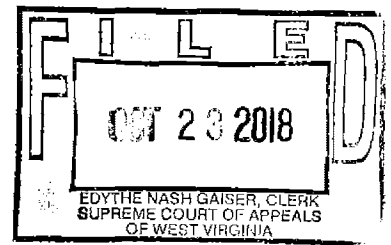


**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**



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

Bar No.: 8960
I.D. No.: 17-01-009

STATEMENT OF CHARGES

To: James B. Atkins, Esquire
Post Office Box 300
Buffalo, West Virginia 25033

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. James B. Atkins (hereinafter "Respondent") is a lawyer practicing in Buffalo, which is located in Putnam County, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on April 23, 2002. As such, Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

COUNT I

I.D. No. 17-01-009

Complaint of Kirk E. Brumbaugh, Esquire

2. On or about January 9, 2017, Complainant Kirk E. Brumbaugh, Esquire, (hereinafter "Complainant") filed a complaint against Respondent.

3. Complainant alleged that on or about November 17, 2015, Respondent had received funds in the amount of \$14,807.55 as a result of a settlement agreement that had been reached with a debtor, but that Respondent had yet to remit the funds to Complainant's law firm, Brumbaugh & Quandahl.¹
4. Complainant alleged that Respondent was contacted by email on or about January 4, 2016, to inquire about the status of the matter and Respondent advised that the funds would be received from the debtor in or about February 2016.
5. Complainant alleged that Respondent and/or employees of his law office then failed to respond to seven (7) emails sent between March 2016 and September 2016, and nine (9) voicemails left between September 2016 and November 2016, wherein Complainant and/or his staff inquired about the status of the funds. Complainant stated that Respondent finally responded to his inquiries on or about December 20, 2016, but Complainant filed the complaint when he did not receive the funds thereafter and he alleged that Respondent used the settlement money for his own benefit.
6. In his timely filed response to the complaint, Respondent said that he was not advised of the issue until late November of 2016, but maintained that he

¹ At a September 12, 2017 Sworn Statement, Respondent said that Brumbaugh & Quandahl was a "clearing house in the debt collection industry" whose "job is take the large portfolio of cases that [a national bank] might have and to go and find attorneys that are in the network and to audit them, make sure they're compliant with whatever the terms are of that particular bank or what they think are industry standard and to farm out the cases that happen to be in those states or those regions." Respondent said that he "answered" to Brumbaugh & Quandahl but his client would be the named plaintiff (i.e., the bank) in the lawsuit, but the client (or bank) would deal with Brumbaugh & Quandahl, not Respondent. Respondent said that he had been handling debt collection cases for Brumbaugh &

immediately attempted to resolve the dispute with Complainant. Respondent said that in late December of 2016, Complainant sent an associate to Respondent's office to review his Brumbaugh & Quandahl files. Respondent and Complainant's associate "worked together to audit every single file, going back over a decade." Respondent denied using any money belonging to Complainant for his own benefit. Respondent said that they had reached an agreement whereby he agreed to close all files associated with Complainant's law firm but he would keep open the file Complainant had referenced in his complaint until Respondent sent the final remittance in "next 30 to 45 days" following the December 2016 file audit. Respondent said he also sent "some follow-up correspondence to [Complainant's] firm regarding the closure cases and [the final] remittance" and provided a copy of the remittance check dated January 25, 2017, which he sent to Complainant along with his response to the ethics complaint. The copy of a check submitted with his response is check No. 086105 in the amount of \$11,150.91 drawn on the Atkins & Ogle Law Offices, LC, Client Account, dated January 25, 2017, and made out to Brumbaugh & Quandahl, PC.

7. Respondent appeared at the Office of Lawyer Disciplinary Counsel on September 12, 2017, for a sworn statement in this matter. Respondent said that the underlying case was "dormant" for a number of years until the debtor wanted to either refinance a loan or purchase a new home. Respondent said that his office received

a number of telephone calls from the debtor and the title company during that time wherein one or the other asked for a "payoff amount or what would be the settlement amount..." Respondent also said that when he and/or his office received these types of calls, he or someone at his office would contact Brumbaugh and Quandahl who, in turn, would contact the bank to determine what amount the bank would take to settle the debt. Respondent said that in most cases, once he received notice about the amount, he would send the debtor a letter indicating that if a specific amount was paid within so many days, then the debtor would receive a release. Respondent said in this case, there was a "disagreement" between his office and Complainant's office because Respondent thought there was an opportunity to obtain a payoff of the entire debt rather than a settlement amount for less than the entire amount. However, Respondent said that Brumbaugh & Quandahl indicated that it wanted a settlement letter sent, not a payoff letter.

8. Respondent said that the person in his office who communicated with Brumbaugh & Quandahl advised him that she had responded to their inquiries about the status of the matter. Respondent said he "was inclined to believe her" and that his staff responded by telephone to the inquiries, rather than by email. Nonetheless, Respondent acknowledged that there had been no email responses from his office for approximately eleven (11) months and that he only became involved in late

November 2016 to deal with the matter. Respondent acknowledged that he is responsible for the actions of his staff in his law office, that his office had received the debtor's settlement check on or about January 16, 2016, that the funds had been deposited into his client trust account, that he had held the money in that account for a year, and that the funds had not been remitted to Complainant until after the filing of this ethics complaint in January of 2017.

9. Upon information and belief, Respondent maintained bank accounts at United Bank until on or about June 30, 2017, and at City National Bank thereafter. These bank accounts included an operating account and client trust accounts, in the name of Atkins & Ogle Law Firm, LC.
10. On or about November 13, 2017, and November 14, 2017, the Office of Lawyer Disciplinary Counsel received Respondent's bank records from United Bank and City National Bank, respectively, in response to a subpoena issued on October 13, 2017. The subpoenas requested bank records from accounts held in the name of James B. Atkins, Esquire, and/or Atkins & Ogle Law Offices, LC, from January 1, 2017, to present date [of the subpoena].
11. On or about May 29, 2018, the Office of Lawyer Disciplinary Counsel received additional bank records from United Bank in response to a subpoena issued on May 2, 2018. This subpoena requested bank records from accounts held in the

name of James B. Atkins, Esquire, and/or Atkins & Ogle Law Office, LC, from January 1, 2016, through December 31, 2016.

12. On January 20, 2016, a check for \$14,807.55 from Title Source, Inc., was deposited into Respondent's "Client Account" at United Bank. The payee was Commonwealth Financial Systems, Inc., 105 River Vista Drive, Buffalo, West Virginia, 25033.
13. On January 31, 2016, the ending balance on Respondent's "Client Account" was \$13,299.64.
14. The ending balance on Respondent's "Client Account" thereafter from February to October, 2016, returned to a balance over \$14,807.55.
15. However, the ending balance of Respondent's "Client Account" on November 30, 2015, was \$6,614.80.
16. On December 31, 2016, the ending balance of Respondent's "Client Account" was negative \$42.99.
17. On January 31, 2016, the ending balance of Respondent's "Client Account" was \$14,572.55.
18. Respondent's bank records indicate that a check in the amount of \$11,150.91 was negotiated on or about February 14, 2014.
19. Because Respondent failed to act with reasonable diligence in this matter, he has violated Rule 1.3 of the Rules of Professional Conduct, which provides as follows:

Rule 1.3. Diligence.

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

20. Because Respondent failed to keep Complainant reasonably informed about the status of the matter and failed to promptly comply with reasonable requests for information, Respondent has violated Rule 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct, which provides as follows:

Rule 1.4. Communication.

(a) A lawyer shall:

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information;

21. Because Respondent failed to hold client funds in an account designated as a "client's trust account," he violated Rule 1.15(a) of the Rules of Professional Conduct, which provides as follows:

Rule 1.15. Safekeeping property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Such separate accounts must comply with State Bar Administrative Rule 10 with regard to overdraft reporting. Other property shall be identified as such and appropriately

safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

22. Because Respondent failed to promptly notify Complainant that he had received funds in which Complainant had an interest and then failed to promptly deliver the funds to Complainant, he violated Rule 1.15(d) of the Rules of Professional Conduct, which provides as follows:

Rule 1.15. Safekeeping property.

(d) Upon receiving funds or other property which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

23. Because Respondent wrongfully misappropriated and converted funds belonging to his client or a third party to his own use, he violated Rules 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provides as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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

24. Because Respondent failed to properly supervise his nonlawyer assistants to ensure that their conduct was compatible with Respondent's professional obligations, he violated Rule 5.3 of the Rules of Professional Conduct, which provides as follows:

Rule 5.3. Responsibilities Regarding Nonlawyer Assistance.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) A partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

25. Because Respondent knowingly made a false statement of material fact in connection with a disciplinary matter at his September 12, 2017 sworn statement when he answered "Yes, ma'am" to the question, "[a]nd so that money had been held in your [client] account for a year[,]" when the balance of that bank account

fell below the amount that Respondent was required to safeguard, he violated Rule 8.1(a) of the Rules of Professional Conduct, as set forth below:

Rule 8.1. Bar Admission and Disciplinary Matters

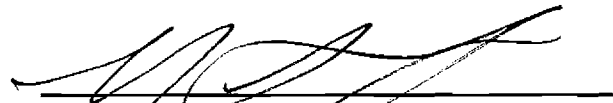
[A] lawyer in connection with ... a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact;...

* * *

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 29th day of September, 2018, and **ISSUED** this 1st day of October, 2018.



Nicole A. Cofer, Chairperson
Investigative Panel
Lawyer Disciplinary Board