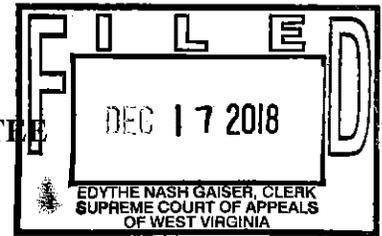


BEFORE THE HEARING PANEL SUBCOMMITTEE  
OF THE  
LAWYER DISCIPLINARY BOARD



Re: JAMES B. ATKINS,  
a member of The West Virginia State Bar

Bar No.: 8960  
I.D. No.: 17-01-009  
Supreme Court No. 18-0918

**VERIFIED RESPONSE TO STATEMENT OF CHARGES**

Respondent, James B. Atkins ("Respondent"), by counsel, responds to the Statement of Charges ("SOC") as follows:

1. Respondent admits the allegations in Paragraph 1 of the SOC.

**COUNT I**

**I.D. No. 17-01-009**

**Complaint of Kirk E. Brumbaugh, Esquire**

2. Upon information and belief, Respondent admits the allegations of Paragraph 2.
3. Respondent does not dispute that Complainant made certain allegations as set forth in Paragraph 3 of the SOC.

Regarding the allegations set forth in Paragraph 3, Respondent's office received a debtor's settlement check in the amount of \$14,807.55 on January 20, 2016. Respondent's office remitted a check in the amount of the \$11,150.91 due and owing to Brumbaugh & Quandahl on January 25, 2017.

4. Respondent does not dispute that Complainant made certain allegations as set forth in Paragraph 4 of the SOC.

Regarding the allegations set forth in Paragraph 4, as of January 4, 2016, Respondent's office had not yet received the funds from the debtor. By email dated January 5, 2016, Dawni Mullins from Respondent's office reported to Elizabeth Denniston at Complainant's office that

the lender had requested another settlement letter that was good for 30 days. Given that the lender had requested an additional settlement letter, Respondent's office thought it would be close to February before funds would be received by Respondent's office.

5. Respondent does not dispute that Complainant made certain allegations as set forth in Paragraph 5 of the SOC.

Regarding the allegations set forth in Paragraph 5, the records reflect that attempts at communication, both by email and by phone calls, were made between certain representatives of Complainant's office and representatives of Respondent's office: Elizabeth Denniston at Complainant's office and Dawni Mullins a Respondent's office. On December 19, 2016, Respondent himself called Elizabeth Denniston at Complainant's office and left a message for her to return Respondent's call. Respondent denies that he used the settlement money for his own benefit.

6. Respondent admits the allegations in Paragraph 6 of the SOC.

7. Respondent admits the allegations in Paragraph 7 of the SOC.

8. Respondent admits the allegations in Paragraph 8 of the SOC.

9. Respondent admits the allegations in Paragraph 9 of the SOC.

10. Respondent is without information sufficient to admit or deny the allegations of Paragraph 10 of the SOC, and respectfully requests proof thereof.

11. Respondent is without information sufficient to admit or deny the allegations of Paragraph 11 of the SOC, and respectfully requests proof thereof.

12. Respondent admits the allegations in Paragraph 12 of the SOC.

13. Upon information and belief, Respondent admits the allegations in Paragraph 13.

14. Upon information and belief, Respondent admits the allegations in Paragraph 14.

15. Upon information and belief, Respondent admits the allegations in Paragraph 15.
16. Upon information and belief, Respondent admits the allegations in Paragraph 16.
17. Respondent denies the allegations in Paragraph 17, averring that the bank statements speak for themselves.
18. Upon information and belief, Respondent admits the allegations in Paragraph 18 to the extent that the SOC intended to say that the check was negotiated in 2017.
19. Respondent acted with utmost diligence once he became aware of the issue involving the Brumbaugh & Quandahl settlement proceeds. Further, Respondent denies any attempt to violate Rule 1.3 of the Rules of Professional Conduct.
20. Respondent denies any attempt to violate Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct.
21. Respondent denies any attempt to violate Rule 1.15(a) of the Rules of Professional Conduct.
22. Respondent denies any attempt to violate Rule 1.15(d) of the Rules of Professional Conduct.
23. Respondent denies any attempt to violate Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct, and specifically denies the misappropriation and/or conversion of funds to his own use.
24. Respondent denies any attempt to violate Rule 5.3 of the Rules of Professional Conduct. To the contrary, Respondent has taken, and continues to take, strident measures to ensure that Respondent's firm has in effect measures giving reasonable assurances that the Firm's agents' and employees' conduct is compatible with the professional obligations of lawyers pursuing debt collections. While acknowledging responsibility for the conduct of those

in his office, Respondent neither 1) ratified; nor, 2) had actual knowledge of the conduct giving rise to missing the Brumbaugh & Quandahl settlement proceeds received in January 2016, and the numerous emails received during the Spring of 2016.

25. Respondent denies any attempt to violate Rule 8.1 of the Rules of Professional Conduct, and specifically denies that he knowingly made a false statement of fact, material or otherwise, in his September 12, 2017 sworn statement. It was Respondent's belief that the money had been held in the client account for a year.

### **AFFIRMATIVE DEFENSES**

1. Respondent did not attempt to violate any of his professional obligations and/or the Rules of Professional Conduct.

2. Respondent did not knowingly violate any of his professional obligations and/or the Rules of Professional Conduct.

3. Respondent did not misappropriate and/or convert any funds belonging to a client or a third party to his own use.

4. Within his practice and law firm structure, Respondent utilizes a variety of tools, including state-of-the-art software, training, audio recordings, data retention practices, security cameras, separation of accounts and frequent audits to assure that his practice not only complies with, but exceeds, the industry standards in best practices of a law firm engaged in debt collection.

5. Despite Respondent's reasonable efforts to ensure that the conduct of each and every person employed, retained or associated with his firm is compatible with the professional obligations of a lawyer, the settlement proceeds in question were a) unique; and, b) were missed

in the reconciliation of the January 2016 bank statements. Respondent acknowledges his direct supervisory responsibility over processes and procedures of bank reconciliations, and has worked with the bank reconciliation handling process to implement procedures to prevent this type of situation from happening again.

6. Despite Respondent's reasonable efforts to ensure that the conduct of each and every person employed, retained or associated with his firm is compatible with the professional obligations of a lawyer, the various emails sent to Respondent's office were sent to an employee (and to only that employee) in Respondent's office who had suffered a severe family tragedy in February-March of 2016. Respondent was never aware of these emails until after the disciplinary complaint was filed. Respondent acknowledges his direct supervisory responsibility over processes and procedures of communications with clients and has implemented procedures to eliminate this communication issue from happening again.

7. Respondent is proud of his and his firm's reputation, development, progress and work product; successfully collecting nearly \$3 Million in delinquent accounts per year for the last 4 years for the firm's various clients. Respondent and his firm make every effort to secure: 1) clients' money; and, 2) the confidentiality of debtor information. Respondent addressed it as expeditiously as possible once he was made aware of it; and, has taken meaningful steps to make sure nothing like this should happen again.

James B. Atkins,  
By Counsel

  
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