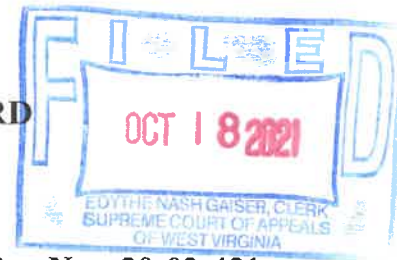


21-0844



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

In Re: Brian K. Carr, a member of
The West Virginia State Bar

Bar No.: 20-03-421

I.D. No.: 7139

STATEMENT OF CHARGES

To: Brian K. Carr, Esquire
301 Court Lane, Room 200
Saint Marys, West Virginia 26170

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. Brian K. Carr (hereinafter "Respondent") is a lawyer practicing in St. Marys, which is located in Pleasants County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on September 30, 1996. 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.
2. Approximately thirteen (13) years ago, a law enforcement officer for the St. Marys Police Department ("SMPD") introduced a program for the City of St. Marys, West Virginia. The initiative was called "Slow Down for the Holidays."
3. During the relevant time-period as approved by the City of St. Marys, if the SMPD pulled over a defendant, a flyer detailing the Slow Down for the Holidays program was provided, along with the citation. The flyer advised that the defendant could face his or

her criminal charges in St. Marys Municipal Court or opt to make a donation to the SMPD program. If the defendant chose to donate to the program and pay to the program the amount assessed to them by SMPD, the Municipal Court Judge would dismiss the citation and the defendant would avoid the criminal fines, pay no court costs, and no convictions would appear on the defendants' record.

4. From 2004-2015, Respondent served as the St. Marys Municipal Judge. As Municipal Judge, Respondent signed dismissal orders for the Slow Down for the Holidays Program.
5. In 2016, Respondent was elected Pleasants County Prosecuting Attorney. Respondent took office on or about January 1, 2017. Respondent ran unopposed and was re-elected for a second term in 2020. Respondent continues to hold the position of public trust as the duly elected prosecuting attorney of Pleasants County, West Virginia.
6. Attorney Paul Marteney, Respondent's former law partner, was hired as an Assistant Prosecutor in Pleasants County, West Virginia in or about 2011. APA Marteney remained as assistant prosecutor after Respondent took office in 2016 and continues to hold the position of public trust.
7. At its October 2, 2018 common council meeting, the City of St. Marys unanimously voted to allow the SMPD to operate the Slow Down for the Holidays program from October 1 thru December 12, 2018.
8. At its September 17, 2019 common council meeting, the City of St. Marys unanimously voted to allow the SMPD to operate the Slow Down for the Holidays program starting September 16, 2019. The minutes reflect that the SMPD Chief represented to the council that the SMPD and Pleasants County Sheriff's Department ("PCSD") "are teaming

together again this year for Slow Down for the Holidays” program.

9. At its October 20, 2020 common council meeting, the City of St. Marys unanimously voted to allow the “police department” to operate the Slow Down for the Holidays program from October 1 thru December 16, 2020.
10. By letter dated December 21, 2020, Respondent self-reported to the Office of Disciplinary Counsel that it had come to his attention that a question existed as to the propriety of his office’s participation in the Slow Down for the Holidays program with the City of St. Marys. From 2018-2020, Respondent identified that fifteen¹ (15) Pleasants County Magistrate Court cases that were disposed² of by his office through the Slow Down for the Holidays program.
11. On or about December 21, 2020, a confidential subpoena *duces tecum* was served by certified mail upon the City Attorney and directed the production of all paperwork, including tickets, citations, orders, and judgments issued of and related to the Slow Down for the Holidays program in the possession, custody, or control of the City of St. Marys.
12. By letter dated January 6, 2021, a complaint was opened against Respondent by ODC pursuant to its authority as set forth in Rule 2.4(a) of the Rules of Lawyer Disciplinary Procedure. Respondent was requested to provide a written response within twenty (20) days of receipt of the letter.

¹State v. Schneider, 18-M37M-276-277; State v. Efaw, 18-M37M-283; State v. Marshall, 18-M37M-284; State v. Buckley, 18-M37M-291; State v. Osborne, 19-M37M-249; State v. Carder, 19-M37M-364; State v. Peters, 19-M37M-652; State v. Dickison, 19-M37M-669,671; State v. Orr, 20-M37M-123; State v. Goodrich, 20-M37M-242; State v. Reeves, 20-M37M-274; State v. Payne, 20-M37M-307; State v. Lee, 20-M37M-318; State v. Bailey, 20-M37M-363; State v. Ward, 20-M37M-367

² At the time of Respondent’s self-report, there was an offer to dispose of the criminal charges in State v. Reeves, 20-M37M-274 but the case was still pending. See **COUNT XV**.

13. By letter dated January 20, 2021, the Attorney for the City of St. Marys reported to the West Virginia State Auditor's Office that the City requested an audit be conducted because City Council had only recently been informed how the Slow Down for the Holidays program was operated and the funds collected through this program had not been run through City accounts or subject to an audit.
14. The records produced by the City Attorney for St. Marys indicates that at least \$7,665.69 was collected from defendants who participated in the Slow Down for the Holidays program in 2018.
15. The records produced by the City Attorney for St. Marys indicates that at least \$21,776.33 was collected from defendants who participated in the Slow Down for the Holidays program in 2019.
16. The records produced by the City Attorney for St. Marys indicates that at least \$11,844.33 was collected through the Slow Down for the Holidays program in 2020.
17. The City Attorney for St. Marys did not have any accounting of the funds collected and did not have any accounting of how the proceeds of the Slow Down for the Holidays program were maintained or disbursed. The records provided by the City Attorney indicate that at least \$41,276.35 was collected from defendants between 2018-2020.
18. By letter dated January 26, 2021, Respondent requested and received a ten (10) day extension to file his written response to the ethics complaint.
19. Respondent filed his verified answer to the ethics complaint by letter dated February 4, 2021. Respondent stated the charging officer is usually the one who suggests disposing of a case through the Slow Down for the Holidays program. Respondent stated that his

office's involvement was to advise defendants, at regularly-scheduled pretrial hearings, of the existence of the program and inquired of the officer if the case was eligible for the program. Respondent further stated the charges have gone through prosecution in municipal court before dismissal in Magistrate Court. Respondent maintained that each case was prosecuted properly and disposed of within the discretion of the Prosecutor, in the interest of the public and the community.

20. Pursuant to the issuance of a confidential investigative subpoena, on July 28, 2021, Respondent gave a sworn statement at the Office of Disciplinary Counsel.
21. On or about August 6, 2021, Pleasants County Magistrate Taylor and Pleasants County Magistrate Nutter tendered letters of resignation to the Honorable Circuit Court Judge Sweeney, effective August 13, 2021.
22. On or about August 27, 2021, the Judicial Investigation Commission ("JIC") issued written Admonishments³ to Magistrate Taylor and Magistrate Nutter for their participation in the Slow Down for the Holiday Program. The JIC found that probable cause existed that Respondents violated Rules 1.1, 1.2, 1.3, 2.2 and 3.7(A)(2) of the Code of Judicial Conduct. The JIC determined that formal discipline was not essential since both Magistrate Taylor and Magistrate Nutter resigned and agreed to never again seek judicial office by election or appointment. The JIC determined by dismissing criminal charges in exchange for donations to a charitable organization, the Pleasants County Magistrates created the appearance of selling justice in their courtrooms. The JIC further

³ Rule 2.7(c) of the Rules of Judicial Disciplinary Procedure states in relevant part "[w]hen it has been determined that probable cause does exist, but that formal discipline is not appropriate under the circumstances, the Commission shall issue a written admonishment to the respondent, who has fourteen days after its receipt to object. The written admonishment shall be available to the public. If the Office of Disciplinary Counsel or the respondent files a timely

reasoned by going along with Respondent and APA Marteney, the Magistrates created a secondary judicial system for select defendants.

23. There is no statute, rule, or case law that allows for the legal dismissal of a magistrate court case in exchange for criminal defendants' payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by State law.

COUNT I

**State of West Virginia v. Karson Wayne Schneider
Magistrate Court of Pleasants County, West Virginia
18-M37M-00276 and 18-M37M-00277**

24. Paragraphs 1-23 are incorporated by reference.
25. On or about September 17, 2018, PCSD Deputy Lauer presented a criminal complaint in the Magistrate Court of Pleasants County that alleged witnesses saw a truck overtake a school bus while the bus stop sign was extended and the bus was loading children at the St. Marys High School. After his investigation, PCSD Deputy Lauer's complaint stated it was determined that the driver was Karson Schneider.
26. Based on the September 17, 2018 incident, Defendant Schneider was charged with violating W.Va. Code § 17C-5-3 [Reckless Driving] which carried a potential penalty of \$25.00 to \$500.00 fine and/or a sentence of 5-90 days in jail and violating W.Va. Code § 17C-12-7 [Passing a School Bus 1st Offense] which, at the time of the offense, carried a potential penalty of \$250.00 to \$500.00 fine and/or a sentence of six (6) months.
27. On or about September 20, 2018, Defendant Schneider filed a financial eligibility affidavit for appointed counsel.

objection to the written admonishment, the Commission shall file a formal charge with the Clerk of the Supreme

28. By Order entered September 24, 2018, Defendant Schneider was appointed Attorney Ira Richardson. Attorney Richardson was representing Defendant Schneider on multiple criminal cases in two counties.⁴
29. Defendant Schneider was on bond in Pleasants County and Ritchie County, West Virginia. His bond was revoked in Pleasants County as a result of the September 2018 misdemeanor charges.
30. On October 15, 2018, the Pleasants County Circuit Court accepted a guilty plea entered by Defendant Schneider to the felony offense of unlawful assault in *State of West Virginia v. Karson W. Schneider* (Civil Action No. 18-F-64). The Court, after motion by Respondent, dismissed *State of West Virginia v. Karson W. Schneider* (Civil Action No. 18-F-33). Respondent had no objection to the Court reinstating bond and advised that the Court that the parties had reached a “method to dispose” of the magistrate court charges.
31. Defendant Schneider’s magistrate court cases, 18M-M37M-00276 and 277, were set to be heard by the Magistrate Court on October 16, 2018, at 2pm.
32. Respondent offered to dismiss the pending magistrate court charges in exchange for Defendant’s Schneider’s payment of money to the Slow Down for the Holidays program.
33. Attorney Richardson conveyed the offer to his client, who accepted Respondent’s offer to have two misdemeanor charges dismissed in exchange for money.
34. At the express and/implied authorization of Respondent, PCSD Deputy Lauer issued

Court of Appeals....”

⁴ *State of West Virginia v. Karson W. Schneider*, Civil Action No. 17-F-57 (Ritchie County); *State of West Virginia v. Karson W. Schneider*, Civil Action No. 18-F-33 (Pleasants County); and *State of West Virginia v. Karson W. Schneider*, Civil Action No. 18-F-64 (Pleasants County).

Defendant Schneider a ticket bearing the date of September 17, 2018, for reckless driving. The ticket bears the notation "SDFHx4." The ticket directs Defendant Schneider to appear before St. Marys City Court before December 12, 2018.

35. On October 16, 2018, Respondent made a written motion to dismiss the misdemeanor charges which stated "case will be disposed of in City Courts."
36. The certificate of service for the motion to dismiss indicates that Attorney Richardson was provided a copy of the State's motion by hand delivery on October 16, 2018.
37. Magistrate Taylor granted Respondent's motion to dismiss on October 16, 2018.
38. Magistrate Taylor entered a Criminal Judgment Order dismissing both misdemeanor charges on October 16, 2018.
39. The citation issued by PCSD Deputy Lauer was dismissed by an undated dismissal order signed by Municipal Judge Elder and attached to the undated dismissal order was an undated receipt for the purchase of four (4) gift cards totaling \$175.00.
40. WV Constitution Article III, § 10 states "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers." Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Schneider, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County

Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.

41. Because Respondent represented to Attorney Richardson and his client Defendant Schneider that the misdemeanor cases could be disposed of in a legal manner in exchange for Defendant Schneider's payment of money or goods to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
42. Because Respondent represented to the magistrate court that the misdemeanor cases could be dismissed by the magistrate in a legal manner in exchange for Defendant Schneider's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
43. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
44. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
45. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Schneider's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

46. Respondent conspired to deprive Defendant Schneider of money by fraudulent representations that the misdemeanor criminal cases could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

COUNT II
State of West Virginia v. Diana Kay Farson
Magistrate Court of Pleasants County, West Virginia
18-M37M-00266

47. Paragraphs 1-23 are incorporated by reference.
48. On or about September 3, 2018, PCSD Deputy Coplin presented a criminal complaint in the Magistrate Court of Pleasants County that stated during his routine traffic patrol he saw a truck weaving and crossing the centerline on multiple occasions. A routine traffic stop was conducted. The Deputy's narrative states he detected the odor of alcohol and observed that the driver appeared very drowsy and noted the presence of alcohol on the floor of the passenger side of the car. The driver failed administered field sobriety testing and yielded a roadside PBT of .123. The driver was placed under arrest. The driver later submitted to an approved secondary chemical breath test and the driver's blood alcohol content was .103.
49. Defendant Farson was charged with violating W.Va. Code § 17C-5-2(e) [Driving under influence of alcohol] which carried a potential penalty of \$100.00 to \$500.00 fine and/or a sentence up to six months in jail.
50. On or about September 6, 2018, Defendant Farson filed a financial eligibility affidavit for

appointed counsel. The same was denied by the Circuit Court.

51. Attorney William B. Summers filed a Notice of Appearance on her behalf on September 17, 2018. Attorney Summers also filed motions seeking discovery and inspection of the administered tests; disclosure of all exculpatory information; disclosure of all reports and statements, written or otherwise the State planned to introduce at trial; notice of intent to use suppressible evidence; request for any Rule 404(b) evidence; request for Rule 403 R.O.E. hearing; and demanded a jury trial.
52. APA Marteney filed a motion to continue the pre-trial hearing on September 27, 2018, to “permit defendant to review discovery.” The certificate of service indicates the State’s motion was hand-delivered to Attorney Summers.
53. Magistrate Nutter granted APA Marteney’s motion to continue on September 27, 2018.
54. Magistrate Nutter re-set the matter for hearing on November 26, 2018.
55. On or about October 18, 2018, Attorney Summers filed a motion to preserve the dash camera video, the body camera video from the Deputy, and video of Defendant Farson at St. Marys Correctional Center.
56. APA Marteney filed a motion to continue the pre-trial hearing on November 26, 2018, to “permit further discovery.” Defendant Farson waived her right to a speedy trial. The certificate of service indicates the State’s motion was hand-delivered to Attorney Summers.
57. Magistrate Nutter granted APA Marteney’s motion to continue on November 26, 2018.
58. Magistrate Nutter re-set the matter for hearing on January 3, 2019, at 9:30am.
59. Prior to December 3, 2018, Respondent offered to move to dismiss the pending

magistrate court charge in exchange for Defendant's Farson's payment of \$1,000.00 to the Slow Down for Holidays program.

60. On or about December 3, 2018, Attorney Summers made a counter-offer to Respondent and represented his client could pay \$600.00 to the Slow Down for the Holidays program.
61. On the same date, Respondent accepted counter-offer of \$600.00 in exchange for the State's motion to dismiss the pending charges.
62. Attorney Summers conveyed the State's acceptance of the counter-offer to his client.
63. Attorney Summers was notified by his client on or about December 7, 2018, that she purchased three (3) \$200.00 gift cards and that she delivered the \$600.00 in gift cards to Respondent.
64. On January 3, 2019, Respondent made a written motion to dismiss the misdemeanor charges which stated "case was disposed of by SDFH."
65. The certificate of service for the motion to dismiss indicates that Attorney Summers was provided a copy of the State's motion by hand delivery on January 3, 2019.
66. Magistrate Nutter granted Respondent's motion to dismiss on January 3, 2019.
67. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charge on January 3, 2019.
68. There are no citations, no orders of dismissal from the Municipal Court, and no record of a \$600.00 payment made by or on behalf of Defendant Farson to the Slow Down for the Holidays program or the City of St. Marys, West Virginia.
69. There are no records to establish that Respondent gave the \$600.00 payment he demanded and received from Defendant Farson to the Slow Down for the Holidays

program or the City of St. Marys, West Virginia.

70. This criminal case was not included in the self-report or in Respondent's verified response.
71. WV Constitution Article III, § 10 states "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers." Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Farson, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.
72. Because Respondent represented to Attorney Summers and his client Defendant Farson that the misdemeanor case could be disposed of in a legal manner in exchange for Defendant Schneider's payment of money to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
73. Because Respondent represented to the magistrate court that the misdemeanor case could be dismissed by the magistrate in a legal manner in exchange for Defendant Farson's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
74. Because Respondent knowingly assisted and/or induced Magistrate Nutter to violate the

laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.

75. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
76. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Farson's payment money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
77. Respondent conspired to deprive Defendant Farson of money by fraudulent representations that the misdemeanor criminal case could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
78. Respondent, in his capacity as the Prosecutor, exacted a promise from Attorney Summers and his client to pay money to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offense, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT III
State of West Virginia v. Alex Mason
Magistrate Court of Pleasants County, West Virginia
18-M37M-00282

79. Paragraphs 1-23 are hereby incorporated by reference.
80. On or about September 26, 2018, PCSD Deputy Marant issued Defendant Alex R. Mason citations for multiple violation. Specifically, Defendant was charged with violating W.Va. Code §17C-6-1 [Speeding] which carried a potential penalty of a \$100.00 fine; W.Va. Code § 22-15A-04(a)(1) [Littering] which carried a potential penalty of a \$100.00 to \$2,500.00 fine; W.Va. Code §17C-07-06(a) [Left of Center] which carried a potential penalty of a \$100.00 fine; W.Va. Code §17A-09-03 [Improper Registration] which carried a potential penalty of a misdemeanor conviction; W.Va. Code §11-16-19(a)(1) [Possession of Alcohol by Minor] which carried a potential penalty of up to a \$500.00 fine and/or up to seventy-two hours in jail and/or probation.
81. On or about September 26, 2018, Defendant Mason retained Attorney Raber and paid Attorney Raber.
82. On or about October 1, 2018, Magistrate Taylor set the matter for a pretrial hearing set for November 14, 2018.
83. On or about October 1, 2018, Attorney Justin Raber filed a Notice of Appearance on behalf of Defendant Alex Mason. On the same date, Attorney Raber filed a motion seeking discovery.
84. On or about November 13, 2018, Attorney Raber and Defendant Mason appeared before Magistrate Taylor. Magistrate Taylor advised Attorney Raber of the total fines, court

costs, and civil penalties.

85. APA Marteney made an offer to Attorney Raber's client, Defendant Mason, to participate in the Slow Down for the Holidays program in exchange for dismissal of his criminal charges.
86. As a result of the offer by the State, Attorney Raber filed a motion to continue "to allow for plea negotiations."
87. There is no information on the certificate of service for Attorney Raber's motion to continue.
88. Magistrate Taylor granted Attorney Raber's motion on the same date.
89. At the express and/implied authorization of Respondent and APA Marteney, PCSD Deputy Marant issued Defendant Mason a ticket bearing the date of September 26, 2018 for speeding and littering.⁵ The ticket bears the notation "\$2500 total." The ticket directs Defendant Mason to appear before November 15, 2018.
90. The citation issued by PCSD Deputy Marant at the direction of APA Marteney was dismissed by Order signed by Municipal Judge Elder on November 14, 2018 and attached to the dismissal order was a receipt dated November 13, 2018, for the purchase of twenty-five (25) \$100.00 gift cards totaling \$2,648.75.
91. Attorney Raber, despite being retained as counsel for Defendant Mason, stated that this November 13, 2018, hearing was his last involvement with his client.
92. On November 16, 2018, APA Marteney made a written motion to dismiss the misdemeanor charges and stated "Defendant participated in slow down for holidays

⁵ The Slow Down for the Holidays program dismissal form signed by Judge Elder references three ticket numbers, but only one ticket was turned over in the production of the records from the City of St. Marys.

program.”

93. There is no information on the certificate of service for the State’s motion to dismiss.
94. Magistrate Taylor granted APA Marteney’s motion to dismiss the criminal charges on November 16, 2018.
95. Magistrate Taylor entered a Criminal Judgment Order dismissing the five misdemeanor charges on November 16, 2018.
96. This criminal case was not included in the self-report or in Respondent’s verified response.
97. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent, through the authorized acts of his APA, chose select criminal defendants, such as Defendant Mason, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s motion to dismiss pending criminal charges. As such, Respondent, through the authorized acts of his APA, violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 5.1(c); Rule 8.4(a); and Rule 8.4(d) of the Rules of Professional Conduct.
98. Because Respondent, through the authorized acts of his APA, represented to Attorney Raber and Defendant Mason that the misdemeanor cases could be disposed of in a legal

manner in exchange for Defendant Mason's payment of money or goods to the Slow Down for the Holidays program, he violated Rule 5.1(c); Rule 8.4(a) and Rule 8.4(c) of the Rules of Professional Conduct.

99. Because Respondent, through the authorized acts of his APA, represented to the magistrate court that the misdemeanor cases could be dismissed by the magistrate in a legal manner in exchange for Defendant Mason's payment of money to the Slow Down for the Holidays program, he violated Rule 5.1(c); Rule 8.4(a); and Rule 3.3(a)(1) of the Rules of Professional Conduct.
100. Because Respondent, through the authorized acts of his APA, knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
101. Respondent, through the authorized acts of his APA, knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 5.1(c); Rule 8.4(a); and Rule 8.4(d) of the Rules of Professional Conduct.
102. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Mason paying money to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, through the authorized acts of his APA, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated 5.1(c), 8.4(a), and Rule 8.4(b) of the Rules of Professional Conduct.

103. Respondent conspired to deprive Defendant Mason of money by fraudulent representations that the misdemeanor criminal cases could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

COUNT IV
State of West Virginia v. Mary D. Efaw
Magistrate Court of Pleasants County, West Virginia
18-M37M-00283

104. Paragraphs 1-23 are incorporated by reference.
105. On or about September 26, 2018, PCSD Deputy Marant presented a criminal complaint in the Magistrate Court of Pleasants County that on the same date the Pleasants County Bus Manager reported a vehicle had passed a school bus. The officer reviewed the video footage provided and identified the vehicle and license plate number while the subject vehicle passed a school bus while the lights were flashing.
106. Defendant Efaw was charged with violating W.Va. Code § 17C-12-07(a) [Overtaking a school bus] which carried a penalty of a \$250.00 to \$1,000.00 fine and/or up to 6 months in jail.
107. A summons to appear was issued to Defendant Efaw and ordered her to appear in Magistrate Court on October 9, 2018, before Magistrate Nutter.
108. APA Marteney offered to dismiss the pending magistrate court charges in exchange for Defendant's Efaw's payment of money to the Slow Down for Holidays program.
109. On October 9, 2018, APA Marteney made a written motion to dismiss the misdemeanor

charges that stated “Defendant participated in Slow Down for the Holidays Program.”

110. There is no information on the certificate of service for APA Marteney’s motion to continue.
111. There is nothing in the record to suggest that Defendant Efaw was represented by counsel.
112. Magistrate Nutter granted APA Marteney’s motion to dismiss on October 9, 2018.
113. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charge on October 9, 2018.
114. At the express and/implicit authorization of Respondent and APA Marteney, PCSD Deputy Marant issued Defendant Efaw a ticket bearing the date of September 26, 2018 for passing a school bus. The ticket bears the notation “\$300.00 RSM” The ticket directs Defendant Efaw to appear before before October 19. 2018.
115. The citation issued by PCSD Deputy Marant was dismissed by an Order signed by Municipal Judge Elder on October 16, 2018, that indicates Defendant Efaw paid the amount of Three Hundred Dollars (\$300.00) by card to the Slow Down for the Holidays program.
116. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent, through the authorized acts of his APA, chose select criminal defendants, such as Defendant Efaw,

and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent, through the authorized acts of his APA, violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation of Rule 5.1(c), Rule 8.4(a), and Rule 8.4(d) of the Rules of Professional Conduct.

117. Because Respondent, through the authorized acts of his APA, represented to Defendant Efaw that the misdemeanor cases could be disposed of in a legal manner in exchange for Defendant Efaw's payment of money or goods to the Slow Down for the Holidays program, he violated Rule 5.1(c), Rule 8.4(a), and Rule 8.4(c) of the Rules of Professional Conduct.
118. Because Respondent, through the authorized acts of his APA, represented to the magistrate court that the misdemeanor cases could be dismissed by the magistrate in a legal manner in exchange for Defendant Efaw's payment of money to the Slow Down for the Holidays program, he violated Rule 5.1(c), Rule 8.4(a) and Rule 3.3(a)(1) of the Rules of Professional Conduct.
119. Because Respondent, through the authorized acts of his APA, knowingly assisted and/or induced Magistrate Nutter to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
120. Respondent, through the authorized acts of his APA, knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule

5.1(c); Rule 8.4(a); and Rule 8.4(d) of the Rules of Professional Conduct.

121. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Efaw's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, through the acts of his APA, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 5.1(c), 8.4(a), and Rule 8.4(b) of the Rules of Professional Conduct.
122. Respondent conspired with his APA to deprive Defendant Efaw of money by fraudulent representations that the misdemeanor criminal cases could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

COUNT V
State of West Virginia v. Theresa L. Marshall
Magistrate Court of Pleasants County, West Virginia
18-M37M-00284

123. Paragraphs 1-23 are incorporated by reference.
124. On or about September 26, 2018, PCSD Deputy Marant presented a criminal complaint in the Magistrate Court of Pleasants County that on September 26, 2018, the Pleasants County Bus Manager reported a vehicle had passed a school bus at the front entrance of the Pleasants County Middle School while the bus was stopped and unloading students on September 19, 2018. The officer reviewed the video footage and the statement of the

bus driver and identified the vehicle and license plate number and a description of the driver.

125. Defendant Marshall was charged with violating W.Va. Code § 17C-12-07(a) [Overtaking a school bus] which carried a penalty of a \$250.00 to \$1,000.00 and/or up to six (6) months in jail.
126. A summons to appear was issued to Defendant Marshall and ordered her to appear in Magistrate Court on October 9, 2018, at 2:30 pm before Magistrate Nutter.
127. APA Marteney offered to dismiss the pending magistrate court charges in exchange for Defendant's Marshall's payment of money to the Slow Down for Holidays program.
128. On October 9, 2018, APA Marteney made a written motion to dismiss the misdemeanor charges that stated "Defendant participated in Slow Down for the Holidays Program."
129. There is no information on the certificate of service for APA Marteney's motion to continue.
130. There is nothing in the record to suggest that Defendant Marshall was represented by counsel.
131. Magistrate Nutter granted APA Marteney's motion to dismiss on October 9, 2018.
132. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charge on October 9, 2018.
133. At the express and/implicit authorization of Respondent and APA Marteney PCSD Deputy Marant issued Defendant Marshall a ticket bearing the date of September 19, 2018, for passing a school bus. The ticket bears the notation "\$300.00 Santa" The ticket directs Defendant Marshall to appear before October 19. 2018.

134. The citation issued by PCSD Deputy Marant was dismissed by an Order signed by Municipal Judge Elder on October 9, 2018, and along with the dismissal order is a receipt for toys purchased from Walmart on October 9, 2018, at 5:51 pm in the amount of Three Hundred and Ten Dollars and Twenty-Three Cents (\$310.23).
135. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent, through the authorized acts of his APA, chose select criminal defendants, such as Defendant Marshall, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s motion to dismiss pending criminal charges. As such, Respondent, through the authorized acts of his APA, violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation of Rule 5.1(c), Rule 8.4(a), and Rule 8.4(d) of the Rules of Professional Conduct.
136. Because Respondent, through the authorized acts of his APA, represented to Defendant Marshall that the misdemeanor cases could be disposed of in a legal manner in exchange for Defendant Marshall’s payment of money to the Slow Down for the Holidays program, he violated Rule 5.1(c), Rule 8.4(a), and Rule 8.4(c) of the Rules of Professional Conduct.
137. Because Respondent, through the authorized acts of his APA, represented to the

magistrate court that the misdemeanor cases could be dismissed by the magistrate in a legal manner in exchange for Defendant Marshall's payment of money to the Slow Down for the Holidays program, he violated Rule 5.1(c), Rule 8.4(a) and Rule 3.3(a)(1) of the Rules of Professional Conduct.

138. Because Respondent, through the authorized acts of his APA, knowingly assisted and/or induced Magistrate Nutter to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
139. Respondent, through the authorized acts of his APA, knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 5.1(c); Rule 8.4(a); and Rule 8.4(d) of the Rules of Professional Conduct.
140. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Marshall paying money to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, through the acts of his APA, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 5.1(c), 8.4(a), and Rule 8.4(b) of the Rules of Professional Conduct.
141. Respondent conspired to deprive Defendant Marshall of money by fraudulent representations that the misdemeanor criminal cases could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of

Professional Conduct.

COUNT VI
State of West Virginia v. Thomas Truette Buckley
Magistrate Court of Pleasants County, West Virginia
18-M37M-00291

142. Paragraphs 1-23 are incorporated by reference.
143. On or about October 3, 2018, Cpl. G.W. McCullough of the West Virginia State Police presented a criminal complaint in the Magistrate Court of Pleasants County that stated the officer responded to the scene of a one vehicle crash. Upon arrival, the officer observed the truck had gone over the embankment and landed on its side. The driver had to be extricated by Pleasants County EMS. The officer detected a strong smell of alcohol and observed the driver's glassy, bloodshot eyes, slurred speech, and the officer further noted the driver was unsteady on his feet and required assistance to the ambulance. The driver was later given a PBT and failed the same. The driver was transported to the hospital and the officer noted the driver became uncooperative and refused to sign a statement of consent to a blood draw.
144. Defendant Buckley was charged with violating W.Va. Code § 17C-5-2(e) [Driving under influence of alcohol] which carried a potential penalty of \$100.00 to \$500.00 fine and/or a sentence up to six months in jail and violating W.Va. Code § 17D-2A-4 [No proof of insurance] which carried a penalty of a \$200.00 to \$5,000.00 fine.
145. Magistrate Taylor issued a warrant for Defendant Buckley's arrest for the above referenced offenses on October 4, 2018.
146. On or about October 5, 2018, Magistrate Taylor set the matter for a pretrial hearing for

October 19, 2018.

147. On or about October 18, 2018, Defendant Buckley retained an attorney and on the same date Attorney Harley O. Wagner filed a notice of appearance on behalf of Defendant Buckley. Attorney Wagner also filed an emergency motion to continue and notice of conflict and requested the October 19, 2018, hearing date be re-set.
148. Magistrate Taylor granted Attorney Wagner's motion on October 19, 2018 and reset the matter for a pretrial hearing for November 16, 2018.
149. On or about November 15, 2018, Attorney Harley O. Wagner filed an emergency motion to continue based on severe winter weather and requested the November 16, 2018, hearing date be re-set.
150. Magistrate Taylor granted Attorney Wagner's motion on November 15, 2018 and reset the matter for a pretrial hearing for December 14, 2018.
151. On December 14, 2018, Attorney Wagner appeared with his client for the pretrial hearing. Attorney Wagner provided his client's proof insurance to Respondent and Attorney Wagner explained to Respondent that his client was a resident of Texas and was only in Pleasants County for his employment with an oil and gas company. Attorney Wagner advised Respondent that if his client got a conviction for driving under the influence it could have adverse consequences on his career and livelihood.
152. Respondent offered to move to dismiss the pending magistrate court charges in exchange for Defendant's Buckley's payment of Two Thousand Five Hundred Dollars in toys or gift cards to the Slow Down for Holidays program.
153. Attorney Wagner conveyed the offer to his client and his client accepted Respondent's

offer.

154. On December 14, 2018, APA Marteney made a written motion to “continue generally” and stated “Def. will participate in Slow Down for the Holidays Program.”
155. There is no information on the certificate of service for APA Marteney’s motion to continue.
156. Magistrate Taylor granted APA Marteney’s motion to continue on December 14, 2018.
157. Defendant Buckley immediately left the Pleasants County Courthouse and went to the local Walmart and purchased gift cards totaling \$2,500.00. Defendant Buckley returned to the Pleasants County Courthouse and went to Respondent’s office and personally delivered \$2,500.00 in gift cards to a member of Respondent’s staff.
158. On December 14, 2018, Respondent made a written motion to dismiss and stated “Defendant has participated in Slow Down for the Holidays Program.”
159. There is no information on the certificate of service for Respondent’s motion to dismiss.
160. Magistrate Taylor granted Respondent’s motion to dismiss on December 14, 2018.
161. Magistrate Taylor entered a Criminal Judgment Order dismissing the misdemeanor charges on December 14, 2018.
162. Cpl. G.W. McCullough was not aware of the disposition of Defendant Buckley’s criminal case, was not consulted prior to Respondent’s decision to dispose of the case, and had no role in Respondent’s decision to dispose of Defendant Buckley’s criminal charges by payment of money through the Slow Down for the Holidays program.
163. There are no citations, no orders of dismissal from the Municipal Court, and no record of a Two Thousand, Five Hundred Dollar payment made by or on behalf of Defendant

Buckley to the Slow Down for the Holidays program or the City of St. Marys, West Virginia.

164. There are no records to establish that Respondent gave Two Thousand, Five Hundred Dollars in gift cards he demanded and received from Defendant Buckley for the dismissal of the criminal charges to the Slow Down for the Holidays program or the City of St. Marys, West Virginia.
165. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Buckley, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.
166. Because Respondent represented to Attorney Wagner and his client Defendant Buckley that the misdemeanor case could be disposed of in a legal manner in exchange for Defendant Buckley’s payment of money or goods to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
167. Because Respondent represented to the magistrate court that the misdemeanor case could be dismissed by the magistrate in a legal manner in exchange for Defendant Buckley’s

payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.

168. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
169. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
170. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Buckley paying money to Respondent's office and/or paying money to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
171. Respondent conspired to deprive Defendant Buckley of money by fraudulent representations that the misdemeanor criminal case could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
172. Respondent, in his capacity as the Prosecutor, exacted a promise from Attorney Wagner

and his client to pay money to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offense, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

173. Because Respondent represented to ODC in his verified response and in his sworn testimony that he consulted with Cpl. G.W. McCullough about disposing of the criminal case through the Slow Down for the Holidays program, when he did not as much as advise Cpl G.W. McCullough that the criminal case had been dismissed by the Court, he violated Rule 8.1(b) of the Rules of Professional Conduct.

COUNT VII
State of West Virginia v. Casey Osborne
Magistrate Court of Pleasants County, West Virginia
19-M37M-00249

174. Paragraphs 1-23 are incorporated by reference.
175. On or about May 8, 2019, PCSO Deputy Lauer presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on May 8, 2019, the officer was dispatched to an accident where the driver struck a porch of a community building and proceeded over the bank into a tree. The officer located the driver, who had a head wound, but also appeared intoxicated. The officer stated after field sobriety tests she appeared impaired, and blew a .154 on the PBT. She was transported to the medical center. The officer stated she came to his office on the same date and gave a statement that she had been drinking prior to driving that night.
176. Defendant Osborne was charged with violating W.Va. Code § 17C-5-2(e) [Driving under

influence of alcohol] which carried a potential penalty of a \$100.00 to \$500.00 fine and/or a sentence up to six months in jail.

177. On or about May 9, 2019, Defendant Osborne filed a financial eligibility affidavit for appointed counsel.
178. By Order entered May 9, 2019, Defendant Osborne was appointed Attorney Sara Hall.
179. On or about May 14, 2019, Magistrate Taylor set the matter for a pretrial hearing for June 4, 2019.
180. On or about June 4, 2019, Attorney Hall filed a motion to continue the hearing and requested an opportunity to review and inspect discovery.
181. The certificate of service for the motion to continue indicates that Respondent was provided a copy of the motion by hand delivery on June 4, 2019.
182. Magistrate Taylor granted Attorney Hall's motion and reset the hearing for July 8, 2019.
183. On or about July 8, 2019, Attorney Hall filed a motion to continue the hearing because she was unable to attend the hearing.
184. The certificate of service for the motion to continue indicates that Respondent was provided a copy of the motion by email on July 8, 2019.
185. Magistrate Taylor granted Attorney Hall's motion and reset the hearing for July 25, 2019.
186. On July 25, 2019, pursuant to W.Va. Code § 17C-5-2(d); 17C-5-2(b) and 17C-5A-3a, Defendant Osborne filed a request for a deferral of DUI conviction and requested to participate in the test and lock program. This request was filed with Magistrate Taylor's office.
187. There was a hearing set for October 2, 2019, and Attorney Hall filed a motion to continue

the hearing and stated “defense needs time to check on her application for a deferral to the DMV.

188. The certificate of service for the motion to continue indicates that Respondent was provided a copy of the motion by hand delivery on October 2, 2019.
189. Magistrate Taylor granted Attorney Hall’s motion and reset the hearing for October 24, 2019.
190. There was a hearing set for October 24, 2019, and Attorney Hall filed a motion to continue the hearing and stated “defense counsel is ill and thus unable to attend the hearing.”
191. The certificate of service for the motion to continue indicates that Respondent was provided a copy of the motion by email on October 23, 2019.
192. Magistrate Taylor granted Attorney Hall’s motion and reset the hearing for November 13, 2019.
193. On November 13, 2019, APA Marteney made a written motion to continue “past end of the month” and stated “Defendant will participate in Slow Down for the Holidays Program.”
194. There is no information on the certificate of service for Respondent’s motion, but Attorney Hall’s signature also appears on the motion to continue.
195. Respondent offered to move to dismiss the pending magistrate court charges in exchange for Defendant’s Osborne’s payment of One Thousand Five Hundred Dollars in toys or gift cards to the Slow Down for Holidays program
196. Magistrate Taylor granted Respondent’s motion to continue on November 13, 2019, and

reset the hearing for December 10, 2019.

197. On December 10, 2019, Attorney Hall filed a motion to continue the hearing and stated “Defendant needs the opportunity to participate in Slow Down for the Holidays”.
198. The certificate of service for the motion to continue indicates that Respondent was provided a copy of the motion by hand delivery on December 10, 2019.
199. Magistrate Taylor granted Attorney Hall’s motion and reset the matter for December 12, 2019.
200. On December 12, 2019, Respondent made a written motion to dismiss and stated “Dismiss” “Slow Down for Holidays.”
201. Magistrate Taylor granted Respondent’s motion to dismiss on December 12, 2019.
202. Magistrate Taylor entered a Criminal Judgment Order dismissing the misdemeanor charge on December 12, 2019.
203. There are no citations, but there is a dismissal order dated December 12, 2019 signed by Municipal Judge Elder and an accompanying receipt dated December 12, 2019, which indicates that Defendant Osborne paid One Thousand Five Hundred Dollars in gift cards for “citations” to the Slow Down for the Holidays program.
204. On or about January 20, 2020, Attorney Hall submitted a bill for fees in the amount of \$1,180.50 and expense in the amount of \$174.00 to Public Defender Services for the services provided in Defendant Osborne’s case.
205. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar

circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Osborne, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.

206. Because Respondent represented to Attorney Hall and her client Defendant Osborne that the misdemeanor case could be disposed of in a legal manner in exchange for Defendant Osborne's payment of money to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
207. Because Respondent represented to the magistrate court that the misdemeanor case could be dismissed by the magistrate in a legal manner in exchange for Defendant Osborne's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
208. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
209. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.

210. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Osborne paying money to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
211. Respondent conspired to deprive Defendant Osborne of money by fraudulent representations that the misdemeanor criminal case could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
212. Respondent, in his capacity as the Prosecutor, exacted a promise from Attorney Hall and her client to pay money to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offense, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT VIII
State of West Virginia v. Sharon M. Knight
Magistrate Court of Pleasants County, West Virginia
19-M37M-00562

213. Paragraphs 1-23 are incorporated by reference.
214. On or about September 5, 2019, PCSD Coplin presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on September 2, 2019, the officer,

while conducting traffic patrol, observed a vehicle take off at a rapid pace from a stop light and cross the center line on multiple occasions. The officer observed the vehicle weaving across the traffic lane at an erratic pace and was able to pace the vehicle at approximately 60mph in a 55mph zone. After the vehicle nearly crashed into a guardrail, the officer conducted a traffic stop. The officer detected the smell of alcohol from the driver and observed beer cans behind the driver's seat. The driver failed a series of field sobriety tests and could not provide a sufficient sample for a PBT at the scene. The driver was placed under arrest for DUI first offense, left of center and speeding and transported to PCSD. After consent, the driver provided a sample of breath into the Intox EC/IR II and produced a result of 0.0054. The driver further advised she had taken approximately one and a half prescription Xanax pills.

215. Defendant Knight was charged with violating W.Va. Code § 17C-5-2(e) [Driving under influence of alcohol] which carried a potential penalty of a \$100.00 to \$500.00 fine and/or a sentence up to six months in jail; W.Va. Code § 17C-7-5(a) [Left of Center] which carried a potential penalty of a fine up to \$500.00; and W.Va. Code § 17C-6-1(a) [Speeding] which carried a potential penalty of a fine up to \$500.00
216. On or about September 9, 2019, Defendant Knight filed a financial eligibility affidavit for appointed counsel.
217. By Order entered September 9, 2019, Defendant Knight was appointed Attorney Ira Richardson.
218. On or about September 12, 2019, Magistrate Taylor set the matter for a pretrial hearing for October 3, 2019.

219. Attorney Richardson filed a motion to continue the hearing because of a scheduling conflict.
220. The certificate of service for the motion to continue indicates that Respondent was provided a copy of the motion by facsimile on September 23, 2019.
221. Magistrate Taylor granted Attorney Richardson's motion and reset the hearing for October 17, 2019.
222. Attorney Richardson filed a motion to continue the hearing because he needed "more time to research options based on defendant's health conditions w/ respect to deferral offer."
223. The certificate of service for the motion to continue indicates that Respondent was provided a copy of the motion by hand delivery on October 17, 2019.
224. Magistrate Taylor granted Attorney Richardson's motion and reset the hearing for November 14, 2019.
225. Respondent offered to dismiss the pending magistrate court charges in exchange for Defendant's Knight's payment of money to the Slow Down for Holidays program.
226. On December 12, 2019, Respondent made a written motion to dismiss without prejudice and stated "Defendant will participate in Slow Down for the Holidays"
227. The certificate of service for the motion to continue indicates that Respondent's motion to dismiss was provided to Attorney Richardson's associate lawyer, Attorney Jordan West, by hand delivery on November 14, 2019.
228. Magistrate Taylor granted Respondent's motion to dismiss without prejudice on November 14, 2019.

229. Magistrate Taylor entered a Criminal Judgment Order dismissing the three (3) misdemeanor charges on December 12, 2019.
230. There are no citations, but there is a dismissal order dated November 18, 2019, signed by Municipal Judge Elder and accompanying receipts dated November 15, 2019, which indicates that Defendant Knight paid One Thousand Five Hundred Dollars, specifically, Four Hundred Dollars in gift cards and receipts for purchased toys, for dismissal of her criminal charges.
231. On or about November 21, 2019, Attorney Richardson submitted a bill for fees in the amount of \$408.00 and expenses in the amount of \$100.53 to Public Defender Services for the services provided in Defendant Knight's case.
232. This criminal case was not included in the self-report or in Respondent's verified response.
233. WV Constitution Article III, § 10 states "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers" Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Knight, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.

234. Because Respondent represented to Attorney Richardson and his client Defendant Knight that the misdemeanor cases could be disposed of in a legal manner in exchange for Defendant Knight's payment of money or goods to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
235. Because Respondent represented to the magistrate court that the misdemeanor charges could be dismissed by the magistrate in a legal manner in exchange for Defendant Knight's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
236. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
237. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
238. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Knight paying money to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
239. Respondent conspired to deprive Defendant Knight of money by fraudulent

representations that the misdemeanor criminal case could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

240. Respondent, in his capacity as the Prosecutor, exacted a promise from Attorney Richardson and his client to pay money to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offense, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT IX
State of West Virginia v. Chelsey Bills
Magistrate Court of Pleasants County, West Virginia
19-M37M-00571

241. Paragraphs 1-23 are incorporated by reference.
242. On or about September 5, 2019, PCSD Coplin issued a uniform citation to Defendant Bills and cited her for violations of W.Va. Code § 17C-6-1 [Speeding] which carried a penalty of a fine up to \$500.00; a violation of W.Va. Code § 17C-15-46 [No Child Restraint] which carried a penalty of a fine up to \$20.00; and a violation of W.Va. Code § 17D-2A-4 [No Certificate of Insurance] which carried a penalty of a fine of \$200.00 to \$5,000.00.
243. On or about September 24, 2019, Magistrate Nutter set the matter for a pretrial hearing for October 9, 2019.
244. On APA Marteney made a written motion to dismiss the charge of no proof of insurance

because Defendant Bills was not driving her own vehicle at the time of the traffic stop and she produced a valid certificate of insurance.

- 245. There is no information on the certificate of service for APA Marteney's motion to dismiss.
- 246. Magistrate Nutter granted Respondent's motion to dismiss the misdemeanor charge on October 9, 2019.
- 247. On or about October 31, 2019, Defendant Bills filed a *pro se* motion and requested the State to provide her with discovery.
- 248. The certificate of service for the motion to continue indicates that Respondent's office was provided a copy of the motion by facsimile on October 31, 2019.
- 249. Magistrate Nutter reset the hearing on the remaining misdemeanor charges for bench trial set for December 4, 2019.
- 250. Respondent offered to dismiss the pending magistrate court charges in exchange for Defendant's Bills' payment of money to the Slow Down for Holidays program.
- 251. By handwritten letter to the Pleasants County Magistrate Court dated December 4, 2019, Defendant Bills stated:

It is my understanding that the Prosecuting Attorney approved this case for the Christmas Toy Drive Program and requested \$200.00 (4- \$50 cards) in exchange for this case to be dismissed. It is also my understanding that it should only be \$50 per offense, which there are 2 offenses. Could someone please provide clarification. I can be reached at XXX-XXX-XXXX⁶.

Respondent is cc'd on Defendant Bills letter.

- 252. On December 4, 2019, Respondent made a written motion to dismiss and stated "Slow Down for the Holidays"

253. There is no information on the certificate of service for Respondent's motion to dismiss.
254. Magistrate Nutter granted Respondent's motion to dismiss on December 4, 2019.
255. Magistrate Nutter entered a Criminal Judgment Order dismissing the two (2) misdemeanor charges on December 4, 2019.
256. There are no citations, but there is a dismissal order dated December 4, 2019, signed by Municipal Judge Elder and accompanying receipts dated December 4, 2019, which indicates that Defendant Bills paid Two Hundred Dollars in gift cards to the Slow Down for the Holidays program in exchange for dismissal of her criminal charges.
257. This criminal case was not included in the self-report or in Respondent's verified response.
258. WV Constitution Article III, § 10 states "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers" Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Bills, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.
259. Because Respondent represented to Defendant Bills that the misdemeanor charges could be disposed of in a legal manner in exchange for Defendant Bills' payment of money or

⁶ Defendant Bills phone number appears in the letter. 43

goods to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.

260. Because Respondent represented to the magistrate court that the misdemeanor charges could be dismissed by the magistrate in a legal manner in exchange for Defendant Bills' payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
261. Because Respondent knowingly assisted and/or induced Magistrate Nutter to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
262. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
263. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Bills paying money to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
264. Respondent conspired to deprive Defendant Bills of money by fraudulent representations that the misdemeanor criminal charges could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as

such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

265. Respondent, in his capacity as the Prosecutor, exacted a promise from Defendant Bills to pay money to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offense, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT X
State of West Virginia v. Jacob C. Carder
Magistrate Court of Pleasants County, West Virginia
19-M37M-00634

266. Paragraphs 1-23 are incorporated by reference.
267. On or about October 12, 2019, PCSD Coplin presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on October 12, 2019, while on a routine traffic patrol observed a vehicle with a defective taillight. The officer observed the vehicle weaving back and forth between the lane markings and subsequently proceeded to conduct a traffic stop. The officer detected the strong odor of alcohol and the driver admitted that he consumed approximately five beers within the past 30 minutes. The driver failed the field sobriety tests and produced a roadside PBT reading of .113 BAC. The officer placed the driver under arrest for DUI. After implied consent was given, the defendant produced a BAC result of .099. The officer further stated that the driver had a prior DUI 1st offense in Ohio in 2017.
268. Defendant Carder was charged with DUI 2nd offense in violation of W.Va. Code §17C-5-2(e)(1) which carried a penalty \$1,000.00 to \$3,000.00 fine and/or a sentence not less than six months up to twelve months in jail.

269. On or about October 12, 2019, Defendant Carder filed a financial eligibility affidavit for appointed counsel.
270. By Order entered October 16, 2019, Defendant Carder was appointed Attorney Wells Dillon.
271. By letter dated October 16, 2019, Attorney Dillon advised his client, Defendant Carder, that he was appointed to represent him. Attorney Dillon advised that the pre-trial was set for December 11, 2019, at 9:30am before Magistrate Taylor.
272. On the same date, Attorney Dillon filed a Motion for Jury Trial and a Motion for Discovery.
273. By letter dated October 28, 2019, Respondent provided Attorney Dillon a copy of discovery in Defendant Carder's criminal case.
274. On or about November 13, 2019, Attorney Dillon filed a Motion to Produce and Preserve all copies of all video and audio recording of the video stop, field sobriety testing, arrest, interviewing, and administration of the secondary chemical testing concerning the incident at issue.
275. On December 12, 2019, Respondent, Attorney Dillon and his client appeared for the 9:30am pre-trial hearing before Magistrate Taylor.
276. In the Magistrate Assistant's office, Respondent advised Attorney Dillon that Defendant Carder was cooperative with PCSD Sgt. Coplin and as such, Respondent offered to dismiss the pending magistrate court charges in exchange for Defendant Carder's payment of One Thousand Five Hundred Dollars in gift cards to the Slow Down for Holidays program.

277. Magistrate Taylor advised that she had no issues with resolving the charges in the manner proposed by Respondent and confirmed that she was familiar with the Slow Down for the Holidays program.
278. Attorney Dillon conveyed the proposed offer to his client who accepted the offer to have his DUI-2nd offense charge dismissed in exchange for his payment of money.
279. On December 12, 2019, Respondent made a written motion to dismiss without prejudice and stated “to do Slow Down for the Holidays”
280. The certificate of service for the motion to continue indicates that Respondent’s motion to dismiss without prejudice was provided to Attorney Dillon, by hand delivery on December 12, 2019.
281. Magistrate Taylor granted Respondent’s motion to dismiss without prejudice on December 12, 2019.
282. Magistrate Taylor entered a Criminal Judgment Order dismissing the misdemeanor charge on December 12, 2019.
283. There are no citations, but there is a dismissal order, with the date obscured, signed by Municipal Judge Elder and accompanying receipts dated December 12, 2019, at 9:58am which indicates that Defendant Carder spent One Thousand Five Hundred and Fifty Dollars to purchase \$1,5000.00 in gift cards that he gave to the Municipal Court for the Slow Down for the Holidays program in exchange for dismissal of his criminal charge.
284. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar

circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Carder, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.

285. Because Respondent represented to Attorney Dillon and/or Defendant Carder that the misdemeanor charges could be disposed of in a legal manner in exchange for Defendant Carder's payment of money or goods to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
286. Because Respondent represented to the magistrate court that the misdemeanor charges could be dismissed by the magistrate in a legal manner in exchange for Defendant Carder's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
287. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
288. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.

289. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Carder paying money to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
290. Respondent conspired to deprive Defendant Carder of money by fraudulent representations that the misdemeanor criminal charges could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
291. Respondent, in his capacity as the Prosecutor, exacted a promise from Defendant Carder to pay money to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offense, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT XI
State of West Virginia v. Matthew Charles Peters
Magistrate Court of Pleasants County, West Virginia
19-M37M-00652

292. Paragraphs 1-23 are incorporated by reference.
293. On or about October 26, 2019, PCSO Cpl. Marant presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on October 26, 2019, he and Sgt. Reed went to the scene of a single vehicle accident. The officers were notified of the

accident by a caller who witnessed the accident, and, while law enforcement was enroute, was following the driver. When the officers got to the vehicle, the driver was sitting in the driver seat without a seatbelt, blankly staring out the front windshield, and the officer observed a bottle of beer in the cup holder. The driver was not wearing a shirt, nor socks and shoes. The officers detected a strong alcohol smell from the vehicle and from the driver's breath. The driver admitted to drinking earlier in the day while at a football game in Huntington, WV. The driver upon exiting the vehicle for field sobriety tests was staggering and unsteady on his feet. The PBT was reading was .141. The driver was placed into custody and taken to the PCSD for processing. After twenty minutes, the driver produced a result on the intoximeter of .135. The driver was transported to SMCC. A statement was taken from the witness to the accident. The witness stated the driver ran off the roadway, struck a road sign, and stopped and the driver staggered out of the vehicle checked the damage and then left the scene. The witness further stated that he witnessed the driver run a red light.

294. Defendant Peters was charged with violations of W.Va. Code §17C-5-2(e)(ii) [Driving Under the Influence of Alcohol] which carried a penalty of a fine of \$100.00 to \$500.00 and/or 6 months in jail; W.Va. Code §17C-4-2 [Leaving Scene of Accident with Property Damage] which carried a penalty of a fine of up to \$100.00 and/or ten days in jail; W.Va. Code §17C-3-5 [Traffic-control signal legend]; W.Va. Code §17C-4-5 [Duty upon striking fixtures upon a highway] which carried a penalty of a fine up to \$150.00; and W.Va. Code §17C-15-49 [Operation of vehicles with safety belts] which carried a penalty of a fine up to \$25.00.

295. Defendant Peters was released from SMCC after posting bail on or about October 27, 2019.
296. On or about October 29, 2019, Magistrate Nutter set the matter for a pretrial hearing for November 19, 2019, at 3pm.
297. Attorney Jay Gerber filed a notice of appearance on behalf of Defendant Peters.
298. On or about October 29, 2019, pursuant to W.Va. Code § 17C-5-2(d); 17C-5-2(b) and 17C-5A-3a, Defendant Peters filed a request for a deferral of DUI conviction and requested to participate in the test and lock program. This request was filed with Magistrate Taylor's office and forwarded to the DMV on November 1, 2019.
299. On or about November 5, 2019, the DMV advised the Magistrate Court that Defendant Peters' driving record did not have any impediment to participating in the Alcohol Test and Lock Program under the terms of W.Va. Code § 17C-5-2b. The Magistrate Court received this notification on November 7, 2019.
300. On or about November 5, 2019, Magistrate Nutter reset the matter for a pretrial hearing for November 19, 2019, at 11:30am.
301. On November 5, 2019, Respondent, Attorney Gerber and his client appeared for the pre-trial hearing.
302. Respondent offered to dismiss the five (5) pending magistrate court charges in exchange for Defendant Peters payment of money or gift cards to the Slow Down for Holidays program.
303. Attorney Gerber conveyed the proposed offer to his client who accepted the offer to have his five misdemeanor charges dismissed in exchange for his payment of money.

304. On November 19, 2019, Respondent made a written motion to dismiss without prejudice and stated “to participate in Slow Down for the Holidays”
305. There is no information on the certificate of service for Respondent’s motion to dismiss.
306. Magistrate Nutter granted Respondent’s motion to dismiss the five misdemeanor charges without prejudice on November 19, 2019.
307. Magistrate Nutter entered a Criminal Judgment Order dismissing the five (5) misdemeanor charge on November 19, 2019.
308. At no time during or after the November 19, 2019 negotiations did Respondent or the Magistrate Court disclose that to Attorney Gerber or his client, Defendant Peters, of the DMV’s assessment that his client was eligible for the test and lock deferral program.
309. There are no citations, but there is a dismissal order dated November 27, 2019, signed by Municipal Judge Elder with accompanying receipt dated November 27, 2019, which indicates that Defendant Peters paid Five Thousand Dollars “cash” to the Slow Down for the Holidays program in exchange for dismissal of his criminal charges.
310. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Peters, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s motion to dismiss pending criminal charges. As such, Respondent violated the due

process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.

311. Because Respondent failed to timely disclose to Attorney Gerber and/or his client that Defendant Peters was eligible for the test and lock conviction deferral program, he violated Rule 3.8(d) of the Rules of Professional Conduct.
312. Because Respondent represented to Attorney Gerber that his client's misdemeanor charges could be disposed of in a legal manner in exchange for Defendant Peters' payment of money or goods to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
313. Because Respondent represented to the magistrate court that the misdemeanor charges could be dismissed by the magistrate in a legal manner in exchange for Defendant Peters' payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
314. Because Respondent knowingly assisted and/or induced Magistrate Nutter to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
315. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
316. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Peters paying money to the Slow Down for the Holidays

program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

317. Respondent conspired to deprive Defendant Peters of money by fraudulent representations that the misdemeanor criminal charges could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

318. Respondent, in his capacity as the Prosecutor, exacted a promise from Attorney Gerber and his client Defendant Peters to pay money to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offense, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT XII

**State of West Virginia v. Michael G. Dickison
Magistrate Court of Pleasants County, West Virginia
19-M37M-00669 and 19-M37M-00671**

319. Paragraphs 1-23 are incorporated by reference.

320. On or about November 2, 2019, PCSD Deputy Gray presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on November 2, 2019, she received a driving complaint about a vehicle, and shortly thereafter she received a second call stating the vehicle of the initial driving complaint crashed into a ditch. The officer

noted there was a statement taken from the caller. Upon arrival, the car was in the ditch and when speaking to the accused, the officer could smell alcohol on the driver's breath. The driver had glassy watery eyes and was unsteady on his feet. The driver complained of ankle pain from the crash, and EMS checked the driver and determined the driver had a minor ankle sprain. The driver advised the officer that he started drinking the night before and stopped between 1:30-2am. The driver stated he drank wine coolers, mixed drinks, and some shots. The driver stated, as he had to be at his place of employment in St. Marys, he woke up and left Pittsburg at 4:30am. The driver stated he fell asleep while driving and that was the cause of the accident. After EMS cleared him, the officer conducted field sobriety tests. After a fifteen-minute observation period, the driver's PBT result was .096. The driver was placed under arrest for DUI and transported to PCSD. After a twenty-minute observation period, the driver's secondary chemical breath test was .081.

321. Upon further investigation and review, PCSD Deputy Gray issued a citation to Defendant Dickison dated November 2, 2019, for driving on a suspended license.
322. Defendant Dickison was charged with a violation of W.Va. Code §17C-5-2(e) [Driving Under the Influence of Alcohol] which carried a penalty of a fine of \$100.00 to \$500.00 and/or six months in jail and a violation of W.Va. Code § 17B-4-3a [Driving Suspended –1st Offense] which carried a penalty of a fine of \$100.00 to \$500.00.
323. Attorney Justin Raber filed a notice of appearance on behalf of Defendant Dickison.
324. On or about November 6, 2019, Magistrate Nutter set the matter for a pretrial hearing for November 21, 2019, at 9:30am.

325. On November 6, 2019, Attorney Raber filed a request for discovery and served a copy of the motion on Respondent by United States Mail.
326. Magistrate Nutter granted Attorney Raber's request on November 8, 2019.
327. On November 21, 2019, Respondent and Attorney Raber timely appeared for the pre-trial hearing. Defendant Dickison was over an hour late for the pre-trial hearing but arrived just before Respondent filed additional charges for failure to appear.
328. Respondent offered to allow Attorney Raber's client to plead guilty to the DUI and driving on a suspended license, first offense, and the State would recommend a jail sentence of seven (7) days and associated financial penalties or, in the alternative, the State would move for dismissal of the two misdemeanor charges in exchange for Defendant Dickison's payment of \$2,500.00 of money or goods to the Slow Down for the Holidays program.
329. Attorney Raber conveyed the proposed offer to his client who accepted the offer to have his misdemeanor charges dismissed with prejudice in exchange for his payment of money in the amount of Two Thousand Five Hundred Dollars. Attorney Raber advised his client that if the prosecution was pursued, Defendant Dickison would be subject to a jail sentence of seven (7) days and additional fines.
330. Attorney Raber's client was not from Pleasants County and did not want to jeopardize his employment, so he accepted Respondent's offer to pay money to have his criminal charges dismissed. Defendant Dickison accepted the offer but, asked for some time to come up with the funds to pay for the dismissal of the misdemeanor charges.
331. On November 21, 2019, Respondent and Attorney Raber made a joint written motion to

continue the pre-trial and stated “to allow Δ sufficient time to participate in Slow Down for the Holidays.”

332. Magistrate Nutter granted the joint motion to continue the pre-trial on November 21, 2019, and reset the pre-trial hearing for December 9, 2019, at 11am.
333. On or before December 9, 2019, Defendant Dickison provided Attorney Raber with the funds for the required gift cards and toys and requested Attorney Raber to take the necessary payment to the City of St. Marys in exchange for the dismissal of his client’s criminal charges.
334. On December 9, 2019, Respondent and Attorney Raber made a joint written motion to dismiss the two misdemeanor charges with prejudice and stated “Δ’s participation in Slow Down for the Holidays program.”
335. Magistrate Nutter granted Respondent and Attorney Raber’s joint motion to dismiss the two misdemeanor charges with prejudice on December 9, 2019.
336. Magistrate Nutter entered a Criminal Judgment Order dismissing the two (2) misdemeanor charge on December 9, 2019.
337. There are no citations, no orders of dismissal from the Municipal Court, and no record of a Two Thousand, Five Hundred Dollar payment of money or goods made by or on behalf of Defendant Dickison to the Slow Down for the Holidays program or the City of St. Marys, West Virginia.
338. PCSD Deputy Gray wasn’t consulted prior to Respondent’s decision to dispose of the criminal charges by way of Defendant Dickison’s payment of money or goods into the Slow Down for the Holidays program.

339. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Dickison, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.
340. Because Respondent represented to Attorney Raber that his client’s misdemeanor charges could be disposed of in a legal manner in exchange for Defendant Dickison’s payment of money to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
341. Because Respondent represented to the magistrate court that the misdemeanor charges could be dismissed by the magistrate in a legal manner in exchange for Defendant Dickison’s payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
342. Because Respondent knowingly assisted and/or induced Magistrate Nutter to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
343. Respondent is a public official or public employee who knowingly and intentionally used

his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.

344. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Dickison's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
345. Respondent conspired to deprive Defendant Dickison of money by fraudulent representations to Attorney Raber that the misdemeanor criminal charges could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
346. Respondent, in his capacity as the Prosecutor, exacted a promise from Attorney Raber and his client Defendant Dickison to pay money or deliver goods to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offenses, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT XIII
State of West Virginia v. Michael Scott Orr
Magistrate Court of Pleasants County, West Virginia
20-M37M-00123

347. Paragraphs 1-23 are incorporated by reference.
348. On or about March 14, 2020, PCSD Sgt. Coplin presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on March 14, 2020, he was notified of a domestic altercation and while enroute to the scene, he was notified by dispatch that the male party left the residence. The officer encountered the vehicle and conducted a traffic stop to speak with the driver about the domestic situation. The officer ran the driver's identification which revealed that his Ohio driver's license was revoked for a first offense DUI conviction with the effective date of suspension date of February 3, 2020. The driver was then placed under arrest for driving while his license was revoked for DUI and was transported to PDSD.
349. Defendant Orr was charged with a violation of W.Va. Code § 17B-04-03(b) [Driving While License Revoked-DUI] which carried a penalty of a fine of \$100.00 to \$500.00 and/or 30 days to six months in jail.
350. On or about March 14, 2020, Defendant Orr filed a financial eligibility affidavit for appointed counsel.
351. By Order entered March 17, 2020, Defendant Orr was appointed Attorney Ira Richardson.
352. On or about April 28, 2020, Magistrate Taylor set the matter for a pretrial hearing for July 20, 2020, at 1pm.

353. On or about July 20, 2020, Attorney Richardson filed a motion to reschedule the pre-trial hearing and stated Defendant was unable to appear at scheduled time.
354. The certificate of service for the motion to continue indicates that Respondent's office was provided a copy of the motion by hand delivery on July 20, 2020.
355. Magistrate Taylor granted the motion on the same date and reset the pre-trial hearing for August 7, 2020.
356. On or about August 7, 2020, Defendant Orr failed to appear for the hearing and Respondent served Attorney Jordan West with a motion to revoke Defendant Orr's bond. However, after speaking to Defendant Orr, the lawyers negotiated an agreement whereby Defendant Orr would appear before the Magistrate Court later that day, and the motion to revoke would be withdrawn and the hearing reset.
357. Upon information and belief, Defendant Orr did appear on August 7, 2020, and Magistrate Taylor reset the pre-trial hearing for September 15, 2020.
358. On or about September 15, 2020, Attorney West filed a motion to continue the pre-trial hearing and stated "Defendant is almost done getting license reinstated. Need to time to negotiate plea."
359. The certificate of service for the motion to continue indicates that Respondent's office was provided a copy of the motion by hand delivery on September 15, 2020.
360. Magistrate Taylor granted the motion on the same date.
361. On or about October 29, 2020, Magistrate Taylor set the matter for a pretrial hearing for December 8, 2020, at 11:00am.
362. At some time at or before the December 8, 2020, pre-trial hearing Respondent offered to

dismiss the pending magistrate court charge in exchange for Attorney West's client, Defendant Orr's, payment of money or gift cards to the Slow Down for Holidays program.

363. After consulting with his client, Attorney West advised that his client would pay the requested money for the dismissal of his criminal charges.
364. At the express and/implied authorization of Respondent, PCSD Marant issued Defendant Orr a ticket bearing the date of March 19, 2020, for "Driving Revoked DUI" and indicates the offense is in violation of Municipal Ordinance 351.1. The ticket bears the notation "SDFH=2,000.00 in FINE PER PLEA DEAL." The ticket directs Defendant Orr to appear before St. Marys City Court before November 12, 2020, at 4pm.⁷
365. On December 14, 2020, Respondent's office received telephone confirmation from SMPD that Defendant Orr "paid his fine."
366. On December 14, 2020, Respondent made a written motion to dismiss and stated "Defendant has satisfied SDFH."
367. The certificate of service for the motion to continue indicates that Respondent's motion to dismiss was provided to Attorney Richardson, by facsimile on December 14, 2020.
368. Magistrate Nutter granted Respondent's motion to dismiss the misdemeanor charge on December 14, 2020.
369. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charge on December 14, 2020
370. There are no citations provided by the City of St. Marys, but there is a dismissal order dated December 16, 2020, signed by Municipal Judge Elder with accompanying receipt

which indicates that Defendant Orr paid Two Thousand Dollars in the form of gift cards to the Slow Down for the Holidays program in exchange for dismissal of his criminal charge.

371. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Orr, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.
372. Because Respondent represented to Attorney West and/or Attorney Richardson that their client’s misdemeanor charge could be disposed of in a legal manner in exchange for Defendant Orr’s payment of money or goods to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
373. Because Respondent represented to the magistrate court that the misdemeanor charge could be dismissed by the magistrate in a legal manner in exchange for Defendant Orr’s payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
374. Because Respondent knowingly assisted and/or induced Magistrate Nutter to violate the

⁷ This citation was not provided by the City of St. Marys in its production of documents pursuant to the subpoena.

laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.

375. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
376. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Orr's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
377. Respondent conspired to deprive Defendant Orr of money by fraudulent representations to Attorney West and/or Attorney Richardson that the misdemeanor criminal charge could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
378. Respondent, in his capacity as the Prosecutor, exacted a promise from Attorney West and/or Attorney Richardson and their client Defendant Orr to pay money or deliver goods to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offenses, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct

COUNT XIV
State of West Virginia v. Paul Richard Goodrich, III
Magistrate Court of Pleasants County, West Virginia
20-M37M-00242

379. Paragraphs 1-23 are incorporated by reference.
380. On or about July 31, 2020, and August 3, 2020, Sgt. W.J. Curran of the West Virginia State Police presented criminal complaints in the Magistrate Court of Pleasants County that alleged that on July 31, 2020, the officer observed a vehicle speeding and observed the vehicle pass another vehicle in a no passing zone. The officer conducted a traffic stop and upon further investigation, the driver's license was revoked for DUI.
381. Defendant Goodrich was charged with a violation of W.Va. Code § 17B-4-3b [Driving While License Revoked-DUI] which carried a penalty of a fine of \$100.00 to \$500.00 and/or 30 days to 6 months in jail and a violation of W.Va. Code § 17C-7-7(a) [No passing zones-left of center] which carried a penalty of a fine up to \$100.00
382. On or about August 12, 2020, Magistrate Taylor set the matter for a pretrial hearing for September 18, 2020, at 11:00am.
383. On or about September 18, 2020, Respondent and Defendant Goodrich, representing himself *pro se*, filed a joint motion to reset the matter in forty-five (45) days to "permit Defendant to pursue getting his license back."
384. There is no information on the certificate of service for motion to reset the hearing date.
385. Magistrate Taylor granted the motion on the same date and reset the pre-trial hearing for November 13, 2020, at 9:30am.
386. At the November 13, 2020, pre-trial hearing, APA Marteney offered a plea bargain

whereby Defendant Goodrich would plead to guilty to driving while revoked for DUI, 1st offense, and in exchange the State would dismiss the left of center charge and recommend 60 days jailtime, suspended for one year of unsupervised probation and minimum fines.

387. Ultimately, at the same November 13, 2020, pre-trial hearing, Respondent offered to dismiss the pending magistrate court charge in exchange for Defendant Goodrich's payment of money or gift cards to the Slow Down for Holidays program.⁸
388. On November 13, 2020, APA Marteney made a written motion to dismiss and stated "Per agreement/Slow Down for Holidays."
389. There is no information on the certificate of service for APA Marteney's motion to dismiss.
390. Magistrate Taylor granted APA Marteney's motion to dismiss the misdemeanor charges on November 13, 2020.
391. Magistrate Taylor entered a Criminal Judgment Order dismissing the misdemeanor charges on November 13, 2020.
392. At the express and/implied authorization of Respondent, SMPD Reed issued Defendant Goodrich a ticket bearing the date of November 13, 2020, for "passing no passing zone" and "speed." The ticket bears the notation "SDFH \$1500.00" The ticket directs Defendant Goodrich to appear before December 16, 2020 at 4pm.
393. The citation issued by SMPD Reed was dismissed by an Order signed by Municipal Judge Elder on November 13, 2020, which indicates that Defendant Goodrich paid

⁸ APA Marteney did not recall making this offer to Defendant Goodrich, but was later informed that Defendant Goodrich participated in the Slow Down for the Holidays Program.

\$1,500.00 to the Slow Down for the Holidays program in exchange for dismissal of his criminal charge. Accompanying the dismissal order, was a page of receipts for gift cards totaling \$850.00.

394. Sgt. W.J. Curran of the West Virginia State Police did not suggest to Respondent to dispose of the criminal charges by way of the Slow Down for the Holidays program. If Respondent would have asked about disposing of the case in this manner, Sgt. Curran would have voiced his objection based on concerns about the disposal of the criminal case through the program. Sgt. Curran had no role in Respondent's decision to dispose of Defendant Goodrich's criminal charges by payment of money through the Slow Down for the Holidays program.
395. WV Constitution Article III, § 10 states "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers" Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Goodrich, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.
396. Because Respondent represented to Defendant Goodrich that his misdemeanor charges could be disposed of in a legal manner in exchange for Defendant Goodrich's payment of

money or services to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.

397. Because Respondent represented to the magistrate court that the misdemeanor charge could be dismissed by the magistrate in a legal manner in exchange for Defendant Goodrich's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
398. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
399. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
400. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Goodrich's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
401. Respondent conspired to deprive Defendant Goodrich of money by fraudulent representations that the misdemeanor criminal charge could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va.

Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

402. Respondent, in his capacity as the Prosecutor, exacted a promise from Defendant Goodrich to pay money or deliver goods to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offenses, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

403. Because Respondent represented to ODC in his verified response and in his sworn testimony that he consulted with and got the approval of Sgt. W.J. Curran of the West Virginia State Police about disposing of the criminal case through the Slow Down for the Holidays program, he violated Rule 8.1(b) of the Rules of Professional Conduct.

COUNT XV
State of West Virginia v. Larry E. Reeves
Magistrate Court of Pleasants County, West Virginia
20-M37M-00274

404. Paragraphs 1-23 are incorporated by reference.

405. On August 10, 2020, PCSD Sgt. Coplin issued a uniform citation to Larry E. Reeves, Jr. for a violation of W.Va. Code §17C-5-2(e) [DUI less than .15] which carried a penalty of a fine of \$100.00 to \$500.00 and/or up to six months in jail.

406. On or about August 13, 2020, Defendant Reeves filed a financial eligibility affidavit for appointed counsel.

407. By Order entered August 13, 2020, Attorney Sara B. Hall was appointed as counsel.

408. On or about August 19, 2020, Magistrate Taylor set the matter for a pretrial hearing for

September 30, 2020, at 1pm.

409. On or about September 30, 2020, PCSD Sgt. Coplin presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on August 10, 2020, the officer was dispatched to a single vehicle accident and upon arrival to the scene, the officer observed a vehicle on its top in the northbound lane. The driver advised that he attempted to avoid striking a deer and rolled his vehicle. The officer detected the heavy odor of alcohol from the driver's breath. The officer noted the driver's face was flushed and his eyes were bloodshot and watery. The driver admitted he had consumed alcohol prior to operating his vehicle. The driver failed all administered field sobriety tests, and the roadside PBT produced a result of .104. The driver was then placed under arrest for driving under the influence of alcohol and transported to PCSD for processing. After consent was given by the driver, and the observation period was completed, the driver produced a BAC sample of .103.
410. Defendant Reeves was charged with a violation of W.Va. Code §17C-05-02(e) [Driving vehicle while in an impaired state, but with alcohol concentration of <.15] which carried a penalty of a fine of \$100.00 to \$500.00 and/or up to six months in jail.
411. The parties appeared for the September 30, 2020, pre-trial hearing and Respondent offered Attorney Hall a plea whereby Defendant Reeves would plead to guilty to the charged offense, and the State would recommend Defendant Reeves serving three (3) months of home confinement.
412. On the same date, Attorney Hall filed a motion to continue the pre-trial hearing because "Defendant needs the opportunity to fill out a home confinement packet as per plea

negotiations.”

413. The certificate of service for the motion to continue indicates that Attorney Hall’s motion to continue was provided to Respondent by hand delivery on September 30, 2020.
414. Magistrate Taylor granted Attorney Hall’s motion to continue on the same date and reset the pre-trial hearing for November 12, 2020, at 1pm.
415. As the November pre-trial date approached, Attorney Hall requested Respondent’s consent for a second continuance because Defendant Reeves was struggling to raise the funds to pay for the fees associated with home confinement.
416. Respondent, while not rescinding the State’s original plea offer, then offered to dismiss the pending magistrate court charge in exchange for Defendant Reeve’s payment of One Thousand Dollars in money or goods to the Slow Down for Holidays program.
417. On November 12, 2020, Attorney Hall filed a motion to continue the pre-trial hearing because “Defendant needs more time to garner for funds for home confinement, he is employed, but needs time to save the money.”
418. The certificate of service for the motion to continue indicates that Attorney Hall’s motion to continue was provided to Respondent by hand delivery on November 12, 2020.
419. Magistrate Taylor granted Attorney Hall’s motion to continue on the same date and reset the pre-trial hearing for January 6, 2021, at 11am.
420. At the January 6, 2021, pre-trial hearing, Respondent advised Attorney Hall that the State was moving forward with the home confinement because his office was not offering the Slow Down for the Holidays. Attorney Hall advised Respondent that her client wanted to plead guilty and serve his sentence on home confinement, but he needed to get

permission from the neighboring county to supervise him.

421. A plea hearing date was set by Magistrate Taylor for January 20, 2021.
422. On or about January 20, 2021, Defendant Reeves, pursuant to a signed plea agreement with APA Marteney, entered a guilty plea to the charge of driving under the influence of alcohol, <.15 in violation of W.Va. Code § 17C-5-2(e). The plea agreement stated the State would recommend Defendant Reeves be sentenced to thirty (30) days of home confinement and minimum fine.
423. Magistrate Taylor accepted Defendant Reeves guilty plea and entered a Criminal Judgment of Guilty per plea agreement to one count of 17C-5-2(e): DUI less .15 and assessed a \$100.00 fine, and costs and fees in the amount of \$245.25. Magistrate Taylor sentenced Defendant Reeves to serve 30 days on home confinement in Wetzel County, West Virginia.
424. Attorney Hall's client Defendant Reeves did not accept Respondent's offer to have his criminal case dismissed in exchange for money or goods paid to the Slow Down for the Holidays program, but because Respondent made the offer, he has violated Rule 8.4(a) of the Rules of Professional Conduct.⁹

COUNT XVI
State of West Virginia v. Jerry T. Payne
Magistrate Court of Pleasants County, West Virginia
20-M37M-00307

425. Paragraphs 1-23 are incorporated by reference.
426. On or about September 1, 2020, Sgt. W.J. Curran of the West Virginia State Police

⁹ The relevant rules that Respondent attempted to violate are Rule 8.4(b) [W.Va. Code § 61-5-27a; W.Va. Code §61-3-24d; and W.Va. Code §61-5-5] Rule 8.4(c) [misrepresentations to Attorney Hall and Defendant Reeves that Slow Down for the Holidays was a legal means to resolve case] and Rule 8.4(d) [violation of due process rights of

presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on August 31, 2020, the officer conducted a traffic stop and put the driver through three field sobriety tests, all of which the driver failed. The driver was then brought to PDSD and issued a breath test on the intoximeter which the driver also failed.

427. Defendant Payne was charged with a violation of W.Va. Code §17C-05-02(e)(ii) [Driving vehicle while in an impaired state, but with alcohol concentration of <.15] which carried a penalty of a fine of \$100.00 to \$500.00 and/or up to six months in jail.
428. On or about September 1, 2020, Defendant Payne filed a financial eligibility affidavit for appointed counsel.
429. By Order entered September 2, 2020, the Court denied Defendant Payne's motion for appointment of counsel.
430. On or about September 2, 2020, Magistrate Taylor set the matter for a pretrial hearing for October 1, 2020, at 11:00am.
431. On October 1, 2020, pursuant to W.Va. Code § 17C-5-2(d); 17C-5-2(b) and 17C-5A-3a, Defendant Payne filed a request for a deferral of DUI conviction and requested to participate in the test and lock program. This request was filed with Magistrate Taylor's office and forwarded to the DMV on October 1, 2020.
432. On the same date, Respondent filed a motion to set additional pre-trial and stated "DMV Deferral requested and need to wait for reply."
433. There is no information on the certificate of service for Respondent's motion.
434. Magistrate Taylor granted the motion on October 1, 2020, and reset the pre-trial hearing for October 29, 2020.

435. On or about October 1, 2020, Respondent offered to dismiss the pending magistrate court charge in exchange for Defendant Payne's payment of money or gift cards to the Slow Down for Holidays program.¹⁰
436. At the express and/implied authorization of Respondent, PCSD Marant issued Defendant Payne a ticket bearing the date of October 1, 2020, for "DUI LESS .15" in violation of Municipal Ordinance 333.01. The ticket bears the notation "\$1,000.00 PER PLEA DEAL SGT. W.J. CURRAN CASE." The ticket directs Defendant Payne to appear before November 12, 2020, at 4pm.
437. The DMV determined that Defendant Payne was not permitted to participate in the Alcohol Test and Lock Program under the terms of W.Va. Code § 17C-5-2b because the charged offense was his 2nd or greater offense. The Magistrate Court received this notification on October 7, 2020.
438. The citation issued by PDSD Marant was dismissed by an Order signed by Municipal Judge Elder on November 23, 2020, which indicates that Defendant Payne paid \$1,000.00 in gift cards to the Slow Down for the Holidays program in exchange for dismissal of his criminal charge. The ticket bears a receipt stamp by the City of St. Marys of November 18, 2020. Accompanying the dismissal order and citation, was a receipt dated November 4, 2020, for the purchase of five \$200.00 gift cards.
439. On November 24, 2020, APA Marteney made a written motion to dismiss and stated "Slow Down for Holidays participation."
440. There is no information on the certificate of service for APA Marteney's motion to

¹⁰ APA Marteney did not recall making this offer to Defendant Payne, but was later informed that Defendant Payne participated in the Slow Down for the Holidays Program.

dismiss.

441. Magistrate Taylor granted APA Marteney's motion to dismiss the misdemeanor charge on November 24, 2020.
442. Magistrate Taylor entered a Criminal Judgment Order dismissing the misdemeanor charge on November 24, 2020.
443. Sgt. W.J. Curran of the West Virginia State Police did not suggest to Respondent to dispose of the criminal charges by way of the Slow Down for the Holidays program. If Respondent would have asked about disposing of the case in this manner, Sgt. Curran would have voiced his objection based on concerns about the disposal of the criminal case through the program. Sgt. Curran had no role in Respondent's decision to dispose of Defendant Payne's criminal charges by payment of money through the Slow Down for the Holidays program.
444. WV Constitution Article III, § 10 states "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers" Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Payne, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State's motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.

445. Because Respondent represented to Defendant Payne that his misdemeanor charge could be disposed of in a legal manner in exchange for payment of money or goods to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
446. Because Respondent represented to the magistrate court that the misdemeanor charge could be dismissed by the magistrate in a legal manner in exchange for Defendant Payne's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
447. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
448. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
449. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Payne's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
450. Respondent conspired to deprive Defendant Payne of money by fraudulent

representations that the misdemeanor criminal charge could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

451. Respondent, in his capacity as the Prosecutor, exacted a promise from Defendant Payne to pay money or deliver goods to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offenses, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.
452. Because Respondent represented to ODC in his verified response and in his sworn testimony that he consulted with and got the approval of Sgt. W.J. Curran of the West Virginia State Police about disposing of the criminal case through the Slow Down for the Holidays program, he violated Rule 8.1(b) of the Rules of Professional Conduct.

COUNT XVII
State of West Virginia v. Kenneth P. Lee, II
Magistrate Court of Pleasants County, West Virginia
20-M37M-00318

453. Paragraphs 1-23 are incorporated by reference.
454. On September 7, 2020, PCSD Cpl. Marant issued a uniform citation to Kenneth P. Lee, II, for a violation of W.Va. Code §17C-16-8 [Fraudulent MVI] which carried a penalty of \$100 fine or 10 days in jail and a violation of W.Va Code § 61-5-17 [Obstruction] which carried a penalty of \$50 to \$500 fine and/or up to one year in jail.
455. On or about September 18, 2020, Defendant Lee filed a financial eligibility affidavit for

appointed counsel.

456. By Order entered September 18, 2020, Defendant Lee was appointed Attorney Jordan West.
457. On or about September 22, 2020, Magistrate Nutter set the matter for a pretrial hearing for October 23, 2020.
458. Respondent made an offer to Attorney West to dismiss the pending magistrate court charge in exchange for Defendant Lee's payment of money or gift cards to the Slow Down for Holidays program.
459. Attorney West conveyed the offer to his client, who agreed to pay the requested money in exchange for the dismissal of his criminal charges.
460. At the express and/implicit authorization of Respondent, PCSD Marant issued Defendant Lee a ticket bearing the date of September 7, 2020, for "FEAUDLANT MVI" [sic] in violation of an unspecified Municipal Ordinance "SDFH X5" and "OBSTRUCTION OF OFFICER" in violation of Municipal Ordinance 501.02 "SDFH X5" The ticket directs Defendant Lee to appear before November 6, 2020, at 4pm.
461. On October 23, 2020, Respondent made a written motion to continue and stated "To allow participation in Slow Down for Holidays."
462. There is no information on the certificate of service for Respondent's motion to continue.
463. Magistrate Nutter granted Respondent's motion to continue the misdemeanor charge on October 23, 2020.
464. The citation issued by PCSD Marant at the direction of Respondent was dismissed by an Order signed by Municipal Judge Elder on October 23, 2020, which indicates that

Defendant Lee paid \$250.00 in gift cards to the Slow Down for the Holidays program in exchange for dismissal of his criminal charges. The ticket bears a receipt stamp by the City of St. Marys of October 23, 2020. There are no accompanying receipts.

465. On November 5, 2020, Respondent made a written motion to dismiss and stated “By agreement. Defendant was permitted participation in the Slow Down for the Holidays program through Municipal Court. Defendant has presented proof of payment in full to the city dated 10/23/20.”
466. The certificate of service for the motion to dismiss indicates that Respondent’s motion to dismiss was provided to Attorney West on November 5, 2020, but there is no demarcation as to how the motion was served upon Attorney West.
467. Magistrate Nutter granted Respondent’s motion to dismiss the misdemeanor charges on the same date.
468. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charges on November 5, 2020.
469. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Lee, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s motion to dismiss pending criminal charges. As such, Respondent violated the due

process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.

470. Because Respondent represented to Defendant Lee that his misdemeanor charges could be disposed of in a legal manner in exchange for payment of money to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
471. Because Respondent represented to the magistrate court that the misdemeanor charges could be dismissed by the magistrate in a legal manner in exchange for Defendant Lee's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
472. Because Respondent knowingly assisted and/or induced Magistrate Nutter to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.
473. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
474. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Lee's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

475. Respondent conspired to deprive Defendant Lee of money by fraudulent representations that the misdemeanor criminal charge could legally be disposed of by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
476. Respondent, in his capacity as the Prosecutor, exacted a promise from Defendant Lee to pay money or deliver goods to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offenses, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT XIX
State of West Virginia v. Jonathon W. Bailey
Magistrate Court of Pleasants County, West Virginia
20-M37M-00363

477. Paragraphs 1-23 are incorporated by reference.
478. On or about November 1, 2020, Cpl. G.P. Honaker of the West Virginia State Police presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on November 1, 2020, the officer was dispatched to a single vehicle crash and upon arrival, he spoke to SMPD Casto who was on the scene with the driver. SMPD Casto advised the driver stated he had been drinking and fell asleep and crashed his vehicle. Cpl. Honaker spoke to the driver and observed the driver's speech was slurred and that his eyes were red and bloodshot. The driver again advised he had been drinking and crashed his vehicle into a yard. The driver failed all administered field sobriety tests and a PBT showed a result of .116. The driver was arrested and transported to PCSD. A

- secondary breath test result was .088.
479. Defendant Bailey was charged with a violation of W.Va. Code §17C-5-2(e) [Driving Under the Influence] which carried a penalty of a fine of \$100.00 to \$500.00 and/or up to six months in jail.
480. Cpl. G.P. Honaker also issued a uniform citation from the same November 1, 2020, incident and cited Defendant Bailey with a violation of W.Va. Code § 17C-6-1 [failure to drive with due care] which carried a penalty of a fine of \$100.00 to \$200.00.
481. On or about November 5, 2020, Defendant Bailey filed a financial eligibility affidavit for appointed counsel.
482. By Order entered November 5, 2020, Defendant Bailey was appointed Attorney Jordan West.
483. On or about November 10, 2020, Magistrate Taylor set the matter for a pretrial hearing for November 30, 2020, at 2pm.
484. At or before the November 30, 2020, Respondent made an offer to Attorney West to dismiss the pending magistrate court charges in exchange for Defendant Bailey's payment of money or gift cards to the Slow Down for Holidays program.
485. On November 30, 2020, APA Marteney made a written motion to "continue pre-trial" and stated "Defendant agreed to participate in Slow Down for the Holidays Program."
486. There is no information on the certificate of service for APA Marteney's motion to continue.
487. Magistrate Taylor granted APA Marteney's motion to continue on November 20, 2020.
488. At the express and/implied authorization of Respondent and/or APA Marteney, SMPD

PFC Hall issued Defendant Bailey a ticket bearing the date of November 1, 2020, for “DUI” in violation of Municipal Ordinance 333.01. The ticket bears the notation “(SDFHx30). The ticket directs Defendant Bailey to appear before December 16, 2020.

489. The citation issued by SMPD Hall was dismissed by an Order signed by Municipal Judge Elder on November 30, 2020, which indicates that Defendant Bailey paid \$1,500.00 in gift cards to the Slow Down for the Holidays program in exchange for dismissal of his criminal charges. Accompanying the dismissal order and citation, are receipts dated November 30, 2020, for the purchase of three \$500.00 gift cards for \$1,518.93.
490. On or about December 8, 2020, Attorney Richardson submitted a bill for fees in the amount of \$88.00 to Public Defender Services for the services provided in Defendant Bailey’s case.
491. Despite confirmation that Defendant Bailey paid the money to the City of St. Marys, on January 21, 2021, Respondent did not file a motion to dismiss his criminal charges, but instead Respondent filed a motion to continue “to permit time to review further.”
492. The certificate of service for the motion to dismiss indicates that Respondent’s motion to continue was provided to Attorney West on January 20, 2021, by hand delivery.
493. Magistrate Taylor granted the motion to continue on the same date.
494. Despite Respondent, Attorney West and the Court’s knowledge that Defendant Bailey had paid the money to Slow Down for the Holidays program, this criminal case remained open and pending and Defendant Bailey remained subject to his original bond conditions from November 1, 2020, until Magistrate Nutter dismissed the charges by the Court’s own motion on August 12, 2021.

495. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charges on August 12, 2021.
496. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Bailey, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.
497. Because Respondent represented to Attorney West that his client Defendant Bailey’s misdemeanor charges could be disposed of in a legal manner in exchange for payment of money to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.
498. Because Respondent represented to the magistrate court that the misdemeanor charges could be dismissed by the magistrate in a legal manner in exchange for Defendant Bailey’s payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.
499. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule

8.4(f) of the Rules of Professional Conduct.

500. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.
501. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Bailey's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct:
502. Respondent conspired to deprive Defendant Bailey of money by fraudulent representations that the misdemeanor criminal charge could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.
503. Respondent, in his capacity as the Prosecutor, exacted a promise from Defendant Bailey to pay money or deliver goods to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offenses, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.
504. Then, Respondent, in his capacity as the Prosecutor, refused and/or failed to dismiss the

criminal charges against Defendant Bailey despite Respondent's knowledge that Defendant Bailey had fully satisfied Respondent's stated financial condition for the State to seek dismissal with the Magistrate Court. Defendant Bailey's criminal charges were pending for an additional nine (9) months until the Magistrate Court, on its own motion, moved to dismiss the charges and release Defendant Bailey from the conditions of bond. As such, he has violated Rule 8.4(c) and 8.4(d) of the Rules of Professional Conduct.

COUNT XX
State of West Virginia v. Mary M. Ward
Magistrate Court of Pleasants County, West Virginia
20-M37M-00367

505. Paragraphs 1-23 are incorporated by reference.
506. On or about November 8, 2020, PCSD Sgt. Coplin presented a criminal complaint in the Magistrate Court of Pleasants County that alleged that on November 7, 2020, he was conducting a routine traffic patrol and observed a vehicle with a defective headlight. The officer observed the vehicle weaving back and forth in traffic, crossing the fog line on two occasions. The officer conducted a traffic stop and immediately observed the driver was confused and difficult to understand, talking unusually slow, and slurring her speech. The driver admitted to smoking marijuana thirty minutes prior to the traffic stop, stated she was "definitely high" and, when asked, produced a small baggie of marijuana and gave the same to the officer. The driver failed all administered field sobriety tests. The driver was then arrested and transported to PCSD. The driver consented to a blood draw, but a sample was not obtained. The driver consented to urinalysis which resulted in a presumptive positive for THC.

507. Defendant Ward was charged with a violation of W.Va. Code §17C-5-2(e)(i) [Driving Under the Influence] which carried a penalty of a fine of \$100.00 to \$500.00 and/or up to six months in jail. and a violation of W.Va. Code §60A-04-401(c) [Knowingly or intentionally possessing a controlled substance without a valid prescription] which carried a penalty of 90 days to six months in jail and up to a \$1,000.00 fine.
508. On or about November 8, 2020, Defendant Ward filed a financial eligibility affidavit for appointed counsel.
509. By Order entered November 9, 2020, Defendant Ward was appointed Attorney Judith McCullough.
510. On or about November 10, 2020, Magistrate Taylor set the matter for a pretrial hearing for December 8, 2020, at 2pm.
511. The parties appeared for the December 8, 2020, pre-trial hearing and Respondent offered to dismiss the pending magistrate court charges in exchange for Defendant Ward's payment of One Thousand Five Hundred Dollars (\$1,500.00) by money or gift cards to the Slow Down for Holidays program.
512. Attorney McCullough conveyed Respondent's offer to her client. Attorney McCullough advised Defendant Ward that the requested amount to be paid to the Slow Down for the Holidays program exceeded the amount of costs and fines she faced if convicted. Defendant Ward directed Attorney McCullough to accept Respondent's offer to dismiss the criminal charges in exchange for her payment.
513. At the direction of Respondent, SMPD Reed issued Defendant Ward a citation bearing the date of December 8, 2020, for "possession marijuana" in violation of an uncited

Municipal Ordinance. The ticket bears the notation “SDFH \$1500.00”. The ticket directs Defendant Ward to appear before December 16, 2020.

514. The citation issued by SMPD Reed at the direction of Respondent was dismissed by an Order signed by Municipal Judge Elder on December 9, 2020, which indicates that Defendant Ward paid \$1,500.00 in gift cards to the Slow Down for the Holidays program in exchange for dismissal of her criminal charges. Accompanying the dismissal order and citation, are receipts dated December 9, 2020, for the purchase of three \$500.00 gift cards for \$1,514.85.
515. On December 10, 2020, Respondent made a written motion to dismiss and stated “Defendant has met her obligations.”
516. The certificate of service for the motion indicated that Respondent’s motion to dismiss was provided to Attorney McCullough by first class mail on December 10, 2020.
517. Magistrate Taylor granted Respondent’s motion to dismiss on December 10, 2020.
518. Magistrate Taylor entered a Criminal Judgment Order dismissing the misdemeanor charges on December 10, 2020.
519. WV Constitution Article III, § 10 states “[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers” Due process requires equal protection. The equal protection doctrine requires that persons in similar circumstances must receive similar treatment under the law. Outside of the statutory structure governed by the laws as prescribed by the Legislature, Respondent chose select criminal defendants, such as Defendant Ward, and arbitrarily determined the amount of money to be paid to the Slow Down for the Holidays program in exchange for the State’s

motion to dismiss pending criminal charges. As such, Respondent violated the due process rights of defendants with pending criminal charges in Pleasants County Magistrate Court in violation Rule 8.4(d) of the Rules of Professional Conduct.

520. Because Respondent represented to Attorney McCullough that her client Defendant Ward's misdemeanor charges could be disposed of in a legal manner in exchange for payment of money to the Slow Down for the Holidays program, he violated Rule 8.4(c) of the Rules of Professional Conduct.

521. Because Respondent represented to the magistrate court that the misdemeanor charges could be dismissed by the magistrate in a legal manner in exchange for Defendant Ward's payment of money to the Slow Down for the Holidays program, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.

522. Because Respondent knowingly assisted and/or induced Magistrate Taylor to violate the laws of the State of West Virginia and the Code of Judicial Conduct, he has violated Rule 8.4(f) of the Rules of Professional Conduct.

523. Respondent is a public official or public employee who knowingly and intentionally used his office or the prestige of the office of the Prosecuting Attorney for the private gain of himself and/or another person in violation of W.Va. Code §6B-2-5, and, as such, in violation of Rule 8.4(d) of the Rules of Professional Conduct.

524. There is no statute, rule, or case law that allows for the dismissal of a criminal case in exchange for Defendant Ward's payment of money or goods to the Slow Down for the Holidays program. Slow Down for the Holidays was not sanctioned by state law. Respondent, in his capacity as the Prosecuting Attorney, knowingly engaged in a

fraudulent official proceeding or legal process in violation of W.Va. Code § 61-5-27a, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

525. Respondent conspired to deprive Defendant Ward of money by fraudulent representations that the misdemeanor criminal charge could legally be disposed by payment of money to the Slow Down for the Holidays program in violation of W.Va. Code §61-3-24d, and, as such, Respondent violated Rule 8.4(b) of the Rules of Professional Conduct.

526. Respondent, in his capacity as the Prosecutor, exacted a promise from Attorney McCullough and her client Defendant Ward to pay money or deliver goods to Slow Down for the Holidays in exchange for the State's agreement to move to dismiss the case and otherwise not prosecute the criminal offenses, in violation of W.Va. Code §61-5-5, and as such, Rule 8.4(b) of the Rules of Professional Conduct.

COUNT XXI

527. The West Virginia State Auditor's Office classifies Pleasants County as a Class IV County. WV Code §7-7-4 states in relevant part that duly elected prosecutors in Counties I-V are full-time prosecutors unless by agreement with the County Commission. WV Code § 7-7-4(8) states in relevant part that full-time means "to the exclusion of any other employment."

528. Judge Sweeney who presides as Circuit Court Judge in Pleasants, Ritchie and Doddridge County, West Virginia advised Respondent on multiple occasions that as the duly elected prosecutor of Pleasants County, West Virginia he was not permitted to engage in the private practice of law.

529. By letter dated May 28, 2021, The Honorable Circuit Court Judge Sweeney of the Third

Judicial Circuit confirmed that Respondent represented to him that he had no further ongoing civil representation and had substituted counsel or withdrawn as counsel on all cases.

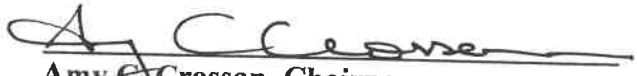
530. By letter dated June 2, 2021, the Clerk of the Supreme Court of Appeals of West Virginia advised in response to Judge Sweeney's May 28, 2021 letter that Respondent was counsel of record for a petitioner in a civil appeal currently pending before the Supreme Court of Appeals. The appeal was directed to be perfected by July 5, 2021. The Clerk further noted that no motion to withdraw as counsel or substitution of counsel had been filed as of that date.
531. On June 20, 2021, Respondent filed a Motion to Withdraw as Counsel in a pending civil appellate matter. [Supreme Court No. 21-0261]
532. From 2016 until June, 2021, Respondent continued to engage in the private practice of law despite being the twice elected full-time Prosecuting Attorney of Pleasants County, West Virginia in violation of W. Va. Code §7-7-4.
533. Because Respondent made a false statement to Judge Sweeney in or about May of 2021 regarding his cessation of his continued engagement in the private practice of law despite being the full-time, duly elected Prosecuting Attorney of Pleasants County, West Virginia, he violated Rule 3.3(a)(1) of the Rules of Professional Conduct.

* * *

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 15th day of October, 2021, and
ISSUED this 15th day of October, 2021.


Amy C. Crossan, Chairperson
Investigative Panel
Lawyer Disciplinary Board