> [i]f it is your position now that you were never assaulted by prison officials during the period in question, we should dismiss the case prior to conducting depositions as those would likely only cost you additional finds. . . . If you wish to pivot to other claims, you would need to either proceed pro se, or find other counsel as we would not represent you on claims we have already indicated we were not pursuing.

On February 11, 2021, you sent Mr. Buchanan a letter again asking to change the nature of your claims.

On February 22, 2021, ODRC filed a motion to compel you, through Mr. Buchanan, to respond to interrogatories. Per the motion, ODRC's attorneys claim that they attempted to contact Mr. Buchanan several times via email about the interrogatories between November 2020, and February 2021, and Mr. Buchanan never responded.

On February 24, 2021, Mr. Buchanan sent you another letter stating that,

> As my previous correspondence indicated, we have medical records that support an injury between June 11, and June 19. Nothing in the medical records or prison records supports a claim outside that time period with sufficient merit to warrant pursuing. When we spoke on the phone you indicated however that nothing happened during that period. Then in your most recent letter, you indicated that you did have eye issues and excessive force claims. I need to know which is accurate. **As a bottom-line issue, were you assaulted by a guard or other employee between June 11, and June 19?** I need a yes or no answer to this question. . . . With this issue unresolved I have been unable to respond to discovery from the State . . . .

After that, Mr. Buchanan stated that you told him on the telephone that nothing happened during those dates. Consequently, on March 3, 2021, Mr. Buchanan filed a motion to withdraw from the case. The court denied his motion because it failed to comply with the court's local rules. On March 17, 2021, Mr. Buchanan filed an amended motion to withdraw, and on March 24, 2021, the court granted Mr. Buchanan leave to withdraw. In the same order, the court granted you an additional 45 days to file a response to ODRC's motion to compel. On April 21, 2021, you filed a pro se motion for leave to conduct discovery. The court granted your motion and ordered a new trial schedule. Your case is pending and is scheduled for trial on January 26, 2022.

With your grievance, you provided copies of two bills that Mr. Buchanan sent to you. Both bills are addressed to you in care of "Attorney John Prelac, Trustee." The March 3, 2021 bill indicates that you owed Mr. Buchanan a total of $2,737.50 for 21.9 hours at a rate of $125/hour. You told Mr. Buchanan that the hourly rate was incorrect. Mr. Buchanan agreed that he erroneously charged you a higher rate, so he corrected the bill and sent you the March 23, 2021 bill, which shows that you owed a total of $1,820. During his review of the bills, he noticed that

his office made the same mistake on the May 11, 2020 bill and overcharged you by $370. Consequently, although your March 23, 2021 bill should have totaled $2,190, Mr. Buchanan issued you a $370 credit for the May 2020 billing error, so the bill totaled $1,820.

In your grievance, we identified four salient allegations – first, that Mr. Buchanan did not use the thoroughness and preparation reasonably necessary to win your lawsuit; second, that Mr. Buchanan did not come to scheduled meetings with you, and he lacked diligence when he represented you; third, that Mr. Buchanan did not discuss with you the objectives he was going to use to win your case; and fourth, that Mr. Buchanan overcharged you and did not issue a refund. We will address your allegations in turn.

First, you alleged that Mr. Buchanan did not use the thoroughness and preparation reasonably necessary to win your lawsuit. In your grievance, you cited Prof.Cond.R. 1.1 to support your allegation. This rule states:

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

Comment [5] expounds on the rule by stating:

> Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation.

Ohio courts have also interpreted this rule. In *Disciplinary Counsel v. Peters*, 158 Ohio St.3d 360, 2019-Ohio-5219, 142 N.E.3d 672 (Ohio 12-19-2019), the Supreme Court of Ohio found that an attorney did not adequately prepare for his client's case when he did not timely file his client's complaint, causing his client's case to be dismissed. In *Erie-Huron Counties Bar Assn. v. Evans* 123 Ohio St.3d 103, 2009-Ohio-4146, 914 N.E.2d 381 (Ohio 08-25-2009), the Supreme Court of Ohio found an attorney did not adequately prepare for his client's case when he accepted a personal injury client and filed the complaint, but then taking no further action in the case, leaving the law firm where he had been employed without notifying his client, the court, or opposing counsel, as a result of which the client's case was eventually dismissed with prejudice for failure to comply with discovery. Finally, in *Columbus Bar Assn. v. DiAlbert*, 120 Ohio St.3d 37, 2008-Ohio-5218, 896 N.E.2d 137 (Ohio 10-14-2008), the Supreme Court of Ohio found that by ignoring his client's repeated attempts to contact him, failing to file the client's personal injury claim, and allowing the statute of limitations to expire, the attorney did not act competently, handled the client's legal matter without adequate preparation, neglected the client's legal matter, and intentionally failed to seek a client's lawful objectives.

Here, Mr. Buchanan did adequately prepare for your case. He timely filed your complaints, engaged in discovery, visited you in prison, obtained and reviewed your medical records, obtained

and reviewed your prison records, and corresponded with you via telephone and letter. Consequently, because Mr. Buchanan's conduct was not similar to the *Peters*, *Evans*, or *DiAlbert* cases, we do not find that he committed an ethical violation relative to this first allegation.

Second, you alleged that Mr. Buchanan did not come to scheduled meetings with you, and he lacked diligence when he represented you. In your grievance, you cited Prof.Cond.R. 1.3 to support your allegation. This rule states:

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

The Supreme Court of Ohio has also interpreted this rule. In *Mahoning Cty. Bar Assn. v. DiMartino*, 147 Ohio St.3d 345, 2016-Ohio-5665, 65 N.E.3d 737 (Ohio 09-07-2016), the court found an attorney violated Prof.Cond.R. 1.3 by failing to respond to the client's repeated telephone calls and office visits and failing to provide a refund after the client had requested a refund. In *Columbus Bar Assn. v. Roseman*, 147 Ohio St.3d 317, 2016-Ohio-5085, 65 N.E.3d 713 (Ohio 07-26-2016), the court found an attorney violated Prof.Cond.R. 1.3 when he voluntarily dismissed a client's personal injury case, failed to refile the case within the limitations period, and sent two letters to clients as after-the-fact attempts to excuse his failure to refile.

Here, we find that Mr. Buchanan did not violate Prof.Cond.R. 1.3 relative to this allegation. Unlike *DiMartino* and *Roseman*, Mr. Buchanan came to visit you in prison in or around August 2019, to discuss your goals for this case, and he provided our office with copies of his handwritten notes from that visit. He also investigated your claim by obtaining your medical records, prison records, and corresponding with you frequently via written correspondence and telephone. Mr. Buchanan properly filed your lawsuit within the statute of limitations. Because this case was in the early phases of discovery, Mr. Buchanan did not schedule depositions at the time he withdrew. We do not find, however, that not scheduling the depositions rises to the level of ethical misconduct in this instance.

You also pointed out that Mr. Buchanan did not respond to the State's discovery requests. The reason Mr. Buchanan could not respond, however, is because your answers to the discovery interrogatories were changing. We reviewed the correspondence that you sent to Mr. Buchanan. You are focused on bringing a medical malpractice claim, and you discuss timeframes outside of June 11, 2019, through June 19, 2019. Specifically, in a letter dated December 17, 2020, you complained that on December 13, 2020, the guards used excessive force and pepper-sprayed you. Mr. Buchanan was rightly concerned that by responding to the discovery requests, he may commit an ethical violation by providing false evidence because he was not entirely sure what was accurate information. The written correspondence that he provided shows he was trying to obtain answers from you.

Third, you alleged that Mr. Buchanan did not discuss with you the objectives he was going to use to win your case. In your grievance, you cited Prof.Cond.R. 1.4 to support your allegation. This rule states, in relevant part:

> A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

The Supreme Court of Ohio has also interpreted this rule. In *Columbus Bar Association v. Roseman*, 156 Ohio St.3d 485, 2019-Ohio-1850, 129 N.E.3d 422 (Ohio 05-16-2019), the court found an attorney violated Prof.Cond.R. 1.4(a)(2) by failing to obtain his clients' consent before dismissing their personal injury lawsuit, abandoning his clients after agreeing to settle their claim and destroying his clients' file without collecting or distributing their settlement proceeds. In *Dayton Bar Association v. Wilcoxson*, 153 Ohio St.3d 279, 2018-Ohio-2699, 104 N.E.3d 772 (Ohio 07-12-2018), the court found an attorney violated Prof.Cond.R. 1.4(a)(2) when the attorney failed to timely file an employment-discrimination lawsuit or oppose dismissal of the lawsuit, failed to inform the client that the filing was untimely until after the case was dismissed, and failed to comply with his client's new counsel's request for the client's file.

Here, we do not find that Mr. Buchanan violated Prof.Cond.R. 1.4(a)(2). In this case, Mr. Buchanan filed the first complaint on February 14, 2019. After that, because you raised additional claims, Mr. Buchanan voluntarily dismissed the complaint so he could conduct further investigation. After doing so, he sent you the June 3, 2020 letter explaining other viable claims as well as what claims he was unwilling to pursue. On June 9, 2020, you sent Mr. Buchanan a responsive letter agreeing that you should not pursue the medical malpractice claim. Unlike *Roseman*, Mr. Buchanan sought your consent before dismissing your lawsuit and refiling it. Unlike *Wilcoxson*, Mr. Buchanan timely filed both lawsuits and provided you with a detailed explanation of the statute of limitations. Consequently, we do not find Mr. Buchanan committed ethical misconduct concerning this allegation.

Fourth, you alleged that Mr. Buchanan overcharged you and did not issue a refund. In your grievance, you cited Prof.Cond.R. 1.5 to support your allegation. Because this is a factual inquiry, however, we will address your fourth allegation based on the records we obtained during our investigation. Please note that we did obtain and review all of the invoices that Mr. Buchanan sent you during the representation.

On the March 3, 2021 bill, Mr. Buchanan charged you $125 for 21.9 hours of work, totaling $2,737.50. You contacted Mr. Buchanan and advised him that he overcharged you. Mr. Buchanan reviewed the invoices and learned that he also erroneously overcharged you on the May 2020 bill at $125 per hour instead of $100 per hour. To remedy this overcharge, Mr. Buchanan added a $370 credit to your next bill. On March 23, 2021, Mr. Buchanan sent you a corrected bill that charged you $100 for 21.9 hours of work. The total should have been $2,190. but due to the $370 credit, the March 23, 2021 bill total was $1,820.

Unfortunately, Mr. Prelac paid the wrong bill. On April 1, 2021, Mr. Prelac paid the March 3, 2021 bill for $2,737.50 instead of the corrected March 23, 2021 bill for $1,820. The difference between the two bills is $917.50. During our investigation, this error was discovered, and Mr. Buchanan issued a $917.50 refund. We confirmed with Mr. Prelac that on October 20, 2021, the refund was deposited into your trust account.