21-0874

FILED OCT 22 2021 EDYTHE NASH GAISER, CLERK SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

**In Re:** M. Paul Marteney, a member of
The West Virginia State Bar

**Bar No.:** 7194
**I.D. No.:** 20-03-422
19-05-149
20-01-172

# STATEMENT OF CHARGES

**To:** M. Paul Marteney, Esquire
5308 2nd Avenue
Vienna, West Virginia 26105

**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. M. Paul Marteney (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. Respondent was hired as an Assistant Prosecutor in Pleasants County, West Virginia in or about 2011. Respondent remained as assistant prosecutor after Attorney Brian Carr was elected to the position of Prosecuting Attorney of Pleasants, County, West Virginia, in 2016. Prosecutor Carr continues to hold this position of public trust.

5. 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.

6. 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.

7. 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.

8. By letter dated December 21, 2020, Prosecutor Carr self-reported to the Office of Disciplinary Counsel that it had to 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, Prosecutor Carr identified that fifteen[1] (15) Pleasants County Magistrate Court cases that were disposed[2] of by his office through the Slow Down for the Holidays program.

9. 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.

10. 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.

11. 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.

12. 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.

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[1] [1]State 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, 19M37M-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 answer, there was an offer to dispose of the criminal charges in State v. Reeves, 20-M37M-274 but the case was still pending.

13. 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.

14. 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.

15. 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.

16. Respondent filed his verified answer to the ethics complaint by letter dated January 22, 2021.

17. Pursuant to the issuance of a confidential investigative subpoena, on July 30, 2021, Respondent gave a sworn statement at the Office of Disciplinary Counsel.

18. 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.

19. On or about August 27, 2021, the Judicial Investigation Commission ("JIC") issued written Admonishments [3] 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

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[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 objection to the written admonishment, the Commission shall file a formal charge with the Clerk of the Supreme Court of Appeals…."

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

20. 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. Alex Mason**
**Magistrate Court of Pleasants County, West Virginia**
**18-M37M-00282**

21. Paragraphs 1-20 are hereby incorporated by reference.

22. 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.

23. On or about September 26, 2018, Defendant Mason retained Attorney Raber and paid Attorney Raber.

24. On or about October 1, 2018, Magistrate Taylor set the matter for a pretrial hearing set for November 14, 2018.

25. 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.

26. 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.

27. Respondent 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.

28. As a result of the offer by the State, Attorney Raber filed a motion to continue "to allow for plea negotiations."

29. There is no information on the certificate of service for Attorney Raber's motion to continue.

30. Magistrate Taylor granted Attorney Raber's motion on the same date.

31. At the express and/implied authorization of Respondent, PCSD Deputy Marant issued Defendant Mason a ticket bearing the date of September 26, 2018 for speeding and littering.[4] The ticket bears the notation "$2500 total." The ticket directs Defendant Mason to appear before November 15, 2018.

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[4] 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.

32. The citation issued by PCSD Deputy Marant 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.

33. Attorney Raber, despite being retained as counsel for Defendant Mason, stated that this November 13, 2018, hearing was his last involvement with his client.

34. On November 16, 2018, Respondent made a written motion to dismiss the misdemeanor charges and stated "Defendant participated in slow down for holidays program."

35. There is no information on the certificate of service for the State's motion to dismiss.

36. Magistrate Taylor granted Respondent's motion to dismiss the criminal charges on November 16, 2018.

37. Magistrate Taylor entered a Criminal Judgment Order dismissing the five misdemeanor charges on November 16, 2018.

38. This criminal case was not included Respondent's verified response.

39. 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 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 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.

40. Because Respondent 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.

41. 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 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.

42. 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.

43. Respondent 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.

44. 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 Assistant 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 5.1(c), 8.4(a), and Rule 8.4(b) of the Rules of Professional Conduct.

45. 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 II**
**State of West Virginia v. Mary D. Efaw**
**Magistrate Court of Pleasants County, West Virginia**
**18-M37M-00283**

46. Paragraphs 1-20 are incorporated by reference.

47. 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.

48. 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.

49. A summons to appear was issued to Defendant Efaw and ordered her to appear in Magistrate Court on October 9, 2018, before Magistrate Nutter.

50. Respondent 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.

51. On October 9, 2018, Respondent made a written motion to dismiss the misdemeanor charges that stated "Defendant participated in Slow Down for the Holidays Program."

52. There is no information on the certificate of service for Respondent's motion to continue.

53. There is nothing in the record to suggest that Defendant Efaw was represented by counsel.

54. Magistrate Nutter granted Respondent's motion to dismiss on October 9, 2018.

55. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charge on October 9, 2018.

56. At the express and/implied authorization of Respondent, 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.

57. 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.

58. 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 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.

59. Because Respondent 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.

60. 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 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.

61. 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.

62. Respondent 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.

63. 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 in his capacity as the Assistant 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.

64. Respondent conspired 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 III**
**State of West Virginia v. Theresa L. Marshall**
**Magistrate Court of Pleasants County, West Virginia**
**18-M37M-00284**

65. Paragraphs 1-20 are incorporated by reference.

66. 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.

67. 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.

68. 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.

69. Respondent 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.

70. On October 9, 2018, Respondent made a written motion to dismiss the misdemeanor charges that stated "Defendant participated in Slow Down for the Holidays Program."

71. There is no information on the certificate of service for Respondent's motion to continue.

72. There is nothing in the record to suggest that Defendant Marshall was represented by counsel.

73. Magistrate Nutter granted Respondent's motion to dismiss on October 9, 2018.

74. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charge on October 9, 2018.

75. At the express and/implied authorization of Respondent, 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.

76. 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).

77. 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 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.

78. Because Respondent 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.

79. 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 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.

80. 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.

81. Respondent 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.

82. 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 in his capacity as the Assistant 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.

83. 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 IV**
**State of West Virginia v. Paul Richard Goodrich, III**
**Magistrate Court of Pleasants County, West Virginia**
**20-M37M-00242**

84. Paragraphs 1-20 are incorporated by reference.

85. 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.

86. 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

87. On or about August 12, 2020, Magistrate Taylor set the matter for a pretrial hearing for September 18, 2020, at 11:00am.

88. On or about September 18, 2020, Prosecutor Carr 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."

89. There is no information on the certificate of service for motion to reset the hearing date.

90. Magistrate Taylor granted the motion on the same date and reset the pre-trial hearing for November 13, 2020, at 9:30am.

91. At the November 13, 2020, pre-trial hearing, Respondent 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.

92. Ultimately, at the same November 13, 2020, pre-trial hearing, Prosecutor Carr 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.[5]

93. On November 13, 2020, Respondent made a written motion to dismiss and stated "Per agreement/Slow Down for Holidays."

94. There is no information on the certificate of service for Respondent's motion to dismiss.

95. Magistrate Taylor granted Respondent's motion to dismiss the misdemeanor charges on November 13, 2020.

96. Magistrate Taylor entered a Criminal Judgment Order dismissing the misdemeanor charges on November 13, 2020.

97. 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"

[5] Respondent 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.

and "speed." The ticket bears the notation "SDFH $1500.00" The ticket directs Defendant Goodrich to appear before December 16, 2020 at 4pm.

98. 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 $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.

99. Sgt. W.J. Curran of the West Virginia State Police did not suggest to Respondent or Prosecutor Carr to dispose of the criminal charges by way of the Slow Down for the Holidays program. If Respondent or Prosecutor Carr 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.

100. 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.

101. 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.

102. 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.

103. 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.

104. 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.

105. 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.

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

106. Paragraphs 1-20 are incorporated by reference.

107. On or about September 1, 2020, Sgt. W.J. Curran of the West Virginia State Police 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 filed 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.

108. 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.

109. On or about September 1, 2020, Defendant Payne filed a financial eligibility affidavit for appointed counsel.

110. By Order entered September 2, 2020, the Court denied Defendant Payne's motion for appointment of counsel.

111. On or about September 2, 2020, Magistrate Taylor set the matter for a pretrial hearing for October 1, 2020, at 11:00am.

112. 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.

113. On the same date, Prosecutor Carr filed a motion to set additional pre-trial and stated "DMV Deferral requested and need to wait for reply."

114. There is no information on the certificate of service for Prosecutor Carr's motion.

115. Magistrate Taylor granted the motion on October 1, 2020, and reset the pre-trial hearing for October 29, 2020.

116. On or about October 1, 2020, Prosecutor Carr 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.[6]

117. At the express and/implied authorization of Prosecutor Car and/or 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.

118. 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.

119. 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

[6] 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.

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.

120. On November 24, 2020, Respondent made a written motion to dismiss and stated "Slow Down for Holidays participation."

121. There is no information on the certificate of service for Respondent's motion to dismiss.

122. Magistrate Taylor granted Respondent's motion to dismiss the misdemeanor charge on November 24, 2020.

123. Magistrate Taylor entered a Criminal Judgment Order dismissing the misdemeanor charge on November 24, 2020.

124. Sgt. W.J. Curran of the West Virginia State Police did not suggest to Prosecutor Carr and/or Respondent to dispose of the criminal charges by way of the Slow Down for the Holidays program. If Respondent and/or Prosecutor Carr 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 the decision to dispose of Defendant Payne's criminal charges by payment of money through the Slow Down for the Holidays program.

125. 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.

126. 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.

127. 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.

128. 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.

129. 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.

130. 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.

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

131. Paragraphs 1-20 are incorporated by reference.

132. 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.

133. 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.

134. 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.

135. On or about November 5, 2020, Defendant Bailey filed a financial eligibility affidavit for appointed counsel.

136. By Order entered November 5, 2020, Defendant Bailey was appointed Attorney Jordan West.

137. On or about November 10, 2020, Magistrate Taylor set the matter for a pretrial hearing for November 30, 2020, at 2pm.

138. At or before the November 30, 2020, Prosecutor Carr 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.

139. On November 30, 2020, Respondent made a written motion to "continue pre-trial" and stated "Defendant agreed to participate in Slow Down for the Holidays Program."

140. There is no information on the certificate of service for Respondent's motion to continue.

141. Magistrate Taylor granted Respondent's motion to continue on November 20, 2020.

142. At the express and/implied authorization of Respondent and/or Prosecutor Carr, 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.

143. 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.

144. 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.

145. 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 Prosecutor Carr filed a motion to continue "to permit time to review further."

146. The certificate of service for the motion to dismiss indicates that Prosecutor Carr's motion to continue was provided to Attorney West on January 20, 2021, by hand delivery.

147. Magistrate Taylor granted the motion to continue on the same date.

148. Despite Prosecutor Carr, 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.

149. Magistrate Nutter entered a Criminal Judgment Order dismissing the misdemeanor charges on August 12, 2021.

150. 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.

151. 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.

152. 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.

153. 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.

154. 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 Assistant 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.

155. 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.

156. Then, Respondent, in his capacity as the Assistant 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 VII
## I.D. No. 19-05-149
## Complaint of Lucy J. Tingler

157. Complainant Tingler filed an ethics complaint on April 8, 2019, and alleged Respondent failed to timely handle her civil case. Complainant Tingler stated that she and her son, Doug Tingler, met with Respondent on February 26, 2018, regarding a deal with Ritchie Petroleum. Complainant Tingler said she paid Respondent $300.00 to start the matter. On April 26, 2018, Complainant Tingler and Mr. Tingler met with Respondent again and were assured that the case would be addressed. Complainant Tingler indicated that she paid $3,475.00 to Respondent on her Visa card. Complainant Tingler stated that nothing was done and, when she contacted Respondent in January of 2019, she was told that Respondent would return her telephone call. Complainant Tingler said she never received a call from Respondent. On February 20, 2019, Complainant Tingler and Mr. Tingler had another meeting with Respondent, and Respondent admitted that he had "screwed up" by

failing to do anything with the case. Respondent then told Complainant Tingler that he received an email from Antero about wanting to complete a well package, but Complainant Tingler never received a copy of the email. Complainant Tingler stated she discharged Respondent as her attorney on March 4, 2019, and Respondent told her that he would refund the unearned fees when he determined what work he had performed on the case. Complainant Tingler noted that Mr. Tingler checked at the courthouse and determined that nothing had been filed, and that no court dates were ever set.

158. On or about April 22, 2019, Disciplinary Counsel received a copy of a letter sent to Respondent from Anita R. Casey, Executive Director of the West Virginia State Bar about Complainant Tingler's application for relief from the Lawyers Fund for Client Protection Committee. Respondent was given an opportunity to respond to the application within twenty days of receipt of the letter.

159. On or about April 22, 2019, Disciplinary Counsel sent Respondent a copy of the ethics complaint and asked him to respond within twenty days of receipt of the letter.

160. Respondent did not respond to the April 22, 2019, letter.

161. On or about May 21, 2019, Disciplinary Counsel sent Respondent a letter by certified and first-class mail and asked for a response by May 31, 2019. The green card was signed for by Respondent on May 28, 2019.

162. Respondent failed to respond to the May 21, 2019, letter.

163. In June of 2019, Disciplinary Counsel contacted Respondent and Respondent indicated that he would file a response by June 26, 2019.

164. On or about June 26, 2019, Respondent informed ODC of internet and/or computer issues, and that he would get the response out the following week.

165. On or about July 3, 2019, Respondent filed his verified response. Respondent acknowledged Complainant Tingler's case was not pursued with proper diligence. Respondent stated Complainant Tingler had engaged him to pursue an oil and gas lease cancellation against Ritchie Petroleum Corporation ("RPC"). Respondent said that after he conducted a title search to ensure Complainant Tingler was the proper owner of the oil and gas lease, he drafted a lawsuit to be filed and reviewed with the clients. Further, Respondent informed Complainant Tingler and Mr. Tingler that he would provide RPC with an advance copy of the lawsuit with a proposed surrender/release of the lease in hopes of obtaining a negotiated settlement and avoiding litigation. Respondent acknowledged that he waited too long to receive a response from RPC, and was not diligent in following up on the issue.

166. Respondent stated Complainant Tingler requested that her client file be returned, and he provided it to her. The file included the lawsuit he had prepared, along with his work product and his notes. Respondent said he also returned the unused portion of the retainer and filing fees after applying a 15% discount to the earned fees.[1] Respondent stated that he regretted not filing the lawsuit within a reasonable time and indicated that it was due to his difficulty in managing a solo practice while working as an Assistant Prosecutor.

167. On or about September 3, 2019, Complainant Tingler filed a reply. Complainant Tingler asserted she was told by Respondent that there was a court date on two separate occasions. When Complainant Tingler checked at the courthouse, she was told there were no court dates. Complainant Tingler also denied Respondent researched the records.

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[1] Respondent provided an invoice that showed he earned $2,453.00. 15% of that amount is $367.95, which leaves $2,085.05 as the amount Respondent claimed he earned. The amount Respondent should have refunded to Complainant was $1,389.95.

168. On or about February 7, 2020, ODC received a letter from the West Virginia State Bar about Complainant Tingler making a claim with the Lawyers Fund for Client Protection Committee. The letter indicated the matter was closed after Complainant Tingler failed to communicate with the Committee about making a claim to her credit card company. Complainant Tingler was informed that she could request a reconsideration in writing by March 6, 2020.

169. On or about July 14, 2020, Disciplinary Counsel sent Respondent a letter asking if he refunded the unearned fee to Complainant Tingler and requested a copy of his fee agreement with Complainant Tingler. Respondent was asked to respond within twenty days of receipt of the letter.

170. Respondent did not respond to the July 14, 2020, letter.

171. On or about August 20, 2020, Disciplinary Counsel sent Respondent a letter by certified and first-class mail, again asked him if he refunded the unearned fee to Complainant Tingler and requested a copy of his fee agreement with Complainant Tingler. Respondent was asked to respond by August 31, 2020.

172. Respondent did not respond to the August 20, 2020, letter.

173. On or about September 8, 2020, Disciplinary Counsel sent an email to Respondent and attached the August 20, 2020, letter. Respondent was asked to respond by September 15, 2020.

174. On or about September 28, 2020, Respondent responded by email and provided a copy of the check for $1,389.95 dated July 3, 2019, which he sent to Mr. Tingler. Respondent indicated that Mr. Tingler was the actual client. Respondent also indicated that he could not find a fee agreement he had with Mr. Tingler, but Respondent's records show he

billed at the rate of $300 per hour. Respondent provided a copy of his usual retainer agreement for reference. That retainer agreement indicated his normal hourly rate was $325.00. Respondent believed he either gave the original fee agreement to Complainant Tingler when she picked up the file or one was not executed in this case.

175. Also, on or about September 28, 2020, Disciplinary Counsel spoke with Respondent about Respondent the retainer agreement. Respondent indicated he would review the client file in storage to determine whether there is a retainer agreement in the client file no later than October 1, 2020. This conversation was confirmed by email on the same date, and such email noted a copy of the retainer agreement was previously requested by ODC by letter dated July 14, 2020, by certified letter dated August 20, 2020, and by email dated September 8, 2020.

176. On or about October 5, 2020, the certified letter dated August 20, 2020 to Respondent was returned to ODC. The notation on the envelope was that the letter was "unclaimed."

177. On or about October 6, 2020, Respondent responded by email and again indicated that he could not locate a written fee agreement for Mr. Tingler as he either gave the document to Complainant Tingler when she picked up the file or one was not signed. Respondent said his usual practice is to obtain a written free agreement at the time the case begins, but sometimes he does not get a written free agreement.

178. By letter dated October 20, 2020, Complainant Tingler indicated that she did not sign a fee agreement with Respondent, but she provided an unsigned copy of the fee agreement that matched the blank fee agreement provided by Respondent in his September 28, 2020 response.

179. During Respondent's sworn statement on February 25, 2021, Respondent said he has been going to family counseling to address personal issues within his family. Respondent stated he did not have an excuse for not filing the lawsuit for Mr. Tingler, and noted it was him "being nonfunctional." Respondent had no answer for why he repeatedly failed to respond to ODC.

180. On or about May 20, 2021, ODC received bank records regarding Respondent's IOLTA account at Pleasants County Bank. Complainant Tingler asserted she paid Respondent $300.00 after she met with him on February 26, 2018, and a review of Respondent's IOLTA account records does not show a deposit in the IOLTA account after that date for the rest of the month of February and there was no deposit in the month of March.

181. Additionally, Complainant Tingler asserted she paid Respondent $3,475.00 after meeting with Respondent on April 26, 2018, and a review of Respondent's IOLTA account records does not show a deposit in the month of April or the month of May.

182. Respondent's IOLTA records do confirm the check for $1,389.95 dated July 3, 2019, to Complainant Tingler was cashed by Complainant Tingler on July 16, 2019.

183. Because Respondent failed to timely handle Complainant Tingler's case and failed to communicate with Complainant Tingler, he violated Rules 1.3; 1.4; and 8.4(d) of the Rules of Professional Conduct.

184. Because Respondent failed to properly segregate client funds in an account designated as a "client's trust account", Respondent has violated Rule 1.15(a) of the Rules of Professional Conduct.

185. Because Respondent failed to respond to multiple letters from Disciplinary Counsel, he violated Rule 8.1(b) of the Rules of Professional Conduct.

**COUNT VIII**
**I.D. No. 20-01-172**
**Complaint of Barbara D. Terrell**

186. On or about June 3, 2020, Complainant Terrell filed an ethics complaint and alleged that Respondent failed to represent her properly in a divorce proceeding and appeal. Complainant Terrell further alleged that Respondent neglected the matter and failed to timely file the appeal of the January 10, 2019 Final Order.

187. The Final Order in Complainant Terrell's divorce proceeding was entered on or about January 10, 2019, and Respondent informed her that he would file an appeal on her behalf.

188. During a meeting with Respondent on or about January 22, 2019, Complainant Terrell gave Respondent a copy of the Final Order because he said he had not received it. She said she also informed Respondent that the appeal to the Circuit Court was due on or before February 10, 2019.

189. Complainant Terrell e-mailed Respondent on or about February 6, 2019, to inquire about the status of her appeal. To which, Respondent replied "[He is] on it. It will go out tomorrow."

190. Complainant Terrell later inquired whether Respondent had filed an Intent to Appeal, and Respondent stated that he had done so.

191. On or about June 3, 2019, Complainant Terrell stated she was notified that the Circuit Court entered an Order denying Respondent's Petition for Appeal because the appeal was not timely filed.

192. The appeal was filed on February 14, 2019, and Respondent had not requested an extension of time or filed a motion to file the appeal out of time. Complainant Terrell also discovered that Respondent had failed to file the Intent to Appeal.

193. Complainant Terrell confronted Respondent about the late filing, to which Respondent stated that the Clerk's office must have left it on their desks for several days or that it had been delayed in the mail. Complainant Terrell stated that Respondent advised he would take care of it by having the Family Court Judge issue another Final Order and then re-file the appeal. Complainant Terrell stated that Respondent assured her that he would prepare a Motion for Reconsideration and explained that the appeal was either delayed by the mail system or not properly recorded on the date it was received.

194. Complainant Terrell stated that she "kept calling [Respondent] to prepare the Reconsideration Motion." Finally, Complainant Terrell got the Motion from Respondent and hand-delivered it to the Court herself for filing on June 19, 2019.

195. On or about August 21, 2019, the Circuit Court Judge denied the Motion for Reconsideration, citing the fact that the deadline had expired on February 11, 2019, and Respondent did not file until February 14, 2019. The Order again noted that no extension of time had been requested by Respondent.

196. Complainant Terrell stated that she made an appointment to meet with Respondent on or about September 9, 2019, because he would not communicate with her any other way. At their meeting, Respondent stated that he would be able to get Judge Cramer's ruling overturned in the Supreme Court or have it remanded back to Circuit Court.

197. On or about September 16, 2019, Complainant got the Appeal from Respondent and delivered it herself to the Supreme Court of Appeals of West Virginia in order to ensure

that it was filed on time. Although, upon filing the Appeal, the Clerk requested a copy of the Final Order from Family Court. Complainant Terrell stated that "luckily," she had a copy in her vehicle and was able to make copies in the law library.

198. Complainant Terrell contacted the Supreme Court Clerk's office and was provided a copy of the Scheduling Order, which indicated that the appeal was due to be perfected by December 23, 2019. Complainant provided a copy of the Scheduling Order to Respondent.

199. On or about May 20, 2020, Complainant Terrell received a notification of a hearing scheduled on June 2, 2020, in Family Court regarding "Petitioner's Motion to Appoint Special Commissioner to Enforce Family Court Final Order," which had been filed by Petitioner's Counsel.

200. Complainant Terrell attempted to contact Respondent regarding the notification, because she did not understand how such an order could be filed while the appeal was pending. Respondent failed to return her call.

201. Complainant Terrell contacted the Clerk of the Supreme Court and was informed that the appeal was dismissed on December 23, 2019.[7]

202. The Clerk's office further informed Complainant Terrell that an Amended Order was entered extending the deadline to "perfect the appeal with the filing of a proper petitioner's brief and appendix record, in compliance with the Appellate Rules, on or before January 14, 2020, or the Appeal will be subject to dismissal." Additionally, the Clerk's office informed Complainant Terrell that the Supreme Court had attempted to contact Respondent, but he failed to return the calls.

[7] A copy of the Order issued by The Supreme Court of Appeals of West Virginia provided by Complainant Terrell with her complaint indicated that the matter was dismissed on February 18, 2020, not December 23, 2019.

203. Respondent failed to notify her of the dismissal of her Appeal.

204. Complainant Terrell alleged that she had paid Respondent "approximately $15,000.00 [for him] to represent [Complainant Terrell] in the divorce proceedings, which included a check for $4,500 to cover the appeal process costs."

205. On or about June 8, 2020, a copy of this complaint was sent to Respondent and requested that he respond to the allegations within twenty (20) days.

206. On or about July 6, 2020, Complainant Terrell stated that upon her receipt of the Final Order from Family Court, she inquired of Respondent whether he had the time to do the appeal, to which he assured her that he did. Complainant Terrell stated that she "paid him an extra $1,500 to obtain help from a Krista Fleagle, another attorney who used to work in his office."

207. Respondent did not file a response to the June 8, 2020 letter from ODC.

208. On or about July 9, 2020, ODC sent a second letter and a copy of Complainant Terrell's correspondence to Respondent and requested a response no later than July 30, 2020. This letter was sent by both certified and first-class mail.

209. On or about August 11, 2020, the certified mailing of the July 9, 2020, letter was returned to the ODC marked "Unclaimed" and "Unable to Forward." The letter sent via first-class mail was not returned to ODC.

210. On or about September 28, 2020, the ODC sent a third letter to Respondent via both certified and first-class mail and requested a response no later than October 13, 2020.

211. On or about October 8, 2020, the green card return receipt for the certified mailing was returned to the ODC. Respondent received the letter on or about October 7, 2020.

212. Respondent did not respond to the lawful request for information from ODC.

213. On or about November 9, 2020, the ODC received notification that Respondent was among the attorneys identified as being administratively suspended from the practice of law in West Virginia pursuant to the requirements of Rule 3.03 (fees), 4.05 (Financial Responsibility Disclosure) and/or 10.02 (IOLTA) of the West Virginia State Bar's Administrative Rules, effective November 9, 2020, at 3:30 p.m.

214. On or about November 30, 2020, a subpoena was served upon Respondent and he was noticed to appear at the ODC for a sworn statement on January 6, 2021.

215. After being rescheduled twice, Respondent appeared in the ODC on February 25, 2021, to provide a sworn statement.

216. During his sworn statement, Respondent did not recall receiving the first letter from the ODC, but acknowledged he received the first class copy of the second letter as well as the certified original and first-class mail copy of the third letter. During the time between the second and third letters, Respondent explained that he had changed his address with the Bar and stopped using the post office box.

217. Respondent stated that he had begun working on a response to the ethics complaint, but "just couldn't finish it."

218. Regarding his administrative suspension, Respondent stated that he had failed to pay his dues. However, upon receipt of the notice of suspension, he immediately paid the dues online.

219. Respondent stated that he met with Complainant Terrell several times. Respondent explained that Complainant Terrell wanted to appeal issues that had no grounds for appeal, or issues to which she had stipulated. Respondent stated that Complainant Terrell had paid a total of Seven Thousand Dollars ($7,000.00).

220. Respondent did appeal Complainant Terrell's matter to the Circuit Court and then to the Supreme Court of Appeals of West Virginia. Respondent confirmed that the appeal was dismissed at the Circuit Court level because it was untimely filed. However, Respondent maintained that the appeal was mailed within the timeframe.

221. Upon receiving the Circuit Court's Order, Respondent stated that he met with Complainant to prepare the Supreme Court appeal.

222. Respondent said he filed the brief with the Supreme Court on or about December 19, 2019. However, Respondent admitted that the appeal was not perfected by December 23, 2019. Respondent further admitted that he failed to perfect the appeal by January 14, 2020, pursuant to the amended scheduling order, which led to the dismissal of the appeal. Respondent stated, "[t]he reason [Respondent] didn't get the appeal perfected was [Respondent] dropped the ball."

223. Respondent could not recall the last time he communicated with Complainant Terrell but stated received a letter from her new counsel and, pursuant to their request, prepared her file.

224. Respondent denied receiving an additional $1,500.00 for the assistance of Krista Fleegle, Esquire and Respondent stated that he would not have accepted money for Attorney Fleegle's services. Further, if Complainant had paid $1,500.00, it would have been credited to her account accordingly.

225. On or about March 8, 2021, Respondent provided a letter to the ODC, stating that he "ran the invoice for [Complainant Terrell] again, [Respondent] did find unapplied payments." Respondent provided a copy of a corrected invoice, which indicated a balance of $0.00. Respondent's invoice noted two payments, one on February 2, 2017, in the amount of

$4,667.49, and the other on May 24, 2018, in the amount of $3,527.84. The invoice indicated that the total bill was $15,195.33, minus a payment of $7,000.00, "adjustment" of $8,195.33, leaving a balance of $0.00.

226. A review of Respondent's operating account records indicates that on February 2, 2017, Respondent deposited a $7,000.00 check from Complainant Terrell. Upon information and belief, Respondent's operating account shows no other checks from Complainant Terrell.

227. On or about May 20, 2021, ODC received bank records regarding Respondent's IOLTA account at Pleasants County Bank. Upon information and belief, Respondent's IOLTA account records show no checks from Complainant Terrell.

228. On or about April 15, 2021, Complainant Terrell provided an additional letter and stated that her new attorney was "not able to overturn the damage that [Respondent] did [to] [Complainant's Terrell] case." Complainant Terrell provided copies of documents received from her attorney, one of which is an Order from her case that fined her $700.00 for "Petitioner's attorney fees incurred as a result of [Complainant Terrell's] failure to provide requested discovery." The other document was a letter provided by Respondent to opposing counsel in her case and noted that the letterhead was from the Pleasant County Prosecuting Attorney's Office.

229. By letter dated April 15, 2021, the ODC sent copy of Complainant Terrell's letter to Respondent and requested a response within ten days. The letter was not returned to ODC.

230. Respondent failed to respond to this lawful request for information.

231. Because Respondent failed to timely file Complainant Terrell's appeal and failed to communicate with Complainant Terrell about her case, both at the Circuit Court level and the Supreme Court, he violated Rules 1.3; 1.4; and 8.4(d) of the Rules of Professional Conduct.

232. Because Respondent failed to segregate un-earned fees in an account designated as a "client's trust account", he violated Rule 1.15(a) of the Rules of Professional Conduct.

233. Because Respondent failed to respond to multiple letters from Disciplinary Counsel, he violated Rule 8.1(b) 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 18th day of October, 2021.

Amy C. Crossan

**Amy C. Crossan, Chairperson**
Investigative Panel
Lawyer Disciplinary Board



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