

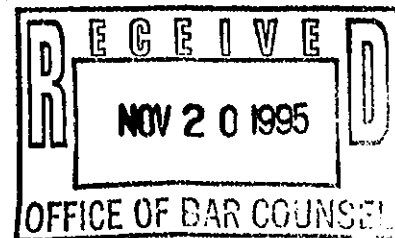
STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 15th day of November, 1995, the following order was made and entered:

Lawyer Disciplinary Board,  
Complainant

vs.) No. 22838

James M. Pool, an active member of The  
West Virginia State Bar, Respondent



On a former day, to-wit, October 3, 1995, came the complainant, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Janice B. Binder, its counsel, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition in the above-captioned proceeding, recommending (1) that the respondent, James M. Pool, an active member of The West Virginia State Bar be admonished; (2) that he make restitution in the amount of Seven Thousand Eight Hundred Five Dollars (\$7,805.00) to Triangle Associates within thirty days of entry of this order; and (3) that jurisdiction of this matter remain with the Lawyer Disciplinary Board until the respondent files with the Office of Disciplinary Counsel a verification of the payment in full of the aforesaid restitution.

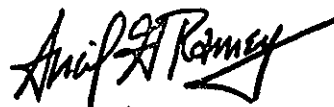
There being heard neither consent nor objection from the respondent or the Office of Disciplinary Counsel, pursuant to Rule 3.11, Rules of Lawyer Disciplinary Procedure, it is hereby ordered that the written recommended disposition of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board be, and it hereby is, adopted. It is therefore ordered (1) that the respondent, James M. Pool, an active member of The West Virginia State Bar be, and he hereby is, admonished; (2) that

respondent make restitution in the amount of Seven Thousand Eight Hundred Five Dollars (\$7,805.00) to Triangle Associates within thirty days of entry of this order; and (3) that jurisdiction of this matter remain with the Lawyer Disciplinary Board until the respondent files with the Office of Disciplinary Counsel a verification of the payment in full of the aforesaid restitution.

Service of a copy of this order upon all parties shall constitute notice of the contents herein.

A True Copy

Attest:



Clerk, Supreme Court of Appeals

BEFORE THE LAWYER DISCIPLINARY BOARD  
OF THE  
STATE OF WEST VIRGINIA

**FILE COPY**

IN RE: JAMES M. POOL, an active member of I.D. No. 93-01-245  
The West Virginia State Bar Supreme Court No. 22838

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HEARING PANEL SUBCOMMITTEE REPORT  
FINDINGS OF FACTS, CONCLUSIONS OF LAW  
MITIGATION AND RECOMMENDED DISCIPLINE

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The Hearing Panel Subcommittee, having reviewed the Stipulated Findings of Fact, Conclusions of Law, and Recommended Discipline in this matter, does find them to be acceptable and, consistent with the Stipulated Findings of Fact, Conclusions of Law, Mitigation, and Recommended Discipline does make the following Findings of Fact, Conclusions of Law and Recommended Discipline:

FINDINGS OF FACTS

1. The parties stipulate that the exhibits incorporated in the Stipulation and other documents attached to the Stipulation are part of the record herein and are true copies.
2. James M. Pool ("Respondent" herein) is a licensed member of The West Virginia State Bar who practices in Clarksburg, Harrison County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to the West Virginia State Bar on June 14, 1988.

3. Elizabeth Denise Poling, also known as Denise Poling, was severely injured in an automobile accident on June 11, 1989 ("the accident"). According to Respondent, Ms. Poling was receiving public assistance for herself and her minor child at the time of the accident.

4. On July 28, 1989, Respondent entered a contingent fee contract with Ms. Poling to investigate and to prosecute Ms. Poling's claims with regard to injuries sustained in the accident. Exhibit 1.

5. As a result of the accident, Ms. Poling required medical care over a period of time for her life threatening injuries.

6. Dr. Gerald W. Pifer, ("Complainant"), of Triangle Orthopedic Associates, participated in a surgery on Ms. Poling to carry out an open reduction and internal fixation of her spine. Exhibit 13,

7. On November 26, 1990, Respondent issued a letter of protection to Triangle Orthopedic Association (Exhibit 4, herein incorporated). The letter states in relevant part: "This office will protect your outstanding bill for medical services provided to this individual due to this accident from any recovery which may be obtained by this office on behalf of Denise Poling."

8. Respondent filed suit on June 11, 1991, on behalf of Ms. Poling in the Circuit Court of Harrison County, Civil Action Number 91-C-404-1, ELIZABETH D. POLING, an individual and ELIZABETH D. POLING, Mother and Next Friend of JASON R. POLING, a minor v. KEVIN H. LAYFIELD an individual; ROBERT G. WHARTON, an individual; and DAVID C. ALLMAN, individually and d/b/a DAVID C.

ALLMAN INSURANCE AGENCY; STATE FARM INSURANCE COMPANY, a corporation; and ERIE INSURANCE COMPANY, a corporation.

9. At the time the civil complaint was filed, the total medical bills were alleged to be \$153,298.66. Exhibit 5.

10. Ms. Poling's medical bill at Triangle Orthopedic Associates totalled \$7,805.00 at the time the personal injury case was filed. Exhibit 5.

11. The insurance available was \$100,000.00 on each of the two vehicles involved. In June 1991, the first carrier paid its total policy of \$100,000.00 plus \$20,000.00 representing the amount it might be at risk for the alleged failure to offer sufficient underinsured coverage to its insured. See, Exhibit 6, herein incorporated. The second carrier paid its total policy proceeds of \$100,000.00 in October 1991 as a structured settlement. The settlement gave Ms. Poling a monthly payment of \$685.00 for her lifetime or to her son through the year 2042. Exhibit 9.

12. The final settlement in Civil Action No. 91-C-404-1 was as follows:

Gross Settlement Amount:	\$220,000.00
Less Attorney Fees	73,333.00
Less Structured Settlement	100,000.00
Less Disbursements	282.72
Less Attorney Retainer	1,000.00
Net to Client	\$ 45,384.28

Exhibit 8.

13. On September 4, 1991, Respondent issued two checks to Ms. Poling totalling \$45,384.28. Such amount represented a lump sum

payment to Ms. Poling from the award received from State Farm Insurance Company. Exhibit 8.

14. Respondent, Investigator Jack Lane, Ms. Poling and her mother met in September 1991 to discuss the settlement.

Respondent advised Ms. Poling that her insistence upon receipt of the lump settlement would mean she would be responsible for payment of all medical bills including the bill for Triangle Associates.

15. By letter dated September 12, 1991, Respondent wrote to Ms. Poling setting forth the final disbursement of the settlement. The letter also states, "As I indicated to you at the time we made the disbursement, you are responsible for any and all outstanding medical bills from the lump sum payment you received.

This was your choice and since the money belonged to you I have no legal right to pay creditors with your money without your consent." Exhibit 7.

16. Upon receipt of the settlement and certificate of structured settlement, Respondent did not contact Triangle Associates, Inc.

17. Complainant's office learned that Ms. Poling's case had been settled and the proceeds disbursed directly to Ms. Poling by telephoning Respondent's office on May 25, 1993. Exhibit 10, herein incorporated. During the telephone conversation, Complainant requested documentation of the settlement.

Respondent admits he did not promptly send documentation of the settlement as requested by Complainant.

18. Respondent no longer uses the same type of protection letters and has not done so since years prior to the Complainant filing the instant Complaint.

19. Respondent, through counsel, has attempted to negotiate a settlement of the fee with Complainant. In response to Respondent's offer made through counsel, Dr. Pifer, through counsel, threatened suit in Pennsylvania but offered, if he receives payment, to write the Committee on Legal Ethics seeking to withdraw his complaint. Disciplinary Counsel has informed Dr. Pifer that withdrawal of his Complaint would not mean that the ethics charges would be dropped.

20. Respondent, in agreeing to pay Dr. Pifer \$7,800.00 has taken into consideration the possibility Dr. Pifer could sue Ms. Poling and recover. Respondent seeks to avoid this outcome for his former client.

#### CONCLUSIONS OF LAW

21. Respondent agrees that he failed to notify Triangle Orthopedic Associates, a third party with an interest in Ms. Poling's settlement, failed to promptly deliver funds to the third party, and failed to promptly render a full accounting when Complainant requested an accounting. By these acts Respondent has violated Rule 1.15(b) of the Rules of Professional Conduct which states:

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 the request by the client or third person, shall promptly render a full accounting regarding such property.

22. It is noted that L.E.I. 82-5 is somewhat on point. Exhibit 17.

RECOMMENDED DISCIPLINE

23. Since this is a case of first impression for the West Virginia Supreme Court of Appeals, Respondent no longer uses the letter at issue here to guarantee payment, and Respondent has agreed to paid \$7,805.00 to Triangle Associates within 30 days of entry of the final order, it is recommended that an admonishment is an appropriate sanction. It is further recommended that jurisdiction be retained until the respondent files a verification of payment with the Office of Lawyer Disciplinary Counsel.

\_\_\_\_\_  
Date

\_\_\_\_\_  
R. Kemp Morton, Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl L. Henderson, Esquire

9/26/95  
Date

Vivian Baumgardner  
Vivian Baumgardner



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9/28/95

Date

9/28/95

Date

Date



R. Kemp Morton, Chairperson



Cheryl L. Henderson, Esquire

Vivian Baumgardner