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



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

Bar No.: 2907
I.D. No.: 18-03-191

FILE COPY

STATEMENT OF CHARGES

To: James M. Pierson
Post Office Box 2291
Charleston, West Virginia 25328

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 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 time of the accident, Ms. Jones was receiving Social Security disability payments and her medical insurer was Medicare.

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 \$1,000.00.¹ Respondent’s hourly rate was \$250.00 and \$125.00 for paralegal and law clerk time.
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.
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.
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 fees², equitable distribution and family support). Judgment was stayed as long as

¹ Complainant 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 for this payment.

² Respondent’s most recent billing statement for the divorce matter (produced pursuant to this disciplinary proceeding)

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 attorneys fees owed to Pierson Legal Services.”

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.
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. Ms. Jones is unaware of any attempts by Respondent to collect on the Judgment.³

indicates that Ms. Jones owes Respondent attorney fees in the amount of \$12,777.56.

³ In March of 2017, Ms. Jones went to the 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 were garnished and Ms. Jones received a monthly check for a time.

9. Meanwhile, 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.
10. 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.
11. 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.”
12. 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.”
13. 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.
14. 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.

15. 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).
16. Ms. Jones' client file contains an unsigned Settlement statement.⁴ 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.
17. 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, 2016.⁵

⁴ In or about 2017, Ms. Jones retained Shari Collias, Esquire, to help her file for bankruptcy. As part of the bankruptcy representation, 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.

⁵ 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 – Thank 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

18. 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.
19. 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. Respondent was reinstated on July 10, 2019.
20. 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.
21. 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.
22. 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

September 5, 2017, for credit for the sale of Mr. Jones’ motorcycle. The total still due, including finance charges, was \$12,777.56.

Investigative Subpoena issued on November 4, 2019, including the production of documents, remain in full force and effect,”

23. 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.
24. 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.
25. 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.
26. 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. On April 3, 2020, the Supreme Court of Appeals issued an amended Order extending the stay until May 4, 2020. On April 22, 2020, the Supreme Court of Appeals issued a Second Amended Order which extended the stay until May 15, 2020.

27. After ongoing discussions with Respondent's counsel throughout the spring and summer of 2020, Respondent's sworn statement was eventually 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 eventually appeared for his sworn statement on October 20, 2020, and October 27, 2020.
28. On October 27, 2020, Respondent provided the exhibits which had been referenced but not attached to his August 24, 2018.⁶
29. 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.

⁶ 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.

30. 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.
31. 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.
32. Upon information and belief, there is no check paid from Respondent's Premier Bank IOLTA account (9196) where Ms. Jones is the payee which would indicate that Ms. Jones received her share of the \$5,000.00 settlement from State Farm in the amount of \$1,492.31.⁷
33. Respondent wrote no checks from his Premier Bank IOLTA account (9196) in August 2016.
34. 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,

⁷ In the complaint, Complainant stated that Ms. Jones had agreed that Respondent "could have her share of any personal injury settlement." However, prior to the settlement of the personal injury matter, Respondent was awarded attorney's fees. Therefore, Complainant said that they decided that Ms. Jones could keep her share of the personal injury settlement. There is no writing that reflects any agreement between Respondent and Ms. Jones for disbursement of the State Farm settlement funds. Respondent's Contract for Legal Services with Ms. Jones in the divorce matter provides in paragraph 9 that "We will have a lien on all your documents, property, or money in my possession for the payment of all sums due use from you under the terms of this agreement. In addition, We [sic] are entitled to a charging lien ensuring that, if We [sic] elect, payment to us will come from any money you receive as part of the settlement in your case."

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.

35. 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 Bank⁸, a second General Account (0768) at Summit Bank, a third IOLTA account (4504) at BB&T and a third General Account (7448) at BB&T. All of these accounts are associated with Respondent and Pierson Legal Services.⁹
36. Complainant also alleged that Respondent did not promptly pay Nationwide its subrogation claim. 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?” Eventually, Respondent paid Nationwide by check dated

⁸ 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. See, ¶ 15, *supra*.

⁹ Respondent also maintained payroll accounts at both Premier Bank and Summit Bank.

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. 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; however, upon information and belief, there is no prior check paid to Nationwide from either Respondent's Premier Bank IOLTA account (9196) or the Summit Bank General Account ending in 4633.

37. Upon information and belief, there are no checks to Ms. Jones and no checks to Nationwide, other than the March 27, 2017 check, from any of Respondent's bank accounts in reference to the personal injury matter.
38. Upon information and belief, 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"). 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 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.¹⁰

39. By December 1, 2016, Respondent's Premier Bank IOTLA Account (9196) had a balance of \$250.01.
40. Upon information and belief, 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. For example, 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 a Debit of \$2,700.00 identified as "Farm income sale of cattle" on December 5, 2016. Then on December 30, 2016, there was a deposit of an insurance check payable to both "[a client] and Respondent as his attorney" in the amount of \$90,000.00. For example, the February 29, 2020 bank statement for Respondent's Summit Bank IOLTA account (4625) includes a Debit to "Payroll" on February 19, 2020, in the amount of \$1,200.00.
41. Because he failed to have a written contingent fee agreement with Cynthia Jones, Respondent violated Rule 1.5(c) of the Rules of Professional Conduct, as follows:

Rule 1.5. Fees.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, A contingent fee agreement shall be in a writing signed by the client and shall

¹⁰ On February 1, 2017, Ms. Jones wrote a check herself to pay CMS in the amount of \$456.71 (total after accumulation of interest).

state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

42. Because he failed to promptly pay the subrogation claims owed to Nationwide and CMS while representing Cynthia Jones, 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 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.

43. Because he failed to safeguard funds belonging to clients or third person, including Nationwide and CME, and comingled personal property with property of clients or third persons in his Premier Bank IOLTA account (4633) and his Summit Bank IOLTA account (4625), Respondent violated 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.

44. Because he wrongfully misappropriated and converted client funds and/or funds due his client and/or to a third person to his own personal use, Respondent violated Rule 8.4(c) and 8.4(d), 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;

45. Because 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, Respondent violated Rule 1.15(b), 1.15(f) and State Bar Administrative Rule 10, as follows:

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.

(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 Accounts; IOLTA Program.

[See Attachment A]

* * *

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 19th day of June, 2021, and
ISSUED this 28 day of June, 2021.



Amy C. Crossan, Chairperson
Investigative Panel
Lawyer Disciplinary Board