 hearing. [Jt. Ex. 1].
215. Mr. Ellis stated that he tried to contact Respondent and or Ms. Queen more than a dozen times and received no answer, and that he even contacted Judge Reger's office asking what to do about the situation. [Respondent's Answer at #135; Jt. Ex. 1].
216. Mr. Ellis testified that he contacted the judge's office seeking assistance since he could not reach Respondent, and discovered that a second contempt petition had been filed against him and that there was a hearing scheduled on the petition the next day. [Hrg. Tr. at 171].
217. Mr. Ellis provided the following description of the phone call with the judge's office:
- I called the judge's office again to see what was going on. She said, honey, you've got court tomorrow. I said, what do you mean I got court tomorrow? She said, you've got court in the morning. I said, well, I...She said, ain't your lawyer notified you of you had court? I said, no. She said, you in contempt to court. And you got court in the morning. [Hrg. Tr. at 171-72].
218. By letter dated May 25, 2023, sent via certified and U.S. mail, the ODC again notified Respondent that the complaint had been opened and asked that he file a response by June 5, 2023. The certified letter was returned to ODC as unclaimed on June 15, 2023. [ODC Ex. 48; ODC Ex. at 54; Jt. Ex. 1].
219. On May 26, 2023, Mr. Ellis supplemented his complaint that he had personally visited the Upshur County Circuit Court for an update and discovered that the plaintiffs in his matter had filed a second contempt of court motion with a hearing scheduled for June 5, 2023. Said motion and notice were provided to counsel of record, including Respondent. [ODC Ex. 50; Jt. Ex. 1].
220. ODC provided the supplemental information and court documents to Respondent by correspondence dated May 30, 2023, and asked that he respond thereto by June 5, 2023. [Jt. Ex. 1].

221. In his verified response dated June 5, 2023, Respondent said he was representing Mr. Ellis in civil litigation against an adjoining tract owner and that there was considerable bad blood between the parties. He said they had two unsuccessful mediations and a bench trial, and that the property issue had been settled by the Court. [Jt. Ex. 1].
222. Respondent asserted he and his legal assistant had over 200 work hours invested, and he blamed the “intransigence of Mr. Ellis” as being the primary problem. He said Mr. Ellis did not trust the plaintiffs to pay the Three Thousand Five Hundred Dollars (\$3,500.00) if they provided the deed in advance, and that’s why he asked that the closing be executed in person. [ODC Ex. 53; Jt. Ex. 1].
223. Respondent admitted to not answering all of Mr. Ellis’ calls because there were so many of them, and that Mr. Ellis even attempted to communicate with Ms. Queen on the weekends. [Jt. Ex. 1].
224. A hearing on the Renewed Petition for Contempt was held on June 5, 2023, before Hon. Jacob E. Reger, in the Circuit Court of Upshur County. [Jt. Ex. 1].
225. Mr. Tissue was present on behalf of the plaintiffs. [Jt. Ex. 1].
226. Respondent was not present at the properly noticed hearing, nor had he provided notice to Mr. Ellis of the hearing. [Jt. Ex. 1].
227. Mr. Ellis was present but unrepresented by counsel due to Respondent’s absence. [Jt. Ex. 1].
228. Judge Reger asked Mr. Ellis if he had terminated Respondent’s representation, because “[t]hat’s what they were telling me.” Mr. Ellis informed the judge he had not “been able to get up with [Respondent] in over a month and a half,” that he had “knocked on the door and still can’t get up with him.” [ODC Ex. 56; Jt. Ex. 1].



229. Respondent had not terminated his representation of Mr. Ellis at the time of the June 5, 2023 hearing. He had neither spoken with Mr. Ellis about terminating his representation, nor had he filed a motion or request for withdrawal with the court. [Hrg. Tr. 250; ODC Ex. 56].
230. Given Respondent's unexplained absence at the hearing, Judge Reger asked his clerk to retrieve Respondent's phone number, and the judge called Respondent's office. [ODC Ex. 56; Jt. Ex. 1].
231. While on the phone, Respondent informed the judge that his client had filed an ODC complaint against him and that "he'd rather not say anything on the record in this case." [ODC Ex. 56 at 698; Jt. Ex. 1].
232. The contempt hearing proceeded without Mr. Ellis having personal representation, because although Respondent was on the telephone, Respondent did not advocate on Mr. Ellis' behalf in the matter. [ODC Ex. 56; Jt. Ex. 1].
233. During the June 5, 2023 hearing, the plaintiff said "we've begged [Respondent]...to send us the deed for that (sic) to sign and send back to him. We've not had no contact with him after that." [ODC Ex. 56 at 702; Jt. Ex. 1].
234. Mr. Ellis explained the mistakes in the deed, that there was still the 5 8 description error in it, and "then that's the last time we've heard from" Respondent. He informed the Court that had he not gone to the courthouse the other day trying to fix the deed himself, he would not have even known about the hearing. [ODC Ex. 56; Jt. Ex. 1].
235. Mr. Ellis informed the Court that he had "been trying to get the deed for over a month," to which Respondent defended himself and said the deed had been sent twice, with the

corrected one being sent on “the 9<sup>th</sup> of March; and that included the corrected deed which is the issue.” [ODC Ex. 56 at 705; Jt. Ex. 1].

236. Respondent notified Mr. Tissue via email on March 13, 2023 that the 5 8 error remained, and Mr. Tissue corrected the error on March 17, 2023. [Jt. Ex. 1].
237. The Court expressed frustration with the confusion over the deeds, and the judge asked that he be given a black pen and the judge made the correction himself, and instructed them to sign it. [ODC Ex. 56; Jt. Ex. 1].
238. Mr. Ellis expressed to the Court that there was an “or” on the deed and that he believed only one was needed to sign it, and Judge Reger told him he was wrong, that Ms. Hurley was needed to sign off on the deed, at which point Mr. Ellis revealed that Ms. Hurley was in the hospital “fighting for her life.” [ODC Ex. 56; Jt. Ex. 1].
239. Upon the discovery that Ms. Hurley was in the hospital and not present to execute the deed, the judge declared the matter “ridiculous,” and that Mr. Ellis was in contempt, to which Mr. Ellis responded, “I’ve been wanting to sign the deed for months and [Respondent] won’t give it to me.” [ODC Ex. 56; Jt. Ex. 1].
240. Mr. Tissue continued to argue that it had been going on forever and recommended a fine and award of attorney’s fees, to which Mr. Ellis attempted to explain that his “attorney’s not been helping me. I mean, he’s not done nothing for me.” [ODC Ex. 56; Jt. Ex. 1].
241. The judge took the Motion for Contempt under advisement, and gave them ten (10) days to get the deed signed and returned to Mr. Tissue, and then for the check to be sent to Mr. Ellis. [Jt. Ex. 1].
242. The judge scheduled a July 6, 2023 hearing if the matter had not been resolved by then. [Jt. Ex. 1].

243. Mr. Ellis received the deed on the ninth (9<sup>th</sup>) day, and personally overnighted it to Mr. Tissue to make sure it was completed on time. [Hrg. Tr. at 179].
244. Mr. Ellis testified that he was very worried that he was going to be sentenced to jail for the contempt. He said the opposing party “kept telling the judge he wanted me fined or time in jail. And the judge said, well, I’ll think about it. And it went on for about a week or two. And I called back to the judge’s office and talked to the secretary. And she said, honey, he just went ahead and throwed that out. He wouldn’t accept [the contempt].” [Hrg. Tr. at 179].
245. Mr. Ellis never received the corrected deed. The deed ultimately executed by the parties had the correction made by the judge during the hearing. [Hrg. Tr. at 179].
246. Respondent did not assist Mr. Ellis in executing the deed or resolving the matter. [Hrg. Tr. at 180].
247. Mr. Ellis said he felt abandoned by Respondent. He said “I paid him to do something I couldn’t do myself. And then I ended up having to do it anyway.” He said this situation with Respondent was very frustrating and has changed his opinion of lawyers. [Hrg. Tr. at 181].
248. Paragraphs 92-101 are incorporated by reference.
249. Paragraphs 103-112 are incorporated by reference.
250. In his verified response dated June 5, 2023, Respondent said he turned over to Mr. Ellis most of the file and he did not make copies for himself. [Jt. Ex. 1].
251. Mr. Ellis testified that he requested to have his documents returned to him, but that Respondent said the “judge threw it in the trash”. Mr. Ellis contacted the judge’s secretary and asked if they had thrown away his documents, and she said “[e]very piece of paper

gets handed back.” He said he had given Respondent pictures, discs, and other documents, and he received “nothing” from Respondent. [Hrg. Tr. at 181-82].

252. Respondent testified that he “participated by phone” at the June 5, 2023 hearing, and that he advised the judge he “didn’t want to say much because this thing was coming up.” [Jt. Ex. 1].
253. Because Respondent failed to keep Mr. Ellis informed as to the status of his case, failed to respond to Mr. Ellis’ attempts to communicate with him, failed to notify Mr. Ellis of the contempt motion, and failed to notice Mr. Ellis of the June 5, 2023 hearing, Respondent violated Rules 1.4(a)(3) and 1.4(a)(4), as previously stated. [Jt. Ex. 1].
254. Because Respondent failed to execute a written fee agreement with Mr. Ellis memorializing the scope of the representation and the basis or rate of the fee and expenses, Respondent violated Rule 1.5(b) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].
255. Because Respondent failed to keep the funds provided to him in advance by Mr. Ellis in a separate account designated as “client’s trust account,” and provided no billing records regarding when the payments and expenses were earned and incurred, Respondent has violated Rules 1.15(a) and 1.15(c) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].
256. Because Respondent constructively ceased his representation of Mr. Ellis by intentionally failing to appear at a properly noticed hearing, and failed to provide notice to either Mr. Ellis or the Court causing judicial confusion, and failed to request leave of the Court to properly withdraw, thereby leaving Mr. Ellis without legal representation in Court, he has violated Rules 1.16(c) and 1.16(d) of the Rules of Professional Conduct, which provide:

**Rule 1.16. Declining or Terminating Representation.**

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c) A lawyer must obtain permission of the court when terminating a representation in litigation. When ordered to do so by a court, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

d) Upon termination of representation, a lawyer shall take such steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. [Jt. Ex. 1].

257. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute when he: failed to notice the errors in the deed were not properly corrected and left it up to his client to point them out to him; failed to work with Mr. Ellis and Mr. Tissue to execute the deed when such failure exacerbated an already tense situation; and essentially abandoned his client before the case was resolved, which caused harm and considerable worry and stress to Mr. Ellis, and required the allocation of additional judicial resources to address the consequences of his failures to act, Respondent has violated Rules 3.2 and 8.4(d) of the Rules of Professional Conduct, as previously stated.
258. Because Respondent charged Mr. Ellis a Three Thousand Dollar (\$3,000.00) flat fee for his representation, but Mr. Ellis provided payment receipts showing at least Five Thousand Two Hundred Fifty Dollars (\$5,250.00) in payments made to Respondent for his representation, and then failed to represent Mr. Ellis in court, and failed to return the money upon being informed of the overpayment error, Respondent violated Rule 8.4(c), which states:

#### **8.4. Misconduct.**

It is professional misconduct for a lawyer to:

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(c)engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

259. Because Respondent had direct supervisory authority over his secretary assistant Heather Queen, and failed to make reasonable efforts to ensure that her conduct toward and communication with Mr. Ellis and Ms. Hurley was compatible with Respondent's professional obligations as a lawyer, Respondent is in violation of Rules 5.3(b) and 8.4(d) of the Rules of Professional Conduct, as previously stated.
260. Because Respondent failed to promptly provide an accurate deed for his client to execute as ordered by the Court on October 18, 2022, and as amended, on November 16, 2023, and failed to promptly communicate with opposing counsel regarding the errors in the deed which caused frustration amongst the parties and contributed to the delay in the deed's execution, which prompted multiple contempt petitions to be filed by opposing counsel against Mr. Ellis, which included requests for significant monetary fines and potential jail time, Respondent has again violated Rule 8.4(d) of the Rules of Professional Conduct, as previously stated, and Rule 3.4 of the Rules of Professional Conduct, which provides:

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

A lawyer shall not:

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

261. Because he failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].

**COUNT IV**  
**I.D. No. 23-05-304**  
**Complaint of Roger K. Stobart**

261. In his verified complaint received by the ODC on July 14, 2023, Complainant Roger K. Stobart (hereinafter “Mr. Stobart”) said Respondent represented him in a criminal matter during all pre-trial and trial proceedings in Upshur County Circuit Court.<sup>24</sup> [Jt. Ex. 1].
262. Mr. Stobart was convicted at trial on November 19, 2020, and he said Respondent maintained possession of all records and documents for appeal purposes. [Jt. Ex. 1].
263. After the initial appeal discussion, Mr. Stobart said Respondent failed to communicate further with him regarding the matter, and never responded to any of the numerous letters sent to him by Mr. Stobart.
264. Respondent never provided Mr. Stobart with information regarding the outcome of his appeal, and he only discovered his appeal had been denied when he received the notice from the Supreme Court of Appeals. [Hrg. Tr. at 31].
265. By correspondence dated April 24, 2022, Mr. Stobart again contacted Respondent, noting that 6 months had gone by and he asked for a status update, but received no response. [Jt. Ex. 1].
266. Respondent testified that clients are entitled to reasonable updates and information and that six months is a reasonable time to provide a status update. [Hrg. Tr. at 226-27].
267. By letter dated July 14, 2022, Mr. Stobart again requested information and a status update on his claim, and received no response. ODC. Ex. 61 at 1071].

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<sup>24</sup> Case Number 20 F 46 in the Circuit Court of Upshur County.

268. Mr. Stobart again wrote to Respondent on September 23, 2022, requesting information and a status update, and received no response. [ODC Ex. 61 at 1072].
269. Mr. Stobart sent a letter to Respondent on April 12, 2023, requesting that he send to Mr. Stobart all legal files, transcripts, and or any materials related to his case, but Mr. Stobart received no response. [ODC Ex. 61 at 1068].
270. Mr. Stobart sent a second letter to Respondent on May 15, 2023, again requesting the documents. This request also went unanswered. [ODC Ex. 61 at 1069].
271. Mr. Stobart stated that he is unable to work on his Habeas Corpus matter without his documents and case file. [Jt. Ex. 1].
272. Mr. Stobart explained that he needed his documents to show reasonable cause to qualify for a state appointed counsel, and that he “can’t do nothing without it.” [Hrg. Tr. at 28].
273. Mr. Stobart testified that his family attempted to contact Respondent on his behalf and were told they would send his records, but never did. [Hrg. Tr. at 24].
274. When asked if Respondent had returned his documents, Mr. Stobart said, “Never. To this day, he still hasn’t. My family went to the courthouse trying to get them. And they went to the county clerk and paid like \$50...for a fragmentation of my...paperwork...it’s not complete.” He said “Mr. Bailey has returned nothing.” [Hrg. Tr. at 24, 27-28].
275. Mr. Stobart feels that Respondent “abandoned” him and has refused to communicate with him, and that “it’s really grieved me and my family for a year and a half. Like, we don’t know what’s going on. We don’t know what to do...he just basically left us in the dark...it’s really discouraging.” [Hrg. Tr. at 30].



276. Mr. Stobart testified that he “hopes [Respondent] considers his clients in the future, man, and understand that we’re people too. I know you got a job to do, but you’re—you signed up for this job. And you got a responsibility for your clients, also.” [Hrg. Tr. at 30].
277. Mr. Stobart said this situation has impacted the way he feels about lawyers, that “state-appointed attorneys just look at us like—like nothing, like we’re nothing. We don’t matter. We’re nobody.” [Hrg. Tr. at 30].
278. By letter dated July 21, 2023, the ODC advised Respondent that it had opened a complaint based upon the conduct alleged by Mr. Stobart and asked that he file a response thereto within twenty (20) days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure. [ODC Ex. 62; Jt. Ex. 1].
279. Respondent did not file a timely verified response as directed. [Jt. Ex. 1].
280. By letter dated August 10, 2023, sent via certified and U.S. mail, the ODC again notified Respondent that the complaint had been opened and asked that he file a response by August 30, 2023. The certified letter was returned to ODC as unclaimed on August 30, 2023. [ODC Ex. 63; ODC Ex. 65; Jt. Ex. 1].
281. Respondent submitted his verified response to ODC on August 29, 2023, wherein he denied a lack of communication with Mr. Stobart. He said he had filed the appeal with the Supreme Court on October 12, 2021, and received the response brief on December 13, 2021. [ODC Ex. 66; Jt. Ex. 1].
282. Respondent said he provided Mr. Stobart with a copy of the Supreme Court Memorandum Decision denying the appeal by letter dated December 13, 2022, which he alleges is the day he received it.<sup>25</sup> [ODC Ex. 66 at 1106; Jt. Ex. 1].

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<sup>25</sup> Respondent submitted a document dated December 13, 2022, marked “copy”, which was unsigned by Respondent.

283. Mr. Stobart testified that “when my appeal was denied, I got a copy from the Supreme Court saying it was denied...It didn’t come directly from you [speaking to Respondent].” [Hrg. Tr. at 31].
284. Mr. Stobart testified on cross-examination by Respondent that his issue was “not the appeal process...it’s the fact that after it was done...I’ve had other areas to exhaust, and you failed to send my documents...I’ve been trying for over a year and a half, Mr. Bailey, to get you to send my documents when you said you dropped my counsel. I mean, this would’ve been easily avoided. Just send my stuff. I don’t understand.” [Hrg. Tr. at 33].
285. Mr. Stobart testified that he had received the appeal documents from Respondent in October 2021. [Hrg. Tr. at 37].
286. Respondent admitted to having received multiple letters from Mr. Stobart requesting updates, but “had nothing to report to him”, and did not respond. [Jt. Ex. 1].
287. Respondent said he planned to send the entirety of the file to Mr. Stobart on a thumb drive. [Jt. Ex. 1].
288. Since Respondent failed to copy Mr. Stobart on his response, ODC sent Mr. Stobart a copy on August 30, 2023, and permitted him to respond. [ODC Ex. 67; Jt. Ex. 1].
289. By letter dated December 5, 2023, Mr. Stobart filed a reply wherein he reported that he had not received any of his documents or case file from Respondent. [ODC Ex. 68; Jt. Ex. 1].
290. By correspondence dated December 14, 2023, ODC sent a copy of Mr. Stobart’s letter to Respondent, requesting a response thereto within twenty (20) days of his receipt of the letter subject to Rule 8.1(b) of the Rules of Professional Conduct. [ODC Ex. 69; Jt. Ex. 1].
291. Respondent did not file a timely response thereto. [Jt. Ex. 1].

292. By correspondence sent via certified and U.S. mail dated January 11, 2023, the ODC again notified Respondent of its request for Respondent to file a response to Mr. Stobart's reply. Respondent was given until January 31, 2024. The certified letter was returned to ODC as unclaimed on February 1, 2024. [ODC Ex. 70; ODC Ex. 71; Jt. Ex. 1].
293. On February 6, 2024, Disciplinary Counsel emailed Respondent at the email address of bwbaile lawoffice @gmail.com to notify him of the correspondence sent requesting a response to Mr. Stobart's reply, and to confirm the address. [ODC Ex. 72; Jt. Ex. 1].
294. Ms. Queen responded on February 7, 2024, and indicated they have been out with Covid and various health issues, and included complaints of mail system problems. She asked that disciplinary counsel forward the documents to her and she "will get them addressed." [ODC Ex. 72; ODC Ex. 73; Jt. Ex. 1].
295. Disciplinary Counsel responded to Ms. Queen's email on February 8, 2024, noting the mail and failure to response issues were not a new problem, and informed Ms. Queen that the complaints were against Respondent and that he was to respond promptly. Inquiry was made as to Respondent's email address rather than Ms. Queen's, and Disciplinary Counsel said she was again sending the correspondence, and that a response was expected. [ODC Ex. 73; Jt. Ex. 1].
296. There was no response from either Ms. Queen or Respondent regarding Disciplinary Counsel's request to confirm the email address. [Jt. Ex. 1].
297. On February 8, 2024, ODC remailed the January 11, 2024 letter, and enclosed the December 14, 2023 letter, as well as Mr. Stobart's reply, sent via certified mail and U.S. mail. The certified letter was returned to ODC as unclaimed on March 2, 2024. [ODC Ex. 74; ODC Ex. 75; Jt. Ex. 1].

298. Respondent failed to respond to the ODC's lawful request for information. [Jt. Ex. 1].
299. Because Respondent failed to act with reasonable diligence and promptness in his representation of Mr. Stobart in response to Mr. Stobart's requests for information and his case file and documents, he has violated Rule 1.3 of the Rules of Professional Conduct, as previously stated.
300. Because Respondent failed to keep Mr. Stobart informed as to the status of his case and failed to respond to Mr. Stobart's attempts to communicate with him, Respondent violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, as previously stated.
301. Because Respondent failed to return Mr. Stobart's documents and case file upon request to Mr. Stobart's detriment and impacting Mr. Stobart's further efforts at filing post-sentencing appeals, he has violated Rules 1.16(d) and 8.4(d) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].
302. Because he failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].

**COUNT V**  
**I.D. No. 23-02-376**  
**Complaint of Lisa J. Thomas**

304. In her verified complaint received by the ODC on September 21, 2023, Complainant Lisa J. Thomas (hereinafter "Ms. Thomas") said Respondent has been her attorney for five years in a property dispute matter. [Jt. Ex. 1].
305. By letter dated October 10, 2023, the ODC advised Respondent that it had opened a complaint based upon the conduct alleged by Ms. Thomas and asked that he file a response thereto within twenty (20) days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure. [ODC Ex. 78; Jt. Ex. 1].

306. Respondent failed to file a timely response. [Jt. Ex. 1].
307. By letter sent via certified mail and U.S. mail dated January 11, 2024, the ODC again notified Respondent that the complaint had been opened and asked that he file a response by January 31, 2024. The certified letter was returned to ODC as unclaimed on February 1, 2024. [ODC Ex. 79; ODC Ex. 80; Jt. Ex. 1].
308. On February 6, 2024, Disciplinary Counsel emailed Respondent at the email address of bwbaile lawoffice @gmail.com to notify him of the correspondence sent requesting a response to Ms. Thomas' complaint, and to confirm his address. [ODC Ex. 81; Jt. Ex. 1].
309. Ms. Queen responded on February 7, 2024, and indicated they have been out with Covid and various health issues and complaints of mail system problems. She asked they be forwarded to her and she "will get them addressed." [ODC Ex. 82 at 1459; Jt. Ex. 1].
310. Disciplinary Counsel responded to Ms. Queen's email on February 8, 2024, noting the mail and failure to response issues were not a new problem, and informed Ms. Queen that the complaints were against Respondent and that he was to respond promptly. Inquiry was made as to Respondent's email address rather than Ms. Queen's, and Disciplinary Counsel said she was again sending the correspondence, and that a response was expected. [ODC Ex. 82; Jt. Ex. 1].
311. There was no response from either Ms. Queen or Respondent regarding Disciplinary Counsel's request to confirm Respondent's email address. [Jt. Ex. 1].
312. On February 8, 2024, ODC remailed the January 11, 2024 letter, and enclosed the October 10, 2023 letter, as well as Ms. Thomas' complaint, sent via certified mail and U.S. mail. The certified letter was returned to ODC as unclaimed on March 2, 2024.
313. Respondent failed to respond to Ms. Thomas' complaint. [ODC Ex. 83; Jt. Ex. 1].

314. Because Respondent failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, as previously stated. [Jt. Ex. 1].

### III. DISCUSSION

The Supreme Court of Appeals of West Virginia has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. *Lawyer Disciplinary Board v. Taylor*, 192 W.Va. 139, 451 S.E.2d 440 (1994). Factors to be considered in imposing appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors consist of: (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* Syllabus Point 4, *Office of Disciplinary Counsel v. Jordan*, 204 W.Va. 495, 513 S.E.2d 722 (1998).

**A. Respondent violated duties he owed to his clients, the public, to the legal system, and to the profession.**

In determining the nature of the ethical duty violated, the standards assume that the most important ethical duties are those obligations which a lawyer owes to clients. In addition to duties owed to clients, the lawyer also owes duties to the general public. Members of the public are entitled to expect lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty or interference with the administration of justice. Lawyers also owe duties to the legal system and the legal profession. Respondent's

pattern and course of misconduct as demonstrated herein breached his duties to his clients, the public, the legal system, and to the profession.

Respondent repeatedly violated duties owed to Ms. Lewis throughout her representation beginning with when he failed to investigate or develop her case that ultimately resulted in its dismissal on summary judgment. Ms. Lewis provided Respondent with a roadmap to develop her case, which he completely ignored. From the outset, Respondent knew that time was of the essence, that there were animals and livestock in need of care and attention on the farm who were part of the dispute. It was evident from her testimony that Ms. Lewis became increasingly distraught as time went on without resolution and she was forbidden from the property, and she watched as the animals were neglected and sold. Within a couple months of filing suit, the opposing party offered Ms. Lewis Ten Thousand Dollars (\$10,000.00) to settle. Rather than personally discuss the offer with Ms. Lewis, and explain the advantages and disadvantages to settling the case, as well as any counter or demand she might make regarding the animals and their care, Respondent simply allowed Ms. Queen, who is not a lawyer, to casually text the information to Ms. Lewis. See Rule 1.4(a)(1) of the Rules of Professional Conduct. Respondent failed to follow-up or have meaningful discussion with Ms. Lewis regarding her desires or objectives, which prevented Ms. Lewis from being able to make an informed decision regarding settlement. Respondent defended his failure to develop the case because he believed the matter would be successfully mediated, despite not knowing the value of the estate, the strength of the case, or what his client was willing to take.

Respondent's most egregious violation of the duty he owed Ms. Lewis occurred when he received discovery from opposing counsel and simply ignored it. He neither discussed the Requests for Admissions with Ms. Lewis, nor responded to them. And worse, Ms. Queen made a

significant misrepresentation to Ms. Campbell that “discovery was provided to O’Brien months ago...”, which reassured Ms. Campbell that they were on schedule with the case. A few weeks later, Mr. O’Brien filed the Motion for Summary Judgment, yet not a word was said to Ms. Lewis about it.

Respondent failed to discuss the motion or his response thereto with his client, and also failed to notify her of the hearing scheduled in the matter. Respondent blamed Ms. Lewis for his failure to keep her updated and informed, stating that she had “discontinued corresponding with the Respondent’s office” and that he had “advised Ms. Campbell to have Ms. Lewis reach out to the Respondent’s office...This contact did not occur.” [Respondent’s Proposed Findings of Fact and Conclusions of Law at ¶¶ 27-28]. Upon questioning by Respondent, Ms. Lewis testified that she was aware of the family issues Ms. Queen was having and was “trying to be considerate since she had so much going on already, but I did...I called your office. I called I tried to stop by...” [Hrg. Tr. at 85].

Respondent justified his failure to keep Ms. Lewis informed by saying that Ms. Lewis’ “normal protocol” was to have contact with Ms. Queen, and that there was a note on the door advising that meetings were by appointment only, and that “[i]t should be noted that Ms. Lewis had Ms. Queen’s personal cell phone number.” [Respondent’s Proposed Findings of Fact and Conclusions of Law at ¶ 29]. The duty of communication is Respondent’s alone, not Ms. Queen’s, not Ms. Lewis’, but Respondent’s. It is not a client’s duty to initiate communication with their attorney when the attorney has information that should be shared. A dispositive motion in a case in which an attorney has failed to respond to discovery is definitely information that should be shared with a client. However, Respondent’s normal protocol was to not communicate with his clients. He handed that essential legal duty and obligation to Ms. Queen, who is not a lawyer, and



he benefited from having clients so desperate for information that they were willing to receive news from anyone associated with his office, which they often relied upon to their detriment.

Due to Respondent's failure to notify Ms. Lewis of the scheduled hearing on the summary judgment motion, Ms. Lewis did not attend the hearing. Both Ms. Lewis and Respondent testified that her absence in court negatively impacted her case and contributed to the judge's decision to grant the summary judgment motion. When questioned by the judge regarding Ms. Lewis' absence, Respondent answered that he was "not sure" why she was not there, despite knowing exactly why she was not there. She was not there because Respondent failed to communicate with her about the discovery, the summary judgment motion, the response thereto, or the hearing. Additionally, Respondent offered no facts or evidence to support Ms. Lewis' case in the hearing, despite considerable prodding and questioning by the judge. It was evident from Respondent's discussion in court that he had not developed the case, did not know what the witnesses would say, or even if Mr. Casto had been confused when he executed the will, which is the very foundation for bringing the lawsuit.

Unsurprisingly, the judge granted summary judgement, and the case was dismissed. Yet Respondent never notified Ms. Lewis that her case was dismissed, and he never discussed her options and appeal rights with her. *See* Rule 1.4(a)(1) of the Rules of Professional Conduct. She only discovered the case's dismissal due to Ms. Campbell's employer's inquiry, and with only two days left to appeal. Respondent was paid at least Two Thousand Three Hundred Dollars (\$2,300.00) by Ms. Lewis, yet she had to expend an additional One Thousand Seven Hundred Dollars (\$1,700.00) for a rushed last-minute appeal of a case in which her lawyer had never spoken to a witness, obtained a single record, responded to or sought discovery. The harm Ms. Lewis suffered due to Respondent's violations of his basic legal and ethical duties was irreparable.

Respondent violated his duty to Mr. Moats when he failed to file the Motion for Reconsideration as promised. Although Respondent indicated in his answer that the chance of the motion being granted was “essentially zero”, Respondent owed Mr. Moats the duty of preparing and filing the motion in accordance with his wishes. *See* Rule 1.2(a) of the Rules of Professional Conduct. It is important for a lawyer to engage in honest and frank discussion concerning best options and potential outcomes, and sometimes, the news might not be what a client wants to hear. However, that did not happen here, and if a lawyer tells his client he is filing a motion, he must file it. Mr. Moats asked that the motion be filed, Respondent promised he would do so, but did not. Additionally, Mr. Moats requested that his case file and documents be returned to him, which did not happen. *See* Rule 1.16(d) of the Rules of Professional Conduct. Respondent pledged during his sworn statement that he would return the file and notify disciplinary counsel of such transmission, but he failed to do so. [ODC Ex. 60 at 1042-43]. Accordingly, Respondent violated his ethical duty to Mr. Moats.

Respondent violated the duties he owed to Mr. Ellis on multiple fronts. Respondent failed to personally communicate with Mr. Ellis throughout his representation, which caused considerable confusion, frustration, and delay. Respondent failed to identify and correct errors in the deed provided to him by the other party, and then seemingly blamed Mr. Ellis for his refusal to execute the flawed deed. Respondent was dilatory in both his provision of the deed to Mr. Ellis, as well as his notification to opposing counsel of the errors and the need for correction of said errors. Ultimately, he never provided his client with a copy of the corrected deed. Respondent’s dilatory conduct in this matter created unnecessary tension and frustration on the part of both Mr. Ellis and the opposing party, and resulted in two separate contempt motions that were filed against

Mr. Ellis, when the record demonstrates that Respondent was responsible for the delay and confusion.

Respondent failed to notify Mr. Ellis of the opposing party's Renewed Motion for Contempt of Court and the scheduled hearing, which could have resulted in Mr. Ellis being excessively fined or even jailed. Mr. Ellis only discovered that a hearing was scheduled when he called the court seeking assistance because Respondent failed to communicate with him. Respondent constructively abandoned Mr. Ellis when he failed to appear at a noticed hearing without first withdrawing pursuant to the Rules of Professional Conduct. Respondent's absence at the hearing caused additional confusion and frustration in an already tense matter, and left Mr. Ellis to represent himself in court against a lawyer and a judge who were under the mistaken belief that Mr. Ellis was difficult due to the misrepresentations made by Respondent. Mr. Ellis was owed money by the other party, and Respondent was dilatory in ensuring his conduct resulted in Mr. Ellis' receipt of the recovery to which he was entitled. Mr. Ellis testified that he was genuinely worried he would be sent to jail due to the contempt charge which was prompted by Respondent's dilatory conduct.

Mr. Ellis resolved his lawsuit without the assistance of Respondent, despite paying Respondent Two Thousand Two Hundred Fifty Dollars (\$2,250.00) more than he had agreed to. [See ¶¶ 165, 167]. Mr. Ellis, who shared that he cannot read and write well and that Respondent was aware of this, immediately began making payments when he retained Respondent, and had asked Ms. Queen to let him know when he had paid the fee in full. [Hrg. Tr. at 149]. However, Ms. Queen never advised him that he had fully paid his fee, which occurred when he made a payment in February 2020. See ¶ 167 at 14. Respondent accepted payments from Mr. Ellis for another year before Mr. Ellis discovered the error. Mr. Ellis sought the assistance of a grandchild

to total his payment invoices for him. Although Respondent's system to *receive* payments seems well functioning, his payment invoice system is severely lacking because it does not track total money paid and the balance due, which contributed greatly to Mr. Ellis' significant overpayment. After the first invoice, all of Mr. Ellis' invoices listed no amount due, with no mention of the balance owed, which would make it virtually impossible for anyone looking at that invoice to know the status of the account. To further complicate matters, Respondent is inconsistent with sending invoices for payments received, only occasionally issuing an invoice. Mr. Ellis' payments have been identified herein and that list has taken into consideration if there is a possibility that a couple of Mr. Ellis' wire receipts might have also been given an invoice. *See* ¶ 166. The most conservative sum of the payments made by Mr. Ellis to Respondent is Five Thousand Two Hundred Fifty Dollars (\$5,250.00), with the possibility of Six Thousand One Hundred Fifty Dollars (\$6,150.00), despite being charged a Three Thousand Dollar (\$3,000.00) flat fee. Mr. Ellis testified that he reported the error to Ms. Queen and asked for a refund, but no money was ever returned to him, and he has not been made whole.

Respondent violated his duty to Mr. Stobart when he failed to keep Mr. Stobart informed about his case, and failed to respond to reasonable requests for information. Despite Mr. Stobart's letters requesting updates, Respondent failed to notify him of the outcome of his appeal to the Supreme Court, with Mr. Stobart only discovering the outcome because the court sent him a copy of the decision. Likewise, Respondent failed to discuss with him his rights and options going forward. Most concerning was Respondent's failure to provide Mr. Stobart with a copy of his case file despite repeatedly being asked by both Mr. Stobart, his family, and disciplinary counsel. Respondent indicated to disciplinary counsel that he would provide the file to him during the disciplinary process and, despite having years to do so, Respondent had still not done so by the

hearing. Mr. Stobart was very patient and respectful with his requests to Respondent, and Respondent's disregard for the obstruction his actions had on Mr. Stobart's ability to pursue additional legal remedies is very troubling. Mr. Stobart spoke of the hurt, frustration, and difficulty Respondent's conduct caused him and his family.

Additionally, Respondent violated his duties to his clients generally when he failed to execute fee agreements with them, which is required pursuant to Rule 1.5(b) of the Rules of Professional Conduct. These agreements serve a very important purpose in memorializing the lawyer's agreement with the client. It further provides notice of both the service to be performed and the fee to be charged. This serves as a protection for both the lawyer and the client, and is not an optional practice for lawyers. Respondent admitted that he does not routinely execute written fee agreements, and that he did not do so with the civil complainants in this matter. [Jt. Ex. 1]

Respondent violated his duties as a lawyer and an officer of the court by abdicating his job duties to his assistant, Heather Queen. Every complainant who testified shared the same story, that Ms. Queen was their main contact during Respondent's representation and that Respondent never initiated communication. Further, there is ample evidence that the office phone was rarely answered, that the voice mailbox was often full, and that you could not rely upon Respondent to return a call if a message was left. In short, Respondent was not available to his clients. He rarely, if ever, discussed their cases after the initial meeting, and he just relied upon Ms. Queen to manage the office, the cases, and all the communication. Ms. Queen's main form of communicating with Respondent's clients was via texting on her personal phone. This is a very dangerous communication practice because it leaves Respondent in the dark about the specifics shared, and privileged information could very easily be compromised.

Additionally, Ms. Queen was tasked with almost every duty in the office, from answering the phone, reviewing and answering mail, listening to messages, responding to messages,

preparing deeds, communicating with clients, preparing documents, mailing documents, accepting payments, and depositing payments, to name a few, and she worked many hours of overtime to do so. However, the complainants sought representation of a lawyer and paid Respondent for those services. As the responsible attorney, Respondent is accountable for Ms. Queen's conduct, pursuant to Rule 5.3 of the Rules of Professional Conduct. Lawyers are required to give assistants appropriate instruction, guidance and supervision regarding ethical aspects of their work. *See* Comment 2 of Rule 5.3 of *The Rules of Professional Conduct*. Therefore, Respondent had a duty to ensure that Ms. Queen understood the information she should share with clients and that said information was accurate. Additionally, Respondent is expected to train and supervise Ms. Queen regarding the required practices of accepting and depositing payments. He is ultimately responsible for the significant errors Ms. Queen made in misrepresenting information to clients and also for not realizing when a client overpaid thousands of dollars.

Most troubling is that Respondent mishandled his IOLTA account for many years. He admitted that he never used it, and the bank records support that assertion. Every time Respondent bypassed his IOLTA account and immediately placed unearned client money into his office operating account without performing the proper accounting, he breached his fiduciary duty. Agreeing to a flat fee in a case does not absolve a lawyer of his fiduciary duty to safeguard the client money paid to him by placing it in a trust account and then removing it promptly once earned. In addition, as fiduciaries, lawyers are expected to have a proper accounting system in place that monitors and keeps track of the money paid to the lawyer by the client. Respondent's continued receipt of Mr. Ellis' payments in excess of the agreed upon flat fee of Three Thousand Dollars (\$3,000.00) is a significant breach of duty, and his failure to review the payments upon Mr. Ellis' reporting the excess payments to Ms. Queen is inexcusable. The record demonstrates that Respondent never deposited any of the money paid to him by Ms. Lewis, Mr. Moats, and Mr.

Ellis into his IOLTA or client trust account before it was earned, and he therefore violated his duty pursuant to Rules 1.15(a) and 1.15(c) of the Rules of Professional Conduct. Thus, the evidence in this case establishes by clear and convincing proof that Respondent violated his duties owed to Ms. Lewis, Mr. Moats, Mr. Ellis, to the public, and the legal community.

Respondent failed to respond timely to disciplinary counsel regularly throughout these proceedings, which is a violation of his duties as an officer of the court pursuant to Rule 8.1 of the Rules of Professional Conduct. It is very important for members of the State Bar to take disciplinary matters seriously and promptly respond to lawful requests for information. Respondent's failure to consistently do so created considerable confusion and compromised the integrity of the disciplinary process. Additionally, Respondent's apparent "mail issue" is extremely problematic. Respondent regularly claimed he did not receive important items in the mail, then also claimed he had sent important items that were never received. A review of the exhibits demonstrates how many times Disciplinary counsel mailed, remailed, called, and emailed Respondent in an effort to just simply communicate with him and receive a response. This took considerable time, energy, and expense, as even certified mail was never signed for and was always returned. A lawyer owes a duty to his clients, the public and the legal community to be able to send and receive mail without delay or struggle.

Finally, lawyers are officers of the court, and as such, must operate within the bounds of the law and abide by the rules of procedure which govern the administration of justice in our state. A lawyer's duties also include maintaining the integrity of the profession. Thus, the evidence in this case establishes by clear and convincing proof that Respondent violated his duties owed to Ms. Lewis, Mr. Moats, Mr. Ellis, Mr. Stobart, to the public, to the legal profession and the legal system.

**B. Respondent has acted knowingly and.**

The *ABA Standards for Imposing Lawyer Sanctions* states that the most culpable mental state is that of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his conduct, both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Rule 1.0(f) of the Rules of Professional Conduct states that a person's knowledge may be inferred from the circumstances. The evidence in these proceedings supports that Respondent acted knowingly.

The evidence is clear and convincing that Respondent knowingly failed to deposit any client funds into his IOLTA account for many years, opting instead to immediately deposit the unearned funds into his operating account. The rules are clear on a lawyer's duty in this regard. Additionally, Respondent failed to keep track of the funds paid to him by his clients, and was uncertain of the payments made by Ms. Lewis and Mr. Ellis, indicating they had paid him less than they had. It is imperative that a lawyer scrutinizes accounts containing client and third-party funds for accuracy, and in not doing so, admittedly over a significant period of time, Respondent knowingly assumed the risk of his conduct. The ODC asserts that "knowingly" encompasses conduct that is careless and recklessly negligent. *See, e.g., State ex rel. Nebraska State Bar Association v. Holscher*, 230 N.W.2d 75 (Neb.1975). Respondent's conduct was also knowing regarding his communication and dilatory issues.



**C. There were injuries resulting from Respondent's conduct.**

Respondent's noncompliance with these rules as exhibited in the record is clearly detrimental to the legal system and legal profession, and his conduct has brought the legal system and legal profession into disrepute. 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. Indeed, misuse of a trust account is a breach of trust that reflects poorly on the entire legal profession. Same is true of dilatory conduct, lack of communication, and the failure to properly develop a case to its conclusion.

Mr. Ellis experienced direct harm as a result of Respondent's misconduct when he trusted Respondent to advocate for him and represent his side of the case, and to also notify him when he had paid his account in full. Respondent did nothing to dispel the friction between Mr. Ellis and the opposing party and, instead, painted Mr. Ellis as a problematic client causing delay when Respondent failed to provide Mr. Ellis with a corrected deed to execute. Without acknowledging his role in the matter, Respondent defended his inaction by saying "the Judge's exasperation came through during the hearing, at one point counsel recalls him exclaiming "This is a scrivener's error!" [Respondent's Proposed Findings of Fact and Conclusions of Law at ¶ 80]. The significant delay that contributed to so much distrust on both sides of this matter was created in part by Respondent's conduct and inaction. First, in his failure to notice the errors in the deed himself, then dragging his heels on notifying the other party of the need for the corrections once Mr. Ellis pointed them out, then again failing to review the deed a second time to realize a typographical error still persisted in the property description, and never ensuring that his client received the corrected deed. Respondent regularly blamed the mail for failing to receive items sent to him even

by certified mail, but when Ms. Queen dropped a deed in the mail and Mr. Ellis repeatedly denied receiving it, Mr. Ellis was the problem.

Clients retain lawyers because they need representation generally, but most assuredly in court. Respondent's failure to appear in court at the hearing he referenced above is definitive proof of that, and shows the direct harm Mr. Ellis suffered by having Respondent as his lawyer. Not only did Respondent not appear in court that day on behalf of his retained client, he actually sacrificed his client's dignity and position by defending himself to the judge. Respondent misstated to the court that he had sent Mr. Ellis two deeds including the corrected deed on March 9<sup>th</sup>, which was impossible because opposing counsel did not email the corrected deed to Respondent until March 17<sup>th</sup>. Mr. Ellis never received the corrected deed. [ODC 56 at 705-707; ODC Ex. 53 at 668]. The judge then used Respondent's words against Mr. Ellis in court, accusing him of being given "two deeds" by Respondent and just refusing to execute them. [ODC Ex. 56 at 707-708].

Ms. Lewis experienced direct harm as a result of Respondent's misconduct. Regardless of what happens at this point, Ms. Lewis can never replace the animals she lost or forget the memories of the suffering endured while Respondent dragged his heels, never made a demand to opposing counsel, never discussed settlement options with her, never developed the case, never responded to discovery, and ultimately caused the case's dismissal. Mr. Stobart was directly harmed by Respondent's misconduct, as he sat in prison wondering about his case and kindly asking for his file from his lawyer before he could exhaust all legal remedies available to him. Mr. Moats was potentially harmed when Respondent failed to file his motion as promised. And there is considerable real and potential for harm to his clients, the public, and the entire legal community given Respondent's misconduct.

**D. There are aggravating factors present and no mitigating factors that should be considered.**

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

Rule 9.22(a) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that prior disciplinary offenses can constitute an aggravating factor, and are more likely to be considered aggravating when they involve the same or similar misconduct. On December 3, 2019, Respondent was warned by the Investigative Panel of the Lawyer Disciplinary Board that he “needs to be true and accurate in his billings” in Public Defender Services matter in *Office of Disciplinary Counsel v. Brian Bailey*. [ODC Ex. 88 at 1964]. Respondent received another warning by the Investigative Panel of the Investigative Panel of the Lawyer Disciplinary Board for conduct involving Rules 1.3 and 1.4(a)(3) of the Rules of Professional Conduct, two of the rules Respondent violated herein, on December 17, 2021 in *Max Lee v. Brian Bailey*. [ODC Ex. 88 at 1971-1979]. Respondent had represented Mr. Lee in an estate matter, and he paid Respondent Two Thousand Dollars (\$2,000.00) on or about December 22, 2019. Mr. Lee said that he and his wife left multiple messages for Respondent “asking for information and a return call with no response from Respondent. Complainant also said his wife tried to see Respondent at his office, but the door was locked.” [*Id.* at 1971]. Respondent said he never received the messages, despite claiming his voicemail is regularly checked, and that he uses email to respond to clients. Mr. Lee responded that they had also sent emails and had received no response. The Investigative Panel noted that

“Respondent indicated that the money paid to him from Complainant remained in his trust account and that he would issue a refund if Complainant so desired.”<sup>26</sup> [*Id.* at 1972]. Mr. Lee changed his mind about Respondent’s representation and said that “after ongoing delays he wished to be issued all paperwork and a full refund”, which he received. [*Id.*]. The Investigative Panel concluded that “Complainant’s interests were delayed and possibly adversely affected [by] Respondent’s inaction in the matter”, and that it is “clear” that “Respondent has failed to act consistent with his obligations under the Rules of Professional Conduct”. [*Id.* at 1973]. However, the Investigative Panel took into consideration that Respondent had no prior discipline, and only warned him.

Respondent again received the benefit of not having prior discipline when he was warned in a complaint filed by Raymond Baugh that was closed in a Chief Lawyer Disciplinary Closing on February 24, 2022. [ODC Ex. 88 at 1980-1982]. In that matter, Respondent was hired in early 2020 to prepare a deed for Mr. Baugh. Mr. Baugh paid Respondent and gave him money to pay the taxes owed, but Respondent never paid the taxes or filed for the restoration of gun rights as promised. Mr. Baugh said he eventually retained other counsel and asked Respondent for a refund, but Respondent never responded. Respondent said he was busy working as the Mental Hygiene Commissioner and had more than he could handle, and ultimately did refund Mr. Baugh’s payments. Respondent’s lack of a prior disciplinary record was taken into consideration, and he was again “warned to be mindful of his duties of diligence and communication pursuant to Rules 1.3 and 1.4 of the Rules of Professional Conduct in future matters.” [*Id.* at 1982].<sup>27</sup>

<sup>26</sup> A review of Respondent’s bank records, which were not subpoenaed by the Investigative Panel, reveals that Respondent never deposited Mr. Lee’s money into his IOLTA account, despite stating to disciplinary counsel that he had done so in his verified response. [ODC Ex. 87 at 1511-1518].

<sup>27</sup> Mr. Baugh’s complaint included invoices for his payments, and although the bank records were not subpoenaed by the Investigative Panel in that matter, there is no record of Respondent depositing Mr. Baugh’s money into his IOLTA account. [ODC Ex. 88 at 1988-1994; ODC Ex. 87].

Respondent was admonished by the Investigative Panel of the Lawyer Disciplinary Board for a violation of Rule 1.16(d) of the Rules of Professional Conduct on October 22, 2022 in *Everett Davis v. Brian Bailey*. [ODC Ex. 88 at 1995-1998]. Mr. Davis met with Respondent and provided him with several documents for Respondent to review. Mr. Davis said Respondent “instead did not do work and would not communicate with him”. [Id. at 1995]. Mr. Davis said he fired Respondent and hired a new attorney, and asked Respondent to return the paperwork he had provided him, but he “would neither return the paperwork, nor communicate with the new attorney.” [Id.]. Mr. Davis said he went to Respondent’s office but was told he was too busy to talk to him. Respondent said he provided a free consultation and “was unable to locate [his documents] until November 2021 after reorganizing his office.” [Id. at 1995]. The Investigative Panel found Respondent’s “apparent failure to appreciate the significance of the undisputed facts of the complaint” to be troubling. They determined that Mr. Davis was either a prospective client or an actual client, and that Respondent “had obligations and duties, which include duties to competently and diligently investigate the case; duties to communicate effectively with his client; and, an affirmative duty to return the client file upon request after he was terminated from the employment.” [Id. at 1996-97]. The Panel concluded that Respondent’s inactions fell woefully short of the expected behaviors of members of the West Virginia State Bar and are violations of the Rules of Professional Conduct. [Id.] He was admonished for violating Rule 1.16(d) and directed to provide the client file within ten (10) days of the closing. [ODC Ex. 88 at 1997]. With the subsequent violations of Rule 1.16(d) of the Rules of Professional Conduct contained herein, this also amounts to a pattern of misconduct.

Additionally, Respondent has exhibited a dishonest or selfish motive, as described in 9.22(b) of the *ABA Model Standards for Imposing Lawyer Sanctions* by failing to acknowledge

his own role in the delay in Mr. Ellis' case and instead blaming his client; in not being honest with the Court about Ms. Lewis' whereabouts and his role in her absence; and by having a monetary system in place which he failed to monitor that allowed him to receive a significant overpayment from Mr. Ellis, and then not reviewing the account when it was brought to Ms. Queen's attention.

Respondent has exhibited a pattern of misconduct under Standard 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* where all complaints indicate that Respondent failed to properly communicate with his clients or keep them informed, and often failed to adequately discuss the matter with his clients to even afford them the opportunity to make informed decisions. He was also dilatory in all matters and failed to notify his clients of important dates and documents and outcomes to their detriment. Most importantly, Respondent also presented a pattern of disregard and carelessness relating to the handling of his IOLTA account over the course of multiple years.

Standard 9.22(d) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicate "multiple offenses committed in the context of a single disciplinary proceeding" can be an aggravating factor. In the matter herein, there are five complainants and at least thirty-nine (39) rule violations.

Additionally, Respondent has failed to show remorse in these matters. Although he said he regrets the outcomes, he failed to acknowledge that his misconduct and lack of inaction resulted in almost every result that his clients had to endure in these matters.

Standard 9.22(h) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that the vulnerability of a victim can be an aggravating factor, and point to the victim's age, level of education or sophistication, and whether they suffer from disabilities or impairments. Mr. Ellis was a vulnerable victim in this matter, and such should be attributed as an aggravating factor to

Count III of the Statement of Charges. He is unable to read or write well, and is also disabled, and he relied on Respondent to represent him and trusted him with his money to his detriment.

Respondent began practicing in 2005, and has substantial experience in the practice of law and should know better than to commit the rule violations herein.

The *Scott* Court also adopted mitigating factors in a lawyer disciplinary proceeding and stated that mitigating factors “are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.” *Lawyer Disciplinary Board v. Scott*, 213 W.Va. 209, 216, 579 S.E.2d 550, 557 (2003). It should be clear, however, that mitigating factors were not envisioned to insulate a violating lawyer from discipline. There exist no mitigating factors based on the record in this matter that outweigh the aggravating factors, or otherwise outweigh the seriousness of Respondent’s misconduct to justify a reduction in the degree of discipline to be imposed.

#### **IV. RECOMMENDED SANCTION**

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, in part, *Committee on Legal Ethics v. Tatterson*, 173 W.Va. 613, 319 S.E.2d 381 (1984). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. Indeed, in Syllabus Point 3 of *Committee on Legal Ethics v. Walker*, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court stated:

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

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

The Supreme Court has consistently held that "[t]he general rule is that absent compelling extenuating circumstances, misappropriation or conversion by a lawyer of funds entrusted to his/her care warrants disbarment." *Office of Disciplinary Counsel v. Jordan*, 204 W.Va. 495, 513 S.E.2d 722 (1998); *Lawyer Disciplinary Board v. Kupec (Kupec I)*, 202 W.Va. 556, 561, 505 S.E.2d 619, 631 (1998) *remanded with directions*, *See Lawyer Disciplinary Board v. Kupec (Kupec II)*, 204 W.Va. 643, 515 S.E.2d 600 (1999). *See also Lawyer Disciplinary Board v. Wheaton*, 216 W.Va. 673, 610 S.E.2d 8 (2004); *Lawyer Disciplinary Board v. Duty*, 222 W.Va. 758, 671 S.E.2d 763 (2008). The *Kupec I* Court recognized as follows:

The term misappropriation can have various meanings. In fact, the misuse of another's funds is characterized as misappropriation or conversion. Black's defines misappropriation as "[t]he 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. Black's Law Dictionary (6<sup>th</sup> ed.1990). *See In re Wilson*, 81 N.J. 451, 409 A.2d 1153, 1155 n.1 (1979) (defining misappropriation as 'any unauthorized use by the lawyer of client's funds entrusted to him including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom').

*Kupec I*, 202 W.Va. at 202-3, 505 S.E.2d at 262-3.

As the Supreme Court stated in *Lawyer Disciplinary Board v. Coleman*, 219 W. Va. 790 639 S.E.2d 882 (2006), "we do not take lightly those disciplinary cases in which a lawyer's misconduct involves the misappropriation of money. In such instances, we have resolutely held



that, unless the attorney facing discipline can demonstrate otherwise, disbarment is the only sanction befitting of such grievous misconduct.” *Id.*, 219 W.Va. at 797, 639 S.E.2d at 889. In addition, “[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.” *Id.* (quoting *Lawyer Disciplinary Board v. Kupec*, 202 W.Va. 556, 571, 505 S.E.2d 619, 634 (1998) (additional quotations and citation omitted).

The *ABA Standards for Imposing Lawyer Sanctions* state that:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

The Supreme Court of Appeals has adhered to a bright-line rule for knowing conversion. See e.g. *Lawyer Disciplinary Board v. Wheaton*, 216 W.Va. 673, 610 S.E.2d 8 (2005) [Respondent failed to deposit monies into a trust account and converted those funds for his own personal use. Respondent’s law license was annulled]; *Lawyer Disciplinary Board v. Brown*, 223 W. Va. 554, 678 S.E.2d 60 (2009) [Respondent converted approximately \$8,000 from his client trust account to his own use. Respondent’s law license was annulled]; *Lawyer Disciplinary Board v. Kohout*, 238 W.Va. 668, 798 S.E.2d 192 (2016) [Respondent 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. Respondent’s law license was annulled, and he was ordered to make full restitution to a client]; *Lawyer Disciplinary Board v. Albertson*, No. 12-1225 (2014) (unreported) [Respondent wrongfully commingled, misappropriated, and converted client funds to his own personal use. Respondent’s law license was annulled; and he was ordered to pay restitution in the amount of \$500.00 to his client].

Respondent, an experienced lawyer, knowingly misappropriated and converted to his own benefit funds that had been entrusted to him in a professional and fiduciary capacity and inflicted injuries upon Ms. Lewis, Mr. Ellis, Mr. Moats, and any other clients he represented during the time he failed to use his IOLTA account, as well as the public, and the legal profession. The evidence presented a pattern of misconduct in the handling of his IOLTA account spanning many years. The repeated acts of misappropriation and conversion of funds when he placed all client money into his operating account exhibit a lack of judgment and touches the very essence of the public's perception of the legal system. There are no compelling mitigating circumstances to overcome the presumption of disbarment for conduct of this nature.

"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); Syl. Pt. 6, *Office of Disciplinary Counsel v. Jordan*, 204 W.Va. 495, 513 S.E.2d 722 (1998). A license to practice law is a revokable privilege and when such privilege is abused, the privilege should be revoked. Indeed, for the public to have confidence in the integrity of our disciplinary and legal system, lawyers who engage in the conduct of Respondent must receive a strong and serious sanction. Such sanction is also necessary to deter other lawyers from engaging in similar conduct and to restore the faith of the victim in this case and of the general public in the integrity of the legal profession.

Respondent committed multiple violations of the Rules of Professional Conduct and his casual disregard for his client's desires and objectives calls into question his ability to properly and safely represent clients. In light of the record and precedent of the Supreme Court of Appeals, the Hearing Panel Subcommittee recommends the following sanctions to the Supreme Court of Appeals of West Virginia:

- A. Respondent's law license be annulled;
- B. That Respondent make restitution to Clifford Ellis, Jr. in the amount of Two Thousand Two Hundred Fifty Dollars (\$2,250.00);
- C. That Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; and
- D. That Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

*Respectfully submitted,*  
The Hearing Panel Subcommittee

  
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*David A. Wandling, Chairperson*

*/s/ Chip Williams*

\_\_\_\_\_  
*Chip Williams, Esq.*

*/s/ Cynthia Tawney*

\_\_\_\_\_  
*Cynthia Tawney, Layperson*

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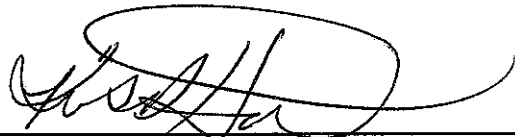
**CERTIFICATE OF SERVICE**

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This is to certify that I, **Kristin P. Halkias**, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 5<sup>th</sup> day of May, 2025, served a true copy of the foregoing "**Report of the Hearing Panel Subcommittee**" upon Respondent Brian W. Bailey, by mailing the same via Certified United States Mail, with sufficient postage, and electronically via File & Serve Xpress, to the following address:

Brian W. Bailey, Esquire  
17 West Main Street  
Buckhannon West Virginia 26201  
***RESPONDENT***

**Notice to Respondent:** for the purpose of filing a consent or objection hereto, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, either party shall have thirty (30) days from today's date to file the same.



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