

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

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

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

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**STATEMENT OF CHARGES**

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**To:** Brian W. Bailey  
17 West Main Street  
Buckhannon, West Virginia 26201

**YOU ARE HEREBY** notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Disciplinary Procedure, upon the following charges against you:

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

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

2. Paragraph 1 is incorporated by reference.
3. In her verified complaint filed on or about February 11, 2022, Complainant Tesla Lewis stated that she retained Respondent in 2019 to file a Petition to Contest Validity of a Will Admitted to Probate in Upshur County Circuit Court Case Number 20-C-19, which was filed on February 25, 2020.
4. Ms. Lewis said that two of the four respondents in the matter retained the same counsel, Mr. O'Brien, and he filed their answer June 2, 2020.
5. Ms. Lewis said the other two respondents failed to file an answer, and Respondent failed to file a Motion for Default Judgment in response.
6. Ms. Lewis stated that the main form of communication with Respondent was via texting his secretary, Heather Queen, and that most of the time when she called Respondent's office no one answered the phone.
7. Ms. Lewis texted Respondent's secretary several times from May 2020 until December 2020 inquiring about a date for the scheduling conference and status updates without success.
8. Ms. Lewis believed Respondent delayed her case by failing to request a hearing date for a scheduling conference in a timely manner. She alleges that the scheduling conference was ultimately scheduled because her aunt, Jackie Campbell, who works for another lawyer in the area, contacted the court and asked that a hearing be scheduled. Ms. Lewis said the scheduling conference was "immediately set for January 12, 2021."
9. Ms. Lewis discovered in December 2021 that Mr. O'Brien had filed discovery/ requests

for admission on May 27, 2021, but Respondent had failed to submit responses or any discovery in her case. She said Respondent never brought the requests to her attention or sought her assistance with their completion.

10. Ms. Lewis reported that when she contacted Respondent's office on July 7, 2021, to inquire about the status of her case, Respondent's secretary had lied to her and said, "Discovery was provided to O'Brien (respondent's attorney) months ago—we have not heard a word from any of them for months."
11. Ms. Lewis said Respondent failed to inform her of the Motion for Summary Judgment, which was filed on August 19, 2021, and received by Respondent on August 24, 2021. She noted that Ms. Campbell had emailed Respondent on August 30, 2021, inquiring about a status update and that he had failed to notify her of the Motion for Summary Judgment received by him six days earlier.
12. Ms. Lewis said that Respondent first mentioned the Motion for Summary Judgment to her aunt in an email dated September 23, 2021, wherein he said a "hearing is set for around the end of October on it. Have Tesla contact us for more information." Ms. Lewis said she contacted the office but was unable to reach Respondent, and that "[h]e never once tried calling or texting me about the motion or hearing date."
13. Since she did not know the date of the hearing, Ms. Lewis did not attend the Summary Judgment hearing. She believes that her not attending the hearing hindered her case "tremendously" based on the transcript of the hearing showing that Respondent failed to present any evidence in response to the motion.
14. Ms. Lewis reported that when she retained Respondent in August 2019, she had provided a list of potential witnesses, including a hospice nurse who declared the deceased was not

- competent when the will was signed, and she was shocked to discover that Respondent had never spoken to the nurse or any other witnesses whose names she provided to him.
15. Ms. Lewis said Ms. Queen advised her in person that they had the hospice records in hand, but Ms. Lewis now said this was untrue.
  16. Ms. Lewis texted Ms. Queen on November 19, 2021, asking for a status update and expected to be given a hearing date, but Ms. Queen did not respond.
  17. On November 22, 2021, Ms. Campbell emailed Respondent to check on the status of the case, and he never responded to her email.
  18. Ms. Lewis again texted Ms. Queen on November 24, 2021, asking for updates and Ms. Queen said she would “see about getting some info.”
  19. Respondent never notified Ms. Lewis that the judge granted the respondents’ Motion for Summary Judgment and dismissed Ms. Lewis’ case on November 17, 2021.
  20. On December 14, 2021, Ms. Lewis discovered that a hearing had been held on October 25, 2021, without her knowledge or attendance.
  21. Ms. Lewis said that finding out so late left her scrambling to file an appeal from the dismissal of her case, and she sought help from Ms. Campbell’s employer, who prepared the notice of appeal for her the next morning, and sent it overnight via FedEx. Ms. Lewis said that although it was not an area of law Ms. Campbell’s employer routinely practiced, upon his review of her file, he believed her chances of winning were very slim given Respondent’s lack of timely responses, notices and discovery.
  22. Ms. Lewis alleged that Respondent was “unprepared, unprofessional and inadequate” in his representation of her. She noted there were factual matters essential to proving her case that Respondent misstated or failed to assert to her detriment, and that had she been there

at the hearing, she could have at least argued her case.

23. In the hearing transcript, the judge notes “that there are problems...with the Plaintiff’s case...with the failure to respond to the interrogatories.” The judge states that the only way around Plaintiff’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.”
24. Ms. Lewis said Respondent never provided her with a copy of the memorandum of law filed with opposing counsel’s Motion for Summary Judgment, and that there were inaccuracies in it that could have been addressed during the hearing had she been provided a copy beforehand, and been present at the hearing.
25. During the hearing, the judge specifically asked Respondent why Ms. Lewis was not present in court, to which Respondent answered, “Your Honor, I’m not sure, with respect to that”.
26. Respondent informed the Court “it is not my perception that... Ms. Lewis has abandoned the case. I’ve certainly been in touch with her...I guess, her aunt, who works at a local law office over here, follows up with—me about it.”
27. Ms. Lewis said Respondent “has never called or texted [her] personally,” and that all her “communication with his office was through his secretary, other than speaking to him at the previous hearings.”
28. Ms. Lewis noted that during the hearing, the Court explained to the parties that now was the time for the Plaintiff “to make a proffer, or to file affidavits, or to file the interrogatories, or the discovery, to—to show it to the court,” which Ms. Lewis asserts was available had Respondent spoken to her witnesses.
29. Due to Respondent’s failures in developing the case and his lack of communication with

Ms. Lewis regarding receipt of documents, court dates, and objectives of the suit, Ms. Lewis said she had to pay another attorney to file the appeal immediately before the time to appeal had expired.

30. By letter dated February 23, 2022, the Office of Lawyer Disciplinary Counsel (“ODC”) sent Respondent a copy of the complaint and directed him to file a verified response within 20 days.
31. In his verified response provided March 5, 2022, Respondent said that Ms. Lewis’ case was a complicated one in which he appeared for multiple court appearances, “despite being paid the sum of one thousand dollars (\$1,000) for 2 ½ years of work.”
32. Respondent said the case began with much sympathy on his part for Ms. Lewis, who had been removed as a recipient of the Estate of a longstanding friend of hers by the execution of a “deathbed” will. He said it appeared as though, and that he “certainly argued and so attempted to plead throughout the case, that Mr. Casto was subjected to undue influence by the ultimate recipients of the bounty of his Estate.”
33. Respondent said he attempted to argue this point “at every turn.”
34. Respondent said his claim was initially rejected by the Upshur County Commission, and that he filed the petition with the Upshur County Circuit Court just being able to come in under the statute of limitations.
35. Respondent said that Ms. Lewis had been offered \$10,000.00 to settle the case, but rejected the offer. He said his recollection was that it was not a large Estate to begin with and Ms. Lewis had provided a lot of care for the animals on the property.
36. Respondent said he believes he appeared before Judge Hall on four separate occasions, and that he drafted a response to the respondents’ Motion for Summary Judgment, and that his

response was “well-briefed with various West Virginia case law.”

37. Respondent noted that the respondents in the estate matter retained Steptoe and Johnson to represent them, while he works as a solo practitioner, who attempts to do his best with the help of “one very loyal legal assistant.”
38. Respondent alleged it was a “mismatch in resources”, and he did it with “very little input from Ms. Lewis.”
39. Respondent admitted to having more “ex parte communications” with Ms. Campbell than Ms. Lewis, and that he characterized it as a “mistake I admit to which I will never make again, for I suspect this entire complaint purported to be prepared by her was ‘ghost written’ by her aunt, who works for a local attorney, judging by the exhibits attached to it.”
40. Respondent said he “cannot recall” if he responded to the interrogatories, and that he turned over the file to Ms. Lewis and did not retain a copy.
41. Respondent opined that in looking at the complaint filed, he believes they would have had to admit the request for admissions anyway, and that his not responding, and them being deemed admitted, would not have mattered.
42. Respondent said he believes the court seized on an opportunity to dismiss the case because a local attorney had provided an affidavit that the second will accurately represented Mr. Casto’s wishes. Respondent alleged “there was no way to rebut this argument,” as Ms. Lewis’ case was always circumstantial.
43. Respondent asserted that Ms. Lewis was in frequent contact with his legal assistant, Ms. Queen.
44. On March 28, 2022, Ms. Lewis filed a reply to Respondent’s response to her complaint. Ms. Lewis provided additional background to her case, as follows: In November 2018, a

dear friend of Ms. Lewis' executed a will appointing her as his durable and medical power of attorney, and the sole beneficiary of his Estate. He passed in July 2019. Two days prior to his passing, he executed a new will at the prompting of his neighbors, leaving his Estate to them. Ms. Lewis said on the same day he signed the new will, a hospice nurse determined he was not competent to sign documents for hospice care, and that since she was his medical power of attorney, Ms. Lewis was the one who signed the documents. Ms. Lewis noted there were significant discrepancies in Mr. Casto's signatures between November and July, and that there was documentation in his hospice records about his competency, or lack thereof.

45. Ms. Lewis explained that she had requested Respondent subpoena the records and speak with the hospice nurse, but he did neither.
46. Ms. Lewis disputed Respondent's claim that she paid him only \$1,000.00. She provided invoices showing she made six payments totaling \$2,300.00. Ms. Lewis said she may have paid more, but those are her only receipts, which were provided.
47. Ms. Lewis said Ms. Queen "insisted" that she pay cash, and that Respondent never asked for additional money.
48. Ms. Lewis disagreed with Respondent that they would have had to admit all the interrogatories and requests for admissions. She indicated she would have denied 6 of the 8 requests for admissions if she had been given the chance to review and discuss them with Respondent.
49. Ms. Lewis refuted Respondent's claim that Mr. Casto had a small estate, stating it was over 146 acres and was valued at \$186,625 at the time of the will contest. Ms. Lewis asserted that her friend had been taken advantage of by people he did not care for, that the money



was not the issue, and that is why she declined the settlement.

50. Ms. Lewis pointed to the summary judgment hearing transcript wherein opposing counsel argued to the Court, “There’s been no evidence presented from any medical person, Nurse or doctor, or any facility. There’s no evidence of that in the record. That’s why we’re here on summary judgment, Your Honor.”
51. Ms. Lewis reiterated that Respondent never once called her for more information, or even had his secretary obtain additional information during their text exchanges, had he needed more information.
52. Ms. Lewis disagreed with Respondent’s assertion that there was no way to rebut an affidavit from a local lawyer, when she had asked him to speak with the hospice nurse and to obtain Mr. Casto’s records, but he had failed to do so.
53. Ms. Lewis stated that had Respondent felt outmatched by opposing counsel, he should have notified her of such to permit her time to retain alternative counsel.
54. By letter dated December 14, 2022, ODC provided Respondent with a copy of Ms. Lewis’ reply to his response, and requested a response within twenty (20) days, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.
55. Respondent did not respond to the December 14, 2022 ODC request.
56. By letter dated January 12, 2023, sent via certified and regular mail, ODC again provided Respondent with a copy of Ms. Lewis’ reply to his verified response, and requested that he provide a written response within twenty (20) days of his receipt, and that it was considered a lawful request for information pursuant to Rule 8.1(b) of the Rules of Professional Conduct. The certified letter was returned to ODC as unclaimed on February 2, 2023.
57. By Memorandum Decision filed January 18, 2023, the Supreme Court of Appeals of West

Virginia found that petitioner had not submitted evidence below of coercion and affirmed the circuit court's granting of summary judgment.

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

there had previously been three.<sup>1</sup> He said he went from doing fifty (50) mental hygiene cases a year to nearly five hundred (500) in 2021 and more than that in 2022.

63. Respondent said that his “lone employee”, Ms. Queen, lost both her mother and her husband within a six (6) month period, and that his normal office procedures were interrupted. Respondent admitted to being “quite overstretched.”
64. Respondent did not provide the billing information requested by ODC in its letter of February 27, 2023.
65. Ms. Lewis replied by correspondence dated March 20, 2023, wherein she reported that Respondent never advised her that he was too busy to represent her. Ms. Lewis questioned Respondent’s assertion that he attempted to argue that the hospice nurse had necessary information concerning Mr. Casto’s competence, stating that “[Respondent] **never** subpoenaed the hospice records. [Respondent] **never** spoke with the hospice nurse.” (emphasis not added).
66. Ms. Lewis noted that Respondent had failed to provide billing invoices and a copy of a fee agreement as requested by ODC in its February 27, 2023, and indicated that she had not received those documents either.
67. By letter dated April 3, 2023, ODC sent Respondent a letter providing a copy of Ms. Lewis’ latest response, and again requesting a response thereto, a copy of the fee agreement with Ms. Lewis, and a copy of his billing invoices, within twenty (20) days of receipt, and that it was considered a lawful request for information pursuant to Rule 8.1(b) of the Rules of Professional Conduct.

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<sup>1</sup> Respondent explained that one Mental Hygiene Commissioner retired and another changed positions, leaving him the only one.

68. Respondent again failed to respond to ODC's request for information.
69. Disciplinary counsel sent an email to Respondent on May 3, 2023, notifying him that she had tried calling and that no one had answered, and that his mailbox was full. He was to respond to her by May 5, 2023, or he would be scheduled for a sworn statement.
70. A subpoena duces tecum was issued by the Supreme Court of Appeals of West Virginia on May 8, 2023.
71. By letter dated May 26, 2023, ODC notified Respondent that she had received confirmation that he had been served the subpoena duces tecum and was expected to appear at ODC's office on June 14, 2023, for a sworn statement.
72. An investigative subpoena duces tecum was issued by the Supreme Court of Appeals for copies of all bank statements, cancelled checks (front and back), deposit slips, checks deposited in the account (front and back) and any other documentation with respect to any and all business, operating, trust, or IOLTA accounts maintained by Respondent for the time period of January 1, 2019 through the present. Date of Appearance/inspection scheduled August 3, 2023.
73. Susan Thompson, AVP, with Citizens United Bank of Weston, received the subpoena on July 24, 2023.<sup>2</sup>
74. The bank statements for the time period of January 2019 through July 2023 for Respondent's IOLTA TRUST ACCOUNT, account number 358692, were delivered to ODC on July 31, 2023.
75. Per the January 14, 2019 bank statement, Respondent's IOLTA account number 358692

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<sup>2</sup> By correspondence dated July 28, 2023, Ms. Thompson provided an itemized bill for \$362.25 for researching and printing Respondent's IOLTA and operating account bank records.

had a balance of \$1,239.92.

76. No deposits or withdrawals were made to Respondent's IOLTA account number 358692 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.<sup>3</sup>
77. Beginning with the March 13, 2020 bank statement, Respondent's IOLTA account number 358692 carried the same balance of \$39.81 until July 13, 2023, which was the last statement provided by Citizens Bank pursuant to the investigative subpoena.
78. Respondent never deposited Ms. Lewis' payments into his IOLTA account.
79. Respondent appeared at the ODC on June 14, 2023, and provided testimony in a sworn statement, wherein he testified that his practice as a solo practitioner is varied, with 40% of his time devoted to his Mental Hygiene Commissioner cases where he bills the state and is always on call. He said he also takes both state and federal criminal appointments, in addition to a few civil and family court matters.

He said his legal assistant, Heather Queen, has worked for him since 2015, and she responds to emails and phone calls. Respondent admitted to not using the IOLTA account that much "other than to keep it active, as is required." He said if a client paid him a retainer, he would "put it into my business account, typically." Respondent said he "kind of got away from" executing fee agreements, and he does not keep track of his hours billed, but recognizes it is something he "probably" needs to be doing. He said he just gets the money up front. Respondent said Ms. Queen handles the office bills.

80. Respondent admitted to not speaking with witnesses or subpoenaing records in Ms. Lewis' case, and has regrets for not complying with the discovery requests. Respondent said he

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<sup>3</sup> There were de minimis adjustments to the account due to interest payments.

was unaware that Ms. Queen had informed Ms. Lewis they had provided discovery. He testified that he believed he would be able to work the case out at mediation, but then the court granted summary judgment before they had an opportunity to mediate.

Respondent admitted not notifying Ms. Lewis of the hearing date, but said he assumed she would have received a copy of the hearing notice. Respondent acknowledged that Ms. Lewis' presence at the hearing might have impacted the outcome of the summary judgment motion. Respondent admitted to not discussing appeal rights with Ms. Lewis.

81. By letter dated March 19, 2024, Ms. Lewis contacted ODC requesting a status update on her complaint, wherein she reiterated her previous issues and concerns.
82. Because Respondent failed to file necessary motions in Ms. Lewis' case, failed to timely respond to discovery requests and requests for admissions, failed to investigate and develop the case, and failed to involve Ms. Lewis in the development of the matter to her detriment, Respondent has violated Rule 1.1 of the Rules of Professional Conduct, which provides as follows:

**Rule 1.1 Competence.**

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

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

**Rule 1.3 Diligence.**

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

84. Because Respondent failed to keep Ms. Lewis informed as to the status of her case and failed to respond to Ms. Lewis' attempts to communicate with him, Respondent violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, which provide:

**Rule 1.4. Communication.**

(a) A lawyer shall:

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

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

**Rule 1.5 Fees.**

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

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

**Rule 1.15. Safekeeping Property.**

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

Rule 10 with regard to overdraft reporting. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

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

87. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute when he failed to schedule hearings, promptly respond to discovery, and failed to notify Ms. Lewis of her right to appeal in a timely manner, and his refusal to take appropriate action on behalf of his client caused potential harm to Ms. Lewis and required additional judicial resources to be allocated in order to address the consequences of his failures to act, he violated Rules 3.2 and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

**Rule 3.2. Expediting litigation.**

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

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

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

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



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

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

\* \* \*

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

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

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

(a) A lawyer shall not knowingly:

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

**COUNT II**

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

**Complaint of Robert L. Moats**

90. Paragraph 1 is incorporated by reference.
91. In his verified complaint received by the ODC on September 23, 2022, Complainant Robert L. Moats (hereinafter "Mr. Moats"), said he hired Respondent to represent him in a criminal matter and a divorce.
92. Mr. Moats reported that he was charged \$3,000.00 to handle both the criminal and divorce cases, paying \$500.00 down, with the rest to be paid in payments.
93. Mr. Moats explained that he had agreed to assume all debt in the divorce and gave everything to his ex-wife but for the house, which they agreed to sell in a land contract to

his ex-wife's aunt.

94. Mr. Moats alleged in the complaint that Ms. Queen, Respondent's secretary, informed him that she used to be part of Mr. Moats' ex-wife's family and that there was bad blood between them. He said soon after the land transaction was made to the ex-wife's aunt, Ms. Queen stopped accepting Mr. Moats' payments.
95. Mr. Moats alleged that Ms. Queen informed him that Respondent did not attend his divorce hearing to save him money, but this was not discussed with Mr. Moats beforehand.
96. Mr. Moats reported that Respondent failed to review discovery with him, and that he had not seen the police report in his case before the plea hearing.
97. Mr. Moats alleged that Respondent recommended Mr. Moats take a plea without fully explaining the details of the plea to him.
98. Mr. Moats asked Respondent to file a Motion to Reconsider after the sentencing hearing and Respondent said he would file the motion.
99. Mr. Moats' efforts to reach Respondent thereafter were unsuccessful.
100. Mr. Moats' power of attorney, Crystal Linger, was informed by Respondent's office that the reconsideration had been filed.<sup>4</sup>
101. On August 1, 2022, Mr. Moats sent Respondent a certified letter attempting to end their attorney-client relationship and to be given his case file and documents. Despite multiple attempts at delivery, the letter was returned as unclaimed on August 26, 2022.
102. By letter dated September 29, 2022, the ODC advised Respondent that it had opened a complaint based upon the conduct alleged by Mr. Moats and asked that he file a response thereto within twenty (20) days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer

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<sup>4</sup> Crystal Linger was appointed as Robert Moats' Power of Attorney effective March 1, 2022.

Disciplinary Procedure.

103. Respondent did not file a response within the time period directed.
104. 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.
105. In his verified response, dated October 31, 2022, Respondent admitted to not seeing the ODC complaint or Mr. Moats' correspondence addressed to him in August 2022.
106. By way of background, Respondent explained that Mr. Moats had pleaded guilty to the felony charge of Sexual Abuse in the First Degree on November 9, 2021, prior to Respondent's involvement. In January 2021, Mr. Moats was indicted on two counts each of Sexual Abuse in the First Degree and Sexual Abuse by a Parent, Guardian, Custodian or Person in a Position of Trust, and retained Respondent to represent him. Respondent said Mr. Moats had already confessed to the West Virginia State Police and declined a polygraph examination before retaining Respondent. He said Mr. Moats was facing 30-90 years in prison.
107. Respondent reported that he argued stringently at sentencing to reduce the sentence and for Mr. Moats to receive alternative incarceration, but he was unsuccessful, and Mr. Moats was sentenced to prison.
108. Respondent denied communication problems and said that his assistant communicated with Mr. Moats regularly via text messages.
109. Respondent said he prepared a Motion for Reconsideration for Mr. Moats, and that "if this did not get filed", he accepted responsibility for not filing it.

110. There is no Motion for Reconsideration filed in Mr. Moats' criminal matter.
111. Respondent provided a printout of \$800 in payments made to him by Mr. Moats between February 10, 2021 and March 19, 2021.
112. By letter received January 6, 2023, Mr. Moats replied to Respondent's response, wherein he said that was his first communication with Respondent since his sentencing on March 15, 2022. Respondent had included the police report in his response, and Mr. Moats said that was the first time he was able to read the report and that he would have liked the opportunity to correct the false information contained therein had he seen the report in advance.
113. Paragraphs 70-79 are incorporated by reference.
114. Respondent admitted in his sworn statement that he did not have a fee agreement with Mr. Moats.
115. During the sworn statement, ODC requested Respondent provide Mr. Moats with a copy of his file, and to provide a confirmation notice to ODC within two weeks.
116. Respondent failed to notify ODC that he provided Mr. Moats with a copy of his file.
117. Because Respondent failed to file the requested motions in Mr. Moats' criminal matter, failed to attend the divorce hearing in Mr. Moats' case, failed to share evidence with Mr. Moats, and failed to involve Mr. Moats in the development of the criminal matter to his potential detriment, Respondent has violated Rule 1.1 of the Rules of Professional Conduct, as previously stated.
118. Because Respondent failed to discuss the case and the evidence with Mr. Moats and obtain his instructions concerning the objectives of representation in this matter, Respondent has violated Rule 1.2(a) of the Rules of Professional Conduct, which provides in pertinent part:

**Rule 1.2. Scope of representation.**

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

119. Because Respondent failed to act with reasonable diligence and promptness in his representation of Mr. Moats and failed to file the Motion for Reconsideration, he has violated Rule 1.3 of the Rules of Professional Conduct, as previously stated.
120. Because Respondent failed to keep Mr. Moats informed as to the status of his case and failed to respond to Mr. Moats' attempts to communicate with him, Respondent violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, as previously stated.
121. Because Respondent failed to execute a written fee agreement with Mr. Moats memorializing the scope of the representation and the basis or rate of the fee and expenses, Respondent violated Rule 1.5(b) of the Rules of Professional Conduct, as previously stated.
122. Because Respondent failed to keep the funds provided to him in advance by Mr. Moats in a separate account designated as "client's trust account," and provided no billing records regarding when the payments and expenses were earned and incurred, Respondent has violated Rules 1.15(a) and 1.15(c) of the Rules of Professional Conduct, as previously stated.
123. Because Respondent failed to return Mr. Moats' documents and case file to him upon Mr. Moats' termination of representation, he has violated Rule 1.16(d) of the Rules of Professional Conduct, which provides:

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

\* \* \*

d) Upon termination of representation, a lawyer shall take such steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other

counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

124. 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. Moats and his power of attorney/representatives was compatible with Respondent's professional obligations as a lawyer, Respondent is in violation of Rules 5.3(b) and 8.4(d) of the Rules of Professional Conduct, as previously stated.

**COUNT III**  
**I.D. No. 22-06-157**  
**Complaint of Clifford Ellis, Jr.**

125. Paragraph 1 is incorporated by reference.
126. In his verified complaint received by the ODC on April 17, 2023, Complainant Clifford Ellis, Jr. (hereinafter "Mr. Ellis"), said he hired Respondent to represent him in a civil matter.
127. Mr. Ellis said he attempted to contact Respondent daily but Respondent never answered or returned his calls.<sup>5</sup>
128. Mr. Ellis alleged that Respondent was not properly prepared for his case, that he asked Mr. Ellis to "remind him what our case was about" when they were on their way to court, failed to raise a conflict issue with the judge which might have necessitated a motion for disqualification, and that he failed to object to anything in court and was on his phone the whole time during the hearing.

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<sup>5</sup> Mr. Ellis provided handwritten notes documenting his communication attempts.

129. Mr. Ellis said the opposing party in his case filed contempt charges and Respondent had failed to notify him.
130. By letter dated April 21, 2023, the ODC advised Respondent that it had opened a complaint based upon the conduct alleged by Mr. Ellis and asked that he file a response thereto within twenty (20) days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.
131. Respondent did not file a response within the time period as directed.
132. By letter dated May 25, 2023, sent via certified and U.S. mail, the ODC again notified Respondent that the complaint had been opened and asked that he file a response by June 5, 2023. The certified letter was returned to ODC as unclaimed on June 15, 2023.
133. On May 26, 2023, Mr. Ellis supplemented his complaint, wherein he explained that he had visited the Upshur County Courthouse on May 24, 2023, to determine if he needed to file a survey in his deed matter, but was told that would not be needed until the deed was filed. He said he then walked over to the Upshur County Circuit Court for an update and was informed by the clerk that the plaintiffs in his matter had filed a second contempt of court motion with a hearing scheduled for June 5, 2023. The clerk said that Respondent had been provided a copy of the motion and notice.
134. Mr. Ellis said Respondent never informed him of the June 5, 2023 hearing.
135. Mr. Ellis stated that he tried to contact Respondent and/or Ms. Queen more than a dozen times and received no answer, and that he even contacted Judge Reger's office asking what to do about the situation.
136. The initial Petition for Contempt, filed by the plaintiffs in Mr. Ellis' matter on January 27, 2023, asked the Court to hold Mr. Ellis and Beverly Hurley in contempt for failing to abide

by the Order and Amended Order of the Court, entered on October 18, 2022 and November 16, 2022, respectively.<sup>6</sup> 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 (30) days of entry of the Order.

137. The Petition stated that on December 7, 2022, Plaintiffs' counsel, Philip Tissue, Esq., mailed to Respondent a deed prepared in accordance with the Court's Amended Order, with Plaintiffs' counsel requesting Respondent execute the deed and return it to him for recording. He said the \$3,500.00 check would be sent as soon as he received the executed deed.
138. Plaintiffs' counsel contacted Respondent on January 3, 2023, inquiring about the status of the deed. By date of the petition, January 27, 2023, Mr. Tissue had not received the deed from Respondent. Plaintiffs' counsel requested Mr. Ellis be responsible for court costs in the amount of \$500.00.
139. The court scheduled a hearing on the contempt petition for Monday, February 27, 2023.
140. On Friday, February 24, 2023, Respondent contacted Mr. Tissue regarding changes suggested by his client more than a month earlier, advising of small changes to the proposed deed (i.e. the marital status of his clients and a revision to an error in the property description).
141. 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."

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<sup>6</sup> Ms. Hurley is Mr. Ellis' fiancée and a co-defendant in the property matter.



142. Plaintiffs' counsel dropped the Petition for Contempt in good faith after his communication with, and assurances from, Respondent, and the corrections were implemented.
143. Respondent failed to communicate further with Plaintiffs' counsel until March 13, 2023, at which time Respondent informed him that there was another typographical error in the description, where 5/8' should have been 5/8", which was corrected by Plaintiffs' counsel on March 17, 2023. At that time, Respondent also indicated to Mr. Tissue that his Mr. Ellis now wished for the closing to be conducted in person, which the plaintiffs did not wish to do.
144. 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.
145. Plaintiffs' counsel said they had not heard from Respondent for more than a month and a half after agreeing to drop the initial contempt petition, and filed their Renewed motion as a result, this time requesting the Court hold Mr. Ellis responsible for court costs of \$1,500.00 at a minimum, and fined \$2,000.00 for "contumaciously refusing to comply with the Court's orders".
146. The contempt matter was set for hearing on June 5, 2023, by Order dated May 16, 2023, and sent to Respondent at that time.
147. ODC provided the supplemental information and court documents to Respondent by correspondence dated May 30, 2023, and asked that he respond thereto by June 5, 2023.
148. In his verified response dated June 5, 2023, Respondent said he was representing Mr. Ellis in civil litigation against an adjoining tract owner and that there was considerable bad blood between the parties. He said they had two unsuccessful mediations and a bench trial, and that the property issue had been settled by the Court.

149. Respondent asserted he and his legal assistant had over 200 work hours invested, and he blamed the “intransigence of Mr. Ellis” as being the primary problem. He said Mr. Ellis did not trust the plaintiffs to pay the \$3,500.00 if they provided the deed in advance, and that’s why he asked that the closing be executed in person.
150. Respondent said Mr. Ellis asked that he file a Motion for Contempt against Plaintiff, when “he was arguably the one in contempt.”
151. Respondent admitted to not answering “all” of Mr. Ellis’ calls because there were so many of them, and that Mr. Ellis even attempted to communicate with Ms. Queen on the weekends.
152. Ms. Queen emailed Plaintiffs’ counsel on April 5, 2023, indicating she had “mailed the...deed out upon receipt,” but that Mr. Ellis had yet to receive it. Ms. Queen indicated she was mailing another copy to Mr. Ellis and would have them sign it as quickly as possible.
153. Respondent provided sporadic text messages between Ms. Queen and Ms. Hurley. The text messages began around October 19, 2022, demonstrating that Ms. Queen was the main source of information and communication, and that Mr. Ellis and Ms. Hurley were eager to complete the transaction, and that the delay and mistakes were making them frustrated and paranoid.
154. On January 2, 2023, Ms. Hurley asked Ms. Queen if she had sent a copy of both of the deeds, to which Ms. Queen indicated they had been “picked up either Friday or Saturday” so she should get them mid-week.
155. On January 10, 2023, Ms. Hurley alerted Ms. Queen to the incorrect property description

in the deed, where 5/8' versus 5/8" had been incorrectly used<sup>7</sup>, and Ms. Hurley also had a question about the deed using "And" for their names, and whether it would go directly to Mr. Ellis if something happened to her, because she did not "know the law on it."

156. Ms. Hurley texted Ms. Queen on February 21, 2023, and asked if they had received the deed from Plaintiffs' counsel and informed Ms. Queen that that their office voicemail box was full. Ms. Queen said they had not received the deed, that she was "not impressed with the antics yesterday though," and that she did not have an update "because tissue (sic) doesn't talk to me if you remember."
157. 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.
158. On February 28, 2023, Ms. Hurley informed Ms. Queen that they had received the deed, but plaintiff's counsel still had not fixed the 5/8' versus 5/8" description mistake, and that Mr. Ellis and Respondent had discussed the two parties meeting up to do the execution and payment.
159. On March 13, 2023, Respondent emailed Mr. Tissue notifying him of the 5/8' versus 5/8" issue.
160. On March 17, 2023, Ms. Queen indicated she was mailing out the corrected deed.
161. On March 31, 2023, Ms. Hurley notified Ms. Queen that they still had not received the deed, and Ms. Queen said she mailed another copy. Ms. Hurley again expressed concern about whether they would actually receive the money upon deed execution, and they thought it should be easy for everyone just to execute it at the lawyers' offices.

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<sup>7</sup> Although pointed out by Mr. Ellis and Ms. Hurley on January 10, 2023, an email shows that Respondent mentioned it to Mr. Tissue on March 13, 2023, that it was corrected by Mr. Tissue on March 17, 2023, but Mr. Ellis never received the corrected deed.

162. On April 3, 2023, Ms. Hurley texted Ms. Queen that they had not received the documents. Ms. Queen did not respond.
163. On April 6, 2023, Ms. Hurley again texted Ms. Queen and simply sent "?", to which Ms. Queen responded that she had "texted the deed, and now I've mailed it twice. I have no idea beyond that."
164. Ms. Queen said she had emailed Mr. Tissue to alert him to the "mail issues." Ms. Hurley expressed concerns since Mr. Tissue had messed up the deed twice now, and Ms. Hurley offered for them to come to Respondent's office or Plaintiffs' counsel's office and sign the deed, and then leave the office for a bit to allow the Plaintiff's to produce the money, and then Respondent would give them the executed deed. Significant frustration was exhibited.
165. A hearing on the Renewed Petition for Contempt was held on June 5, 2023, before Hon. Jacob E. Reger, in the Circuit Court of Upshur County.
166. Mr. Tissue was present on behalf of the plaintiffs.
167. Respondent was not present at the properly noticed hearing, nor had he provided notice to Mr. Ellis of the hearing.
168. Mr. Ellis was present but unrepresented by counsel due to Respondent's absence.
169. Judge Reger asked Mr. Ellis if he had terminated Respondent's representation, because "[t]hat's what they were telling me." Mr. Ellis informed the judge he had not "been able to get up with [Respondent] in over a month and a half," that he had "knocked on the door and still can't get up with him."
170. 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.
171. 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.”

172. The contempt hearing proceeded without Mr. Ellis having personal representation, because although Respondent was on the telephone, Respondent did not advocate on Mr. Ellis’ behalf in the matter.
173. 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.”
174. Mr. Ellis explained the mistakes in the deed, that there was still the 5/8 description error in it, and “then that’s the last time we’ve heard from” Respondent. He informed the Court that had he not gone to the courthouse the other day trying to fix the deed himself, he would not have even known about the hearing.
175. Mr. Ellis informed the Court that he had “been trying to get the deed for over a month,” to which Respondent defended himself and said the deed had been sent twice, with the corrected one being sent on “the 9<sup>th</sup> of March; and that included the corrected deed which is the issue.”<sup>8</sup>
176. The Court expressed frustration with the confusion over the deeds, and the judge asked that he be given a black pen and the judge made the correction himself, and instructed them to sign it, at which point Mr. Ellis revealed that Ms. Hurley was in the hospital “fighting for her life.”
177. Mr. Ellis expressed to the Court that there was an “or” on the deed and that he believed only one was needed to sign it, and Judge Reger told him he was wrong, that Ms. Hurley

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<sup>8</sup> Respondent notified Mr. Tissue via email on March 13, 2023 that the 5/8 error remained, and Mr. Tissue corrected the error on March 17, 2023.

was needed to sign off on the deed.

178. 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.”
179. Mr. Tissue continued to argue that it had been going on forever and recommended a fine and award of attorney’s fees, to which Mr. Ellis attempted to explain that his “attorney’s not been helping me. I mean, he’s not done nothing for me.”
180. The judge took the Motion for Contempt under advisement, and gave them 10 days to get the deed signed and returned to Mr. Tissue, and then for the check to be sent to Mr. Ellis.
181. The judge scheduled a July 6, 2023 hearing if the matter had not been resolved by then.
182. Paragraphs 70-79 are incorporated by reference.
183. In his verified response dated June 5, 2023, Respondent said he turned over to Mr. Ellis most of the file and he did not make copies for himself.
184. In his sworn statement, Respondent admitted that he did not have a written fee agreement with Mr. Ellis, and he could not recall how much money Mr. Ellis paid him. He believed Mr. Ellis made regular payments of \$250 each month, for a total of “either \$2,300.00 or \$3,000.00”.
185. Respondent testified that he “participated by phone” at the June 5, 2023 hearing, and that he advised the judge he “didn’t want to say much because this thing was coming up.”
186. Because Respondent failed to promptly notice or notify opposing counsel of the need to correct errors in the deed in question, which caused considerable delay and frustration on the part of his client, opposing counsel and plaintiffs, as well as the judge, and failed to

attend the contempt hearing in the matter, Respondent has violated Rule 1.1 of the Rules of Professional Conduct, as previously stated.

187. Because Respondent failed to act with reasonable diligence and promptness in his representation of Mr. Ellis, he has violated Rule 1.3 of the Rules of Professional Conduct, as previously stated.
188. Because Respondent failed to keep Mr. Ellis informed as to the status of his case and failed to respond to Mr. Ellis' attempts to communicate with him, Respondent violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, as previously stated.
189. Because Respondent failed to execute a written fee agreement with Mr. Ellis memorializing the scope of the representation and the basis or rate of the fee and expenses, Respondent violated Rule 1.5(b) of the Rules of Professional Conduct, as previously stated.
190. Because Respondent failed to keep the funds provided to him in advance by Mr. Ellis in a separate account designated as "client's trust account," and provided no billing records regarding when the payments and expenses were earned and incurred, Respondent has violated Rules 1.15(a) and 1.15(c) of the Rules of Professional Conduct, as previously stated.
191. Because Respondent constructively ceased his representation of Mr. Ellis by intentionally failing to appear at a properly noticed hearing, and failed to provide notice to either Mr. Ellis or the Court causing judicial confusion, and failed to request leave of the Court to properly withdraw, thereby leaving Mr. Ellis without legal representation in Court, he has violated Rules 1.16(c) and 1.16(d) of the Rules of Professional Conduct, which provide:

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

\* \* \*

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

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

192. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute when he failed to promptly notify opposing counsel of the errors in the deed; failed to notice when the errors had not been properly corrected, leaving it up to his client to point it out to him; and failed to work with Mr. Ellis and Mr. Tissue to execute the deed, when such failure exacerbated an already tense situation, and his refusal to take appropriate action on behalf of his client caused potential harm to Mr. Ellis and required additional judicial resources to be allocated in order to address the consequences of his failures to act, he has violated Rules 3.2 and Rule 8.4(d) of the Rules of Professional Conduct, as previously stated.
183. Because Respondent had direct supervisory authority over his secretary/assistant Heather Queen, and failed to make reasonable efforts to ensure that her conduct toward and communication with Mr. Ellis and Ms. Hurley was compatible with Respondent's professional obligations as a lawyer, Respondent is in violation of Rules 5.3(b) and 8.4(d) of the Rules of Professional Conduct, as previously stated.
184. 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, Respondent has violated Rule 8.4 (d) of the Rules of Professional Conduct, as previously stated, and Rule 3.4 of the Rules of Professional Conduct, which provides:

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

A lawyer shall not:

\* \* \*

(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.

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

185. Paragraph 1 is incorporated by reference.
186. In his verified complaint received by the ODC on July 14, 2023, Complainant Roger K. Stobart (hereinafter "Mr. Stobart") said Respondent represented him in a criminal matter during all pre-trial and trial proceedings in Upshur County Circuit Court.<sup>9</sup>
187. Mr. Stobart was convicted at trial on November 19, 2020, and he said Respondent maintained possession of all records and documents for appeal purposes.
188. After the initial appeal discussion, Mr. Stobart said Respondent failed to communicate further with him regarding the matter, and never responded to any of the numerous letters sent to him by Mr. Stobart.
189. Mr. Stobart never received information on his appeal, and said he only discovered his

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<sup>9</sup> Case Number 20-F-46 in the Circuit Court of Upshur County.

- appeal had been denied when he received the notice from the Supreme Court of Appeals.
190. Mr. Stobart sent a letter to Respondent on April 12, 2023, requesting that he send Mr. Stobart all legal files, transcripts, and/or any materials related to his case, but received no response.
  191. Mr. Stobart sent a second letter to Respondent on May 15, 2023, again requesting the documents. This request also went unanswered.
  192. By correspondence dated April 24, 2022, Mr. Stobart again contacted Respondent, noting that 6 months had gone by and he asked for a status update, but received no response.
  193. By letter dated July 14, 2022, Mr. Stobart again requested information and a status update on his claim, and received no response.
  194. Mr. Stobart again wrote to Respondent on September 23, 2022, requesting information and a status update, and received no response.
  195. Mr. Stobart stated that he is unable to work on his Habeas Corpus matter without his documents and case file.
  196. Mr. Stobart feels that Respondent "abandoned" him and has refused to communicate with him.
  197. By letter dated July 21, 2023, the ODC advised Respondent that it had opened a complaint based upon the conduct alleged by Mr. Stobart and asked that he file a response thereto within twenty (20) days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.
  198. Respondent did not file a timely verified response as directed.
  199. By letter dated August 10, 2023, sent via certified and U.S. mail dated, 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.

200. Respondent submitted his verified response to ODC on August 29, 2023, wherein he denied a lack of communication with Mr. Stobart. He said he had filed the appeal with the Supreme Court on October 12, 2021, and received the response brief on December 13, 2021.
201. Respondent said he provided Mr. Stobart with a copy of the Supreme Court Memorandum Decision denying the appeal by letter dated December 13, 2022, which he alleges is the day he received it.<sup>10</sup>
202. Respondent admitted to having received multiple letters from Mr. Stobart requesting updates, but “had nothing to report to him”, and did not respond.
203. Respondent said he planned to send the entirety of the file to Mr. Stobart on a thumb drive.
204. Since Respondent failed to copy Mr. Stobart on his response, ODC sent Mr. Stobart a copy on August 30, 2023, and permitted him to respond.
205. By letter dated December 5, 2023, Mr. Stobart filed a reply wherein he reported that he had not received any of his documents or case file from Respondent.
206. By correspondence dated December 14, 2023, ODC sent a copy of Mr. Stobart’s letter to Respondent, requesting a response thereto within twenty (20) days of his receipt of the letter subject to Rule 8.1(b) of the Rules of Professional Conduct.
207. Respondent did not file a timely response thereto.
208. By correspondence sent via certified and U.S. mail dated January 11, 2023, the ODC again notified Respondent of its request for Respondent to file a response to Mr. Stobart’s reply.

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<sup>10</sup> Respondent submitted a document dated December 13, 2022, marked “copy”, which was unsigned by Respondent.

- Respondent was given until January 31, 2024. The certified letter was returned to ODC as unclaimed on February 1, 2024.
209. On February 6, 2024, Disciplinary Counsel emailed Respondent at the email address of [bwbaileylawoffice@gmail.com](mailto:bwbaileylawoffice@gmail.com) to notify him of the correspondence sent requesting a response to Mr. Stobart's reply, and to confirm the address.
210. Ms. Queen responded on February 7, 2024, and indicated they have been out with Covid and various health issues, and included complaints of mail system problems. She asked that disciplinary counsel forward the documents to her and she "will get them addressed."
211. Disciplinary Counsel responded to Ms. Queen's email on February 8, 2024, noting the mail and failure to response issues were not a new problem, and informed Ms. Queen that the complaints were against Respondent and that he was to respond promptly. Inquiry was made as to Respondent's email address rather than Ms. Queen's, and Disciplinary Counsel said she was again sending the correspondence, and that a response was expected.
212. There was no response from either Ms. Queen or Respondent regarding Disciplinary Counsel's request to confirm the email address.
213. 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.
214. Respondent failed to respond to the ODC's lawful request for information.
193. Because Respondent failed to act with reasonable diligence and promptness in his representation of Mr. Stobart in response to Mr. Stobart's requests for information and his case file and documents, he has violated Rule 1.3 of the Rules of Professional Conduct, as previously stated.

194. Because Respondent failed to keep Mr. Stobart informed as to the status of his case and failed to respond to Mr. Stobart's attempts to communicate with him, Respondent violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, as previously stated.
195. Because Respondent failed to return Mr. Stobart's documents and case file upon request to the potential detriment impacting Mr. Stobart's further efforts at filing post-sentencing appeals, he has violated Rules 1.16(d) and 8.4(d) of the Rules of Professional Conduct, as previously stated.
215. 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, which provides:

**Rule 8.1. Bar Admission and Disciplinary Matters.**

An applicant for admission to the bar, or a lawyer in connection with a bar admission or in connection with a disciplinary matter, shall not:

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(b) [...] knowingly fail to respond to a lawful demand for information from [...] disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

**COUNT V**

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

**Complaint of Lisa J. Thomas**

216. Paragraph 1 is incorporated by reference.
217. In her verified complaint received by the ODC on September 21, 2023, Complainant Lisa J. Thomas (hereinafter "Ms. Thomas") said Respondent has been her attorney for five years in a property dispute matter.
218. Ms. Thomas said that Respondent has all her "paperwork and money", and she would like both returned to her to allow her to find another lawyer.
219. Ms. Thomas said Respondent's office door is locked and the message on the door says "call for an appointment", but when she calls, no one answers the phone and she has not

been able to leave a message because the mailbox is always full.

220. Ms. Thomas said she has sent over forty (40) emails and has tried calling one hundred (100) times, and only once did they answer the phone. She said she was told her emails were “going to spam”.
221. Ms. Thomas said she even messaged them on Facebook trying to get an answer or a response.
222. Ms. Thomas said she paid Respondent \$3,000.00 six years ago, but has never gone to court.
223. By letter dated October 10, 2023, the ODC advised Respondent that it had opened a complaint based upon the conduct alleged by Ms. Thomas and asked that he file a response thereto within twenty (20) days of receipt, pursuant to Rule 2.5 of the Rules of Lawyer Disciplinary Procedure.
224. Respondent failed to file a timely response.
225. 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.
226. On February 6, 2024, Disciplinary Counsel emailed Respondent at the email address of [bwbaileylawoffice@gmail.com](mailto:bwbaileylawoffice@gmail.com) to notify him of the correspondence sent requesting a response to Ms. Thomas’ complaint, and to confirm his address.
227. Ms. Queen responded on February 7, 2024, and indicated they have been out with Covid and various health issues and complaints of mail system problems. She asked they be forwarded to her and she “will get them addressed.”
228. Disciplinary Counsel responded to Ms. Queen’s email on February 8, 2024, noting the mail

and failure to response issues were not a new problem, and informed Ms. Queen that the complaints were against Respondent and that he was to respond promptly. Inquiry was made as to Respondent's email address rather than Ms. Queen's, and Disciplinary Counsel said she was again sending the correspondence, and that a response was expected.

229. There was no response from either Ms. Queen or Respondent regarding Disciplinary Counsel's request to confirm Respondent's email address.
230. 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.
231. Respondent failed to respond to Ms. Thomas' complaint.
232. Because Respondent failed to properly represent Ms. Thomas in her property dispute case, Respondent has violated Rule 1.1 of the Rules of Professional Conduct, as previously stated.
233. Because Respondent failed to act with reasonable diligence and promptness in his representation of Ms. Thomas, he has violated Rules 1.3 and 8.4(d) of the Rules of Professional Conduct, as previously stated.
234. Because Respondent failed to keep Ms. Thomas informed as to the status of her case and failed to respond to Ms. Thomas' attempts to communicate with him, Respondent violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, as previously stated.
235. Because Respondent failed to execute a written fee agreement with Ms. Thomas memorializing the scope of the representation and the basis or rate of the fee and expenses, Respondent violated Rule 1.5(b) of the Rules of Professional Conduct, as previously stated.
236. Because Respondent failed to keep the funds provided to him in advance by Ms. Thomas

in a separate account designated as "client's trust account," and provided no billing records regarding when the payments and expenses were earned and incurred, Respondent has violated Rules 1.15(a) and 1.15(c) of the Rules of Professional Conduct, as previously stated.

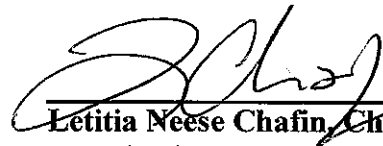
237. Because Respondent failed to return Ms. Thomas' documents and case file upon request to the potential detriment impacting Ms. Thomas' further efforts at litigating her property dispute, he has violated Rules 1.16(d) and 8.4(d) of the Rules of Professional Conduct, as previously stated.
238. Because Respondent engaged in dilatory practices that brought the administration of justice into disrepute when he failed to promptly represent Ms. Thomas in her case, he violated Rules 3.2 and 8.4(d) of the Rules of Professional Conduct, as previously stated.
239. Because Respondent failed to comply with the ODC's lawful request for information, Respondent violated Rule 8.1(b) of the Rules of Professional Conduct, as previously stated.

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Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.



**STATEMENT OF CHARGES ORDERED** on the 15<sup>th</sup> day of June, 2024, and **ISSUED**  
this 15<sup>th</sup> day of June, 2024.

  
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**Letitia Neese Chafin, Chairperson**  
Investigative Panel  
Lawyer Disciplinary Board

## CERTIFICATE OF SERVICE

This is to certify that I, Kristin P. Halkias, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 27<sup>th</sup> day of June, 2024 served a true copy of the foregoing "**STATEMENT OF CHARGES**" upon Respondent Brian W. Bailey, through first class mail, and electronically through File and Serve Xpress to the following address:


Brian W. Bailey, Esquire  
17 West Main Street  
Buckhannon West Virginia 26201  
[bwbaileyesq@gmail.com](mailto:bwbaileyesq@gmail.com)

And upon the Hearing Panel Subcommittee by First Class United States Mail and electronically at the following addresses:

David A. Wandling, Esquire  
1 Washington Avenue, Suite 200  
Logan West Virginia 25601  
[dwanling@lccwv.us](mailto:dwanling@lccwv.us)

Chip E. Williams, Esquire  
252 George Street  
Beckley West Virginia 25801  
[cwilliams@pffwv.com](mailto:cwilliams@pffwv.com)

Cynthia "Cyndi" Tawney  
3836 Indian Creek Drive  
Elkview West Virginia 25071  
[cynthiatawney@gmail.com](mailto:cynthiatawney@gmail.com)

  
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Kristin P. Halkias