

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

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**In Re:** PHILLIP S. ISNER, a member of  
The West Virginia State Bar

**Bar No.:** 9399  
**I.D. Nos.:** 22-02-471  
22-02-484  
23-02-163  
23-02-262  
23-02-362  
24-02-047  
24-02-050

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**STATEMENT OF CHARGES**

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**To:** Phillip S. Isner, Esquire  
Post Office Box 1878  
Elkins, West Virginia 26241

**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 Lawyer Disciplinary Procedure, with regard to the following charges against you:

1. Phillip S. Isner (hereinafter "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.

**COUNT I**

**I.D. No. 22-02-471**

**Complaint of Danielle J. George**

2. In her complaint, filed on or about December 14, 2022, Complainant Danielle J. George stated that Respondent represented her from approximately July 12, 2020, through November 1, 2022.

3. 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 nonresponsiveness 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.
4. 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 from Respondent. 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.
5. 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.
6. Finally, Ms. George alleged that Respondent failed to complete the Qualified Domestic Relations Order ("QDRO") for her case.
7. By letter dated December 19, 2022, the Office of Lawyer Disciplinary Counsel ("ODC") provided Respondent a copy of Ms. George's complaint and asked him to file a verified response within twenty days of his receipt of the same.
8. 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, Esquire, 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.

9. Respondent said Ms. George and Mr. Fuellhart agreed to a “flat fee” of Two Thousand Five Hundred Dollars (\$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.
10. 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.
11. Respondent stated that the case was finally resolved on August 22, 2022, following a settlement conference where the parties reached an agreement regarding the allocation of their marital property and debt.
12. 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 proposed order to the Court within ten days of the hearing. 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 must 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 finding a lawyer to be 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.
13. 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 not documented. Respondent also stated there were forty-two phone calls documented between Ms. George and non-attorney staff during that same period.

14. Respondent acknowledged that he could not locate a written engagement agreement prepared by Mr. Fuellhart in the matter. Mr. Fuellhart left Respondent's practice in the summer of 2021.
15. Respondent admitted it was his responsibility to prepare a QDRO in the matter following the entry of the Final Order in Ms. George's case and he had not yet done so.
16. 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.
17. According to the docket sheet for the 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.
18. 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.
19. Because Respondent failed to make reasonable efforts to expedite the QDRO matter consistent with Ms. George's interests, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides:

**Rule 1.3. Diligence.**

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

20. Because Respondent failed to reasonably respond to Ms. George's inquiries for information regarding her case and upcoming hearings, he has 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:

\* \* \*

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

21. Because Respondent failed to surrender to Ms. George photographs and other papers to which she was entitled when his representation concluded, 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 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.

22. 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 has violated Rules 3.4(c) 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 II**  
**I.D. No. 22-02-484**  
**Complaint of Adam T. Kramer**

23. In his complaint, filed on or about December 27, 2022, Complainant Adam T. Kramer stated that Respondent represented him in a Family Court matter.
24. Mr. Kramer alleged that while 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.
25. 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.
26. 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.
27. When he received paperwork from Respondent, Mr. Kramer said it was often inaccurate and he had to spend his own time correcting it.
28. Mr. Kramer ultimately retained new counsel to replace Respondent.
29. 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.

30. 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 his representation concluded.
31. 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.
32. 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.
33. 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.

34. 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.
35. 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 agreed-on representation.
36. 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.
37. Respondent denied Mr. Kramer's allegations regarding lack of communication. He provided a statement of account that 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.
38. 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.
  39. Respondent asserted that having been in the case for approximately six years, he had a comprehensive understanding of the facts.
  40. 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.
  41. 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 has violated Rule 1.3 of the Rules of Professional Conduct, as previously provided.
  42. Because Respondent failed to reasonably respond to Mr. Kramer’s inquiries for information regarding his case, he has violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, as previously provided.

**COUNT III**  
**I.D. No. 23-02-163**  
**Complaint of the Office of Lawyer Disciplinary Counsel**

43. By letter dated April 21, 2023, Thomas McQuain, Esquire, 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.
44. 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.
45. 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 was submitted.
46. 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 was ever submitted.
47. 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.

48. 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.
49. 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 sent his response a couple of weeks prior.
50. In his response, dated June 21, 2023, Respondent admitted the accuracy of the facts contained in Mr. McQuain's letter.
51. 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.
52. 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.
53. Respondent asserted that due to an error made in inputting his office's general account email ["info@isnerlaw.com"] 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.
54. Respondent said he was not aware of the problem until he received the instant complaint from the ODC.
55. 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.

56. Respondent said he subsequently contacted Jeremy Cooper, Esquire, 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 entire fee for any work performed for the Timbrooks.
57. 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.
58. Because Respondent failed to provide competent representation to his clients, the Timbrooks, he has violated Rule 1.1 of the Rules of Professional Conduct, which provides:

**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.

59. Because Respondent failed to make reasonable efforts to expedite the appeal consistent with his clients' interests, he has violated Rule 1.3, as previously provided, and Rule 3.2 of the Rules of Professional Conduct, which provides:

**Rule 3.2. Expediting Litigation.**

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

60. 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, which provides as follows:

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

\* \* \*

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

**COUNT IV**

**I.D. No. 23-02-262**

**Complaint of Joy E. Timbrook**

61. In her complaint, filed on or about June 28, 2023, Complainant Joy E. Timbrook stated that she and her husband hired Respondent in July 2022 for a grandparent custody case.
62. 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.
63. 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 informed that Respondent did not anticipate a court date occurring in June or July.
64. Feeling something was wrong, Mrs. Timbrook said she called the Supreme Court on May 25, 2023, and learned from the Clerk of the Court that because Respondent had never submitted the required paperwork, the appeal was dismissed by the Court on April 21, 2023.
65. 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.

66. 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.
67. 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.
68. By email dated August 8, 2023, Respondent was reminded by the ODC that it had not yet received his response to the complaint.
69. In his response, dated August 14, 2023, Respondent admitted to the accuracy of most of the allegations of Mrs. Timbrook.
70. 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.
71. 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.
72. Respondent asserted that due to an error made in inputting his office's general account email ["info@isnerlaw.com"] 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.

73. Respondent said he was not aware of the problem until he received the complaint from the ODC as outlined in Count III, above.
74. 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.
75. 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.
76. Respondent stated that Mrs. Timbrook called again the following day, but Respondent 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.
77. 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.
78. Respondent said he subsequently contacted Jeremy Cooper, Esquire, 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 entire fee for any work performed for the Timbrooks.
79. 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.

80. In a reply filed by Mrs. Timbrook, she asserted that she had no contact with Mr. Cooper.
81. The alleged violations of Rules 1.1, 1.3, 3.2, and 8.4(d) of the Rules of Professional Conduct, as outlined in Count III, are hereby incorporated by reference.
82. 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 Respondent had notice of said dismissal by at least late April 2023, he has violated Rule 1.4(a)(3), as previously provided.
83. Because Respondent misled his client, Mrs. Timbrook, regarding the status of her dismissed appeal he has violated Rule 8.4(c), which provides:

**Rule 8.4. Misconduct.**

It is professional misconduct for a lawyer to:

\* \* \*

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

**COUNT V**  
**I.D. No. 23-02-362**  
**Complaint of David P. Cox**

84. In his complaint, filed on or about September 7, 2023, Complainant David P. 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 frustrations regarding many issues in the matter and accused Respondent of “dragging his feet” on behalf of his client.
85. 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.

86. 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.
87. 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.
88. 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.
89. 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 has been requested.
90. Respondent stated that no orders that he had been directed to prepare were outstanding as of the date of Mr. Cox's complaint.
91. 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.

92. Because Respondent failed to diligently prepare and file the proposed orders as ordered by the Family Court Judge, he has violated Rule 1.3 of the Rules of Professional Conduct, as previously stated.
93. 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 has violated Rule 3.4(c) of the Rules of Professional Conduct, as previously provided.
94. 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 prepared and entered by the Family Court, he has violated Rule 8.4(d) of the Rules of Professional Conduct, as previously provided.

#### **COUNT VI**

**I.D. No. 24-02-047**

#### **Complaint of Ronald W. Kesner**

95. In his complaint, filed on or about January 30, 2024, Complainant Ronald W. 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 Grant County in or around February 2021.
96. Mr. Kesner alleged that a response to the case came from Jay P. Geary, Esquire, in April 2021, but Respondent "didn't do anything with it."
97. 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].”

98. Mr. Kesner stated that he paid Respondent a retainer fee of Two Thousand Five Hundred Dollars (\$2,500.00).
99. 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.
100. On March 5, 2024, Respondent was given an extension to March 12, 2024, to file his response to the complaint.
101. 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 flat fee of Seven Hundred Five Hundred Dollars (\$750.00).
102. 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.
103. 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.
104. Respondent said he met with Mr. Kesner about a new matter on May 21, 2021<sup>1</sup>, and Mr.

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<sup>1</sup> Respondent had no record of a meeting with Mr. Kesner on December 22, 2019.

- 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 Two Thousand Five Hundred Dollars (\$2,500.00).
105. Respondent said at the time, Mr. Kesner produced two 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.
  106. 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.
  107. 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.
  108. 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. Kenser.
  109. Respondent denied making any material misrepresentations to Mr. Kesner.
  110. Respondent was certain that appointments were canceled or rescheduled from time to time but said it was not in an unusual or unreasonable manner. He further stated that his records reflected regular meetings and phone calls with Mr. Kesner from May 2021 to the present date.
  111. In reply to Respondent's response to his complaint, Mr. Kesner wrote that he had been calling Respondent's office every month for the last five years and never received return phone calls from Respondent.
  112. Because Respondent neglected Mr. Kesner's case and failed to take appropriate action in

the matter, he has violated Rule 1.3 of the Rules of Professional Conduct, as previously provided.

113. Because Respondent failed to keep Mr. Kesner informed as to the status of the matter and failed to respond to his requests for information, Respondent has violated Rule 1.4 of the Rules of Professional Conduct, as previously provided.

114. Because Respondent engaged in dilatory practices and failed to make reasonable efforts consistent with the stated and agreed upon objectives of Mr. Kesner, he has violated Rule 3.2 of the Rules of Professional Conduct, as previously provided.

**COUNT VII**  
**I.D. No. 24-02-050**  
**Complaint of Linda A. Taylor**

115. In her complaint, filed on or about February 2, 2024, Complainant Linda A. Taylor stated that in attempting to seek temporary custody of her two granddaughters, she contacted Respondent in September 2023.

116. Ms. Taylor said she paid an initial consultation fee of Two Hundred Dollars (\$200.00) and spoke with Respondent, who said he would take the case once a retainer fee of Four Thousand Dollars (\$4,000.00) was paid. Ms. Taylor asserted that she paid the fee via credit card on September 11, 2023.

117. 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.

118. On November 16, 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.

119. Ms. Taylor asserted in her complaint that she never received a refund from Respondent

and had been unable to reach him.

120. 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.
121. On March 5, 2024, Respondent was given an extension to March 12, 2024, to file his response to the complaint.
122. 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 Two Hundred Dollars (\$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 Four Thousand Dollars (\$4,000.00).
123. 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.
124. Respondent said that when his staff arrived at work the following morning, they found that Ms. Taylor's daughter had emailed the requested documents and notified Respondent. 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.

125. 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 presented to Respondent in summary form to review when he reviewed the rest of the documents.
126. 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. 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.
127. 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.
128. Respondent had no record of receiving any call from Ms. Taylor in October 2023.
129. 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.
130. On November 21, 2023, Respondent said he spoke with Ms. Taylor 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.

131. 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."
132. 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.
133. With a copy of his response to her complaint, Respondent asserted he was enclosing a check payable to Ms. Taylor for Four Thousand Dollars (\$4,000.00), declining to charge for work actually performed.
134. Because Respondent failed to reasonably respond to Ms. Taylor's inquiries for information regarding her case, he has violated Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, as previously provided.
135. Because Respondent failed to promptly refund the unearned portion of the retainer to Ms. Taylor, he has violated Rule 1.16(d) of the Rules of Professional Conduct, as previously provided.

#### **POTENTIAL AGGRAVATING FACTORS**

136. 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 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 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 Hearing Panel Subcommittee 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 violated Rules 1.3, 3.2, 1.4(a)(3), 1.4(a)(4), 8.4(d) and 3.4(c) of the Rules of Professional Conduct in that proceeding.

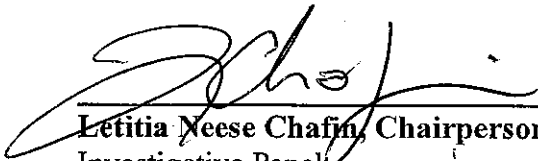
137. Rule 9.22(c) of the *ABA Model Standards for Imposing Lawyer Sanctions* indicates that a pattern of misconduct constitutes an aggravating factor. A pattern and practice of conduct in violation of the diligence and communication provisions of the Rules of Professional Conduct has been established 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.

\* \* \*

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 the 15<sup>th</sup> day of June, 2024.

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

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**CERTIFICATE OF SERVICE**

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This is to certify that I, Renée N. Frymyer, Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 3<sup>rd</sup> day of July, 2024, served a true copy of the foregoing "**STATEMENT OF CHARGES**" upon Respondent Phillip S. Isner, by mailing the same via United States Mail, with sufficient postage, and electronically, through File and Serve Xpress, to the following address and e-mail:

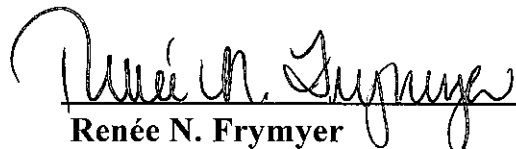
Phillip S. Isner, Esquire  
PO Box 1878  
Elkins, WV 26241  
[phil@isnerlaw.com](mailto:phil@isnerlaw.com)

And upon the Hearing Panel Subcommittee at the following addresses:

Nicole A. Cofer, Esquire (Chair)  
4700 MacCorkle Avenue, SE 9<sup>th</sup> Floor  
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Renée N. Frymyer