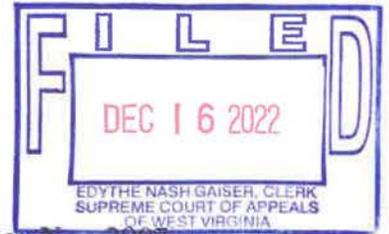


**IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**



**In Re:** JAMES M. PIERSON, a member of  
of The West Virginia State Bar

**Bar No.:** 2907  
**Supreme Court No.:** 21-0590  
**I.D. No.:** 18-03-191

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**REPORT OF THE HEARING PANEL SUBCOMMITTEE**

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Pursuant to Rule 3.32 of the Rules of Lawyer Disciplinary Procedure, the Hearing Panel Subcommittee (hereinafter "HPS") of the Lawyer Disciplinary Board hereby makes the following recommendation regarding James Pierson.

**I. PROCEDURAL HISTORY**

Formal charges were filed against James M. Pierson (hereinafter "Respondent") with the Clerk of the Supreme Court of Appeals on or about July 23, 2021, and served upon Respondent via certified mail by the Clerk on July 29, 2021. Lawyer Disciplinary Counsel filed her mandatory discovery on or about August 18, 2021. Respondent filed his Answer to the Statement of Charges on or about August 30, 2021. Respondent did not provide his mandatory discovery, which was originally due on or before September 17, 2021, then on or before April 1, 2022, after requesting a continuance, and then again by July 8, 2022, following another continuance. Lawyer Disciplinary Counsel filed a Motion to Exclude Testimony of Witnesses and Documentary Evidence or Testimony of Mitigating Factors on July 8, 2022. After Respondent, by counsel, indicated that he did not intend to bring in any witnesses to testify other than Respondent, and that the documentation he intended to use at the hearing was documentation that had already been produced by the Office of Lawyer Disciplinary Counsel, the Hearing Panel Subcommittee deemed this motion moot at the prehearing held on July 19, 2022.<sup>1</sup>

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<sup>1</sup> See Pre-Hearing Tr. p. 19. Additional motions were filed in this proceedings, such as Respondent's motions to take the deposition of the Complainant Sherri Goodman Reveal, Esquire, and Cynthia Jones. These motions were granted

Thereafter, this matter proceeded to hearing in Charleston, West Virginia, on August 23, 2022. The Hearing Panel Subcommittee was comprised of Gail T. Henderson-Staples, Esquire, Chairperson, William L. Mundy, Esquire, and Loretta Sites, Layperson. Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel, appeared on behalf of the Office of Lawyer Disciplinary Counsel. Paul Saluja appeared on behalf of Respondent, who also appeared. The Hearing Panel Subcommittee heard testimony from Sherri Goodman Reveal, Esquire, Shari Collias, Esquire, Cynthia Jones and Respondent and admitted into evidence ODC Exhibits 1-42, Respondent's Exhibits 1-76, and Joint Exhibits 1-2 were admitted into evidence. Joint Exhibit I consisted of agreed joint stipulations regarding findings of fact and conclusions of law which had been reached by the parties prior to the hearing.

## **II. STIPULATED FINDINGS OF FACTS AND CONCLUSION OF LAW**

1. James M. Pierson (hereinafter "Respondent") is a lawyer practicing in Charleston, which is located in Kanawha County, West Virginia. Respondent, having diploma privilege, was admitted to The West Virginia State Bar on May 21, 1985. 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. 18-03-191**

#### **Complaint of Sherri Reveal, Esquire**

2. On July 14, 2014, Ms. Cynthia Jones was involved in an automobile accident. She was insured by Nationwide, the other driver was insured by State Farm. Ms. Jones' Nationwide policy provided for \$2,000.00 in medical benefits ("med pay"). At the

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and those depositions took place on June 28, 2022. However, Respondent's motion to take the deposition of Shari Collias, Esquire, was denied. However, Respondent was permitted to issue a Subpoena *duces tecum* to Ms. Collias. Respondent's Motion for Clarification of Changes were denied. ODC's motion to quash the Subpoena *duces tecum* was granted due to Respondent's failure to comply with Rule 3.8, WVRDP.

time of the accident, Ms. Jones was receiving Social Security disability payments and her medical insurer was Medicare. [ODC Vol. I, Ex. 1, Bates 2]

3. On December 13, 2014, Ms. Jones signed a "Contract for Legal Services" for Respondent to represent her "in a matter involving a divorce adverse to David Jones." The "Contract for Legal Services" provided for an initial retainer fee payment of \$1,000.00.<sup>2</sup> Respondent's hourly rate was \$250.00 and \$125.00 for paralegal and law clerk time. [ODC Vol. III, Ex. 33, Sealed Bates 2467- 2473; Hrg. Tr. p. 17-18]
4. The Final Order of Divorce entered March 18, 2016, and May 20, 2016 amended Order provided Mr. Jones was to relinquish any interest in the motorcycle previously delivered to Respondent and two firearms (.45 caliber handgun and a 7 mm rifle) that had also been delivered to Respondent. [ODC Vol. I, Ex. 1, Sealed Bates 122-131; ODC Vol. III, Sealed Ex. 40; Hrg. Tr. 18]
5. On or about February 18, 2016, Mr. Jones' counsel forwarded to Respondent the title of a 2005 Jeep and a \$2,508.00 check from Geico representing insurance funds regarding the motorcycle that had been wrecked prior to delivery to Respondent. [ODC Vol. I, Ex. 1, Sealed Bates 133-134]
6. Furthermore, since Mr. Jones had liquidated his pension, Ms. Jones and Respondent were granted a judgment for \$45,000.00 (which included the prior arrears in alimony, the house payment arrearage before foreclosure, \$15,000.00 in attorney fees<sup>3</sup>, equitable distribution and family support). Judgment was

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<sup>2</sup> Complaint alleged that Ms. Jones paid another \$750.00 in or about January 2015, after one of Respondent's paralegals contacted her. Ms. Jones does not have a receipt of this payment [ODC Vol. I, Ex. 1, Sealed Bates 8; See also ODC Vol. I, Ex. 3]

<sup>3</sup> Respondent's most recent billing statement for the divorce matter (produced pursuant to this disciplinary proceeding) indicates that Ms. Jones has an outstanding balance with Pierson Legal Services in the amount of \$12,777.56.

stayed as long as Mr. Jones made certain payments of \$500.00 per month for 30 months until Respondent received his fee of \$15,000.00; \$400.00 a month thereafter until the \$45,000.00 was paid. The Final Order also provided that "[t]he payments set forth in this section shall be made payable to Cynthia Jones and Pierson Legal Services and delivered to Pierson Legal Services" and "[t]hat Cynthia Jones has irrevocably assigned her interest in the judgment to the extent of attorney's fees owed to Pierson Legal Services." [ODC Vol. I, Ex. 1, Sealed Bates 125]

7. A \$500.00 alimony payment was due from Mr. Jones on the first of the month beginning March 2016. Ms. Jones' client file reflects a check in the amount of \$500.00 on February 25, 2016 from Mr. Jones made payable to Ms. Jones and Respondent. The memo line reads "Alimony - March 2016." There were two other payments made but the alimony check was returned for insufficient funds. [ODC Vol. I, Ex. 1, Sealed Bates 137, 142]
8. Respondent filed a Motion for Contempt on April 16, 2016. After a hearing on July 19, 2016, Orders were entered granting Respondent another \$1,500.00 in attorney fees and permitted either him or Ms. Jones to collect on the Judgment. Complainant reported that the Family Court eventually appointed a Special Commissioner to effectuate title transfer to Respondent.<sup>4</sup> [ODC Vol. I, Ex. 1, Sealed Bates 146]
9. On November 15, 2016 the Respondent's office prepared a Bureau of Child Support Enforcement application for Ms. Jones to execute and emailed the application to

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<sup>4</sup> In March of 2017, Ms. Jones went to Bureau of Child Support Enforcement for assistance in collecting her permanent alimony, which at the time, was in arrears in the amount of \$4,340.56. Mr. Jones' wages garnished, and Ms. Jones received a monthly check for a time.

Anastasia Rhodes of the BCSE with a copy to Ms. Jones. This effort resulted in alimony payments that Ms. Jones received until March 2017. [ODC Vol. I, Ex. I, Bates 10]

10. That on or about June 1, 2017 Buddy Jones died testate leaving David Neal Jones as one of his heirs and upon learning of his death the Respondent did send an email to Ms. Collias and Ms. Jones dated August 14, 2017 advising Ms. Collias and Ms. Jones that her former husband David Neil Jones' father had died that there may be funds available to attach and pay the Judgement which Ms. Jones had gotten in the divorce.
11. Respondent again communicated that there was a pool of funds available to pay the judgment in a letter dated September 7, 2017, advising Ms. Collias that there were funds available to pay the Judgement which Ms. Jones had gotten in the divorce.
12. Ms. Collias responded by letter dated September 11, 2017 wherein [sic] acknowledged Respondent's communication.
13. On February 25, 2015, Ms. Jones had signed an authorization for Respondent to "review [a] personal injury case in order to determine if he would represent her in that matter. The authorization read that if [Respondent] decided to proceed with the representation, they would enter into a separate retainer agreement." Ms. Jones subsequently signed a Medical Authorization on January 25, 2016. However, no written contingent fee agreement signed by Ms. Jones has been produced by Respondent for the personal injury representation. [ODC Vol. I, Ex. 1, Bates 2, Sealed Bates 14]
14. No signed contingent fee agreement has been produced by Respondent for the personal injury representation.

15. Ms. Jones testified, however, no written contingent fee agreement signed by Ms. Jones.<sup>5</sup> Ms. Jones testified during her deposition that she agreed to retain Mr. Pierson to represent her in the personal injury matter and that she agreed that Mr. Pierson should apply the net proceeds of the settlement to the balance due on her divorce bill. [See also Hrg. Tr. 18]
16. Nationwide sent a Notice of Subrogation on May 2, 2016, to Respondent indicating that it expected reimbursement from any personal injury settlement of the \$2,000.00 med pay it had paid out. [ODC Vol. I, Ex. 3, Sealed Bates 23-24]
17. Respondent sent a settlement demand to State Farm on May 10, 2016, for what "he characterized as the tortfeasor's policy limits of \$25,000.00." [ODC Vol. I, Ex. 2, Bates 3, Sealed Bates 26-27]
18. On June 20, 2016, Respondent wrote to Nationwide asking that Nationwide waive its right of subrogation. He also noted that "even if Nationwide sought reimbursement, it would only be entitled to \$1,333.22, because under West Virginia law, the company had to pay its proportionate share of [Respondent's] legal fee."<sup>6</sup> [ODC Vol. I, Ex. 2, Bates 3, Sealed Bates 42-43, 45]
19. Respondent negotiated with State Farm over the next six weeks and eventually accepted State Farm's offer to settle for \$5,000.00 by letter dated July 8, 2016. [ODC Vol. I, Ex. 2, Bates 3, Sealed Bates 47]
20. Ms. Jones signed a release of State Farm on July 13, 2016, and State Farm issued a check for \$5,000.00 on July 22, 2016. [ODC Vol. I, Ex. 2, Bates 3, Sealed Bates 11, 51]

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<sup>5</sup> This first sentence of ¶ 15 appears to be a typographical error which was not noticed when the parties signed the Agreed Stipulations on August 23, 2022. See, Joint Ex. 1, p. 5.

<sup>6</sup> The date on the letters is June 30, 2016.

21. On August 2, 2016, Respondent deposited the \$5,000.00 State Farm check into an Interest on Lawyers Trust Account (IOLTA) (9196) which he maintained at Premier Bank (also known as First Now on the bank statements). [ODC Ex. 30, Bates 2008-2009]
22. Ms. Jones' client file contains an unsigned Settlement statement.<sup>7</sup> The Settlement statement indicated that Respondent would receive \$1,666.66 in attorney's fees and had advanced expenses in the amount of \$217.37 for a total to Pierson Legal Services of \$1884.97, leaving \$3,115.97. The Settlement statement then indicated that the following would be paid from the settlement: (1) subrogation claim of Nationwide in the amount of \$1,260.88; (2) escrowed from settlement pending verification of subrogation claim of Medicare Part B in the amount of \$362.78. The statement indicated that the "TOTAL PAID OR ESCROWED FOR SUBROGATION" was \$1,623.66 and the "TOTAL TO BE PAID DIRECTLY TO CLIENT" was to be \$1,492.31. [ODC Vol. I, Ex. 1, Bates 4, Sealed Bates 53]
23. Complainant, on behalf of Ms. Jones, alleged that Ms. Jones did not receive her portion (\$1,492.31) of the \$5000.00 settlement funds which had been deposited into Respondent's Premier Bank IOLTA account (9196) on August 2, 2016.<sup>8</sup> [ODC

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<sup>7</sup> In or about 2017, Ms. Jones retained Shari Collias, Esquire, to help her file for bankruptcy. As part of the bankruptcy representations, Ms. Collias needed financial information about the two legal matters on which Respondent represented Ms. Jones, the divorce and the personal injury matter. Complainant was contacted by Ms. Collias after Ms. Jones had difficulty obtaining her client file from Respondent despite Ms. Jones' requests for the same. Ms. Jones finally obtained her client file from Respondent on August 15, 2017, with the assistance of ODC after filing an informal complaint against Respondent. Complainant filed the formal complaint on May 29, 2018. [ODC Vol. I, Ex. 2, Bates 2; ODV Vol. III, Ex. 41, Bates 2612]

<sup>8</sup> In a billing statement dated September 11, 2017, Respondent credited Complainant's account on July 22, 2016, in the amount of \$1,492.31. The entry is labeled "Regular Payment – Than You. Personal Injury Proceeds (MP)" Respondent also credited Ms. Jones' account on February 9, 2016, in the amount of \$500.00 for Mr. Jones' guns; \$500.00 on March 11, 2016 for a Postal Order from Mr. Jones; \$500.00 for a check from Mr. Jones; and \$3,500.00 on September 5, 2017, for a credit for the sale of Mr. Jones' motorcycle. The total still due, including finance charges, was \$12,777.56. [ODC Vol. III, Ex. 36, Bates 2612]

Vol. I, Ex. 2, Bates 4] However, Ms. Jones testified during her deposition that she did receive payment of \$ 1492.31 from Pierson Legal, although she returned the amounts to him towards her outstanding legal fees.

24. After receiving an extension of time to respond, Respondent filed a response to the complaint on August 14, 2018. While he referenced numerous "Resp. Exhibits" in the response, Respondent failed to attach the same to his response. [ODC Vol. I, Ex. 6, 7]
25. By Memorandum Decision and Mandate entered July 8, 2019, Respondent was administratively suspended for failure to provide proof of compliance with the mandatory continuing legal education reporting requirements. [ODC Vol. I, Ex. 8, Bates 175-183] Respondent was reinstated on July 10, 2019. [ODC Ex. 8, Bates 184] During this time period, Mr. Pierson was consumed with his personal medical issues, as he was diagnosed with cancer. [ODC Vol. I, Ex. 11, Bates 192; ODC Ex. 22, Bates 253]
26. By certified letter dated August 5, 2019, Respondent was advised that his sworn statement was set for November 6, 2019, at ODC. The original subpoena and an acknowledgment of service were included in the letter. The green card, signed by Teconia Williams, was returned to ODC on August 9, 2019. [ODC Vol. I, Ex. 9]
27. By letter dated November 4, 2019, sent by both facsimile and certified mail, ODC advised Respondent that his request for a continuance of the November 6, 2019 sworn statement was granted and that a new subpoena would be issued for his appearance at ODC on January 15, 2020. The green card, signed by Respondent, was returned to ODC on November 12, 2019. [ODC Vol. I, Ex. 12]

28. By letter dated January 15, 2020, ODC granted Respondent's request to continue the January 15, 2020 sworn statement, and rescheduled the same for 1:30 pm. on February 13, 2020. Respondent was advised that "all other provisions in the Investigative Subpoena issued on November 4, 2019, including the production of documents, remain in full force and effect, " [ODC Vol. I, Ex. 13]
29. By letter dated February 13, 2020, ODC confirmed a 11:30 a.m. conversation Senior Lawyer Disciplinary Counsel had with Respondent wherein Respondent stated that he did not have the February 13, 2020 sworn statement on his calendar and was "reminded of it upon receipt of recent letter from [ODC] which contained a reference to [the February 13, 2020] sworn statement." Respondent also advised ODC that he "would like the opportunity to obtain counsel for these proceedings and requested two (2) weeks to do so." ODC released Respondent from his February 13, 2020 appearance and stated that ODC "will expect to hear from [Respondent] or [his] counsel no later than Thursday, February 27, 2020, in order to arrange a mutually convenient date for [Respondent's] sworn statement. [ODC Vol. I, Ex. 15]
30. On February 27, 2020, Respondent's counsel faxed a letter to ODC advising that he had been retained by Respondent to represent him, but he would be out of the office until after March 15, 2020. [ODC Vol. I, Ex. 16]
31. By letter dated March 4, 2020, ODC sent a confirming letter to Respondent's counsel based upon a conversation with his assistant wherein it was agreed that Respondent would appear at ODC on April 16, 2020, for his sworn statement. New subpoenas were issued and included in the March 4, 2020 letter. [ODC Vol. I, Ex. 17]

32. On March 22, 2020, the Supreme Court of Appeals issued an Administrative Order declaring a Judicial Emergency due to the COVID pandemic and stayed all proceedings, subject to certain emergency proceedings, in the State of West Virginia, until April 10, 2020. [ODC Vol. I, Ex. 21, Bates 228-229] On April 3, 2020, the Supreme Court of Appeals issued an amended Order extending the stay until May 4, 2020. [ODC Vol. I, Ex. 21, Bates 230-231] On April 22, 2020, the Supreme Court of Appeals issued a Second Amended Order which extended the stay until May 15, 2020. [ODC Vol. I, Ex. 21, Bates 232-33]
33. After ongoing discussions with Respondent's counsel throughout the spring and summer of 2020, Respondent's sworn statement was scheduled to occur over two (2) days, October 14, and October 15, 2020. New subpoenas were issued and sent to Respondent's counsel by letter dated September 10, 2020. Pursuant to later discussions between ODC and Respondent's counsel, Respondent appeared for his sworn statement on October 20, 2020, and October 27, 2020. [ODC Vol. II, Ex. 31; ODC Vol. II, Ex. 32]
34. On October 27, 2020, Respondent provided the exhibits which had been referenced but not attached to his August 24, 2018 [response to the complaint].<sup>9</sup> [ODC Vol. III, Sealed Ex. 33]
35. By letter dated October 29, 2020 addressed to Respondent's counsel, ODC confirmed ODC's request from the October 27, 2020 sworn statement that Respondent provide additional information, Ms. Jones' billing records, within twenty (20) days. Respondent did not respond. [ODC Vol. III, Ex. 34]

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<sup>9</sup> By email dated October 13, 2020, in response to an inquiry to Senior Lawyer Disciplinary Counsel, Respondent's counsel was advised that Respondent's exhibits to the August 14, 2018 response had not been previously submitted to ODC.

36. By certified letter dated November 30, 2020, addressed to Respondent's counsel, ODC again requested that Respondent provide Ms. Jones' billing records no later than December 14, 2020. The green card, signed on December 1, 2020, was returned to ODC on December 3, 2020. [ODC Vol. III, Ex. 35]
37. By letter dated December 22, 2020, and received by ODC by email on December 23, 2020, and original received by U.S. Mail on December 26, 2020, Respondent provided Ms. Jones' billing records. [ODC Vol. III, Ex. 36]
38. In September 2016, Respondent wrote the following checks from his Premier Bank IOTLA account (9196): (1) September 1, 2016, check no. 7077, payable to Pierson Legal Services for \$5,000.00, no memo; (2) September 9, 2016, check no. 7078, payable to Pierson Legal Services for \$2,000.00, memo - to Summit; (3) September 13, 2016, check no. 7080, payable to Pierson Legal Services for \$1,000.00, memo - to Summit Gen.; (4) September 15, 2016, check no. 7072, payable to Pierson Legal Services for \$2,800.00, no memo; (5) September 16, 2016, check no. 7082, payable to Pierson Legal Services for \$1,100.00, no memo. [ODC Vol. II, Ex. 30, Bates 2014-2022]
39. In addition to the Premier Bank IOLTA account (9196), and the Summit Bank General Account (4633) which were associated with Respondent and Pierson Legal Services during this time, Respondent also maintained a General Account (9212) at Premier Bank, a second IOLTA Account (4625) at Summit Bank<sup>10</sup>, a second General Account (0768) at Summit Bank, a third IOLTA account (4504) at BB&T

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<sup>10</sup> The September 30, 2016 bank statement for Respondent's Summit IOLTA bank account (4625) indicates a Deposit on September 1, 2016, of Respondent's Premier Bank IOLTA account ending in 4633, September 1, 2016, check no. 7077, payable to Pierson Legal Services for \$5,000.00; a Remote Capture Deposit of \$2,000.00 on September 9, 2016; and a Deposit on September 19, 2016, of Respondent's Premier Bank IOLTA Account ending in 4633, September 16, 2016, check no. 7082, payable to Pierson Legal Services for \$1,100.00. [ODC Ex. Vol. I, Ex. 26, Bates 862-866]

and a third General Account (7448) at BB&T. All of these accounts are associated with Respondent and Pierson Legal Services.<sup>11</sup> [See ODC Vol. I, Ex. 24, 25, 26, ODC Vol. II, Ex. 27, 28, 29, 30]

40. Complainant also alleged that Respondent did not promptly pay Nationwide its subrogation claim. [ODC Vol. I, Ex. 1, Bates 4-5] In or about November 2016, Respondent's staff emailed Nationwide and attached the June 30, 2016 letter wherein Respondent had requested that Nationwide waive its subrogation claim and requesting that "Could you please respond accordingly?" [ODC Vol. I, Ex. 2, Bates 2, Sealed Bates 59] Eventually, Respondent paid Nationwide by check dated March 27, 2017, in the amount of \$1,333.33 (not the \$1,260.88 on the Settlement statement) from his General Account (4633) at Summit Bank. [ODC Vol. I, Ex. 2, Sealed Bates 61] In his response to the complaint, Respondent asserted that this 2017 check was a replacement check for a check allegedly written in or about November 2016.
41. While the unsigned Settlement statement indicated that Respondent "escrowed from settlement pending verification of subrogation claim of Medicare Part B in the amount of \$362.78," Respondent failed to set aside, maintain and preserve funds that may have been due to Medicare and/or the Centers for Medicare and Medicaid Services ("CMS"). [ODC Vol. I, Ex. 2, Sealed Bates 53] Ms. Jones received and delivered two Conditional Payments Notices dated September 8, 2016, and October 20, 2016, to Respondent's office, and received an acknowledgment of receipt of the CMS notices on November 1, 2016, from Respondent's office staff. Respondent still did not issue payment to CMS. Ms. Jones then received a Notice of Intent to

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<sup>11</sup> Respondent also maintained payroll accounts at both Premier Bank and Summit Bank.

Refer Debt to the Department of Treasury for Cross-Servicing and Offset of Payments from CMS dated January 24, 2017. Ms. Jones again delivered this notice to Respondent's office.<sup>12</sup> [ODC Vol, I, Ex. 2, Bates 5-7, Sealed Bates 65-94; Hrg. Tr. 21-23]

42. By December 1, 2016, Respondent's Premier Bank IOTLA Account (9196) had a balance of \$250.01. [ODC Vol. II, Ex. 30, Bates 2044]
43. Respondent used the Pierson Legal Services Summit Bank IOLTA account (4625) for purposes other than those outlined in the Rules of Professional Conduct and State Bar Administrative Rule 10. Specifically, the December 16, 2016 bank statement for Respondent's Summit Bank IOLTA account (4625), includes a notation for a Remote Capture Deposit of \$2,734.25 on December 5, 2016, and on the same day a Debit of \$2,700.00 identified as "Farm income sale of cattle" on December 5, 2016. [ODC Vol. I, Ex. 26, Bates 884]
44. Respondent alleges that he did enter into a written contingency fee agreement with Ms. Jones. However, the Respondent has not been able to produce a copy of the agreement.
45. Ms. Jones and Mr. Pierson both testified that they agreed, albeit orally, for Pierson Legal Services to represent Ms. Jones in her personal injury matter. [Hrg. Tr. 18]
46. Respondent admits that he failed to promptly pay the subrogation claims owed to Nationwide and CMS while representing Cynthia Jones in violation of Respondent violated Rule 1.15(d), as follows:

**Rule 1.15. Safekeeping Property.**

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall

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<sup>12</sup> On February 1, 2017, Ms. Jones wrote a check herself to pay CMS in the amount of \$456.71 (total after accumulation of interest). [Hrg. Tr. 21-23]

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.

47. Respondent admits that he failed to safeguard funds belonging to clients or third person, including Nationwide and CME, and on this occasion (December 5, 2016 deposit of Pierson Farm Income) commingled personal property with property of clients or third persons in his Premier Bank IOLTA account (4633) and his Summit Bank IOLTA account (4625) in violation of Rule 1.15(a) of the Rules of Professional Conduct, as follows:

**Rule 1.15. Safekeeping.**

(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. Such separate accounts must comply with State Bar Administrative Rule 10 with regard to overdraft reporting. Other property shall be identified as such and appropriated 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.

48. Respondent admits that his use of his IOLTA accounts were and are not in compliance with his obligations under the Rules of Professional Conduct and State Bar Administrative Rule 10, and that as such he violated Rule 1.15(b), 1.15(f) and State Bar Administrative Rule 10, by depositing funds from his farm business into his IOLTA account; however, on the same day he promptly removed the accidental deposit:

**Rule 1.15. Safekeeping Property.**

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

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(f) IOLTA (Interest on Lawyers Trust Accounts). A lawyer who receives client funds that are nominal in amount or are expected to be held for a brief period shall establish and maintain a pooled, interest or dividend-bearing account for the deposit of such funds at an eligible financial institution in compliance with State Bar Administrative Rule 10.

**West Virginia State Bar Administrative Rule 10. Client Trust Account; IOLTA Program.**

49. Based upon the record, Disciplinary Counsel and Respondent jointly recommend dismissal of the Rule 8.4 violation in paragraph 44 of the Statement of Charges.

**III. STIPULATIONS REGARDING BANK AND COURT RECORDS**

50. Judicial Notice was taken, and all foundation and/or authenticity requirements are waived, as to all pleadings, motions, orders, hearing transcripts, and court documents submitted in this matter.
51. The parties stipulated that all bank records including those from Premier Bank (now known as First Now), Summit Bank and BB&T submitted in this matter including but not limited to Respondent's IOLTA/Client Trust Accounts, General Accounts, and or Payroll Accounts are authentic and properly obtained by a lawfully executed subpoena.
52. The parties hereby agreed to waive foundation requirements for any bank records submitted as exhibits in this matter.

#### IV. DISCUSSION

The Supreme Court of Appeals of West Virginia has long recognized that attorney disciplinary proceedings are not designed solely to punish the attorney, but also to protect the public, to reassure the public as to the reliability and integrity of attorneys, and to safeguard its interests in the administration of justice. Lawyer Disciplinary Board v. Taylor, 192 W.Va. 139, 451 S.E.2d 440 (1994). Factors to be considered in imposing appropriate sanctions are found in Rule 3.16 of the Rules of Lawyer Disciplinary Procedure. These factors consist of: (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the lawyer acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of any aggravating or mitigating factors. *See also*, Syl. Pt. 4, Office of Disciplinary Counsel v. Jordan, 204 W.Va. 495, 513 S.E.2d 722 (1998).

**A. Respondent violated duties to his clients, to the public, to the legal system and to the legal profession.**

Lawyers owe duties of candor, loyalty, diligence and honesty to their clients. A lawyer also has a fiduciary duty to a client and, with that duty, an obligation to act in the client's best interests. The evidence in this case establishes by clear and convincing proof that Respondent violated his duties owed to his client, to the public, to the legal system, and to the legal profession. Indeed, lawyers are officers of the court and must act in a manner to maintain the integrity of the Bar and the profession and Respondent's admitted conduct in this matter fell short of all these stated obligations.

Respondent's actions in failing to have a written contingent fee agreement with Ms. Jones, failing to timely pay the Nationwide subrogation claim and failing to pay the CMS subrogation claim violated his duties owed to his client.

**B. Respondent acted intentionally and knowingly.**

The most culpable mental state is that of intent when the lawyer acts with the conscious objective or purpose to accomplish a particular result. The next most culpable mental state is that of knowledge, when the lawyer acts with conscious awareness of the nature or attendant circumstances of his conduct, both without the conscious objective or purpose to accomplish a particular result. The least culpable mental state is negligence, when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *ABA Model Standards for Imposing Lawyer Sanctions, Definitions* (1992). The evidence establishes that in representing Ms. Jones, Respondent acted intentionally and knowingly and that his actions were not the result of simple negligence or mistake. The Supreme Court has held that "lawyers who engage in the practice of law in West Virginia have a duty to know the Rules of Professional Conduct and to act in conformity therewith." Lawyer Disciplinary Board v. Ball, 219 W.Va. 296, 633 S.E.2d 241 (2006). The Rules of Professional Conduct require written contingent fee agreements. Furthermore, Respondent had knowledge that there were subrogation claims to be paid in Ms. Jones' case and he did not pay the CMS claim even after Ms. Jones advised his office that the claim had not been paid. Respondent also had to be advised by Nationwide some months later that Nationwide's subrogation claim had yet to be paid. [ODC Vol. I, Ex. 1, Sealed Bates 65-85]. The evidence supports that Respondent acted intentionally and knowingly in failing to safeguard funds owed to his clients and third parties.

The Respondent recognized the remote capture deposit error the same day and immediately withdrew the personal monies deposited. [Hrg. Tr. 56-57]

Q. ...Why is there a deposit, and then an immediate withdrawal?

A. Well, the check for \$2,734.25 was a check from the Jackson County Livestock Auction, which was from farm income.

And at the time, we used a remote capture device, so we didn't have to go to the bank. Unfortunately, I never knew how to use that. My legal assistant did. And she deposited that \$2,734.25 into the trust account and that same day when I discovered it, I said, "Well, get that \$2,700.00 out of there, and that's what she did. She took \$2,700.00 back out and put it into farm account the same day. I suspect within an hour or so of each other.

**C. The amount of real injury is significant**

As a direct result of Respondent's misconduct, his client, Ms. Jones suffered real and actual injury.<sup>13</sup> Despite Respondent having knowledge of the CMS subrogation claim and that he was holding money from her July 2016 settlement to pay the same, Ms. Jones had to pay the CMS claim herself in February 2017 after receiving notices from CMS (which she personally delivered to Respondent's office) that the subrogation claim had not been paid. [Hrg. Tr. 21; See also ODC Vol. I, Ex. 1, Sealed Bates 65-85] Ms. Jones also testified that "it's taken [her] six years to get here". Because the legal profession is largely self-governing, it is vital that lawyers abide by the rules of substance and procedure which shape the legal system. Indeed, the rules enacted by the Supreme Court of Appeals governing the practice of law and conduct of lawyers have force and effect of law. *See* W.Va. Const. Art. VIII, §3 ("The court shall have power to promulgate rules...for all of courts of the State relating to...practice and procedure, which shall have the force and effect of law.")

Respondent's noncompliance with the Rules as exhibited in the record is clearly detrimental to the legal system and profession, and his conduct has brought the legal system and legal profession into disrepute. The conduct exhibited by Respondent also undermines the integrity and public confidence in the administration of justice. Jones testified that she "trusted"

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<sup>13</sup> Respondent provided a check to Ms. Jones at the August 23, 2022 hearing in the amount of \$538.92. Joint Ex. 2] At the hearing, Respondent's counsel stated that the check represented "the amount of the CMS payment plus the statutory rate of interest from the time it was paid to Ms. Jones. In her deposition, they provided a copy of the check that she sent, so we used the date of the check to the date of today, and it's approximately \$500.00." [Hrg. Tr. 25-26]

Respondent because he had been recommended to her by her father's friend. [Hrg. Tr. 23-24]. After her experience with Respondent representing her in her divorce and in the personal injury case, Ms. Jones said "[she] know[s] that there are good lawyers out there and I know he's a bad lawyer" and that, in her opinion, Respondent is "dishonest." [Hrg. Tr. 23, 28].

**D. The Existence of any aggravating factors.**

Aggravating factors are considerations enumerated under Rule 3.16 of the Rules of Lawyer Disciplinary Procedure for the Court to examine when considering the imposition of sanctions. Elaborating on this rule, the Scott Court held "that aggravating factors in a lawyer disciplinary proceeding 'are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.'" Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E.2d 550, 557(2003) *quoting ABA Model Standards for Imposing Lawyer Sanctions*, 9.21 (1992). There are several aggravating factors present in this case, including (1) dishonest or selfish motive, (2) pattern of misconduct, (3) multiple offenses, (4) vulnerability of victim, (5) substantial experience in the practice of law, (6) indifference to making clearly owed restitution and (7) prior disciplinary offenses. Respondent committed multiple violations of the Rules of Professional Conduct during his representation of Ms. Jones and in the operation of his law practice. Ms. Jones was in vulnerable position when Respondent undertook her representation, and he was aware of the fragile state of her health. Ms. Goodman also testified that she noted that Ms. Jones "was a fragile client." [Hrg. Tr. 12-13, ODC Vol. I, Ex. 2, Bates 2]. Ms. Collias, Ms. Jones' bankruptcy attorney, likewise testified that Ms. Jones had significant health issues and would easily get upset discussing matter. [Hrg. Tr. 39-41]

This panel finds that the deposit of Respondent's personal funds with his client and third-party funds in his IOLTA account was a technical error and it was corrected the same day. [Hrg. Tr. 56-57]. There was no evidence presented of any intent to defraud any client as a result of this

deposit. Likewise, there was no evidence that any client was harmed as a result of this momentary error. The HPS does not consider the Respondent's commingling of the funds an aggravating factor in this matter.

Respondent has been licensed to practice law since 1985. The Supreme Court has held that "lawyers who engage in the practice of law in West Virginia have a duty to know the Rules of Professional Conduct and to act in conformity therewith." Lawyer Disciplinary Board v. Ball, 219 W.Va. 296, 633 S.E.2d 241 (2006).

Respondent's action in issuing the restitution check to Ms. Jones should not mitigate in his favor. Respondent did not pay Ms. Jones until the day of his disciplinary hearing and this action does not negate the misconduct, is not a defense, and should not mitigate any proposed sanction. Syl. pt. 8, Lawyer Disciplinary Board v. Geary M. Battistelli, 206 W.Va. 197, 523 S.E.2d 257 (1999); Syl. pt. 4, Committee on Legal Ethics v. Hess, 186 W.Va. 514, 413 S.E.2d 169 (1991); and Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 569-570, 505 S.E.2d 619, 632-633 (1998), *remanded with directions*, see Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999). Battistelli and Hess note that mitigation of punishment because of restitution must be governed by the facts of the particular case. Kupec I also provides that:

Where the restitution has been made after the commencement of disciplinary proceedings, or when made as a matter of expediency under the pressure of the threat of disciplinary proceedings, some courts have refused to consider it a mitigating factor.

Kupec I, 515 S.E.2d at 570, *citations omitted*.

The Supreme Court of Appeals of West Virginia also considers prior Investigative Panel admonishments to be aggravating. See, e.g., Lawyer Disciplinary Board v. Sturm, 237 W.Va. 115, 785 S.E.2d 821 (2016); Lawyer Disciplinary Board v. Grindo, 231 W.Va. 365, 745 S.E.2d 256 (2013). Respondent has been previously admonished on four (4) occasions by the Investigative

Panel of the Lawyer Disciplinary Board. In I.D. No. 08-01-378, Respondent was admonished for violating Rules 1.4(a) and 1.4(b) for failing to communicate with his client in a manner consistent with his obligations under the Rules of Professional of Conduct. [ODC Vol. III, Ex. 42, Bates 2923-2932]. In I.D. No. 10-05-006, the Investigative Panel admonished Respondent for violating Rule 1.5(a) of the Rules of Professional Conduct after the Family Court and the Circuit Court of Fayette County, West Virginia, found Respondent's fee to be unreasonable. [ODC Vol. III, Ex. 42, Bates 2958-2968]. Respondent was again admonished by the Investigative Panel in I.D. No. 19-01-14 and 19-01-490 for violating Rule 8.1(b) of the Rules of Professional Conduct after the Panel found that beginning in May 2019, ODC had to send multiple letters to Respondent to obtain a response from him after requesting additional information.

While the Panel recognized that Respondent was undergoing medical treatment and that court operations were suspended for a short period of time due to the COVID pandemic, there were still many months when Respondent had knowledge of ODC's requests for additional information and had knowledge of his obligation to respond to the requests for information, and did not tender a response until October 2020. [ODC Vol. III, Ex. 42, Bates 3126-3160; 3161-3183].

**E. The existence of mitigating factors.**

In addition to adopting aggravating factors in Scott, the Scott court also adopted mitigating factors in a lawyer disciplinary proceedings and stated that mitigating factors "are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." Lawyer Disciplinary Board v. Scott, 213 W.Va. 209, 216, 579 S.E.2d 550, 557 (2003) *quoting ABA Model Standards for Imposing Lawyer Sanctions*, 9.31 (1992)<sup>14</sup>. It should be clear that

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<sup>14</sup> The Scott Court held that mitigating factors which may be considered in determining the appropriate sanction to be imposed against a lawyer for violating the Rule of Professional Conduct include: (1) absence of a prior disciplinary record; (2) absence of a dishonest or selfish motive; (3) personal or emotional problems; (4) timely good faith effort to make restitution or to rectify consequences of misconduct; (5) full and free disclosure to disciplinary board or

mitigating factors were not envisioned to insulate a violating lawyer from discipline. Respondent may assert that he was experiencing medical issues that warrant mitigation, however there were no mitigating factors present during his representation of Ms. Jones.

At the hearing, Respondent's counsel asked Respondent to "shed some light as to [his] medical situation as to why [Respondent] may or may not have been quite so attentive[.]" [Hrg. Tr. 69]. In response, Respondent said that he had "two medical issues that were that were relatively close together. [He] had a horse, which fell on [him] and crushed [his] pelvis...[He] was diagnosed with cancer. And [he] underwent chemotherapy and radiation for the cancer...[He] was hospitalized for a few weeks with the cancer." [Hrg. Tr. 70]. However, Respondent did not submit any medical records regarding his medical issues. The only evidence is Respondent's letter dated November 1, 2019, wherein he requested a continuance of his November 4, 2019 sworn statement and stated that "earlier this year [he] was diagnosed with throat cancer,...[o]n September 30, 2019, [he] began a course of treatment ...." [ODC Vol. I, Ex. 11, Bates 192]. Based upon his letter, ODC agreed to continue his sworn statement even though he had known about the November 6, 2019 sworn statement since service of the subpoena was accepted in August of 2019. [ODC Vol. I, Ex. 9, Bates 186-189] Then on March 27, 2020, Respondent's counsel sent an undated letter<sup>15</sup> from Respondent's treating physician indicating that he had been treating Respondent since August 9, 2019 when he was referred for a consult, diagnosis and treatment of throat cancer. [ODC Vol. I, Ex. 22, Bates 253]

Clearly, Respondent's medical issues involving his cancer diagnosis occurred more than two years after the conclusion of his representation of Ms. Jones and he cannot therefore justify receiving mitigation for misconduct that took place prior to his medical diagnosis and

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cooperative attitude toward proceedings; (6) inexperience in the practice of law; (7) character or reputation; (8) physical or mental disability or impairment; (9) delay in disciplinary proceedings; (10) interim rehabilitation; (11) imposition of other penalties or sanctions; (12) remorse; and (13) remoteness of prior offenses.

<sup>15</sup> While the letter is undated, it does appear to have been faxed from Respondent's physician on March 24, 2020.

treatment. Likewise, Respondent should not receive any mitigation for the horse fall injury because he could not recall the date when he suffered that injury when questioned by Senior Lawyer Disciplinary Counsel. [Hrg. Tr. 71] When asked by the HPS, the Respondent answered that the horse incident was prior to the time he was representing Ms. Jones. [Hrg. Tr. 79]

## V. SANCTION

The Rules of Professional Conduct state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. Syllabus Pt. 3, *in part*, Committee on Legal Ethics v. Tatterson, 173 W.Va. 613, 319 S.E.2d 381 (1984), *cited in* Committee on Legal Ethics v. Morton, 186 W.Va. 43, 45, 410 S.E.2d 279, 281 (1991). In addition, discipline must serve as both instruction on the standards for ethical conduct and as a deterrent against similar misconduct to other attorneys. In Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987), the Court stated:

In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession.

Moreover, a principle purpose of attorney disciplinary proceedings is to safeguard the public's interest in the administration of justice. Daily Gazette v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984); Lawyer Disciplinary Board v. Hardison, 205 W.Va. 344, 518 S.E.2d 101 (1999).

Absent any aggravating or mitigating circumstances, Standard 4.12 of the *ABA Model Standards for Imposing Lawyer Sanctions* provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury

or potential injury to a client and Standard 4.42 provides that suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

In the instant matter, Respondent committed multiple violations of several Rules of Professional Conduct. Respondent failed to have a written contingent fee agreement. Respondent also failed to timely pay the Nationwide subrogation claim and failed to pay the CMS subrogation claim altogether despite having knowledge that payments must be made and that he was withholding money to pay the same from Ms. Jones' personal injury settlement. Respondent's misconduct also caused his client, Ms. Jones, to worry that her disability status could be impacted by the failure to promptly pay the CMS claim.<sup>16</sup> Moreover, the aggravating factors outweigh any mitigating factors that may be present in this case. Therefore, a serious sanction, such as suspension, should be imposed when an experienced lawyer such as Respondent knowingly and intentionally fails to comply with his obligations, including his fiduciary responsibilities, under the Rules of Professional Conduct.

Respondent failed to take proper precautions to ensure the protection of client and third-party funds when he deposited his own personal funds into his IOLTA account. This act was immediately corrected and therefore does not warrant sanctions.

Furthermore, while Respondent eventually reimbursed the funds that Ms. Jones had paid to CMS, this action does not negate the misconduct, is not a defense, and in this case should not mitigate any proposed sanction. Syl. pt. 8, Lawyer Disciplinary Board v. Geary M. Battistelli, 206 W.Va. 197, 523 S.E.2d 257 (1999); Syl. pt. 4, Committee on Legal Ethics v. Hess, 186 W.Va. 514,

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<sup>16</sup> Ms. Collias who was Ms. Jones' bankruptcy attorney testified that Ms. Jones came to her office on several occasions with the notices from CMS about the unpaid subrogation claim and that she advised Ms. Jones that "it was best to go ahead and – she was so upset over it, afraid it would impact her Social Security payment. I said 'Just go ahead and pay.'" [Hrg. Tr. 38]

413 S.E.2d 169 (1991); and Lawyer Disciplinary Board v. Kupec (Kupec I), 202 W.Va. 556, 569-570, 505 S.E.2d 619, 632-633 (1998), *remanded with directions*, see Lawyer Disciplinary Board v. Kupec (Kupec II), 204 W.Va. 643, 515 S.E.2d 600 (1999). Battistelli and Hess note that mitigation of punishment because of restitution must be governed by the facts of the particular case. Kupec I provide that:

Where the restitution has been made after the commencement of disciplinary proceedings, or when made as a matter of expediency under the pressure of the threat of disciplinary proceedings, some courts have refused to consider it a mitigating factor.  
Kupec I, 515 S.E.2d at 570, citations omitted.

The West Virginia Supreme Court has issued suspensions in cases where an attorney improperly dealt with client property. In Lawyer Disciplinary Board v. Santa Barbara, 229 W.Va. 344, 729 S.E.2d 179 (2012), the Supreme Court dealt with an attorney who failed to diligently handle client matters, failed to communicate with his clients, failed to competently represent his clients, and failed to properly manage his client trust account, and which resulted in a one (1) year suspension. In Mr. Santa Barbara's case, the Court was also faced with multiple complaints and the attorney's depression which was considered by the Court as a mitigating factor to lessen the ultimate sanction to a one (1) year suspension, albeit in consideration of significant mitigation present in that matter.

The Supreme Court has also issued shorter suspensions cases involving similar misconduct. In Lawyer Disciplinary Board v. Harmon-Schamberger, No. 16-0662 (WV 5/16/17) (unreported), the attorney was issued a three (3) month suspension for violating Rules 1.1, 1.4(a) and (b), 1.5(b), 1.15(a), 1.15(c) 1.16(d), 5.3(b) and 8.4(c) of the Rules of Professional Conduct. The attorney was found to have acted negligently in the management of her law practice by authorizing an improperly trained employee to handle communication with clients, and collect payments from them on her behalf, without any supervision, resulting

in the employee's use of funds for personal use. It was noted that the attorney should have recognized the many warning signs presented by the situation and that she could have mitigated damages had she been properly monitoring her employee.

In Lawyer Disciplinary Board v. Hoosier, No. 16-1028 (WV 8/30/17) (unreported), the attorney was found to have violated Rules 1.1; 1.2(a); 1.3; 1.4(a) & (b); 3.2; 1.15(a); 1.15(f); and 7.1(a) in his representation of multiple appointed clients in *habeas* matters. Mr. Hoosier was found to have co-mingled client funds with personal funds when he deposited client settlements into his operating account and had advertising issues. In Hoosier, the Supreme Court issued a three (3) month suspension to the attorney in addition to the imposition of additional continuing legal education hours in the area of ethics and office management.

In Lawyer Disciplinary Board v. Blyler, 237 W.Va. 325, 787 S.E.2d 596 (2016), the Supreme Court suspended the attorney for sixty (60) days for improperly naming the account in which he had been holding almost \$100,000.00 of client funds in trust. The funds were appropriated from the improperly named account by the State to pay the attorney's back taxes. Id. In that case, the Court also considered the fact that the attorney was dealing with his wife's early onset Alzheimer's disease to be a mitigating factor. Id.

This Court has also issued reprimands in some cases. In Lawyer Disciplinary Board v. Chittum, 225 W.Va. 83, 689 S.E.2d 811 (2010), the Supreme Court issued a reprimand to an attorney found to have co-commingled client funds with his own funds with no intent to convert client funds and no actual injury. The Supreme Court also issued a reprimand to an attorney in Lawyer Disciplinary Board v. Niggemyer, No. 31665 (W.Va. May 11, 2005) (unreported). In that case, Mr. Niggemyer was found to have violated Rules 1.3 (lack of diligence), 1.4(a) (communication, failure to keep the client informed about the status of a case), 1.15(a) (safekeeping funds or property of clients or third parties), 1.15(b) (promptly delivering funds or property to

clients or third parties), 1.15(d) (properly maintaining an IOLTA account), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d) (engaging in conduct prejudicial to the administration of justice) stemming from his mishandling of a client's settlement funds.

As the Court has noted, "there is no 'magic formula' ... to determine how to weigh the host of mitigating and aggravating circumstances to arrive at an appropriate sanction; each case presents different circumstances that must be weighed against the nature and gravity of the lawyer's misconduct." Lawyer Disciplinary Board v. Sirk, 240 W.Va. 274,282, 810 S.E. 2d 276, 284 (2018). For the public to have confidence in our disciplinary and legal systems, lawyers who engage in the type of conduct exhibited by Respondent must be removed from the practice of law for some period of time. A license to practice law is a revocable privilege and when such privilege is abused, the privilege should be revoked. Such sanction is also necessary to deter other lawyers from engaging in similar conduct and to restore the faith of the victims in this case and of the general public in the integrity of the legal profession.

## **VI. RECOMMENDED SANCTIONS**

Rule 3.15 of the Rules of Lawyer Disciplinary Procedure provides that the following sanctions may be imposed in a disciplinary proceeding: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment.

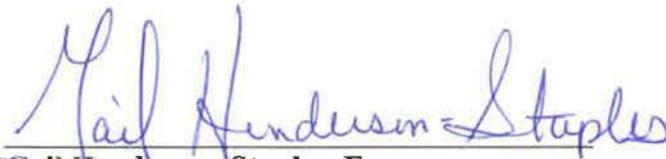
For the reasons set forth above, the Hearing Panel Subcommittee recommends the following sanctions:

- A. That Respondent's law license be suspended for Ninety (90) days;

- B. That upon his reinstatement, Respondent be placed on One (1) year of supervised practice by an active attorney in his geographic area in good standing with the West Virginia State Bar and as agreed upon by ODC;
- C. That Respondent must complete nine (9) additional hours of continuing legal education in the area of law office management, including at least six (6) of those hours in IOLTA account management prior to Respondent's reinstatement;
- D. That Respondent must comply with the mandates of Rule 3.28 of the Rules of Lawyer Disciplinary Procedure; and
- E. That Respondent be ordered to pay the costs of these proceedings pursuant to Rule 3.15 of the Rules of Lawyer Disciplinary Procedure.

Respectfully submitted,  
Hearing Panel Subcommittee  
Of the Lawyer Disciplinary Board

Dated December 7, 2022



**Gail Henderson-Staples, Esq.**  
**Chair**

**IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

**In Re:** JAMES M. PIERSON, a member of  
of The West Virginia State Bar

**Bar No.:** 2907  
**Supreme Court No.:** 21-0590  
**I.D. No.:** 18-03-191

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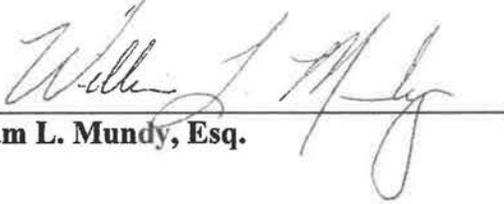
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**REPORT OF THE HEARING PANEL SUBCOMMITTEE**

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Dated December 7, 2022

  
William L. Mundy, Esq.

IN THE SUPREME COURT OF APPEALS  
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REPORT OF THE HEARING PANEL SUBCOMMITTEE

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Dated December 7, 2022

Loretta Walker Sites  
Loretta Walker Sites, ACP, Laymember

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**CERTIFICATE OF SERVICE**

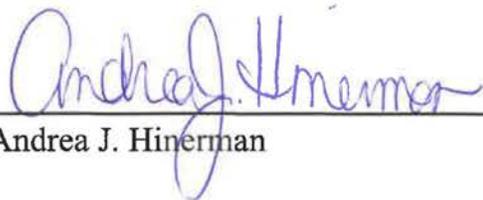
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This is to certify that I, Andrea J. Hinerman, Senior Lawyer Disciplinary Counsel for the Office of Lawyer Disciplinary Counsel, have this day, the 16<sup>th</sup> day of December, 2022, served a true copy of the foregoing "**REPORT OF THE HEARING PANEL SUBCOMMITTEE**" upon Paul Saluja, Esquire, counsel for Respondent James M. Pierson, by e-mailing and mailing the same via United States Mail, with sufficient postage, to the following address:

Paul Saluja, Esquire  
Post Office Box 3856  
Charleston, West Virginia 25338  
[psaluja@salujalaw.com](mailto:psaluja@salujalaw.com)

**Notice to Respondent:** for the purpose of filing a consent or objection hereto, pursuant to Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, either party shall have thirty (30) days from today's date to file the same.

  
\_\_\_\_\_  
Andrea J. Hinerman