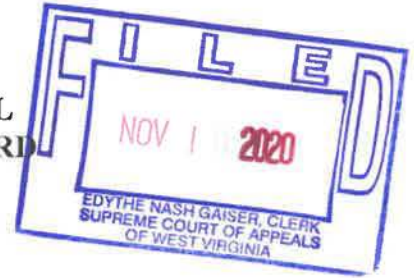


20-0908

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



In Re: Leah Perry Macia member of
The West Virginia State Bar

Bar No.: 7742
I.D. No.: 19-03-416

STATEMENT OF CHARGES

To: Leah Perry Macia, Esquire
c/o Jeffrey A. Foster, Esquire
200 Capitol Street
Charleston, West Virginia 25301

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. Leah Perry Macia (hereinafter "Respondent") is a lawyer practicing in Charleston, West Virginia. Respondent, having passed the bar exam, was admitted to The West Virginia State Bar on October 13, 1998. 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. 19-03-416

Complaint of the Office of Disciplinary Counsel

2. This complaint was opened after receiving an order from the Circuit Court of Kanawha County, West Virginia holding Respondent in contempt of court FOR... .

3. Respondent, who is employed by the Kanawha County Public Defender's Office, was appointed by the Circuit Court of Kanawha County, West Virginia to represent Charles W. McClanahan in the criminal action case styled State of West Virginia v. Charles W. McClanahan, Case No. 19-F-292, in the Circuit Court of Kanawha County, West Virginia.
4. On or about July 31, 2019, Respondent and her client appeared for the purpose of a sentencing hearing pursuant to her client's acceptance of a plea to felony burglary.
5. As part of the plea, the State recommended the Court suspend her client's sentence and impose a period of probation.
6. Respondent also requested the Court show her client leniency and sentence her client to probation so that he could enter a treatment program. To support this argument, Respondent affirmatively stated that if the Court granted her client probation he could immediately report to a long-term, residential treatment facility. Specifically, Respondent stated:

... He would go—he is— if the Court would allow it, if he is sentenced to probation, he does have a place waiting for him at Pretera. He would go to Pretera Riverside today, then he would to PARC East, and he would – until a bed is open at Harbor House, then he would be admitted to a 28 day inpatient program followed thereby – thereafter by a three-to six month inpatient program.
7. The Court during sentencing expressed concern about the client's criminal record, but stated he believed the defendant had a fairly significant drug problem. When the Court attempted to clarify the proposed treatment plan, the following exchange occurred between Respondent and Court:

THE COURT: And I actually couldn't follow where all he's going and when he's going, by why don't you outline that for me one more time so I can think about that again?

RESPONDENT: He has a place waiting for him at Presteria, the Riverside facility. And that's where that he would go for intake. Then he would go from there to the PARC East Presteria.

THE COURT: And is there a bed available?

(A Private conference was had between the defendant and defense counsel.)

RESPONDENT: I'm sorry, I got that reversed, your Honor. Sorry. PARC East is where he would go for intake, and then he would be housed at Riverside, impatient for 28-day impatient.

THE COURT: And is that a guaranteed bed?

RESPONDENT: I'm sorry?

THE COURT: Is that a guaranteed bed?

RESPONDENT: Yes, it is, your Honor.

THE COURT: For the entire six or seven months?

RESPONDENT: Yes. Upon completion of the "28," yeah.

THE COURT: The bed is guaranteed?

RESPONDENT: Yeah.

8. The Court sentenced Respondent's client to prison for a term of 1-15 years. The sentence was suspended and he was placed on probation for a period five years with the condition that he enroll in the drug rehabilitation program that Respondent described for a period of seven (7) months and, upon release he would be placed on home confinement.

9. Following the sentencing hearing, the Court was advised by a probation officer that no placement was available for the criminal defendant at Presteria Center. The probation officer stated he contacted the Presteria Center and was advised that no referral had been made on Respondent's client's behalf.

10. The Court subsequently held another hearing on or about August 1, 2019, wherein Respondent was advised of the information provided by the probation officer. The following exchange occurred:

RESPONDENT: Well, your Honor, I- it is correct that they [Presteria] don't have any materials from me because I'm not the one, nor is the Kanawha County Defender's Office, the one who contacted Presteria about him in this instance. It was, it

THE COURT:
RESPONDENT:

was done through his mother. I think I may have contacted them at some point, but not - anyway, it was his mother and - who con- who initiated the process. I called yesterday before the hearing to confirm, and I was told yes, he was and he was - they had a place for him. I-

Well, who did you speak to , because I need to, to deal with them as well. I do not know who it was I spoke to initially, because the person I asked for - I asked to speak to Joyce, who is - I can't - I'm sorry, I can't remember her name right now - who is our - the contact I'm used to dealing with her, and I've never had any miscommunication with her; and if I call her, the person has a spot. I called for her. That's who I thought I was talking to it turned - I learned subsequently that she isn't there anymore, and I don't know who it that I ended up speaking to yesterday morning.

11. The Court then questioned the criminal defendant who admitted under oath that he didn't tell Respondent that a treatment placement was guaranteed. The Court found that the criminal defendant misled the Court by failing to correct the statements about the immediacy of the treatment placement. The Court found the client in breach and vacated the earlier order and sentenced the client to 1-15 years in the penitentiary.
12. The Court entered a rule to show cause against Respondent ordering her "to show cause regarding why she could not be held in contempt of Court" regarding the misrepresentations made during the July 31, 2019 hearing.
13. A rule to show cause hearing was held on August 16, 2019. Respondent appeared, in person, and with counsel.
14. The State called Margaret Welch and Storm Smith, two administrative employees from Presetera, who were answering phones at PARC East on July 31, 2019, and both testified that neither recalled anyone calling and asking for "Joyce"

15. Ms. Smith further testified that Respondent came to PARC East on July 31, 2019, and inquired if her client had a bed. Ms. Smith testified that she phoned Riverside and informed Respondent there was no bed for her client.
16. The State then called Allycia Stennet, the clinical supervisor at Pretera, who testified that on July 31, 2019, she received a call from Probation about a referral for Respondent's client. She confirmed in writing to probation that she verified no such referral had been made. She further testified that a referral was made on August 1, 2019, and the defendant had been accepted in to a 28 day program, but clarified that long term placement was not guaranteed. She also testified that a woman named "Joyce" had previously worked at PARC East a receptionist but had left the employ about a month and a half prior.
17. The State called Jostin Holmes, the residential supervisor at Pretera's PARC East, who testified that after searching all the referrals for the different residential sites, that prior to July 31, 2019, there had been no referral made for Respondent's client. He further testified that the defendant's mother contacted Riverside on July 31, but the staff advised the mother he would have to go through the referral process. Mr. Holmes testified that no referral was generated and no placement of the defendant was guaranteed on that date, but testified the following day a referral was made and placement was secured at Riverside's 28 day program.
18. Respondent also testified at the rule to show cause hearing. Respondent maintained that based upon the circumstances, including the representation of the defendant's mother and her client's representations, that she had a good faith belief her client had definite placement in the facility.

19. On August 29, 2019, and August 30, 2019, the State and Respondent, by and through counsel, filed their written pleadings.
20. The Court entered an Order on September 16, 2019, Respondent to be in direct criminal contempt of court in violation of West Virginia Code §61-5-26 and assessed her a fine of fifty dollars (\$50.00).
21. The Court found Respondent's testimony was not credible. Additionally, the Court determined that even in Respondent's testimony was credible, that she failed to ensure the accuracy of the information even to a "minimal degree" before conveying the same to the Court.
22. The Court made the finding that "no placement existed" for Mr. McClanahan at the Pretera Center despite Respondent's repeated representations that her client had "guaranteed bed" at Pretera during the July 31, 2019 hearing.
23. The Court further found that Respondent's misrepresentations were "reckless and irresponsible" and "threatened to 'obstruct or interrupt the administration of justice,' as [the defendant] was granted probation at the dispositional hearing and was permitted to enroll in treatment program at which he lacked a placement."
24. Respondent's statements to the Court on July 31, 2019, regarding the "guaranteed bed" and the nature of the treatment plan were false statements of fact. Respondent was made aware of the false nature of her statements to the tribunal on the same date when she was advised, in person, by the PARC East staff person that no bed was available for her client. Respondent did not inform the Court of the lack of immediate availability for treatment placement for her client. Because Respondent made a false statement of fact to the Court and failed to take any

remedial measures to correct the false statement of material fact, she has violated Rule 3.3(a)(1) of the Rules of Professional Conduct, which provides:

Rule 3.3(a)(1) Candor Toward the Tribunal

- (a) A lawyer shall not knowingly¹:
 - 1. make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

25. Because the Court determined that Respondent's false statements to the Court and her subsequent failures to take remedial measures to correct the same threatened to obstruct or interrupt the administration of justice, Respondent was found in direct criminal contempt of court in violation of West Virginia Code §61-5-26² and as such she has violated Rules 8.4(b) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects
- (d) engage in conduct that is prejudicial to the administration of justice


¹ **Terminology Rule 1(f)** "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

² **§61-5-26. Contempt of court; what constitutes contempt; jury trial; presence of defendant.**
The courts and the judges thereof may issue attachment for contempt and punish them summarily only in the following cases: (a) Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice; (b) violence or threats of violence to a judge or officer of the court, or to a juror, witness, or party going to, attending or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court; (c) misbehavior of an officer of the court, in his official character; (d) disobedience to or resistance of any officer of the court, juror, witness, or other person, to any lawful process, judgment, decree or order of the said court. No court shall, without a jury, for any such contempt as is mentioned in subdivision (a) of this section, impose a fine exceeding \$50, or imprison more than ten days. But in any such case the court may impanel a jury (without an indictment or any formal pleading) to ascertain the fine or imprisonment proper to be inflicted, and may give judgment according to the verdict. No court shall impose a fine for contempt, unless the defendant be present in court, or shall have been served with a rule of the court to show cause, on some certain day, and shall have failed to appear and show cause.

* * *

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 17th day of October, 2020, and
ISSUED this 20th day of October, 2020.


Amy C. Crossan, Chairperson
Investigative Panel
Lawyer Disciplinary Board