

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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LAWYER DISCIPLINARY BOARD,

Petitioner,

v.

No. 24-363

BRIAN W. BAILEY,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

Rachael L. Fletcher Cipoletti [Bar No. 8806]
Chief Lawyer Disciplinary Counsel
rfcipoletti@wvdc.org
Kristin P. Halkias [Bar No. 7167]
Lawyer Disciplinary Counsel
khalkias@wvdc.org
Office of Lawyer Disciplinary Counsel
West Virginia Judicial Tower, Suite 1200
4700 MacCorkle Avenue SE
Charleston, West Virginia 25304
(304) 558-7999
(304) 558-4015 – *facsimile*

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I. STATEMENT OF THE CASE

A. Nature of Proceedings and Recommendation of the Hearing Panel Subcommittee

Formal charges were filed against 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 ("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 ("ODC"), 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 Roger 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.

On or about May 5, 2025, the HPS issued its recommendation in this matter and filed with the Supreme Court its Report of the Hearing Panel Subcommittee ("Report"). The HPS

properly found that the evidence established Respondent knowingly committed multiple violations of the Rules of Professional Conduct (“Rules”), including misappropriating client funds, and that his casual disregard for his clients’ desires and objectives calls into question his ability to properly and safely represent clients. The HPS recommended that Respondent’s license to practice law be annulled; that Respondent make restitution to Clifford Ellis, Jr. in the amount of \$2,250.00; that Respondent comply with the mandates of Rule 3.28 of the Rules; and that Respondent be ordered to pay the costs of the disciplinary procedure pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Disciplinary Counsel consented to the Report on May 13, 2025, and Respondent filed an untimely objection to the recommendation of the HPS on June 5, 2025. On June 6, 2025, Respondent filed a Motion to file out of time, and the Court granted said motion by Order issued June 13, 2025.

B. Findings of Fact and Conclusions of Law of the Hearing Panel Subcommittee

Brian Wayne Bailey, (“Respondent”) is a lawyer practicing in Buckhannon, West Virginia, 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. Respondent is a sole practitioner who also works as a mental hygiene commissioner in Lewis and Upshur counties. He employs a legal assistant, Heather Queen (“Ms. Queen”). [Hrg. Tr. at 205, 207].

COUNT I
I.D. No. 22-05-046
Complaint of Tesla Lewis

Complainant Tesla Lewis (“Ms. Lewis”) retained Respondent in 2019 to contest the validity of the will of Ms. Lewis’ longtime friend, Stephen Casto (“Mr. Casto”), who passed in July 2019.¹ 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. Unbeknownst to Ms. Lewis, two days prior to his death in 2019, Mr. Casto executed a new will at the prompting of his neighbors leaving his estate to them. Ms. Lewis said that on the same day he signed the new will, a hospice nurse had determined Mr. Casto was not competent to sign documents for hospice care, and she had asked Ms. Lewis, as Mr. Casto’s power of attorney, to sign the hospice documents. Ms. Lewis noticed significant discrepancies in Mr. Casto’s signatures between November and July, and there was documentation in his hospice records about his competency, or lack thereof. [ODC Ex. 4; Hrg. Tr. at 45]. Ms. Lewis quickly sought Respondent’s legal assistance, making it clear to him that time was of the essence because there were many animals on the farm in urgent need of food, water, and care. [Hrg. Tr. at 56-58].

At the start of his representation of Ms. Lewis, Respondent failed to execute a written fee agreement or discuss his hourly rate with her, and Ms. Queen, Respondent’s secretary, advised Ms. Lewis to pay in cash. [ODC 60 at 1013; Hrg. Tr. at 48]. Ms. Lewis paid Respondent at least \$2,300.00 in cash for his representation, and Respondent filed the Petition to Contest Validity of a Will in Upshur County Circuit on February 25, 2020, Case Number 20-C-19.² [ODC Ex. 1 at 15; Respondent’s Answer #46]. Respondent failed to deposit Ms. Lewis’ payments into his IOLTA account. [ODC Ex. 87].

¹ Ms. Lewis and Mr. Casto developed a grandfather/granddaughter relationship dating back to her elementary school days bonded 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. [ODC Ex. 4].

² Ms. Lewis paid Respondent \$200.00 for her filing fee to the Upshur County Circuit Clerk on July 30, 2019; a \$1,000.00 retainer fee paid in two payments, \$250.00 on July 30, 2019, and \$750.00 on August 9, 2019; \$100.00 on

Two of the four respondents in Ms. Lewis' lawsuit retained William O'Brien ("Mr. O'Brien"), an attorney with Steptoe and Johnson, who filed an answer on June 2, 2020. 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].

Throughout Ms. Lewis' representation, Respondent "never called or texted [Ms. Lewis] personally", and all "communication with his office was through his secretary, other than speaking to him at the previous hearings," with the main form of communication being texting Ms. Queen.³ [ODC Ex. 1 at 12; Hrg. Tr. at 52].

On August 2, 2019, shortly after retaining Respondent, Respondent was provided with a list of potential witnesses and people with information about the case, including a hospice nurse who declared Mr. Casto not competent when the will was signed. [ODC Ex. 1 at 43]. However, Respondent never contacted a single witness on the list, never sought or obtained Mr. Casto's medical or hospice records, never conducted an investigation into the matter, and never advised Ms. Lewis of his failure to do so. [Hrg. Tr. at 88-91, 231].

As the case was languishing, Ms. Lewis texted Ms. Queen several times from May 2020 until December 2020 inquiring about a date for the scheduling conference and status updates, with Ms. Queen providing a variety of excuses. The scheduling conference was ultimately scheduled when Ms. Lewis' aunt, Jackie Campbell ("Ms. Campbell"), who works for another lawyer in the area, contacted the court and asked that a scheduling conference be scheduled, which was promptly set for January 12, 2021.⁴ [ODC Ex. 1; Hrg. Tr. at 55].

January 18, 2020; \$100.00 toward her new filing and the retainer on the second filing; \$250.00 on February 10, 2020; and \$650.00 on March 6, 2020. The August 9, 2019 invoice notes "retainer paid in full". [ODC Ex. 1 at 15].

³ Ms. Lewis testified that no one answered Respondent's phone when she called, that she stopped by the office "quite a few different times" but the office door was always locked. [Hrg. Tr. at 53, 57-58].

⁴ Ms. Lewis was inexperienced with the law and relied on her aunt for guidance and support. [Hrg. Tr. at 46].

A settlement offer of \$10,000.00 was made to Respondent, but he never personally notified Ms. Lewis of the offer, never discussed with her the advantages and disadvantages of accepting or declining the offer, and never discussed with her any demands or counter offers they should make. [Hrg. Tr. at 59, 61].

On June 1, 2021, Mr. O'Brien filed Combined Discovery and Requests for Admissions to Petitioner, but Respondent failed to notify or discuss said discovery with Ms. Lewis and failed to submit responses thereto. Ms. Queen provided incorrect information to Ms. Campbell and Ms. Lewis regarding discovery in a July 7, 2021 email when she said "[d]iscovery was provided to O'Brien months ago—we have not heard a word from any of them for months", when discovery had neither been provided nor answered.⁵ [ODC Ex. 1 at 22; Hrg. Tr. at 116-117].

On August 19, 2021, Mr. O'Brien filed a "Motion for Summary Judgment" against Ms. Lewis, which Respondent failed to personally discuss with his client, or even notify her of its filing.⁶ [ODC Ex. 1 at 15; Hrg. Tr. at 70]. In an email response to Ms. Campbell on September 21, 2021, Respondent first mentioned the pending Motion for Summary Judgment and said a "hearing is set for around the end of October on it...[h]ave Tesla contact us for more information. [ODC Ex. 1 at 41]. Ms. Lewis promptly contacted Respondent's office but was unable to reach him. [Hrg. Tr. at 69-70]. Respondent never contacted Ms. Lewis regarding the summary judgment motion, nor did he provide her with a copy of the Response he filed thereto. [Hrg. Tr. at 66-67]. Ms. Campbell testified that she was not concerned about the motion because she had relied on Ms. Queen's misrepresentation that discovery had been sent, that she knew

⁵ Ms. Lewis only became aware of Respondent's failure to respond to discovery in December 2021 after her case had been dismissed and she obtained a copy of her case file. [ODC Ex. 1 at 15, 51; Hrg. Tr. at 63].

⁶ Ms. Campbell emailed Respondent on August 30, 2021, inquiring about a status update. Respondent responded the same day and did not mention the pending Motion for Summary Judgment. Ms. Campbell asked Respondent to send a copy of the discovery to Ms. Lewis, which never happened. [ODC Ex. 1 at 23]. Ms. Campbell again emailed Respondent on September 23, 2021, asking for a status update, noting the mediation deadline of September 30,

“the other party had an expensive attorney”, and she believed they were “doing motions just to make it look good”.⁷ [Hrg. Tr. at 117].

Respondent filed a “Response in Opposition to the Motion for Summary Judgment” on October 7, 2021, which he did not share with Ms. Lewis. [ODC Ex. 1 at 15]. A hearing was set for October 25, 2021, but Respondent failed to notify Ms. Lewis of the date and time of the hearing or advise that she should attend. [Hrg. Tr. 70-72] Consequently, Ms. Lewis was not present at the October 25, 2021 hearing, and the Court questioned her whereabouts on the record. [ODC Ex. 1 at 47]. Respondent answered that he was “not sure” why she was not there, despite knowing he had not informed Ms. Lewis of the hearing or its significance, and that she most assuredly would have been there had she been made aware. [ODC Ex. 1 at 62; Hrg Tr at 71-72]. The Court specifically asked, “Why is she not here today?”, to which Respondent answered, “Your Honor, I’m not sure, with respect to that”.⁸ [ODC Ex. 1 at 63]. Before the HPS, Ms. Lewis confirmed that she did not attend the hearing because she had not been provided notice by Respondent, and that she would have liked to attend the hearing and discuss the motion with Respondent prior to the hearing. [Hrg. Tr. at 70-72].

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

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].

⁷ Ms. Campbell said she would have “definitely” been scared and worried if she had known Respondent had failed to respond to discovery. [Hrg. Tr. at 117].

⁸ Respondent added “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].

confused. Respondent answered, “I’m gathering that they will...” Judge Hall said, “the sound of it is, you don’t even know that.”⁹ [ODC. Ex. 1 at 61].

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”. [ODC Ex. 1 at 62-68]. The Court further advised that “this is a dispositive motion, and this is the time to present it to the court...”, 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.”¹⁰ [Id.]

On November 17, 2021, the judge granted the respondents’ Motion for Summary Judgment and dismissed Ms. Lewis’ case, but Respondent failed to notify Ms. Lewis of the outcome or advise her of her appeal rights. [ODC Ex. 60 at 1051-54, 1060-61; Hrg. Tr. at 72, 94]. It was not until December 14, 2021 when Ms. Lewis discovered that a hearing had been held on October 25, 2021 in her case without her knowledge or attendance, and she had just a few days to file an appeal. [Hrg. Tr. at 122]. Ms. Lewis quickly scrambled to find new counsel to prepare a notice of appeal despite her new counsel’s acknowledgement that her chances of winning were very slim given Respondent’s lack of timely responses, notices and discovery.¹¹ [Hrg. Tr. at 72, 122].

In his response, 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

⁹ Mr. O’Brien argued to the Court, “[t]here’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].

¹⁰ During the investigation herein, Respondent acknowledged that he believed 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 judgment motion. [ODC Ex. 60 at 1056-59].

¹¹ Retaining the services of another lawyer cost \$1,700.00 in addition to the \$2,300.00 already paid to Respondent. [Hrg. Tr. at 127]. By Memorandum Decision filed January 18, 2023, this Honorable Court found that petitioner had

(\$1,000) for 2 ½ years of work”. [ODC Ex. 3 at 76]. Respondent never discussed the size of the estate with Ms. Lewis, and never obtained an appraisal to determine property value, yet claimed the estate was not large.¹² [Id.; Hrg. Tr. at 49, 231]. Respondent never personally initiated contact or communication with Ms. Lewis during his representation and never shared his concerns with Ms. Lewis that there was a “mismatch in resources”. [Hrg. Tr. at 58]. Ms. Lewis testified that she would have “[m]ost definitely” liked to know Respondent’s concerns during her representation to provide her the opportunity to retain alternative counsel. [ODC Ex. 4 at 87; Hrg. Tr. at 62].

In his answer to the complaint, Respondent said that his not responding to requests for admission was “immaterial” because he would have to admit them all, although in his Answer to the Charges herein he admitted that at least one request would have merited a denial. Ms. Lewis believed several should have been denied, as that was the basis of her claim. [ODC Ex. 3 at 77; Respondent’s Answer #9]. By letter dated December 14, 2022 and follow-up dated January 12, 2023, ODC provided Respondent with a copy of Ms. Lewis’ reply and requested his response pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure and 8.1(b) of the Rules, but Respondent did not respond.¹³ [ODC Ex. 5 & 6].

Per the January 14, 2019 bank statement, Respondent’s IOLTA account had a balance of \$1,239.92.¹⁴ [ODC Ex. 87 at 1488]. No deposits or withdrawals were made to Respondent’s

not submitted evidence below of coercion and affirmed the circuit court’s granting of summary judgment. [ODC Ex. 8 at 172].

¹² Ms. Campbell said the estate was in excess of 146 acres with a value over \$600,000.00. [Hrg. Tr. at 49, 123].

¹³ 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. [ODC Ex. 10]. ODC again requested this information by letter dated April 3, 2023, and Respondent failed to provide the documents. He did send correspondence noting that “it was highly unlikely in retrospect...that [Ms. Lewis] would have prevailed in this case”, which he never shared with Ms. Lewis during her representation. [ODC Ex. 11 & 13].

¹⁴ Respondent’s IOLTA account is maintained at Citizens Bank of Weston, account number 358692; his IOLTA account records from January 2019 through July 2023 were obtained pursuant to a subpoena duces tecum issued by

IOLTA account until a withdrawal of \$1,200.00 was made by Respondent on January 14, 2020, leaving a balance of \$39.81, which was reflected in the February 13, 2020 bank statement.¹⁵ [ODC Ex. 87 at 1488-1512]. Beginning with the March 13, 2020 bank statement, Respondent's IOLTA account 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].

Respondent never deposited Ms. Lewis' payments into his IOLTA account and admitted at his June 14, 2023 sworn statement that he did not use his IOLTA account "other than to keep it active, as is required". [ODC Ex. 60 at 1012]. He testified that if a client paid him a retainer, he would "put it into my business account, typically." [ODC Ex. 60 at 1012]. 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 send out billing invoices. [ODC Ex. 60 at 1011-1016]. 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].

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.¹⁶

Because Respondent failed to act with reasonable diligence and promptness in his representation of Ms. Lewis in the underlying matter causing irreparable harm to Ms. Lewis, he has violated Rule 1.3 of the Rules.¹⁷

the Supreme Court of Appeals on August 3, 2023. [ODC Ex. 85 at 1480; ODC Ex. 87].

¹⁵ There were de minimis adjustments to the account due to interest payments.

¹⁶ **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.

¹⁷ **Rule 1.3 Diligence.** A lawyer shall act with reasonable diligence and promptness in representing a client.

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)¹⁸, 1.4(a)(3) and 1.4(a)(4) of the Rules.¹⁹

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.²⁰

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.²¹

¹⁸ 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, *Lawyer Disciplinary Bd. v. Stanton*, 233 W.Va. 639, 760 S.E.2d 453 (2014).

¹⁹ **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... (3) keep the client reasonably informed about the status of the matter; (4) promptly comply with reasonable requests for information[.]

²⁰ **Rule 1.5(b) Fees.** 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.

²¹ **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... (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.

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 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.²²

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.²³

Because Respondent made a false and misleading 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.²⁴

COUNT II
I.D. No. 22-05-358
Complaint of Robert L. Moats

Complainant Robert L. Moats ("Mr. Moats"), hired Respondent to represent him in a criminal matter and a divorce. In his complaint, Mr. Moats said he struggled with reaching

²² **Rule 3.2. Expediting litigation.** A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client. **Rule 8.4(d). Misconduct.** It is professional misconduct for a lawyer to:...(d) engage in conduct that is prejudicial to the administration of justice.

²³ **Rule 5.3(b). 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;...

Respondent and receiving communication from him, and that Respondent failed to go over his discovery with him. He said he had not been advised by Respondent what he had agreed to in his plea deal, that Respondent never shared some of his documents with him, and that he asked Respondent to file a reconsideration, but he never did. [ODC Ex. 20].

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 days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure. [ODC Ex. 21]. Respondent did not file a timely response.²⁵

Following additional contact and prodding from ODC, Respondent eventually filed a response and claimed he had not seen the ODC complaint or Mr. Moats' correspondence addressed to him in August 2022. [ODC Ex. 23]. Respondent said that although he prepared a Motion for Reconsideration for Mr. Moats, he accepted responsibility for not filing it if that was the case. [Id. at 424]. Per the case docket, there is no Motion for Reconsideration filed in Mr. Moats' criminal matter and no order issued in response. [ODC Ex. 31 at 467-8]. Respondent provided a printout of \$800.00 in payments made to him by Mr. Moats between February 10, 2021 and March 19, 2021.²⁶ [ODC Ex. 23 at 429-30]. Respondent did not deposit Mr. Moats' payments into his IOLTA account, and he admitted in his sworn statement that he did not have a fee agreement with Mr. Moats. [ODC Ex. 60 at 1041; ODC Ex. 87].

²⁴ **Rule 3.3(a)(1). 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...

²⁵ 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].

²⁶ In his response, Respondent said that Mr. Moats was advised that a retainer for his criminal and Abuse and Neglect cases would be \$3,000.00, and that he could pay \$500.00 initially, with the remainder to be paid \$200.00 weekly for 13 weeks. [ODC Ex. 20 at 402].

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. [ODC Ex. 29 at 460].

Because Respondent failed to file the requested motion in Mr. Moats' criminal matter despite Mr. Moats' request that he do so, Respondent has violated Rule 1.1, as previously stated, and Rule 1.2(a) of the Rules.²⁷

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, as previously stated. [Jt. Ex. 1 at 19].

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, as previously stated. [Jt. Ex. 1 at 19].

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.²⁸

Because he failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules, as previously stated. [Jt. Ex. 1 at 20].

²⁷ **Rule 1.2(a) 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...

²⁸ **Rule 1.16(d) Declining or Terminating Representation:** 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 expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

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

On April 17, 2023, Complainant Clifford Ellis, Jr. (“Mr. Ellis”) filed a complaint against Respondent, who had represented him in a civil matter involving a land dispute.²⁹ [ODC Ex. 44]. Mr. Ellis testified that Respondent agreed to represent him for a \$3,000.00 flat fee, and that included a jury trial, if necessary. [Hrg. Tr. at 145]. Mr. Ellis’ representation began when he made his first payment to Respondent on February 21, 2019, and Ms. Queen provided Mr. Ellis with a receipt that shows he made a \$200.00 payment and had a balance of \$2,800.00 for the \$3,000.00 fee. [Hrg. Tr. at 144-45; ODC Ex. 89 at 2004]. Mr. Ellis testified that he received a payment receipt/invoice if he paid in person at Respondent’s office, which he usually paid in cash. If Mr. Ellis wired payments, he did not usually receive a receipt/invoice from Respondent, but he retained his personal receipt of the payment. Mr. Ellis provided receipts/invoices for the following twenty-one payments made to Respondent during his representation, for a total of \$5,250.00, which is \$2,250.00 above the \$3,000.00 flat fee amount.³⁰ [Hrg. Tr. at 147-8; ODC Ex. 89]:

1.	Invoice #44, 2/21/19	\$200.00 (cash), amount due \$2,800.00
2.	Invoice #51, 3/14/2019	\$300.00, amount due \$0.00 ³¹
3.	Invoice #54, 3/18/2019	\$200.00 (cash), amount due \$0.00
4.	No invoice, 4/9/2019	\$300.00 ³²
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

²⁹ For background purposes: Mr. Ellis, a resident of Mingo County, bought a hunting cabin with his girlfriend, Beverly Hurley (“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’ neighbor would pay him \$3,500.00 for a portion of the property. [Hrg. Tr. at 143].

³⁰ These are the minimum payments made by Mr. Ellis, as Respondent’s accounting system is inconsistent, and there are wired payments that could very well be additional payments. It is possible Mr. Ellis paid an additional \$900.00 above the \$5,250.00 to Respondent during his representation.[ODC Ex. 89 at 2007, 2013, 2017, 2020].

³¹This is most likely the invoice for Mr. Ellis’ March 7, 2019 \$300.00 wire because the invoice does not indicate “cash” payment but could be an additional payment. [ODC Ex. 89 at 2006-2007].

³² Wire transaction #51370251816. [ODC Ex. 89 at 2009].

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 ³³
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 ³⁴
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 ³⁵
13.	Invoice #114, 1/15/2020	\$200.00 (cash), amount due \$0.00
14.	No invoice, 2/25/2020	\$200.00 (cash) ³⁶
15.	No invoice, 4/17/2020	\$400.00 (wire) ³⁷
16.	No invoice, 6/24/2020	\$400.00 (wire) ³⁸
17.	No invoice, 8/3/2020	\$200.00 (wire) ³⁹
18.	No invoice, 8/3/2020	\$200.00 (wire) ⁴⁰
19.	No invoice, 10/6/2020	\$400.00 (wire) ⁴¹
20.	No invoice, 1/8/2021	\$250.00 (wire) ⁴²
21.	No invoice, 1/20/2021	\$250.00 (wire) ⁴³

Total payments \$5,250.00

Mr. Ellis made several individual payments with the hope to pay his bill in full as soon as possible. He testified that he cannot read and write and “can’t keep up with stuff. [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.⁴⁴ [Hrg. Tr. at 149, 159-60]. Respondent never requested additional money above the \$3,000.00 flat fee from Mr. Ellis. [Id. at 149]. The invoices do not show a balance owed or total paid after the initial payment on February 21, 2019. [ODC Ex. 89]. Mr. Ellis sought the assistance of his granddaughter to calculate his payments and realized he

³³ This is 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].

³⁴ This is 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].

³⁵ This is 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].

³⁶ 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]

³⁷ Wire transaction #5141773444. [ODC Ex. 89 at 2023].

³⁸ Wire transaction #26623582468. [ODC Ex. 89 at 2024].

³⁹ Wire transaction #26623595327. [ODC Ex. 89 at 2025].

⁴⁰ Wire transaction #26623595531 [ODC Ex. 89 at 2025].

⁴¹ Wire transaction #27035786430. [ODC Ex. 89 at 2026].

⁴² Wire transaction #27259191145. [ODC Ex. 89 at 2027].

⁴³ Wire transaction #272508050913. [ODC Ex. 89 at 2028].

⁴⁴ Mr. Ellis testified Ms. Queen was aware of Mr. Ellis’ reading and writing challenges. [Hrg. Tr. at 160].

had significantly overpaid Respondent. [Hrg. Tr. at 148-49]. Mr. Ellis requested a refund from Ms. Queen for the amount he overpaid, and Ms. Queen “said she would tell [Respondent]”, but neither she nor Respondent ever got back with him, and he never received a refund for his overpayment. [Hrg. Tr. at 149-150].

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 \$250.00 each month, for a total of “either \$2,300.00 or \$3,000.00”. [ODC Ex. 60 at 1020]. Respondent did not deposit Mr. Ellis’ payments into his IOLTA account located at Citizens Bank of Weston. [ODC Ex. 87].

Mr. Ellis testified that during his representation, he regularly tried calling Respondent’s office and no one answered or 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 secretary said, they’re in there. They answer it when I call. So you’ve got the right number.” [Hrg. Tr. at 160]. Mr. Ellis visited Respondent’s office to make payments to Ms. Queen but did not meet with Respondent during those visits. Respondent “would come by and say howdy and keep it moving.” [Hrg. Tr. at 192]. Two mediations were held during the case for which Mr. Ellis paid out of pocket at the time of the mediations, and Respondent left in the middle of both of them.⁴⁵ [Hrg. Tr. at 153, 185].

Mr. Ellis testified that there was a bench trial in the matter and both parties had initially agreed to pay him \$7,500.00 for the portion of his property, and Ms. Queen prepared the deed to execute the order. [Hrg. Tr. at 154-56]. 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

⁴⁵ Payments for the mediations were paid by Mr. Ellis at the mediation and not included in the payments outlined above. [Hrg. Tr. at 153].

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 \$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. [Hrg. Tr. at 155]. Mr. Ellis said Respondent agreed to reduce the amount Respondent was to receive to \$3,500.00 without discussing it with him. The other party was to prepare the new deed. [Hrg. Tr. at 153-157].

Per emails provided by Respondent, Ms. Queen was the main source of information and communication to Mr. Ellis and Ms. Hurley, who both appeared eager to complete the transaction, and that the delay and mistakes were making them frustrated and paranoid. [ODC Ex. 53]. The judge had ordered the deed to be executed and the matter to be resolved within thirty days of its Order of November 16, 2022. The deed was prepared by the opposing party and sent to Respondent on December 7, 2022, but Respondent had not sent it to Mr. Ellis as of January 2, 2023. [ODC Ex. 50 at 643; ODC Ex. 53 at 678].

Immediately upon receipt on January 10, 2023, Ms. Hurley alerted Ms. Queen to an incorrect property description contained in the deed, where 5/8’ versus 5/8” had been used, and she needed clarification on the use of “and” versus “or”. [ODC Ex. 53 at 677]. Respondent never personally answered Ms. Hurley’s questions and 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.⁴⁶ [ODC Ex. 50 at 639].

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. [ODC Ex. 53 at 676]. On February 28, 2023, Ms. Hurley

⁴⁶ Three days prior, 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 Respondent’s office voicemail box was full. Ms. Queen said they had not received the deed, that she was “not impressed with [Mr. Tissue’s] 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].

informed Ms. Queen that they had received the deed, but that the 5/8' versus 5/8" description mistake remained. [Id. at 675]. It was not until two weeks later on March 13, 2023 that Respondent emailed Mr. Tissue notifying him that the property description typo remained. [Id at 668]. Four days later on March 17, 2023, Ms. Queen notified Ms. Hurley that she was mailing out the corrected deed, but Mr. Ellis never received a corrected deed from Respondent.⁴⁷ [ODC Ex. 53 at 674; Hrg. Tr. at 166].

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 Ms. 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.⁴⁸ [ODC Ex. 50 at 643].

As outlined in the renewed contempt petition, Plaintiffs' counsel had contacted Respondent on January 3, 2023, inquiring about the status of the deed, and by date of the petition, January 27, 2023, Mr. Tissue had still not received the deed from Respondent. [ODC Ex. 50]. In the motion, Plaintiffs' counsel requested Mr. Ellis be responsible for court costs in the amount of \$500.00, and the matter was scheduled for hearing for Monday, February 27, 2023.⁴⁹ [Id. at 639].

Despite his assurances they would execute the deed, Respondent failed to communicate further with Plaintiff's counsel until March 13, 2023, at which time Respondent informed him that the typographical error in the description, where 5/8' should have been 5/8", remained. The

⁴⁷ On March 31, 2023, Ms. Hurley notified Ms. Queen via text that they had still not received the corrected deed, and Ms. Hurley was worried they might not receive the money upon deed execution. She suggested for everyone to execute the deed at the lawyers' offices. Ms. Queen indicated she would mail another copy. [ODC Ex. 53 at 673]. On April 3, 2023, Ms. Hurley again notified Ms. Queen that they had not received the documents, and Ms. Queen did not respond. [ODC Ex. 53 at 673].

⁴⁸ Mr. Ellis had been ordered to convey the 0.011 acre tract/encroachment, by deed, to the Plaintiffs for consideration of \$3,500.00 within thirty days of entry of the Order. [Id. at 638-641].

⁴⁹ With the hearing looming on Monday, Respondent contacted Mr. Tissue that Friday regarding changes suggested by his client more than a month earlier. 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.

error was finally corrected by Plaintiffs' counsel on March 17, 2023. As noted above, Mr. Ellis never received a corrected deed in the mail that he could sign and execute, and Respondent never communicated further with Mr. Ellis or Ms. Hurley about the situation. [ODC Ex. 53 at 671; Hrg. Tr. at 160, 166].

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 Respondent did not file a timely response.⁵⁰ [ODC. Ex. 45].

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, stating they had not heard from Respondent for more than a month after agreeing to drop the initial contempt petition.⁵¹ [ODC Ex. 50 at 638-42]. Respondent did not notify Mr. Ellis of the Renewed Motion for Contempt, or the hearing scheduled for June 5, 2023.⁵² [Hrg. Tr. at 171]. During that time, Mr. Ellis tried to contact Respondent and/or Ms. Queen more than a dozen times and received no answer, and even contacted the judge's office seeking assistance, which is when he was informed by the judge's secretary that a second contempt petition had been filed against him with a hearing scheduled the next day. [Hrg. Tr. at 171-2].

In his untimely response to the complaint, Respondent blamed the "intransigence of Mr. Ellis" as being the primary problem in the underlying matter and that he had over "200 hours" involved.⁵³ [ODC Ex. 53 at 665]. Respondent admitted to not answering all of Mr. Ellis' calls

50 at 639]. Plaintiffs' counsel had dropped the Petition for Contempt in good faith after his communication with, and assurances from, Respondent.

⁵⁰ By letter dated May 25, 2023, sent via certified and U.S. mail, the ODC sent a second notice to 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].

⁵¹The plaintiffs requested the Court hold Mr. Ellis responsible for court costs of \$1,500.00 at a minimum and fined \$2,000.00 for "contumaciously refusing to comply with the Court's orders". [ODC Ex. 50 at 640].

⁵²Respondent was notified of the contempt hearing by Order dated May 16, 2023. [ODC Ex. 50 at 657].

⁵³ Respondent provided no record of billable hours and admitted he does not regularly keep track of his hours billed

because there were so many of them, and that Mr. Ellis even attempted to communicate with Ms. Queen on the weekends.⁵⁴ [Id. at 666].

A hearing on the Renewed Petition for Contempt was held on June 5, 2023, before The Hon. Jacob E. Reger, in the Circuit Court of Upshur County, in which Mr. Tissue appeared for the plaintiffs. Mr. Ellis was present, but Respondent failed to appear on behalf of Mr. Ellis, despite remaining counsel of record. [ODC Ex. 56 at 697-99]. At the hearing, Judge Reger asked Mr. Ellis if he had terminated Respondent's representation, because "[t]hat's what they were telling me." [Id. at 697]. Mr. Ellis denied terminating Respondent and 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." [Id. at 697]. Respondent 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. at 250; ODC Ex. 56]. 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 during the hearing. [Id. at 698]. 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." [Id.]. The contempt hearing proceeded without Mr. Ellis having legal representation because although Respondent was on the telephone due to the judge calling him, Respondent did not advocate on Mr. Ellis' behalf in the matter. [ODC Ex. 56].

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."⁵⁵ [ODC Ex. 56 at 702]. The Court expressed frustration with the confusion over the deeds,

in his retained cases. [ODC Ex 60 at 1013].

⁵⁴ Mr. Ellis testified before the HPS that Ms. Queen asked him to call her on the weekends. [Hrg. Tr. at 161].

⁵⁵ Mr. Ellis informed the Court that he had "been trying to get the deed for over a month," to which Respondent interjected on his own behalf that the deed had been sent twice, with the corrected one being sent on "the 9th of March". [ODC Ex. 56 at 705]. However, the record shows that Respondent had not notified Mr. Tissue that the 5/8

and the judge made the correction himself with a pen and instructed them to sign it.⁵⁶ [Id. at 706]. 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.” [Id. at 708]. 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 “my attorney’s not been helping me. I mean, he’s not done nothing for me.” [Id. at 709]. The judge took the Motion for Contempt under advisement and gave them ten days to get the deed signed and returned to Mr. Tissue, and then for the check to be sent to Mr. Ellis. [Id. at 710-11]. Mr. Ellis received the deed from Mr. Tissue on the ninth day and personally overnighted it to Mr. Tissue to make sure it was completed on time.⁵⁷ Respondent did not assist Mr. Ellis in executing the deed or resolving the matter.⁵⁸ [Hrg. Tr. at 180].

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) of the Rules, as previously stated.

error remained until March 13, 2023, and Ms. Queen was aware Mr. Ellis reported he had not received a corrected deed. [ODC Ex. 52 at 653].

⁵⁶ Judge Reger was further frustrated with Mr. Ellis that Ms. Hurley was not present for the hearing to execute the deed. Mr. Ellis explained to the Court that he believed only one was needed to sign the deed because there is an “or” instead of an “and”. Judge Reger informed Mr. Ellis that he was wrong, that Ms. Hurley needed to sign the deed, and Mr. Ellis revealed that Ms. Hurley was in the hospital “fighting for her life.” [Id. at 707].

⁵⁷ The deed he received from Mr. Tissue still contained the description error pointed out by Mr. Ellis, which he executed despite the error to comply with the court order. [Hrg. Tr. at 179-80].

⁵⁸ Mr. Ellis requested to have his documents returned to him, but Respondent informed him that the “judge threw it in the trash”. [Hrg. Tr. at 182]. 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.” [Id.]. He said he had given Respondent pictures, discs, and other documents, and he received “nothing” from Respondent. [Id. at 181-82].

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, as previously stated. [Jt. Ex. 1].

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, as previously stated.

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 Rule 1.16(d), as previously stated, and Rule 1.16(c) of the Rules.⁵⁹

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 never properly corrected and required 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 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, as previously stated.

Because Respondent charged Mr. Ellis a \$3,000.00 flat fee for his representation, but Mr. Ellis provided payment receipts showing at least \$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) of the Rules.⁶⁰

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, as previously stated.

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 and included requests for significant monetary fines and potential jail time, Respondent has again violated Rule 8.4(d), as previously stated, and Rule 3.4(c) of the Rules.⁶¹

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 at 29].

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

Respondent represented Complainant Roger K. Stobart ("Mr. Stobart") in a criminal matter during all pre-trial and trial proceedings in the Circuit Court of Upshur County, during which

⁵⁹**Rule 1.16(c). Declining or Terminating Representation.** 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.

⁶⁰**Rule 8.4(c). Misconduct.** It is professional misconduct for a lawyer to: ...engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

⁶¹**Rule 3.4(c). Fairness to Opposing Party and Counsel.** A lawyer shall not:...(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.

Mr. Stobart was convicted at trial on November 19, 2020.⁶² [ODC Ex. 61]. Respondent maintained possession of all records and documents for appeal purposes. [Id.]. After the initial appeal discussion, Respondent failed to communicate with Mr. Stobart regarding the matter and never responded to any of the numerous letters sent by Mr. Stobart.⁶³ Ultimately, Respondent never provided Mr. Stobart with information regarding the outcome of his appeal, and Mr. Stobart only discovered his appeal had been denied when he received the notice from this Honorable Court. [Hrg. Tr. at 31].

Mr. Stobart sent a letter to Respondent on April 12, 2023, requesting that Respondent send him all legal files, transcripts, and/or any materials related to his case, but Mr. Stobart received no response. [ODC Ex. 61 at 1068]. Mr. Stobart sent a second letter to Respondent on May 15, 2023, again requesting the documents, and this request also went unanswered. [ODC Ex. 61 at 1069]. Mr. Stobart testified that he is unable to work on his Habeas Corpus petition without his documents and case file, and he needs his documents to show reasonable cause to qualify for a state appointed counsel, that he “can’t do nothing without it.” [Hrg. Tr. at 28]. 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]. When asked at the hearing if Respondent had returned his documents, Mr. Stobart said, “Never. To this day, he still hasn’t. My family went to the courthouse to try 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]. Mr. Stobart feels that Respondent “abandoned” him and has

⁶²Case Number 20-F-46 in the Circuit Court of Upshur County.

⁶³By correspondence dated April 24, 2022, Mr. Stobart contacted Respondent, requesting an update as 6 months had gone by, but he received no response. [ODC Ex. 61 at 1070]. By letter dated July 14, 2022, Mr. Stobart again requested information and a status update on his claim, and received no response. [Id. at 1071]. Mr. Stobart again wrote to Respondent on September 23, 2022, requesting information and a status update, and received no response. [Id. at 1072].

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].

By letter dated July 21, 2023, the ODC advised Respondent that it had opened a complaint and asked that he file a response thereto within twenty days of receipt, but Respondent did not timely respond.⁶⁴ [ODC Ex. 62]. Eventually Respondent submitted an untimely response to ODC on August 29, 2023, wherein 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]. 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.⁶⁵ [ODC Ex. 66 at 1106]. 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.”⁶⁶ [Hrg. Tr. at 33]. Respondent admitted to having received multiple letters from Mr. Stobart requesting updates, but “had nothing to report to him”, and did not respond. [ODC Ex. 66 at 1100].

By letter dated December 5, 2023, Mr. Stobart replied that he had not received any of his documents or case file from Respondent. [ODC Ex. 68]. By correspondence dated December 14, 2023, ODC sent a copy of Mr. Stobart’s letter to Respondent, requesting a response thereto

⁶⁴By 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].

⁶⁵Respondent submitted a document dated December 13, 2022, marked “copy”, which was unsigned by Respondent. 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].

within twenty days of his receipt of the letter subject to Rule 8.1(b) of the Rules of Professional Conduct, but Respondent failed to timely respond.⁶⁷ [ODC Ex. 69].

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, as previously stated.

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, as previously stated.

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, Respondent has violated Rules 1.16(d) and 8.4(d), as previously stated. [Jt. Ex. 1 at 32].

Because he failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules, as previously stated. [Jt. Ex. 1 at 33].

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

Complainant Lisa J. Thomas ("Ms. Thomas") said Respondent has been her attorney for five years in a property dispute matter, and that he had failed to communicate with her. [ODC Ex. 77; Jt. Ex. 1 at 33]. By letter dated October 10, 2023, the ODC advised Respondent that it had

⁶⁶Mr. Stobart testified that he had received the initial appeal documents from Respondent in October 2021, but never the appeal outcome, or his case file and other documents. [Hrg. Tr. at 37].

⁶⁷ By correspondence sent via certified and U.S. mail dated January 11, 2023, the ODC again notified Respondent of its request for him 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]. A series of emails were exchanged between Disciplinary Counsel and Ms. Queen in February 2024 at the email address of bwbaileylawoffice@gmail.com in an attempt to receive a response from Respondent. [ODC Ex. 72 and 73]. At Ms. Queen's request, 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, and Respondent failed to respond. [ODC Ex. 74; ODC Ex. 75].

opened a complaint and asked that he file a response within twenty days of receipt, but he never responded to Ms. Thomas' complaint.⁶⁸ [ODC Ex. 78].

Because Respondent failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules, as previously stated. [Jt. Ex. 1 at 34].

II. SUMMARY OF ARGUMENT

The HPS found that the evidence established by clear and convincing proof that Respondent, an attorney with substantial experience, committed serious violations of the Rules of Professional Conduct and knowingly violated his duties owed to Ms. Lewis, Mr. Moats, Mr. Ellis, Mr. Stobart, the public, the legal system, and the profession, and that his actions caused actual harm. Further, there are aggravating factors present and no mitigating factors to be considered. Accordingly, the HPS correctly recommended Respondent's license to practice law be annulled, and restitution be made to Mr. Ellis, as well as compliance with Rule 3.28 of the Rules of Lawyer Disciplinary Procedure, and payment of costs pursuant to Rule 3.15.⁶⁹

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This Honorable Court's Order of June 13, 2025 stated that the Clerk of the Court will, at a later date, provide the parties with a Notice of Argument under Rule 19(b).

⁶⁸ 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]. 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. [ODC Ex. 83; Jt. Ex. 1].

⁶⁹Ms. Campbell testified at the hearing that Respondent caused Ms. Lewis to expend an additional \$1,700.00 to appeal the summary judgment decision caused by Respondent's failure to competently represent Ms. Lewis. [Hrg. Tr. at 127].

IV. ARGUMENT

A. STANDARD OF PROOF

In lawyer disciplinary matters, a *de novo* standard applies to a review of the adjudicatory record as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions. This Court gives respectful consideration to the recommendations of the Lawyer Disciplinary Board while ultimately exercising its own independent judgment. On the other hand, substantial deference is given to the Board's findings of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record. Syl. Pt. 2, *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286, 452 S.E.2d 377 (1994).

The charges against an attorney must be proven by clear and convincing evidence pursuant to Rule 3.7 of the Rules of Lawyer Disciplinary Procedure. *See also* Syl. Pt. 1, *Lawyer Disciplinary Board v. McGraw*, 194 W. Va. 788, 461 S.E.2d 850 (1995). At the Supreme Court level, “[t]he burden is on the attorney at law to show that the factual findings are not supported by reliable, probative, and substantial evidence on the whole adjudicatory record made before the Board.” *Lawyer Disciplinary Board v. Cunningham*, 195 W. Va. 27, 39, 464 S.E.2d 181(1995).

The Supreme Court of Appeals has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. *Lawyer Disciplinary Board v. Taylor*, 192 W.Va. 139, 451 S.E.2d 440 (1994). The Supreme Court of Appeals is the final arbiter of formal legal ethic charges and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys' licenses to practice law. Syl. Pt. 3, *Committee on Legal Ethics v. Blair*, 174 W.Va. 494, 327 S.E.2d 671 (1984).

B. THE FINDINGS OF THE HPS ARE SUPPORTED BY RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE

Indeed, substantial deference is to be given to the Lawyer Disciplinary Board's findings of fact unless the findings are not supported by reliable, probative, and substantial evidence on the whole record. Syl. Pt. 3, *Committee on Legal Ethics v. McCorkle*, 192 W. Va. 286, 452 S.E.2d 377 (1994). Further, the HPS "hears testimony of the witnesses firsthand and, being much closer to the pulse of the hearing, is much better situated to resolve such issues as credibility." *Id.* at 290, 381. The review of the record in this case, which includes numerous exhibits, significant witness testimony, and admissions made by Respondent, offers substantial support that the findings of fact made by the HPS should not be disturbed. In addition, the reliable, probative, and substantial evidence also supports the findings that Respondent violated multiple Rules of Professional Conduct as determined by the HPS regarding all five counts of the Statement of Charges.

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

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

- 1. Respondent violated duties he owed to a third party, 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, with one of the highest duties imposed upon a lawyer is safekeeping funds that are entrusted into his or her care as a legal professional and keeping those funds secure and separate from the lawyer's own funds and property. The record reflects that Respondent fell short of these duties. Respondent admittedly failed to use his IOLTA account for many years, and this admission is supported by his IOLTA account records. [ODC Ex. 60 at 1012; ODC Ex. 87]. Respondent failed to deposit client funds into his IOLTA account and, instead, immediately deposited the entire amount into his operating account. [ODC Ex. 60 at 1012]. A flat fee 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. Every time Respondent converted unearned client funds that should have been placed into his IOLTA account into his operating account without performing the proper accounting, he breached his fiduciary duty. In addition, with the misappropriation of Mr. Ellis' money in excess of the fee amount, he breached a lawyer's duty of trust.

Additionally, 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, and 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. [ODC Ex. 56 at 705; ODC Ex. 53 at 665] Ultimately, Respondent never provided his client with a copy of the corrected deed, nor did he work to resolve the matter. [Hrg. Tr. at 166]. Respondent's dilatory conduct in this matter created unnecessary tension and frustration on the part of Mr. Ellis, the opposing party, and the court, 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. Moreover, 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.⁷⁰

Respondent constructively abandoned Mr. Ellis when he failed to appear at a noticed hearing without first withdrawing pursuant to the Rules of Professional Conduct. [ODC Ex. 56]. 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 before a judge who were under the mistaken belief that Mr. Ellis was difficult due to the misrepresentations made by Respondent. [Id.]. Ultimately, Mr. Ellis resolved his lawsuit without the assistance of Respondent, despite paying him \$2,250.00 more than he had agreed to. Mr. Ellis, who shared that he cannot read and write well and that Respondent's office 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 Mr. Ellis that he had fully paid his fee as of February 2020, and Respondent accepted payments from Mr. Ellis for another year before Mr. Ellis discovered the error. [Hrg. Tr. at 148-9]. Respondent's 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.⁷¹ 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 the overpayment was never even addressed. [Id. at 149].

⁷⁰ Mr. Ellis only discovered that a hearing was scheduled when he called the court seeking assistance because Respondent failed to communicate with him. [Hrg. Tr. at 171-2].

⁷¹ 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. [ODC Ex. 89].

Respondent repeatedly violated duties owed to Ms. Lewis throughout his representation when he failed to investigate or develop her case, failed to communicate personally or provide her with legal direction or guidance, improperly relied on Respondent's non-lawyer staff to handle all communications including discussions wherein Ms. Lewis' informed consent was required, failed to seek or respond to discovery, failed to notify Ms. Lewis of crucial substantive motions and hearings that ultimately resulted in her case being dismissed, and failed to inform her of substantive court decisions and her legal rights thereto. Ms. Lewis provided heartfelt testimony pertaining to the significant and irreparable harm she has suffered.

Respondent violated his duty to Mr. Stobart when he failed to keep Mr. Stobart informed about his case, failed to respond to reasonable requests for information, failed to notify him of the outcome of his appeal, and failed to return the case file to Mr. Stobart despite multiple requests to do so.⁷² Respondent's disregard for the obstruction his actions had on Mr. Stobart's ability to pursue additional legal remedies is very troubling. At the hearing, Mr. Stobart spoke of the hurt, frustration, and difficulty Respondent's conduct has caused him and his family.

Respondent violated his duty to Mr. Moats when he failed to file the Motion for Reconsideration as promised. [ODC Ex. 20 at 403; ODC Ex. 58 at 720-722]. Additionally, Mr. Moats requested that his case file and documents be returned to him, which did not happen, despite Respondent being required to do pursuant to Rule 1.16(d) of the Rules.⁷³

To compound Respondent's failures, upon questioning by judges regarding the concerning legal circumstances his misconduct created (i.e. failing to answer discovery, contempt hearings), Respondent repeatedly sacrificed his clients' positions and provided courts with incorrect

⁷² 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. [Hrg. Tr. at 38].

⁷³ 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].

information to protect himself.⁷⁴ Respondent's normal protocol was to not communicate with his clients. He passed 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, which they often relied upon to their detriment. Additionally, Respondent violated his duties to his clients generally when he failed to execute fee agreements, which is required pursuant to Rule 1.5(b) of the Rules. [ODC Ex. 60 at 1013].

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. As noted above, Respondent abdicated his job duties to his non-lawyer assistant, and failed to adequately supervise her actions. Every complainant who testified shared the same story, that Ms. Queen was their main, if not only, contact during Respondent's representation, that Respondent never initiated communication, and he was not available to his clients.⁷⁵ The complainants sought representation of a lawyer and paid Respondent for those services. As the responsible attorney, Respondent is accountable, pursuant to Rule 5.3, for Ms. Queen's conduct, including the significant errors Ms. Queen made in misrepresenting information to clients, and also for not realizing when a client overpaid thousands of dollars. [ODC Ex. 1 at 22; ODC Ex. 89].

Additionally, Respondent failed to timely respond to disciplinary counsel regularly throughout these proceedings, which is a violation of his duties as an officer of the court

⁷⁴Respondent feigned ignorance as to Ms. Lewis' absence at the summary judgment hearing and misstated to the court that he had sent Mr. Ellis two deeds despite knowing Mr. Ellis repeatedly informed them that he never received the corrected deed. [ODC Ex. 1 at 62; ODC Ex. 56 at 705-707; ODC Ex. 53 at 668].

⁷⁵Ms. Queen was tasked with almost every duty in the office, including but not limited to answering the phone, reviewing and answering mail, listening to messages, responding to messages, preparing deeds, communicating with

pursuant to Rule 8.1 of the Rules. Moreover, Respondent's mail system is an unacceptable and dangerous practice.⁷⁶

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, Ms. Thomas, to the public, to the legal profession and the legal system.

2. Respondent acted knowingly.

Rule 1.0(f) of the Rules of Professional Conduct states that a person's knowledge may be inferred from the circumstances. In the complaints herein, there is no evidence to suggest that Respondent did not act knowingly as he failed to use his IOLTA account; failed to execute fee agreements; failed to monitor client payments and funds; failed to properly supervise his staff; failed to provide competent representation to his clients; failed to effectively communicate with his clients; failed to respond to their requests for information or to provide them with enough information for informed consent; failed to respond to disciplinary counsel; failed to respond to discovery; failed to notify clients of hearings and dispositive motions that required their input; failed to attend a hearing when he was attorney of record; failed to properly withdraw from a case; and failed to return client documents for years after they were requested. The misconduct on the part of Respondent was not isolated and not the result of simple negligence or mistake but was pervasive and persisted over the course of many years. Thus, it is apparent that Respondent

clients, preparing documents, mailing documents, accepting payments, depositing payments, and more.

⁷⁶Respondent regularly claimed he did not receive important items in the mail, then also claimed he had sent important items that were never received, as shown by the multiple attempts by ODC to send and receive documents; all certified mail was returned as unclaimed.

has acted with conscious awareness of the nature or attendant circumstances of his conduct regarding the instant charges.

Importantly, 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 without any accounting system in place. The rules are clear on a lawyer's duty in this regard. Additionally, Respondent knowingly failed to keep track of the funds paid to him by his clients. It is imperative that a lawyer scrutinizes accounts containing client and third-party funds for accuracy, and in not doing so, 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).

3. Respondent's misconduct caused actual injury and harm.

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 both 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 in the end, was left to defend himself in court against opposing counsel and Respondent and conclude the case without legal assistance.⁷⁷ [ODC Ex.

⁷⁷ 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, never ensuring that his client received the corrected

56]. Ms. Lewis also 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 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. Likewise, Mr. Stobart was directly harmed by Respondent's misconduct as he sat in prison wondering about his case and requesting 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 potential for harm to his clients, the public, and the entire legal community given Respondent's misconduct.

4. Aggravating factors are present and no mitigating factors 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. Respondent's public file reveals multiple complaints regarding similar conduct as the complaints herein, in which the ODC and

deed, and washing his hands of the case before its resolution. [ODC Ex. 50 at 652-3; Hrg. Tr. at 180]. A review of the contempt hearing transcript reveals the struggle Mr. Ellis faced while unrepresented in a proceeding where Respondent had portrayed him as difficult to both opposing counsel and the court, when Respondent had created the delay and suspicion. [ODC Ex. 56 at 698-9, 705].

Investigative Panel had been concerned about his conduct, but only warned him due to his lack of prior discipline.⁷⁸

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 dilatory in all matters and failed to notify his clients of important dates, 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

⁷⁸ 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 matters in *Office of Disciplinary Counsel v. Brian Bailey*. [ODC Ex. 88 at 1964]. Respondent received another warning by the Investigative Panel of the Lawyer Disciplinary Board for conduct involving Rules 1.3 and 1.4(a)(3) of the Rules, two of the rules Respondent violated herein, on December 17, 2021, in *Max Lee v. Brian Bailey*. [ODC Ex. 88 at 1971-1979]. Respondent was admonished by the Investigative Panel of the Lawyer Disciplinary Board for a violation of Rule 1.16(d) of the Rules, also a rule violation herein, on October 22, 2022, in *Everett Davis v. Brian Bailey*. [ODC Ex. 88 at 1995-1998].

aggravating factor. In the matter herein, there are five complainants and thirty-nine 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 caused almost every result that his clients suffered 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.

Moreover, 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.

D. THE RECOMMENDED SANCTION IS CORRECT

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, the 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 purpose other than that for which intended . . . including not only stealing but also unauthorized temporary use for lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." Black's Law Dictionary (6th 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.

This Honorable Court has adhered to a bright-line rule for knowing misappropriation of funds by an attorney. 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; 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; 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; 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; law license was annulled, and he was ordered to pay restitution in the amount of \$500.00 to his client).

Most recently in *Lawyer Disciplinary Board v. Greer*, this Honorable Court stated that “[t]he formation and proper operation of an IOLTA account represents a key protection of funds rightfully belonging to clients against commingling and misappropriation. Mr. Greer’s habitual, blatant, and knowing misappropriation of his clients’ funds rendered serious harm not only to his clients but to the legal profession as a whole.” *Id.*, 917 S.E. 2d 1, 11 (2024). The same is true of Respondent’s conduct herein with all clients he represented during the time period covered by the bank records since Respondent admittedly never deposited any client money into his IOLTA account. It’s not enough to simply have an IOLTA account; it must be properly used, as well. Moreover, Respondent’s acceptance of thousands of dollars above the agreed upon fee from Mr. Ellis, an illiterate client, further illustrates his dangerous payment system and complete disregard of his fiduciary duty to his clients. Respondent never deposited the unearned client money into his IOLTA account, and he failed to review the overpayment after it was brought to their attention.

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. He harmed Mr. Ellis, and potentially harmed Ms. Lewis and 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. [ODC Ex. 87]. The repeated acts of misappropriation and

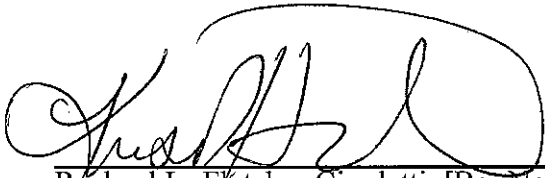
conversion of funds when he placed all client money into his operating account exhibit a lack of judgment and touches the very essence of the public's perception of the legal system. There are no compelling mitigating circumstances to overcome the presumption of disbarment for conduct of this nature.

V. CONCLUSION

The HPS properly considered the reliable, probative, and substantial evidence on the whole adjudicatory record, the factors set forth in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure, and applicable law, and made an appropriate recommendation to this Honorable Court. The factual findings clearly and convincingly establish that in the instant proceedings; Respondent has engaged in numerous violations of the Rules of Professional Conduct. Respondent's course of misconduct cannot be condoned or excused. For the reasons set forth above, the ODC urges that this Honorable Court uphold the following recommendations and sanctions contained in the Report of the HPS of the Lawyer Disciplinary Board in this matter, as listed below:

- A. Respondent's law license be annulled;
- B. That Respondent make restitution to Clifford Ellis, Jr. in the amount of \$2,250.00;
- C. That Respondent 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 Office of Lawyer Disciplinary Counsel
By counsel



Rachael L. Fletcher Cipoletti [Bar No. 8806]

Chief Lawyer Disciplinary Counsel

rfcipoletti@wvdc.org

Kristin P. Halkias [Bar No. 7167]

Lawyer Disciplinary Counsel

khalkias@wvdc.org

Office of Lawyer Disciplinary Counsel

West Virginia Judicial Tower, Suite 1200

4700 MacCorkle Avenue SE

Charleston, West Virginia 25304

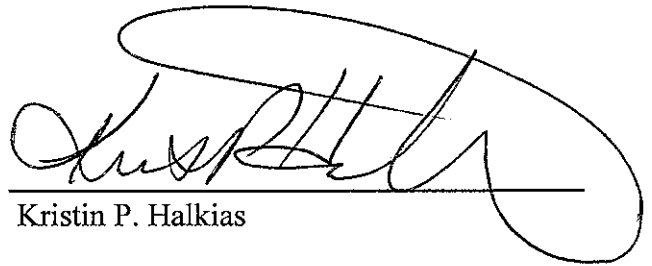
(304) 558-7999

(304) 558-4015 *facsimile*

CERTIFICATE OF SERVICE

This is to certify that I, Kristin P. Halkias, Senior Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 4th day of August, 2025, served a true copy of the foregoing "**Brief of the Lawyer Disciplinary Board**" upon Respondent Brian W. Bailey, electronically via File & Serve Xpress, to the following address:

bwbaileyesq@gmail.com



Kristin P. Halkias