

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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LAWYER DISCIPLINARY BOARD,

Petitioner,

v.

No. 24-376

PHILLIP S. ISNER,

Respondent.

BRIEF OF THE LAWYER DISCIPLINARY BOARD

Rachael L. Fletcher Cipoletti [Bar No. 8806]
Chief Lawyer Disciplinary Counsel
rfcipoletti@wvdc.org
Renée N. Frymyer [Bar No. 9253]
Lawyer Disciplinary Counsel
rfrymyer@wvdc.org
Office of Lawyer Disciplinary Counsel
West Virginia Judicial Tower
4700 MacCorkle Avenue SE, Suite 1200
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

This is a lawyer disciplinary proceeding against Phillip S. Isner (hereinafter “Respondent”), arising from a Statement of Charges issued against him by the Investigative Panel of the Lawyer Disciplinary Board and filed with the Supreme Court of Appeals on July 3, 2024, and served upon Respondent via certified mail by the Clerk on July 11, 2024. Lawyer Disciplinary Counsel filed her mandatory discovery on July 26, 2024, and supplemental discovery on October 1, 2024. Respondent filed his Answer to the Statement of Charges on August 16, 2024, but did not file any discovery in this matter.

Because Respondent did not provide any discovery, on October 3, 2024, undersigned counsel filed a “Motion to Exclude Testimony of Witnesses and Documentary Evidence or Testimony of Mitigating Factors.” Respondent did not file a written response thereto and did not otherwise voice any objection to the motion. At a pre-hearing conference held on October 31, 2024, a Hearing Panel Subcommittee of the Lawyer Disciplinary Board (hereinafter “HPS”) granted Lawyer Disciplinary Counsel’s motion.

Thereafter, on November 7, 2024, this matter proceeded to hearing. The HPS was comprised of: Nicole A. Cofer, Esquire, Chairperson; Charles R. Steele, Esquire; and Margaret Chapman Pomponio, Layperson. Renée N. Frymyer, Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel (hereinafter “ODC”). Respondent appeared *pro se*. The HPS heard testimony from seven witnesses and admitted ODC Exhibits 1-52 into evidence, with ODC Exhibit 30 admitted Under Seal. Following the hearing, on April 10, 2025, the Chairperson of the HPS entered an Order which admitted additional exhibits into evidence: ODC Exhibit 53 and Respondent’s Exhibits 1 and 2.

On or about April 10, 2025, the HPS filed its Report with the Supreme Court in which it properly found that the clear and convincing evidence established that Respondent had violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), and 3.4(c) of the Rules of Professional Conduct regarding Count I, Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.16(d) of the Rules of Professional Conduct regarding Count II, Rules 1.1, 1.3, 3.2, and 8.4(d) of the Rules of Professional Conduct regarding Count III, Rules 1.1, 1.3, 1.4(a)(3), 3.2, 8.4(c) and 8.4(d) of the Rules of Professional Conduct regarding Count IV, Rules 1.3, 3.4(c), and 8.4(d) of the Rules of Professional Conduct regarding Count V, Rules 1.3, 1.4, and 3.2 of the Rules of Professional Conduct regarding Count VI, and Rules 1.4(a)(3), 1.4(a)(4) and 1.16(d) of the Rules of Professional Conduct regarding Count VII of the Statement of Charges. The HPS recommended that Respondent's license to practice law be suspended for one year, that he issue a refund to Ronald Kesner in the amount of \$2,500.00, that he comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure, and that he be ordered to pay the costs of the proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure. Thereafter, on April 21, 2025, the ODC filed its consent to the recommendation of the HPS. On May 9, 2025, Respondent filed his objection to the disposition recommended by the HPS.

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

Respondent is a lawyer practicing in Elkins, which is located in Randolph County, West Virginia. Respondent, having passed the Bar Exam, was admitted to The West Virginia State Bar on October 9, 2003. 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.¹

¹ Admitted by Respondent in his Answer to the Statement of Charges filed on August 16, 2024.

COUNT I - Complaint of Danielle George

In her complaint, filed on or about December 14, 2022, Danielle George stated that Respondent represented her from approximately July 12, 2020, through November 1, 2022. During that time, Ms. George alleged that Respondent was found in contempt of court in her case six times. She alleged that most of Respondent's contempt charges were due to non-responsiveness to the judge, but that he also was found in contempt for not submitting orders within the required ten-day period per the applicable rule. Ms. George further alleged that when she tried to reach Respondent regarding her case or an upcoming court date, she would have to start calling him one to two weeks in advance, and sometimes still would not get a return call. She said on three occasions she called Respondent's office to inquire about a court date and was told it was not on Respondent's schedule and the date would have to be continued. Ms. George alleged that Respondent had lost photographs and other documents pertaining to her case that she had provided him with and could not find a copy of her retainer agreement. Finally, Ms. George alleged that Respondent failed to complete the Qualified Domestic Relations Order ("QDRO") for her case. [ODC Ex. 1]

By letter dated December 19, 2022, the ODC provided Respondent with a copy of Ms. George's complaint and asked him to file a verified response within twenty days of his receipt of the same. [ODC Ex. 2] After requesting and receiving extensions of time to respond to the complaint, in his response received by the ODC on March 10, 2023, Respondent stated that Ms. George had an initial consultation with a former attorney at his office, David Fuellhart, on July 14, 2020, who agreed to accept her case. He stated that the case consisted of prosecuting a pending petition for the entry of a Domestic Violence Protective Order and a divorce. [ODC Ex. 3; 4] Respondent said Ms. George and Mr. Fuellhart agreed to a "flat fee" of \$2,500.00 for the

representation, which Ms. George paid on or about July 16, 2020. Ms. George was not billed further in the matter. Due to a scheduling conflict on the part of Mr. Fuellhart, Respondent said he prepared for and attended the initial hearing in the case, scheduled for August 3, 2020, which was a hearing on the domestic violence protective order. Following this hearing, Respondent said he agreed to take on the remaining portion of the case. Respondent stated that the case was resolved on August 22, 2022, following a settlement conference where the parties reached an agreement regarding the allocation of their marital property and debt. [ODC Ex. 4]

Respondent denied that he was found in contempt of court six times. He stated that the Rules of Practice and Procedure for Family Courts indicate that when assigned to do so, a lawyer is to submit a proposed order to the Court within ten days of the hearing.² Respondent said when a lawyer does not submit an order within ten days, it is common practice for the Court to issue a “Notice of Contempt Hearing/Rule to Show Cause” directing that counsel appear on a date certain to show cause as to why they should not be held in contempt for not preparing the order in the pertinent time frame. Respondent acknowledged that such notices had been issued in Ms. George’s case but asserted that the notice is different than a finding that a lawyer is in contempt of court. He said if counsel submits the order prior to the scheduled hearing, no hearing is conducted, and no finding of contempt is made. [ODC Ex. 4]

Respondent said that for the approximately two-year period of his representation of Ms. George, his records indicated sixteen documented phone calls between them, eight of which having detailed notes of the content of the call, and sixteen documented text messages. He also said other calls took place by cell phone when Respondent was outside of the office, which were

² See Rules of Practice and Procedure for Family Court, Rule 22(b), which states, in part: “An attorney assigned to prepare an order or proposed findings shall deliver the order or findings to the court no later than ten days after the conclusion of the hearing giving rise to the order or findings.”

not documented. Respondent also stated there were forty-two phone calls documented between Ms. George and non-attorney staff during that same period. Respondent acknowledged that he could not locate a written engagement agreement prepared by Mr. Fuellhart in the matter, who left Respondent's practice in the summer of 2021. Respondent admitted it was his responsibility to prepare a QDRO following the entry of the Final Order in Ms. George's case and he had not done so. [ODC Ex. 4]

By letter dated April 7, 2023, the ODC asked Respondent to provide a status update regarding the QDRO in Ms. George's matter. By letter dated May 11, 2023, Respondent stated that he had recently prepared two QDROs on behalf of Ms. George and submitted them to the Court for review and entry. [ODC Ex. 5] According to the docket sheet for Ms. George's Family Court matter, a Notice of Proposed Order with a QDRO attached was e-filed in the case on June 6, 2023. [ODC Ex. 8, bates 62] The docket sheet also reflected multiple Notice of Contempt hearing/Rule to Show Cause entries in the case, and one Order Finding Contempt against Respondent, which was entered on September 1, 2021. [ODC Ex. 8, bates 59-62]

At the hearing, Danielle George testified that she felt that Respondent had done a lot wrong in her case. She said she had received copies of the notices of contempt hearings from the court and would try to reach out to Respondent and would never hear anything back. She said the notices worried her. She said she did not understand the terminology and did not want them to be against her. She said it was her understanding that Respondent was not following through with what the court told him to do in a timely matter. She said she worried about how the contempt notices would affect her case and her son, and that it scared her as a mom. Ms. George described Respondent's communication with her overall as very poor. She said she met with Respondent ten to fifteen minutes prior to court hearings, but when asked if she felt that was adequate time to

prepare her for court, she said “absolutely not.” She said it was a highly stressful situation for her. [Hrg. Tr. pp. 13-21]

Ms. George stated that Respondent appeared “discombobulated” sometimes at hearings. She recalled that a few hearings had been continued but she was given short notice, or she did not have notice until she went to court, after she had taken off work. She said she lost pay when she took off work. She said Respondent did not explain why the hearings had been continued. She said that the resolution of her case was delayed. She said after the divorce she kept calling Respondent about the QDRO and it took him several months to complete. She said that she still did not have those funds and that Respondent had not prepared the QDRO properly. Ms. George also testified that she had provided Respondent with documents and photographs, but despite requesting they be returned, she never got them back. Ms. George described a time when Respondent approached her at her job and asked her to drop the ethics complaint. She said her experience with Respondent made her scared to reach out to other lawyers. She said she felt that she did not get justice. Ms. George testified that she felt the guardian *ad litem* helped her more than Respondent. [Hrg. Tr. pp. 21-50]

At the hearing, Respondent acknowledged that he “broke the rule” that says orders should be prepared in ten days. [Hrg. Tr. p. 260] Respondent also acknowledged that this still happens at times. [Hrg. Tr. p. 262] He also admitted that he “absolutely” did not submit the QDRO in time. [Hrg. Tr. p. 265] He denied, however, asking Ms. George to withdraw her complaint, and stated that he was passionate about her case and worked very hard on her behalf. [Hrg. Tr. p. 268; 272] At the hearing, Respondent apologized to Ms. George for his conduct. [Hrg. Tr. pp. 39-42] He stated that his problems in this case occurred during the same time period of the issues addressed in his previous disciplinary hearing, which took place on November 14, 2022, and that although

he has been working on them, practice management issues are not fixed overnight. [Hrg. Tr. p. 265]

The HPS found that because Respondent failed to make reasonable efforts to expedite the QDRO matter consistent with Ms. George's interests, he violated Rule 1.3 of the Rules of Professional Conduct,³ because Respondent failed to reasonably respond to Ms. George's inquiries for information regarding her case and upcoming hearings, he violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct,⁴ because Respondent failed to surrender to Ms. George photographs and other papers to which she was entitled when his representation concluded, he violated Rule 1.16(d) of the Rules of Professional Conduct,⁵ and because Respondent violated a Rule of Practice and Procedure for Family Court by failing to deliver orders to the Court in Ms. George's case within ten days after the conclusion of a hearing, he violated Rules 3.4(c) of the Rules of Professional Conduct.⁶

COUNT II - Complaint of Adam Kramer

In his complaint, filed on or about December 27, 2022, Adam Kramer stated that Respondent represented him in a Family Court matter. Mr. Kramer alleged that while

³ Rule 1.3. Diligence.

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

⁴ Rule 1.4. Communication.

(a) A lawyer shall:

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

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

⁵ Rule 1.16. Declining or Terminating Representation.

(d) Upon termination of representation, a lawyer shall take 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 that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

⁶ Rule 3.4. Fairness to Opposing Party and Counsel.

A lawyer shall not:

Respondent was his lawyer, he encountered several repeated problems, including Respondent showing up to hearings with wrong or incomplete evidence, failing to show up to scheduled meetings, not responding to emails or phone calls for weeks or months, refusing to meet deadlines, failing to pay the bill from the guardian *ad litem* despite having been given the funds by Mr. Kramer, delays in filing motions, and failure to return personal property that was potential evidence in the matter. Mr. Kramer stated that there were tasks and motions that Respondent had suggested would be completed within a week or two, but often took months or a year, during which Mr. Kramer made repeated phone calls and emails to Respondent to determine the status of the case to no avail. Mr. Kramer alleged that he eventually learned that it was best to schedule an appointment with Respondent, but several times Respondent did not make it to the appointments. When he received paperwork from Respondent, Mr. Kramer said it was often inaccurate, and he had to spend his own time correcting it. Mr. Kramer ultimately retained new counsel to replace Respondent. [ODC Ex. 10]

By letter dated December 29, 2022, the ODC provided Respondent a copy of Mr. Kramer's complaint and asked him to file a verified response within twenty days of his receipt of the same. [ODC Ex. 11] After requesting and receiving an extension of time to respond to the complaint, in his response received by the ODC on March 10, 2023, Respondent stated that Mr. Kramer became his client for the first time in March 2017 when he sought representation in connection with a petition for modification of a parenting plan and a petition to change the last name of Mr. Kramer's daughter in the Family Court of Randolph County. Respondent said that the case later became complicated by the filing of an extensive counterpetition to modify filed by the opposing party. Respondent said the parties ultimately reached a settlement in that matter and

(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.

his representation concluded. Respondent stated that Mr. Kramer retained him for a second time on September 6, 2019, to pursue a petition for contempt, which concluded following a contested final hearing on September 1, 2020. [ODC Ex. 12]

Respondent said he was also retained to pursue a second petition to modify the parenting plan as it related to both custodial and decision-making responsibility. He said a petition to modify was filed on February 12, 2021. The parties were ultimately ordered to attend mediation, which took place on September 1, 2021. Respondent said the parties announced to the Court at a status hearing held on September 22, 2021, that they had reached a partial agreement, which was adopted by the Court that day. Pursuant to the agreement, the parties jointly requested that a guardian *ad litem* be appointed for the subject child to investigate and make recommendations on the remaining unresolved issues. The guardian presented her initial report on January 24, 2022. The Court made modifications to the parenting plan at the request of the guardian and ordered the parties to participate in mediation by April 18, 2022. However, due to scheduling issues, mediation did not occur by that date. In response, the Court ordered that the parties participate in mediation on April 29, 2022, and rescheduled the final hearing for June 8, 2022. [ODC Ex. 12]

Respondent stated that the parties participated in mediation on April 29, 2022, where an agreement was reached. The mediator, however, never memorized the agreement and this is when Respondent believed frustrations grew between himself and Mr. Kramer as any agreement that did exist at mediation fell apart over the next several weeks. The final hearing was rescheduled again, to August 24, 2022. During a meeting with Mr. Kramer and his wife, Respondent said they went over his bill, and he agreed to charge a discounted rate and/or waive some fees. He admitted that from time to time he had been overwhelmed, and the case did not always move forward at the speed Mr. Kramer desired. He stated, however, that Mr. Kramer's

demands had become unreasonable and had exceeded the scope of the representation. The final hearing did not take place on August 24, 2022, due to the Court's direction that the parties begin participating in counseling. After an order from the August 24, 2022, hearing was entered on September 22, 2022, Respondent said he received notice on September 30, 2022, from Mr. Kramer indicating that he wanted to end their attorney-client relationship. Respondent said he waived the "significant" outstanding balance Mr. Kramer had with his office and desired that the parties go their separate ways in peace. [ODC Ex. 12]

Respondent denied Mr. Kramer's allegations regarding lack of communication. He provided a statement of account he said reflected extensive documented communication with Mr. Kramer and his wife. He said there were also other calls and "countless texts" exchanged over the many years of representation which were not billed. Respondent also denied allegations concerning lack of preparation. Respondent said he used his best professional judgment about what to present at hearings and that there were times Mr. Kramer wanted things introduced or asked that Respondent believed were inadmissible or not in Mr. Kramer's best interests to use. Respondent asserted that having been in the case for approximately six years, he had a comprehensive understanding of the facts. [ODC Ex. 12]

Mr. Kramer subsequently provided additional documents which appeared to reflect his and his wife's frustrations regarding delays and lack of communication on the part of Respondent. Mr. Kramer reiterated the allegations contained in his complaint against Respondent. [ODC Ex. 13]

At the hearing, Adam Kramer testified that he filed the complaint against Respondent after "years of negligence" and negative repercussions to his daughter, his family, his life, and his bank account. He described retaining Respondent for representation in three different family

court matters, dating back to 2015. He described that the receipt of billing statements from Respondent “deteriorated over time,” to the point of frustration. Mr. Kramer testified that Respondent’s communication with him was “sporadic at best.” He stated that Respondent’s office had a high turnover, and staff would make promises that Respondent was not going to keep. He said he would repeatedly call Respondent’s office, leave messages, and very rarely get returned phone calls. Mr. Kramer said even if there was a scheduled appointment, Respondent was unavailable on occasion. He described obtaining childcare and coming to Respondent’s office just for no one to be there. Mr. Kramer recalled that this happened at least twice. [Hrg. Tr. pp. 93-99]

Mr. Kramer said that Respondent was held in contempt by the court at one point, and that one of the final orders was not written for more than a year, during which he was paying three times the amount of child support than he had been ordered to pay. [See ODC Ex. 10, bates 87, in which Respondent references that Mr. Kramer’s child support was ordered by the court to be reduced effective October 1, 2017, but the Order reflecting that change was not entered until October 25, 2018.] Mr. Kramer compared that to an order his new attorney had written within forty-eight hours of the conclusion of a hearing. Mr. Kramer said Respondent did not prepare orders in a timely manner. Mr. Kramer said when he retained Respondent most recently, it took him seven to eight months to find out whether the opposing party was still represented by the same attorney. Mr. Kramer believed the delays on the part of Respondent weakened his case, which he described as a parental alienation matter. He said that his daughter, now thirteen years old, has cut off contact with him. He described personal property that had been provided to Respondent, which included a journal and photographs, that had not been returned to him, despite his requests. [Hrg. Tr. pp. 93-105]

Mr. Kramer testified that he did not promptly receive paperwork from Respondent. He said when he retained new counsel, he learned that the guardian *ad litem* was still owed money, that she had sent bills to Respondent, but he had not notified Mr. Kramer. Mr. Kramer stated that he had paid \$250.00 for a payment to the guardian *ad litem* but Respondent had not paid her. [See ODC Ex. 10, bates 91-92] Mr. Kramer described a mediation that had fallen through due to the agreement not being memorialized in writing by the mediator, which led to more litigation in the matter. [See ODC Ex. 10, bates 93-96] Mr. Kramer described his decision to terminate Respondent's representation. He described subsequent representation that was provided to him by lawyer Amy Lanham. He stated that it was a "whole new world." He said, "Everything happened real fast, everything was moving right along, her and the other attorney were able to communicate and solve things outside of the courtroom...She gave us a billing statement promptly, every month was exactly what was going on. Motions were filed instantly, the final order came back right away." Mr. Kramer acknowledged that Respondent had agreed to waive any outstanding money owed to him by Mr. Kramer in his billing statement. Mr. Kramer said regarding Respondent's delays, "[T]he person that I was paying to empower me to help my child was largely empowering her abuser to just keep it going." [Hrg. Tr. pp. 106-162]

Desirae Kramer also testified at the hearing. She stated as Mr. Kramer's wife, she was very involved with the family court matter where Respondent had provided representation. She described that Respondent represented her husband in two back-to-back situations, one beginning in approximately 2016 that ended a few years later and said they did not get the paperwork for that for another year. She said that by the time they got the final paperwork, Mr. Kramer's ex was in contempt, so Respondent represented them again in 2019 up until he was fired in 2022. Mrs. Kramer said it took months after that representation for Respondent to find

out if Mr. Kramer's ex was still represented by counsel. She said that Respondent stood her and her husband up for meetings more than twice, both with in-person and over the phone meetings, and that Respondent was also late for appointments. When asked if she felt the case was a priority for Respondent, she replied "absolutely not." Mrs. Kramer said that it made her feel "[h]elpless, absolutely helpless, and really, as if we just had absolutely nothing to do but wait on [Respondent] to do his job." She described it as an "awful" feeling and said that she had lost all her faith in lawyers and the system. [Hrg. Tr. pp. 164-171]

Mrs. Kramer did describe, however, the counsel they subsequently hired in the matter as "wonderful." She said the new counsel and Respondent were "night and day." She said they were provided with a regular bill, and they knew where their money was going and what was happening. She said the new counsel never missed an appointment and always followed up. Mrs. Kramer said the most embarrassing portion of Respondent's representation was when they would hear about what was going on with the case from the opposing party or her counsel [See, e.g., ODC Ex. 10, bates 97]. Mrs. Kramer discussed a to-do list she had prepared to prompt Respondent [See ODC Ex. 10, bates 84]. She said several things on the list were never completed [See ODC Ex. 10, bates 89]. She described her relationship with her stepdaughter now as "non-existent," and believed that if not for the years spent of having nothing done in the case, the outcome would be different. Mrs. Kramer said they "spent hours of our life, trying to either get [Respondent] to do the job, trying to follow up, trying to help him." Mrs. Kramer also said that "...getting a bill seemed to be very difficult for him," and discussed an email to Respondent referencing multiple requests for a billing statement after she had provided him with additional money [See ODC Ex. 13, bates 176]. [Hrg. Tr. pp. 171-182]

At the hearing, Respondent admitted that he had forgotten he had the \$250.00 to forward

to the guardian *ad litem* for payment and admitted that he had missed and/or cancelled appointments with the Kramers. [Hrg. Tr. pp. 273; 276] He stated that he no longer had the photographs or journal referenced by Mr. Kramer in his possession but said that he once did. [Hrg. Tr. 276] He admitted being overwhelmed during that time and referenced similar issues he had during that time, as addressed in the prior disciplinary proceeding. [Hrg. Tr. p. 276] He said that some of the delays with motions or other actions taken in the matter were strategic decisions. [Hrg. Tr. p. 282] He admitted that he could have updated Mr. Kramer better on his case but denied that he was not prepared for court proceedings. [Hrg. Tr. pp. 284; 299]

The HPS found that because Respondent failed to act with reasonable diligence in his representation of Mr. Kramer including but not limited to missing client appointments, taking over a year to comply with Mr. Kramer's request for a billing statement in his case, failing to promptly prepare and file motions and other documents upon approval from his client, and failing to timely forward payment to the guardian *ad litem*, he violated Rule 1.3 of the Rules of Professional Conduct,⁷ that because Respondent failed to reasonably respond to Mr. Kramer's inquiries for information regarding his case, he violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct,⁸ and because Respondent failed to surrender to Mr. Kramer photographs and other papers to which he was entitled when his representation concluded, he violated Rule 1.16(d) of the Rules of Professional Conduct.^{9 10}

⁷ Fn. 2, *supra*.

⁸ Fn. 3, *supra*.

⁹ Fn. 4, *supra*.

¹⁰ 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).

COUNT III - Complaint of the ODC

By letter dated April 21, 2023, Thomas McQuain, Staff Attorney for the Supreme Court of Appeals, advised the ODC of the filing of a complaint against Respondent at the direction of the Court. Mr. McQuain advised that Respondent was retained counsel for the grandparents appealing their denial of intervenor status in abuse and neglect proceedings captioned *In re A.S.*, No. 22-888. He further advised that the appeal was dismissed by Dismissal Order dated April 21, 2023, due to Respondent's failure to perfect the appeal. The Dismissal Order stated that on November 24, 2022, the petitioners, by Respondent, presented to the Supreme Court a Notice of Appeal from an order of the Circuit Court of Pendleton County entered on October 24, 2022. As set forth in the Court's December 7, 2022, Scheduling Order, the petitioners were directed to submit a motion showing good cause for the untimely filing of the notice of appeal on or before December 19, 2022, and the petitioners were directed to perfect the appeal on or before January 27, 2023. However, no motion showing good cause, petitioners' brief, or appendix were submitted. On February 9, 2023, the Supreme Court issued a notice of intent to dismiss directing that the appeal be perfected on or before February 23, 2023, or the appeal would be dismissed. According to the Dismissal Order, no petitioners' brief or appendix were ever submitted. [ODC Ex. 17]

Pursuant to Rule 2.4 of the Rules of Lawyer Disciplinary Procedure, a complaint was opened in the name of the ODC against Respondent based upon Mr. McQuain's letter. By letter dated April 25, 2023, Respondent was provided with a copy of the information provided by Mr. McQuain and asked to file a verified response within twenty days of receipt of the letter. [ODC Ex. 18] By email dated May 24, 2023, Respondent confirmed with the ODC an extension received to May 30, 2023, to file his response to the complaint. [ODC Ex. 19] By email dated

June 20, 2023, Respondent was reminded by the ODC that it had not yet received his response to the complaint. Respondent replied indicating that he thought he had sent his response a couple of weeks prior. [ODC Ex. 20]

In his response, dated June 21, 2023, Respondent admitted the accuracy of the facts contained in Mr. McQuain's letter. Respondent stated that on or about July 15, 2022, he had an initial consultation with Mr. and Mrs. Timbrook and agreed to take their case, which consisted of prosecuting a Motion to Intervene into a Chapter 49 abuse and neglect case in the Circuit Court of Pendleton County. Respondent proceeded to prepare and file the motion, which was ultimately denied by the Court on October 24, 2022, following a hearing. Respondent said that after evaluating their options, the Timbrooks retained Respondent to appeal the decision of the Circuit Court. Respondent said he timely filed a Notice of Intent to Appeal but failed to perfect the appeal. Respondent asserted that due to an error made in inputting his office's general account email into the Supreme Court's e-filing service when setting up the account, instead of his personal email address, he did not know that a scheduling order was entered or that subsequent pleadings were filed. Accordingly, the dates were never calendared. Respondent said he was not aware of the problem until he received the instant complaint from the ODC. Upon realizing the mistake, Respondent said he researched every way in which he could assist in reviving the appeal before notifying the Timbrooks. Being unsuccessful in that regard, Respondent said he spoke to Mrs. Timbrook on or about May 25, 2023, to confirm that the appeal had been dismissed. Respondent said he subsequently contacted attorney Jeremy Cooper to advise him of the situation and asked if he would take over the case and pursue any remedy possible, including asserting the ineffective assistance of counsel. Respondent said he offered to pay Mr. Cooper's fee for any work performed for the Timbrooks. Finally, Respondent offered to

refund all fees paid by the Timbrooks, not only for the appeal, but also for the underlying Circuit Court case and initial consultation fee. [ODC Ex. 21]

The HPS found that because Respondent failed to provide competent representation to his clients, the Timbrooks, he violated Rule 1.1 of the Rules of Professional Conduct,¹¹ that because Respondent failed to make reasonable efforts to expedite the appeal consistent with his clients' interests, he violated Rule 1.3¹² and Rule 3.2 of the Rules of Professional Conduct,¹³ and because Respondent's dilatory conduct denied his clients the opportunity to have their appeal be heard by the Supreme Court of Appeals of West Virginia, he violated Rule 8.4(d) of the Rules of Professional Conduct.^{14 15}

COUNT IV - Complaint of Joy Timbrook

In her complaint, filed on or about June 28, 2023, Complainant Joy Timbrook stated that she and her husband hired Respondent in July 2022 for a grandparent custody case. Mrs. Timbrook stated that after going to Circuit Court in October 2022, custody was denied. Thereafter, on November 24, 2022, Respondent presented a Notice of Appeal to the Supreme Court of Appeals. Mrs. Timbrook alleged that they did not hear anything further about the case until May 24, 2023, when she called Respondent to inquire about the matter. She said she was

¹¹ 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.

¹² Fn. 2, *supra*.

¹³ Rule 3.2. Expediting Litigation.

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

¹⁴ Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

¹⁵ Respondent admitted to these rule violations in his Answer to the Statement of Charges filed on August 16, 2024.

informed that Respondent did not anticipate a court date occurring in June or July. Feeling something was wrong, Mrs. Timbrook said she called the Supreme Court on May 25, 2023, and learned from the Clerk that because Respondent had never submitted the required paperwork, the appeal was dismissed on April 21, 2023. Mrs. Timbrook said she immediately called Respondent, who she alleged would not take her call until she told Respondent's secretary that she had called the Supreme Court. In the call, Mrs. Timbrook said Respondent stated that he had been trying to figure out a way to "fix" the situation which was why he did not let her know that her appeal had been dismissed. Ms. Timbrook stated that Respondent promised to send a refund, but as of the filing of her complaint, she had not received anything from Respondent. [ODC Ex. 24]

By letter dated June 28, 2023, Respondent was provided with a copy of Mrs. Timbrook's complaint and was asked to file a verified response within twenty days of receipt of the same. [ODC Ex. 25] By email dated August 8, 2023, Respondent was reminded by the ODC that it had not yet received his response to the complaint. [ODC Ex. 26] In his response, dated August 14, 2023, Respondent admitted to the accuracy of most of the allegations of Mrs. Timbrook. Respondent stated that on or about July 15, 2022, he had an initial consultation with Mr. and Mrs. Timbrook and agreed to take their case, which consisted of prosecuting a Motion to Intervene into a Chapter 49 abuse and neglect case in the Circuit Court of Pendleton County. Respondent proceeded to prepare and file the motion, which was ultimately denied by the Court on October 24, 2022, following a hearing. Respondent said that after evaluating their options, the Timbrooks retained Respondent to appeal the decision of the Circuit Court. Respondent said he timely filed a Notice of Intent to Appeal but failed to perfect the appeal. Respondent asserted that due to an error made in inputting his office's general account email into the Supreme Court's e-

filing service when setting up the account, instead of his personal email address, he did not know that a scheduling order was entered or that subsequent pleadings were filed. Accordingly, the dates were never calendared. Respondent said he was not aware of the problem until he received the complaint from the ODC. Upon realizing the mistake, Respondent said he researched every way in which he could assist in reviving the appeal. Respondent acknowledged that on May 23, 2023, he had not yet contacted the Timbrooks to notify them of the problem. [ODC Ex. 27]

Respondent further acknowledged that on May 23, 2023, Mrs. Timbrook called his office and spoke to a staff member. He said office notes indicated that the staff person sent him a message about the call at 9:24 a.m., and his calendar indicated that he was in a hearing starting at 9:30 a.m. that day and subsequently traveled to Hardy County for a hearing that afternoon. Respondent said he did not recall receiving the message on May 23, 2023. Respondent stated that Mrs. Timbrook called again the following day, but he was not prepared to have a conversation with her regarding the dismissal of her appeal. Respondent said he was truthful, however, in advising his staff person that he did not anticipate a hearing would be scheduled in the matter that June or July. Respondent said he concluded his remaining research and spoke to Mrs. Timbrook the next day, where he confirmed that the appeal had been dismissed. Respondent said he offered to support the Timbrooks any way he could. Respondent said he subsequently contacted lawyer Jeremy Cooper to advise him of the situation and asked if he would take over the case and pursue any remedy possible, including asserting ineffective assistance of counsel. Respondent said he offered to pay Mr. Cooper's fee for any work performed for the Timbrooks. Finally, Respondent asserted that he offered to refund all fees paid by the Timbrooks, not only for the appeal, but also for the underlying Circuit Court case and initial consultation fee. [ODC Ex. 27]

Joy Timbrook testified at the hearing about having raised her granddaughter since she was born, but when she was thirteen months old, she was removed by Child Protective Services because Mrs. Timbrook's daughter, the child's mother, had been involved in an accident and was incarcerated. Mrs. Timbrook said she and her husband sought Respondent's representation for temporary custody of their granddaughter. She described not prevailing in court, and Respondent appealing the matter to the Supreme Court. Mrs. Timbrook stated that she paid Respondent for the representation and that Respondent thought they had a good case for appeal. She said that Respondent helped her feel hopeful they would prevail. She said after the Notice of Appeal was filed in November 2022, she did not get updates from Respondent. She said she also did not receive copies of any documents from Respondent. She said in May 2023, she was supposed to have surgery, so she called Respondent's office to see if he foresaw a court date in the near future so she could schedule her surgery. She said that Respondent's secretary informed her that Respondent did not foresee a court date in June or July. She said she knew that something was wrong when she got off the phone, so she called the Supreme Court and ultimately learned that the case had been dismissed. She said she called Respondent's office again. She said, "...of course, when you call his office, he's never there. He's never available." She said Respondent quickly became available when he learned she had talked to someone at the Supreme Court. She said he told her that the reason he had not told her was because he was trying to figure out a way to fix it. But she said that during that time the adoption process had already started, and her granddaughter's adoption was finalized soon thereafter. She said she and her husband have had no further contact with their granddaughter. Mrs. Timbrook referenced documents in the record indicating that in February 2023 the Supreme Court had issued a Notice of Intent to Dismiss and because nothing was filed, it was dismissed in April 2023 [*See* ODC Ex. 17, bates 194]. She said

that Respondent referred her to a lawyer, Jeremy Cooper, who never returned her messages. Mrs. Timbrook stated that she demanded a refund from Respondent, and he mailed her a check that she could not cash due to insufficient funds. She said that an employee of Respondent delivered a money order to her in person. Mrs. Timbrook believed that she had lost a child because of Respondent. She said that this matter had “destroyed” and “devastated” her and cost her her health. [Hrg Tr. pp. 183-199]

At the hearing, Respondent admitted on the record that he forgot to follow up on the appeal he filed on behalf of the Timbrooks. [Hrg. Tr. p. 301] He said this is the case in these proceedings that he felt the worst about. Respondent said that there was no excuse or mitigation for his conduct in this case. [Hrg. Tr. p. 304] He stated that the appeal was a “long shot,” and admitted that he had a hard time telling clients no. [Hrg. Tr. pp. 304; 306-307] Respondent apologized to Mrs. Timbrook. [Hrg. Tr. p. 198]

The HPS found that Respondent’s violations of Rules 1.1, 1.3, 3.2, and 8.4(d) of the Rules of Professional Conduct, as outlined in Count III, were incorporated by reference in Count IV.¹⁶ The HPS also found that because Respondent failed to keep his clients reasonably informed as to the status of their appeal, which had been dismissed by the Supreme Court of Appeals on April 21, 2023, where he had notice of said dismissal by at least late April 2023, he violated Rule 1.4(a)(3) of the Rules of Professional Conduct,¹⁷ and because Respondent misled his client regarding the status of her appeal he violated Rule 8.4(c) of the Rules of Professional Conduct.¹⁸

¹⁶ Page 17, *supra*. Respondent also admitted to these rule violations in his Answer to the Statement of Charges filed on August 16, 2024.

¹⁷ Fn. 3, *supra*.

¹⁸ Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

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

COUNT V - Complaint of David Cox

In his complaint, filed on or about September 7, 2023, Complainant David Cox stated that Respondent represented his estranged wife in a Family Court proceeding in the Randolph County Family Court. Mr. Cox, who represented himself in the matter *pro se*, expressed frustration regarding many issues in the matter and accused Respondent of “dragging his feet” on behalf of his client. Mr. Cox stated that Respondent had been late in filing almost every order or other paper that he was ordered to file in the case. Mr. Cox asserted that the Family Court had entered multiple Notice of Contempt Hearing/Rules to Show Cause in the matter due to Respondent’s failure to provide proposed orders pursuant to the Rules of Practice and Procedure for Family Court. [ODC Ex. 30]

By letter dated September 14, 2023, Respondent was provided with a copy of Mr. Cox’s complaint and was asked to file a verified response within twenty days of receipt of the same as to the allegations concerning his failure to prepare and file orders in the Cox Family Court matter, which resulted in contempt proceedings. [ODC Ex. 31] In his response dated October 10, 2023, Respondent admitted that in the instances cited by Mr. Cox he failed to submit an order in the ten-day time period but stated that in each instance he submitted the order by the date set forth by the Court in the Notice and the Rules to Show Cause were dismissed without a finding of contempt. Respondent provided copies of the dismissal orders that had been entered in the matter by the Family Court Judge referencing Rules to Show Cause that were issued between March 30, 2022, and June 7, 2023. Respondent asserted that the preparation of the orders in the case was “exceptionally difficult,” and that despite taking copious notes he had to request a copy of the recording of the hearing from the Court in nearly every instance. He acknowledged that a better practice may be to formally move for additional time in instances where a recording was

requested. Respondent stated that no orders that he had been directed to prepare were outstanding on the date of Mr. Cox's complaint. [ODC Ex. 33]

The docket sheet for the matter reflects twelve Notice of Contempt Hearing/Rule to Show Cause entries in the case, and no orders finding Respondent in contempt of court. The first Notice was entered on March 30, 2022, and the last was entered on September 5, 2023. [ODC Ex. 38] At the hearing, Respondent stated that he did not believe any delays in the entry of orders in the Cox case harmed the underlying case. He said the case had concluded. [Hrg. Tr. pp. 312-313] Mr. Cox was not called to testify at the hearing.

The HPS found that because Respondent failed to diligently prepare and file the proposed orders as ordered by the Family Court Judge, he violated Rule 1.3 of the Rules of Professional Conduct,¹⁹ that because Respondent violated a Rule of Practice and Procedure for Family Court by failing to deliver orders to the Court in the Cox case within ten days after the conclusion of a hearing, he violated Rule 3.4(c) of the Rules of Professional Conduct,²⁰ and because Respondent engaged in dilatory conduct in failing to comply with the Rules of Practice and Procedure for Family Court, causing multiple Notices of Contempt Hearing/Rules to Show Cause being entered by the Family Court, he violated Rule 8.4(d) of the Rules of Professional Conduct.²¹

COUNT VI - Complaint of Ronald Kesner

In his complaint, filed on or about January 30, 2024, Complainant Ronald Kesner stated that he met with Respondent on December 22, 2019, to get assistance in settling his parents' estate. Mr. Kesner said Respondent agreed to take his case, and a case was ultimately filed in

¹⁹ Fn. 2, *supra*.

²⁰ Fn. 5, *supra*.

²¹ Fn. 13, *supra*.

Grant County in or around February 2021. Mr. Kesner alleged that a response to the case came from opposing counsel in April 2021, but Respondent “didn’t do anything with it.” Mr. Kesner alleged that in the past five years, Respondent has “lied, dodge[d] [Mr. Kesner], cancelled appoint[ments]. ...refused to return any phone calls and set phone calls and not answer[ed].” Mr. Kesner stated that he had paid Respondent a retainer fee of \$2,500.00. [ODC Ex. 39]

By letter dated January 31, 2024, Respondent was provided with a copy of Mr. Kesner’s complaint and was asked to file a verified response within twenty days of receipt of the same. [ODC Ex. 40] On March 5, 2024, Respondent was given an extension to March 12, 2024, to file his response to the complaint. [ODC Ex. 41]

In his response dated March 11, 2024, Respondent stated that he first met Mr. Kesner on September 23, 2016, and they engaged in an initial consultation. His records indicated that Mr. Kesner said he was an heir to his mother’s estate and needed legal help because he had “not been able to find out what was going on.” Respondent said he agreed to represent Mr. Kesner in connection with the investigation of public records regarding the status of his mother’s estate, and Mr. Kesner paid him a fee of \$750.00. Respondent described the work he performed on Mr. Kesner’s behalf and asserted that he reported the results of his investigation to Mr. Kesner on October 5, 2016. Respondent said Mr. Kesner advised that he had been appointed Executor of his mother’s estate on October 13, 2016. Respondent said they met on October 28, 2016, to go over follow up questions, and his representation of Mr. Kesner concluded. Respondent said he met with Mr. Kesner about a new matter on May 21, 2021,²² and Mr. Kesner indicated that he was interested in contesting the will of his father. Respondent agreed to represent him, and Mr. Kesner paid a flat fee of \$2,500.00. Respondent said at the time, Mr. Kesner produced two

²² Respondent had no record of a meeting with Mr. Kesner on December 22, 2019.

documents he had filed with the Grant County Clerk seeking to contest the will of his father before the Grant County Commission but wanted to take his claim to Grant County Circuit Court. Respondent stated that he drafted a proposed complaint for Mr. Kesner's review and approval and proceeded to file the complaint on Mr. Kesner's behalf and appear as counsel of record in the action in December 2021. According to Respondent, opposing counsel appeared and responded with a Notice of Bona Fide Defense on January 11, 2022, and an Answer on or about January 21, 2022. Respondent acknowledged since that time frame there had been delays and the case has not moved as quickly as one would have hoped but offered to move forward in his representation of Mr. Kesner. Respondent denied making any material misrepresentations to Mr. Kesner. [ODC Ex. 42]

Ronald Kesner testified at the hearing about retaining Respondent in 2016 for representation regarding estate issues involving his parents. Mr. Kesner said he was trying to get Respondent to take the case to court because he did not believe the estate was being handled properly. Mr. Kesner could not recall any work Respondent did for him. He stated that he called and left messages for Respondent but never had a phone call returned. Mr. Kesner also said that he gave Respondent a list of people to schedule for depositions and set up a room twice in the Grant County Courthouse, but nothing happened. Mr. Kesner stated that Respondent was always late to their scheduled meetings and recalled a time when Respondent did not show up at all for a meeting, after he had travelled to Respondent's office. Mr. Kesner said he was basically being his own attorney. Mr. Kesner said that he had to file the case in court himself, and it was still pending. Mr. Kesner said that he could not proceed with the case because other lawyers would not touch it because Respondent's name was still on it. Mr. Kesner believed Respondent owed him a full refund of the money he had been paid. He said, "I feel if...you should get paid for the

job, if you do the job, but if you don't do the job, you should give the money back.” Mr. Kesner said that when he paid Respondent the retainer, Respondent “disappeared and took off and went to the beach.” Mr. Kesner said it made him “feel like the rug was pulled out...[l]ike [he] had no help at all.” Mr. Kesner said he had trusted Respondent and thought he was going to do the right thing. [Hrg. Tr. pp. 52-92] At the hearing, Respondent apologized to Mr. Kesner and offered him a refund of the retainer he paid. [Hrg. Tr. pp. 86-87, 89]

The HPS found that because Respondent neglected Mr. Kesner’s case and failed to take appropriate action in the matter, he violated Rule 1.3 of the Rules of Professional Conduct,²³ that because Respondent failed to keep Mr. Kesner informed as to the status of the matter and failed to respond to his requests for information, he violated Rule 1.4 of the Rules of Professional Conduct,²⁴ and because Respondent engaged in dilatory practices and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Mr. Kesner, he violated Rule 3.2 of the Rules of Professional Conduct.²⁵

COUNT VII - Complaint of Linda Taylor

In her complaint, filed on or about February 2, 2024, Complainant Linda Taylor stated that in attempting to seek temporary custody of her two granddaughters, she contacted Respondent in September 2023. Ms. Taylor said she paid an initial consultation fee of \$200.00 and spoke with Respondent, who said he would take the case once a retainer fee of \$4,000.00 was paid. Ms. Taylor asserted that she paid the fee via credit card on September 11, 2023. Ms. Taylor alleged that after not hearing back from Respondent for two weeks, she made several attempts to contact his office, leaving messages but received no response. On November 16,

²³ Fn. 2, *supra*.

²⁴ Fn. 3, *supra*.

2023, Ms. Taylor said she finally spoke to Respondent, who told her that the case was not what he thought, and he would send her a refund on December 1, 2023. Ms. Taylor asserted in her complaint that she never received a refund from Respondent and had been unable to reach him. [ODC Ex. 47]

By letter dated February 6, 2024, Respondent was provided with a copy of Mrs. Taylor's complaint and was asked to file a verified response within twenty days of receipt of the same. [ODC Ex. 48] On March 5, 2024, Respondent was given an extension to March 12, 2024, to file his response to the complaint. [ODC Ex. 49]

In his response dated March 11, 2024, Respondent acknowledged that he first met with Ms. Taylor by telephone on September 11, 2023, and that she paid a one-time fee of 200.00 for an initial consultation. Respondent said Ms. Taylor indicated that she was seeking custody of her grandchildren after they had been removed from the care of their parents by the Circuit Court of Kanawha County. Respondent said he agreed to accept the case, and Ms. Taylor paid him a fee of \$4,000.00. Respondent stated that Ms. Taylor gave every indication that the case her daughter was involved in was an abuse and neglect case brought pursuant to Chapter 49 of the West Virginia Code. Respondent said Ms. Taylor agreed that she would email all available documents, specifically one with the style of the case, for Respondent's review and then they would formulate a plan on how to proceed. Respondent said that when his staff arrived at work the following morning, they found that Ms. Taylor's daughter had emailed the requested documents. However, Respondent said his records reflected that he was largely out of the office in hearings that week and was not able to begin a thorough review of the information until the weekend of September 16-17, 2023. Respondent also stated that his assistant contacted Ms. Taylor on September 14, 2023, to get additional information about the facts of the case which were

²⁵ Fn. 12, *supra*.

presented to Respondent in summary form to review when he reviewed the rest of the documents. Respondent said that the information provided that the case was not a Chapter 49 case, but an infant guardianship case brought by the paternal grandparents pursuant to a different section of the West Virginia Code. [ODC Ex. 50]

Respondent said the most recent order indicated that a hearing had been held in that matter on July 6, 2023. Therefore, Respondent sought to clarify if a Chapter 49 case had been filed between the date of that order and the date of his consultation with Ms. Taylor. Respondent asserted that finding out any information on a Chapter 49 case can be daunting due to the highly confidential nature of the proceedings. He said he was able to confirm, however, that there was no pending Chapter 49 case. Therefore, legal research was necessary to determine what standing Ms. Taylor would have to intervene in an infant guardianship case. Respondent had no record of receiving any call from Ms. Taylor in October 2023. Respondent's records indicated no communication between Ms. Taylor and anyone at his office until November 16, 2023, when he received a message from Ms. Taylor indicating that she wanted a refund. [ODC Ex. 50]

Respondent asserted that he spoke with Ms. Taylor on November 21, 2013, and advised her that his work had led him to discover that her daughter's case was not a Chapter 49 case, but rather an infant guardianship case, and explained what he believed her options to be in proceeding in a request for custody as a grandparent. Respondent said that Ms. Taylor sought to defend her daughter, and he advised her that if her position was that her daughter had done nothing wrong, her request for custody would likely fail. Respondent said that Ms. Taylor thereafter indicated that she no longer needed Respondent's assistance and wanted a refund. Respondent said he explained to Ms. Taylor that he would offer her a partial refund after charging for the work he had performed in the "research and strategy phase." Respondent

admitted that as his office processed refunds on the first day of the month, the refund should have been issued on or about December 1, 2023, and he regretted that that had not occurred. With a copy of his response to her complaint, Respondent stated that he was enclosing a check payable to Ms. Taylor for \$4,000.00, declining to charge for work he performed. [ODC Ex. 50]

Linda Taylor testified at the hearing that she retained Respondent in September 2023 because her grandchildren had been removed from her daughter's home by Child Protective Services, and she wanted to intervene and see if she could get the children in her care. Ms. Taylor said Respondent agreed to help her and she paid him a \$200.00 retainer fee and then an additional \$4,000.00 for the representation. Ms. Taylor said she was told by Respondent he would go to the courthouse and file a paper the very next day, and she took him at his word. However, she said that she never heard anything more from him. Ms. Taylor referenced her phone records and recalled that she called Respondent on October 16, 2023, and there was no answer. She said she called on October 19, 2023, and was told by a male employee that Respondent was on vacation. She said she called on November 16, 2023, and talked to someone at Respondent's office and said that because she had never heard anything from Respondent since he had been retained, she wanted a refund. She said Respondent called her on November 21, 2023, and she told him she wanted a refund. She said she was "just fed up with, you know, no – no service from him." She said Respondent said the check would be mailed out the first day of December, or at the latest the first day of January. Ms. Taylor said she never heard anything more until she got the check from Respondent in March 2024, which was after she filed her complaint with the ODC. She said her experience made her feel like she can't trust lawyers. She felt Respondent was not professional by having no contact with her. She said every time she called it was either no answer, or he was not there. [Hrg. Tr. pp. 201-211]

Respondent admitted at the hearing that he should have told Ms. Taylor he could not pursue the case faster and issued her a refund faster. He also admitted that he did not communicate effectively with her. [Hrg. Tr. pp. 323-324]

The HPS found that because Respondent failed to reasonably respond to Ms. Taylor's inquiries for information, he violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct,²⁶ and because Respondent failed to promptly refund the unearned portion of the retainer to Ms. Taylor, he violated Rule 1.16(d) of the Rules of Professional Conduct.²⁷

II. SUMMARY OF ARGUMENT

The HPS correctly found that the reliable, probative, and substantial evidence on the whole record established by clear and convincing proof that Respondent committed numerous violations of the Rules of Professional Conduct, that he knowingly violated his duties to his clients, the public, the legal system, and the legal profession, and that his actions caused actual injuries and harm. The HPS also properly considered the aggravating factors of prior disciplinary offenses and a pattern and practice of conduct in violation of the diligence and communication provisions of the Rules of Professional Conduct, as well as any potential mitigating factors, and made an appropriate recommendation that the Respondent's license to practice law be suspended for one year in addition to other appropriate sanctions. In adopting and ordering such sanctions in this lawyer disciplinary proceeding, this Honorable Court will serve its goals of protecting the public, reassuring the public as to the reliability and integrity of attorneys, and safeguarding the administration of justice. A strong sanction is also necessary to restore the faith of the complainants in this matter, and to deter lawyers who may be considering or who are engaging in similar misconduct.

²⁶ Fn. 3, *supra*.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

On June 5, 2025, the Supreme Court of Appeals entered an Order that the matter be briefed by the parties and scheduled it for oral argument under Rule 19 of the Rules of Appellate Procedure.

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, 1989 (1995).

The Supreme Court of Appeal 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

²⁷ Fn. 4, *supra*.

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 the multiple Rules of Professional Conduct as determined by the HPS regarding all seven 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 his clients, the public, the legal system, and the profession.

The record is clear that Respondent engaged in a course of conduct in violation of the Rules of Professional Conduct and therefore violated the enumerated duties he owed to his clients, the public, the legal system and legal profession. The evidence clearly demonstrates that, among other things, Respondent repeatedly failed to communicate with his clients or respond to his clients' reasonable requests for information. He missed scheduled phone calls and appointments with his clients. He failed to diligently pursue matters on behalf of his clients. Respondent also missed deadlines, which in the case of the Timbrooks lost them their chance at an appeal, and he failed to comply with court rules on numerous occasions. Although Respondent was not charged with failing to respond to the requests of the ODC, it is noted that Respondent's responses to several of the complaints herein were delayed. The legal system and legal profession are adversely affected when lawyers fall short of their duties under the rules and fail to participate in a disciplinary investigation properly.

2. Respondent acted knowingly.

In the cases herein, there is no evidence to suggest that Respondent did not act knowingly. On November 14, 2022, a hearing was held where Respondent was ultimately found to have violated the Rules of Professional Conduct in multiple matters. Respondent was publicly reprimanded by this Honorable Court and ordered that his practice of law be supervised for two years. Respondent's supervision began in August 2023. The instant proceeding involves

complaints filed after the preceding disciplinary hearing, and for the most part involve actions which occurred subsequent to that proceeding. The misconduct on the part of Respondent was not an isolated incident and not the result of simple negligence or mistake but has continued over the course of multiple years. Thus, it is apparent that Respondent has acted with conscious awareness of the nature or attendant circumstances of his conduct regarding the instant charges.

3. There are injuries resulting from Respondent's conduct.

The record contains testimony from multiple former clients of Respondent as to the harm they suffered as a result of Respondent's conduct, which included delay, frustration, stress, a sense of lost justice, and the loss of trust in lawyers and the legal system. Much of this injury stemming from Respondent's misconduct is incalculable but nonetheless significant. In addition, the conduct exhibited by Respondent undermines the integrity and public confidence in the administration of justice, and has brought the legal system into disrepute.

4. There are aggravating factors present.

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 constitute an aggravating factor. On December 8, 2017, Respondent was twice admonished by the Investigative Panel of the Lawyer Disciplinary Board for violating

Rules 1.3 and 1.4 of the Rules of Professional Conduct in one matter, and for violating Rules 1.3, 1.4, and 3.2 of the Rules of Professional Conduct in a separate matter. On October 17, 2020, Respondent was again admonished by the Investigative Panel of the Lawyer Disciplinary Board for violating Rules 1.3, 1.4, and 1.5(b) of the Rules of Professional Conduct. On July 15, 2022, a three-count Statement of Charges was filed against Respondent by the Investigative Panel of the Lawyer Disciplinary Board. On June 9, 2023, the Supreme Court entered an Order which adopted the disposition previously filed by the HPS and publicly reprimanded Respondent, ordered that his practice of law be supervised for a period of two years by an attorney agreed upon by the ODC and Respondent, that Respondent shall meet with his supervising attorney every two weeks with the goal of the supervised practice being to improve the quality and effectiveness of his law practice to the extent that his sanctioned behavior is not likely to reoccur, that Respondent complete an additional six hours of continuing legal education, over and above the mandatory continuing legal education hours required in the current reporting period in the area of ethics and law office management within twelve months from the date of the order, and Respondent shall pay the costs of the disciplinary proceeding. Respondent was found to have committed multiple violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 3.2 of the Rules of Professional Conduct, and single violations of Rules 3.4(c) and 8.4(d) of the Rules of Professional Conduct, in that proceeding. [See documents from Respondent's public file, ODC Ex. 52.] The misconduct in that proceeding was strikingly similar to Respondent's misconduct in the instant proceeding, particularly in reference to Count II in the preceding matter and the discussion of Respondent's handling of the matter on behalf of the Timbrooks herein.

Rule 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* also indicates that a pattern of misconduct constitutes an aggravating factor. A pattern and practice of conduct

in violation of the diligence and communication provisions of the Rules of Professional Conduct has been established by Respondent as reflected by the conduct in three prior complaints where Respondent was admonished, the conduct set forth in the previous three-count Statement of Charges, and the allegations contained in the seven pending complaints as set forth herein.

5. Potential mitigating factors.

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. In this case, Respondent’s cooperative attitude toward proceedings is a potential mitigating factor. Respondent also expressed remorse to several of the complainants and to the HPS during these proceedings.

D. RESPONDENT’S CONDUCT REQUIRES STRONG SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, in part, *Committee on Legal Ethics v. Tatterson*, 173 W.Va. 613, 319 S.E.2d 381 (1984), cited in *Committee on Legal Ethics v. Morton*, 186 W.Va. 43, 35, 410 S.E.2d 279, 281 (1991). 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.

Absent any aggravating or mitigating circumstances, the *ABA Model Standards for Imposing Lawyer Sanctions* provide that:

Standard 4.42. Suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standard 6.22. Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

Standard 8.2. Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system or the profession.

In addition, the case law in West Virginia concerning such misconduct has resulted in attorney suspensions. Recently, in *Lawyer Disciplinary Board v. Davis*, -- W.Va. --, -- S.E.2d --, 2022 WL 421119 (2022), the Supreme Court of Appeals suspended the respondent lawyer's license to practice law for six months for his violation of Rules 1.3, 1.4, 1.5(b) 8.1(b), and 8.4(d) of the Rules of Professional Conduct relating to a one-count Statement of Charges. In that matter, the Supreme Court specifically found a strong sanction consistent with the Court's obligation to protect the public interest and dissuade similar conduct in the future due to the lawyer's prior disciplinary sanctions, which included admonishments and a thirty-day suspension. *Lawyer Disciplinary Board v. Thorn*, 236 W. Va. 681, 783 S.E.2d 321 (2016) is also instructive. In that matter, a one-year suspension was imposed on a lawyer who failed to communicate with clients, failed to respond to client inquiries, failed to refund unearned fees, failed to provide accountings for his work, and failed to respond to disciplinary matters. Although evidence was adduced that Mr. Thorn's conduct was partially attributable to his

depression and he had no disciplinary history, the Supreme Court found that he violated duties to clients and legal system, caused significant harm to clients, and exhibited a pattern and practice of misconduct. *See also, Lawyer Disciplinary Board v. Curmutte*, -- W.Va. --, -- S.E.2d --, 2025 WL 1604403 (2025) (six-month suspension, along with the other sanctions recommended by HPS, warranted for lawyer with pattern and practice of neglecting his clients' cases, failing to communicate with them, and failing to take action on their behalf); *Lawyer Disciplinary Board v. Schillace*, 247 W.Va. 673, 885 S.E.2d 611 (2022) (two-year suspension ordered for lawyer with pattern of knowingly ignoring communications from his clients); *Lawyer Disciplinary Board v. Hart*, 235 W. Va. 523, 775 S.E.2d 75 (2015) (three year suspension for a pattern of violations of Rules 1.3; 1.4; 1.5; and 1.15); *Committee on Legal Ethics v. Keenan*, 189 W.Va. 37, 427 S.E.2d 471 (1993) (indefinite suspension for failure to provide competent representation, failure to act with reasonable diligence, failure to communicate effectively with his clients, and failure to return unearned fees); *Lawyer Disciplinary Board v. Burgess*, No. 23030 (W. Va. 4/25/96) (unreported) (two year suspension with one year suspension deferred while respondent undergoes a one-year period of supervision following reinstatement for violation of Rules 1.3, 1.4, 8.1(b), 8.4(d) and other violations); *Lawyer Disciplinary Board v. Morgan*, 228 W.Va. 114, 717 S.E.2d 898 (2011) (one year suspension for violation of Rules 1.3, 1.4, 8.1(b), 8.4(d), and other violations); *Lawyer Disciplinary Board v. Phalen*, No. 11-1746 (WV 11/14/12) (unreported) (one year suspension for violation of Rules 1.3, 1.4, and other violations).

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). In this case, the Lawyer Disciplinary Board asserts that Respondent knowingly engaged in conduct that violated his duties as a professional and caused direct harm

to his clients, the public, the profession and the system of justice. The infractions committed by Respondent, in addition to the aggravating factors present which include Respondent's prior disciplinary history of multiple admonishments and a public reprimand with supervised practice ordered, touch the very essence of the public's perception of the legal system. For the public to have confidence in our disciplinary and legal systems, lawyers such as Respondent must be removed from the practice of law for a period of time. A license to practice law is a revocable privilege and when such privilege is abused, the privilege should be revoked. A strong sanction is also necessary to deter other lawyers from engaging in similar conduct, to restore the faith of the multiple complainants in these cases, and to reassure the general public of the integrity of the legal profession. A sanction less than suspension in this matter would likely fail to dissuade similar conduct on the part of Respondent in the future, thereby putting the public at risk and thus fall short of the stated goals of the disciplinary system.

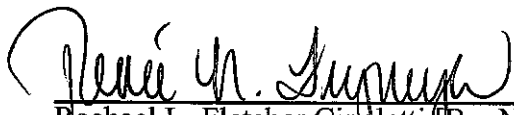
Respondent, an experienced lawyer, has committed over twenty violations of the Rules of Professional Conduct in the instant proceeding. In his prior disciplinary proceeding, where he ultimately received a public reprimand, he acknowledged that subsequent violations of the Rules may result in harsher sanction. The recommendation made by the HPS that Respondent's license to practice law be suspended for one year in addition to other sanctions including issuing a refund and the requirement to petition for reinstatement, is appropriate. In adopting and ordering such sanctions herein, this Honorable Court will serve its goals of protecting the public, reassuring the public as to the reliability and integrity of attorneys, and safeguarding the administration of justice.

V. CONCLUSION

The HPS of the Lawyer Disciplinary Board 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, the 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 regarding multiple matters. Respondent's course of misconduct cannot be condoned or excused, and thus a strong sanction is necessary. For the reasons set forth above, the Lawyer Disciplinary Board urges that this Honorable Court uphold and adopt the recommendations as contained in the Report of the HPS of the Lawyer Disciplinary Board in this matter.

Respectfully submitted,
The Lawyer Disciplinary Board
By Counsel


Rachael L. Fletcher Cipolletti [Bar No. 8806]
Chief Lawyer Disciplinary Counsel
rfcipolletti@wvdc.org
Renée N. Frymyer [Bar No. 9253]
Lawyer Disciplinary Counsel
rfrymyer@wvdc.org
Office of Lawyer Disciplinary Counsel
West Virginia Judicial Tower
4700 MacCorkle Avenue SE, Suite 1200
Charleston, West Virginia 25304
(304) 558-7999
(304) 558-4015 --*facsimile*

CERTIFICATE OF SERVICE

This is to certify that I, Renée N. Frymyer, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 21th day of July, 2025, served a true copy of the foregoing **“BRIEF OF THE LAWYER DISCIPLINARY BOARD”** upon Respondent Phillip S. Isner, via email and electronically, through File and Serve Xpress, to the following address:

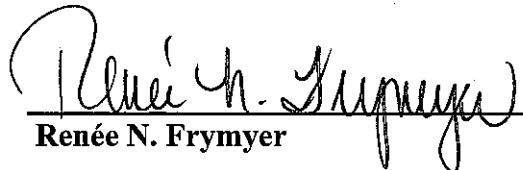
Phillip S. Isner, Esquire
PO Box 1878
Elkins, WV 26241
phil@isnerlaw.com

And upon the Hearing Panel Subcommittee via email at the following addresses:

Nicole A. Cofer, Esquire
4700 MacCorkle Avenue, SE 9th Floor
Charleston, WV 25304
nicole.cofer@courtsww.gov

Charles R. Steele, Esquire
347 Washington Avenue
Clarksburg, WV 26301
crs@steelemcmunn.com

Margaret Chapman Pomponio
1237 Highland Road
Charleston, WV 25302
margaret@wvfree.org



Renée N. Frymyer