

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2221 Disciplinary Docket No. 3
Petitioner :
v. : No. 160 DB 2015
: Attorney Registration No. 203818
JOSHUA ADAM JANIS, :
Respondent : (Chester County)

ORDER

PER CURIAM

AND NOW, this 25th day of November, 2015, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is hereby granted, and Joshua Adam Janis is suspended on consent from the Bar of this Commonwealth for a period of five years. Respondent shall comply with all the provisions of Pa.R.D.E. 217.

A True Copy Patricia Nicola
As Of 11/25/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 160 DB 2015
Petitioner :
v. : Attorney Registration No. 203818
JOSHUA ADAM JANIS :
Respondent : (Chester County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members David E. Schwager, P. Brennan Hart, and Douglas W. Leonard, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on October 1, 2015.

The Panel approves the Joint Petition consenting to a five year suspension and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.



David E. Schwager, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 10/30/2015

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 160 DB 2015
Petitioner :
:
v. :
:
: Attorney Reg. No. 203818
JOSHUA ADAM JANIS, :
Respondent : (Chester County)

JOINT PETITION IN SUPPORT
OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215(d)

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Harold E. Ciampoli, Jr., Disciplinary Counsel and Respondent, Joshua Adam Janis (hereinafter, "Respondent"), by and through his counsel, James C. Schwartzman, Esquire, respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant

FILED 10/01/2015 The Disciplinary Board of the Supreme Court of Pennsylvania

to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent, Joshua Adam Janis, was born on August 29, 1980, and was admitted to practice law in the Commonwealth on October 18, 2006. Respondent is on active status and maintains his office at 11 Lincoln Drive, P.O. Box 340, Downingtown, Pennsylvania 19335. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

I) MISAPPROPRIATION OF LAW FIRM FUNDS

A) CICCARELLI COMPLAINT

3. Respondent worked as an associate attorney for the law firm of attorney Lee Ciccarelli, Ciccarelli Law Offices, 304 North High Street, West Chester, PA 19380 (the "Firm") from approximately October 18, 2006 through December 29, 2013.

4. The Firm paid Respondent a base salary and an end-of-the-year bonus.

5. In the spring-summer of 2013, Mr. Ciccarelli brought to Respondent's attention complaints Mr. Ciccarelli had received

from the Firm's family law clients accusing Respondent of lack of proper communication.

6. As a result of various issues, Mr. Ciccarelli requested a private meeting with Respondent outside of the office to discuss these matters.

7. On August 14, 2013, Respondent met with Mr. Ciccarelli and Mr. Ciccarelli's wife at Mrs. Ciccarelli's office in Chester County Hospital, at which time Respondent admitted:

- a) He was "messaging up" at work;
- b) He had taken money belonging to the Firm directly from clients and had concealed it from Mr. Ciccarelli;
- c) He had secretly created the website jajfamilylaw.com because he was afraid he would get fired;
- d) He had illicitly received \$1,000.00 from Firm client Robert Davis; \$1,500.00 from Firm client Brianna Sands; \$750.00 from Firm client Catherine Young; and \$2,500.00 from Firm client Dan McCarthy.

8. On August 26, 2013, Respondent signed a *Repayment Agreement* in which he acknowledged that he owed Mr. Ciccarelli

and his Firm \$5,750.00 for services provided by the Firm on behalf of Firm clients Davis, Sands, Young and McCarthy.

9. In the weeks that followed Respondent's meeting with the Ciccarellis, Respondent represented to Mr. Ciccarelli that he was receiving counseling and was committed to improving his practice.

10. In December 2013, an associate of Mr. Ciccarelli discovered that Firm client Adriana Griffin had paid Respondent Firm fees that Respondent had failed to report to Mr. Ciccarelli and that Respondent had falsely represented to the associate that Respondent had filed a divorce complaint in the Griffin case.

11. When confronted by Mr. Ciccarelli about the Griffin case, Respondent acknowledged in a December 19, 2013 email to Mr. Ciccarelli the following: "I am well aware of the issues I had earlier this year, and unfortunately, this appears to go along with that..."

12. By email dated December 29, 2013, Respondent informed Mr. Ciccarelli that Respondent was resigning from the Firm effective immediately.

13. Mr. Ciccarelli filed a disciplinary complaint in January 2014 against Respondent after it became clear that Respondent's conversion of Firm funds was more extensive than

what was disclosed in the *Repayment Agreement* Respondent had signed.

14. Respondent admits that in 2013 he misappropriated and concealed from Mr. Ciccarelli money belonging to the Firm totaling \$6,000.00 that he received directly from clients Davis, Sands, Young and McCarthy.

15. Respondent also admits that in 2013 he misappropriated and concealed from Mr. Ciccarelli money belonging to the Firm totaling \$4,000.00 that he received directly from clients Adriana Griffin and Bryon Shearer. These misappropriations were in addition to the clients whom Respondent identified in his August 14, 2013 admission to Mr. Ciccarelli.

16. Respondent admits that he made false representations to Mr. Ciccarelli's associate that Respondent had filed a complaint in the Griffin case.

17. Respondent also admits that on July 2, 2013 he misappropriated and concealed from Mr. Ciccarelli a \$2,980.27 referral fee belonging to the Firm in connection with the personal injury claim of Carlo and Louise Fortuna.

II) FALSE REPRESENTATIONS TO TRIBUNAL AND TO CLIENT
AND CLIENT NEGLECT

A) JUDGE JACQUELINE CODY COMPLAINT

18. Respondent represented Randi Kremer Saunders in the matter captioned: *Lamb McErlane, PC vs. Randi Kremer Saunders*, Court of Common Pleas of Chester County, No. 2013-06921 ("the Saunders Case").

19. The Saunders Case was originally scheduled for trial on September 2, 2014; it was continued to October 2014 based on Respondent's motion for continuance.

20. The October 2014 trial date was continued until the trial term commencing November 24, 2014.

21. On Wednesday, November 26, 2014, Respondent was notified that the matter was called for trial to commence on Monday, December 1, 2014.

22. Respondent did not notify Ms. Saunders of the December 1, 2014 trial date until Friday, November 28, 2014.

23. By text messages exchanged between Respondent and Ms. Saunders on November 28, 2014:

- a) Ms. Saunders expressed to Respondent that "there is no way [she] could go to trial on such short notice"; and

- b) Respondent assured Ms. Saunders to "trust" him that the December 1, 2014 trial date would be "moved."

24. Respondent instructed Ms. Saunders not to appear in court on December 1, 2014, because it was only a procedural matter of Respondent requesting a continuance.

25. Based on Respondent's instructions, Ms. Saunders did not appear in court on December 1, 2014.

26. On December 1, 2014, at the call of the list before Judge Jacqueline Cody:

- a) The Saunders Case was called for trial;
- b) Respondent requested a continuance of the Saunders Case;
- c) Judge Cody denied Respondent's request for a continuance;
- d) Respondent requested a few minutes to speak with Ms. Saunders;
- e) Judge Cody granted Respondent's request to speak with his client;
- f) Respondent called Ms. Saunders and engaged in the following conversation:

(Respondent): I just have to ask because I'm up here, but I know the answer: would you settle this case for \$50,000.00?

(Ms. Saunders): "Of course not! Why are you even asking me that?"

(Respondent): "I know, I know...don't worry about it. I'm getting a continuance";

- g) Respondent represented to the Court the parties had reached a settlement; and
- h) The purported settlement agreement was placed on the record.

27. Ms. Saunders had not given Respondent authority to enter into a settlement on her behalf.

28. Respondent never advised Ms. Saunders of the purported settlement agreement.

29. Respondent's representation to the Court that Ms. Saunders had agreed to a settlement was false and Respondent knew it to be false.

30. The purported settlement agreement called for Ms. Saunders to pay \$50,000.00 to the Plaintiff and further provided that Plaintiff's entire claim of \$83,302.04 would become due and payable by Ms. Saunders upon any default.

31. On December 4, 2014, Ms. Saunders was in the Chester County Justice Center on an unrelated custody matter at which time:

- a) Ms. Saunders spoke to Respondent; and

b) Respondent mentioned nothing to her about the Saunders Case or what had transpired on December 1, 2014.

32. On December 18, 2014, Ms. Saunders sent Respondent the following email:

As year ends, I'm just trying to 'get my ducks in a row' for (hopefully a better 2015.) On that note, I wanted to check in on status and see when and how we are going to put this case behind me finally. Is anything happening on settlement negotiations? If not, how are we to avoid the trial date coming up quickly on us again (like happened in Dec.)?.. I know we have spoken a fair bit over the last months about status, but relatively little seems to have been done on the case itself. I am concerned and really need to understand what is happening to close it.

33. Respondent received Ms. Saunders' December 18, 2014 email but did not respond to it.

34. On January 4, 2015, Ms. Saunders sent Respondent the following email: "Perhaps you overlooked my email last month(?)...but still awaiting a reply when you get a moment."

35. Respondent received Ms. Saunders' January 4, 2015 email but did not respond to it.

36. On January 19, 2015, Ms. Saunders sent Respondent the following email:

Josh- Is everything OK? I have been reaching out to you for over a month now in repeated emails. I'm very confused and concerned, and have no idea what is happening on my case. Can you please call or write back at your earliest convenience?

37. Respondent received Ms. Saunders' January 19, 2015 email but did not respond to it.

38. On January 21, 2015, Ms. Saunders texted Respondent the following:

Josh- I have tried teaching (sic) you by email repeatedly over a month and tried you on phone today too. Can you lette(sic) know when we can talk? I don't understand what is happening on my case."

39. On Thursday January 22, 2015, the following texts were exchanged between Respondent and Saunders:

(Respondent): "Hi Randi I will call you this afternoon after court";

(Ms. Saunders): "Thank you. Is everything OK on my case? Anything coming up soon I need to know?"

(Respondent): "Nothing coming up we well talk later!";
and

(Ms. Saunders): "OK-Great. Look forward to getting update."

40. Respondent's representation to Ms. Saunders that nothing was coming up on her case was false and/or misleading and Respondent knew it to be false and/or misleading.

41. Respondent did not call Ms. Saunders the afternoon of January 22, 2015, as he had promised.

42. On January 22, 2015, at 7:21 p.m., Ms. Saunders texted Respondent the following: "I never got a call today. Tomorrow then?"

43. On January 23, 2015, the following text messages were exchanged between Respondent and Ms. Saunders:

- a) (Ms. Saunders): "Josh, will you be calling me?";
- b) (Respondent): "Yes. I did try you around 3:45 yesterday. I will be calling after 1";
- c) (Ms. Saunders): "Really? I don't show any call on my cell yesterday from you. Anyway, I'll look forward to hearing from you after 1";
- d) (Respondent): "Yes on my outgoing calls:) but speak to you today; and
- e) (Ms. Saunders 6:48 p.m.): "I never got a call from you today-??"

44. On January 29, 2015, Ms. Saunders sent Respondent the following email:

Josh- What in the world is going on? I have tried to reach you by email three (3) times since December 18 (see messages sent and re-sent below), but you have never responded. Last week, I tried reaching you through phone and text messages too. You texted me back on Thursday (1/22) and said you would call that afternoon- but never called. You did the same thing on Friday (1/23): texted me saying that you would call me that afternoon- but again never called. I don't understand. You are my attorney of record, yet I have no idea what is happening on the case. What has been filed (if anything)? What court dates are coming up (if any)? Are you still negotiating with Lamb, McErlane to resolve? I have not heard from you as to the status nor ever gotten copies of anything filed in court or sent between counsel in this case. Month after month,

you just keep requesting continuances on the trial list but with no strategy on next steps. Also, is there anything that we need to do for Monday? Please contact me ASAP to explain status. I'm sure you understand why I am concerned."

45. Respondent received Ms. Saunders' January 29, 2015 email but did not respond to it.

46. Shortly after her January 29, 2015 email to Respondent, Ms. Saunders called the Chester County Prothonotary's Office and was informed that the Plaintiffs had filed a Motion to Enforce Settlement in the Saunders Case.

47. Respondent had never advised Ms. Saunders that the Plaintiffs had filed a Motion to Enforce Settlement.

48. After learning that the Plaintiffs had filed a Motion to Enforce Settlement, Ms. Saunders sought the advice of attorney Stephen J. Kelly.

49. On February 4, 2015, Mr. Kelly called Respondent, at which time:

- a) Respondent advised Mr. Kelly that Ms. Saunders had given Respondent the authority to use Respondent's discretion in handling her case and Respondent believed he had the authority to settle her case;
- b) Mr. Kelly inquired as to a text message Ms. Saunders had sent to Respondent in which she

rejected a demand of \$50,000.00 made by the plaintiff;

- c) Respondent claimed that Ms. Saunders had later changed her mind when she spoke to Respondent on the telephone on December 1, 2014;
- d) Mr. Kelly requested Respondent to send him copies of Ms. Saunders' file and all correspondence Respondent had with Ms. Saunders; and
- e) Respondent agreed to send Mr. Kelly the requested items.

50. Respondent's representations to Mr. Kelly as set forth in the paragraphs 49(a) and (c) were false and Respondent knew them to be false.

51. Subsequent to February 4, 2015, Mr. Kelly made several telephone calls to Respondent and left several messages.

52. Respondent never responded to Mr. Kelly's calls.

53. Respondent never provided Ms. Saunders' file to Mr. Kelly.

54. By Order dated March 2, 2015, Judge Cody granted the Plaintiff's Motion to Enforce Settlement Agreement and entered judgment against Ms. Saunders in the amount of \$83,302.04.

55. On April 14, 2015, Respondent appeared in Court and entered into an agreement that, *inter alia*, required Respondent

to personally pay \$25,000.00 to Plaintiff in the Saunders Case as part of a full settlement of the claims.

56. Subsequently Respondent indicated to the parties that he would not make the final payment due under the April 14, 2015 settlement agreement.

57. Respondent never withdrew his appearance in the Saunders Case.

**III) CONVERSION & FAILURE TO SAFEGUARD CLIENT FUNDS;
MISREPRESENTATION TO CLIENT AND CLIENT NEGLECT**

A) DIDONATO COMPLAINT

58. On February 20, 2014, Dawn M. DiDonato consulted with Respondent and provided him with a \$1,500.00 retainer via a credit card payment.

59. The \$1,500.00 retainer was funds belonging to Ms. DiDonato, represented an advanced payment of expenses in connection with Ms. DiDonato's legal matter and constituted Rule 1.15 funds.

60. On February 20, 2014, Respondent deposited Ms. DiDonato's \$1,500.00 into his DNB, Attorney at Law Account ("the Account").

61. At the time of the deposit and thereafter, the Account contained other funds belonging to Respondent.

62. The Account was not an IOLTA or a trust account.

63. Respondent converted Ms. DiDonato's funds when he deposited them into a non-trust account.

64. On or about March 5, 2014, Respondent and Ms. DiDonato entered into a Contingency Fee Agreement wherein Respondent agreed to represent Ms. DiDonato in all matters relating to a civil action against Delaware County regarding a breach of privacy.

65. On May 22, 2014, Ms. DiDonato called Respondent, at which time Respondent represented he:

- a) had filed Ms. DiDonato's complaint with the court;
- b) was now in the process of waiting for a response from Delaware County;
- c) would be "filing additional paperwork with the courthouse"; and
- d) would, by week's end, mail her copies of all filed paperwork with a written estimated "timeline" of events for Respondent's handling of Ms. DiDonato's case.

66. Respondent's representation that he had filed Ms. DiDonato's complaint with the court was false and Respondent knew it to be false because he had not filed Ms. DiDonato's complaint with the court.

67. Respondent did not provide Ms. DiDonato the information he promised.

68. By email to Respondent dated June 4, 2014, Ms. DiDonato:

- a) advised she had not received the paper work Respondent promised her;
- b) requested Respondent to send her copies of paperwork that had been completed in her case; and
- c) requested Respondent to provide a status update on her case and an estimate as to when it would be resolved.

69. Respondent received Ms. DiDonato's June 4, 2014 email but did not respond to it.

70. In early July 2014, Ms. DiDonato left Respondent a voicemail requesting copies of Ms. DiDonato's filed paperwork.

71. Respondent received the July 2014 voicemail but did not respond to it.

72. On September 10, 2014, Ms. DiDonato left a voicemail requesting her copies of her filed paperwork.

73. Respondent received the September 10, 2014 voicemail but did not respond to it.

74. By email to Respondent dated November 5, 2014, Ms. DiDonato:

- a) stated Respondent had not responded to her phone and email messages;

- b) advised she was disappointed with Respondent's lack of communication and failure to keep her reasonably informed about the status of her case;
- c) reminded Respondent that it was almost a year since litigation had been initiated and she had yet to receive any documents relating to her case; and
- d) requested Respondent to contact her by phone or email.

75. Respondent received the November 5, 2014 email but did not respond to it.

76. By letter to Respondent dated December 2, 2014, Ms. DiDonato requested Respondent provide her with a detailed status update and copies of all documentation in connection with her case.

77. Respondent received the December 2, 2014 letter but did not respond to it.

78. Ms. DiDonato filed a disciplinary complaint against Respondent on November 12, 2014.

79. By DB-7 Letter dated December 11, 2014, Respondent was apprised of Ms. DiDonato's allegations.

80. By Letter dated February 25, 2015, Respondent, through counsel, submitted a Statement of Position to the December 11, 2014 DB-7, denying any violations of the Rules of Professional Conduct and requesting the matter be dismissed.

81. By DB-7A dated March 25, 2015, Respondent was apprised of allegations, *inter alia*, that he had converted Ms. DiDonato's funds when he deposited them into a non-trust account.

82. Under cover of a letter dated April 6, 2015, Respondent provided Ms. DiDonato a full refund of her \$1,500.00 retainer.

B) FLOWER COMPLAINT

83. On May 27, 2014:

- a) Elizabeth Flower telephoned and spoke with Respondent about representing her son, Charles (Chuck) S. Flower, in a divorce matter;
- b) Mrs. Flower told Respondent that in 2001 Chuck had a civil union in Vermont with another male (Dennis Ulrich);
- c) Mrs. Flower advised Respondent that Chuck was in another relationship and needed to resolve the Vermont union before he could marry again;
- d) Mrs. Flower inquired whether it was necessary for Chuck to obtain a divorce because it was her understanding that Pennsylvania didn't recognize a civil union;
- e) Respondent informed Mrs. Flower that Chuck would need to obtain a divorce before marrying again;

- f) Respondent assured Mrs. Flower that once Dennis was located, the divorce would proceed quickly, and could take as little as 45 days;
- g) Respondent told Mrs. Flower that Respondent's fee for the divorce matter was \$1,000.00 and requested her credit card number;
- h) Respondent took Mrs. Flower's credit card number and deposited Mrs. Flower's \$1,000.00 into the Account;
- i) Respondent told Mrs. Flower that Respondent would contact Chuck to initiate the process of obtaining his divorce; and
- j) Respondent promised to keep in touch with Mrs. Flower and said everything could be done through email.

84. Although Respondent had never previously represented Mrs. Flower or Chuck Flower, Respondent did not provide them with a writing that communicated the rate or basis of his fee.

85. The \$1,000.00 represented a legal fee that had been paid in advance and belonged to Mrs. Flower.

86. The \$1,000 constituted Rule 1.15 funds.

87. On May 27, 2014 and thereafter, the Account contained other funds belonging to Respondent.

88. Respondent converted Mrs. Flower's funds when Respondent deposited them into a non-trust account.

89. On May 27, 2014, Respondent emailed Chuck and advised he would be drafting the complaint immediately and requested to meet with him on the weekend to discuss Chuck's case.

90. On Tuesday June 3, 2014, Respondent met with Chuck and had Chuck sign papers.

91. On July 11, 2014, Mrs. Flower emailed Respondent and inquired as to the progress made on Chuck's divorce.

92. On July 29, 2014, Respondent emailed Chuck that Respondent had just returned from vacation and requested Chuck call Respondent to touch base.

93. On July 29, 2014, Mrs. Flower called Respondent and Respondent told her that he was waiting to hear from Mr. Ulrich.

94. On August 7, 2014, Mr. Ulrich emailed his address and telephone number to Respondent.

95. On August 20, 2014, Mrs. Flower emailed Respondent and:

- a) advised that Chuck had not received the papers Respondent had promised;
- b) expressed concern that the divorce was taking so long; and

c) requested Respondent to email the papers to Chuck as soon as possible.

96. On August 20, 2014, Respondent emailed Chuck and:

- a) apologized for the delay;
- b) attached a verification; and
- c) requested Chuck sign the verification and fax it to Respondent.

97. On August 21, 2014, Chuck faxed Respondent the signed verification page.

98. On September 23, 2014, Mrs. Flower emailed Respondent the following:

"Hi Joshua, it has been over a month since I had faxed you the papers with Chuck's signature. Would like to know when all this is going to be finalized. Chuck is quite anxious to get this over with. Please let me know how much longer this may take."

99. Respondent did not respond to Mrs. Flower's September 23, 2014 email.

100. On September 26, 2014, Mrs. Flower emailed Respondent the following:

Joshua, I know you are busy, but I would really appreciate some kind of update in Chuck's divorce. It's been over a month since I faxed the signed papers to you. Can you tell us how much longer this is going to take? I would greatly appreciate a reply.

101. Respondent did not respond to Mrs. Flower's September 26, 2014 email.

102. On September 29, 2014, Mrs. Flower emailed Respondent the following:

Joshua, I'm starting to wonder if I picked a lawyer that is so busy that my son's case is pushed to the side. You have not responded to my last 2 emails and this whole divorce case is starting to become stressful to my son and myself. And the lack of communication is puzzling to say the least. I am now worried that I paid one thousand dollars and this divorce might take forever. I suppose you won't respond to this email either but I would really appreciate it if you can give us any time frame to when this will be over.

103. On September 29, 2014, Respondent emailed Mrs. Flower the following:

Elizabeth I will be getting back to you this afternoon. I was out Thursday and Friday for Rosh Hashanah. It is my understanding that Dennis accepted service for it early this month. I will email later today with more details and the next steps.

104. Respondent's representation to Mrs. Flower that he believed Dennis accepted service for "it" early this month was false and/or misleading and Respondent knew it to be false and/or misleading because Respondent was aware that no complaint had been filed for Dennis to accept.

105. On September 29, 2014, Respondent emailed Mrs. Flower the following:

I will be sending over an affidavit that Chuck needs to sign and fax back. You can expect that tomorrow. Once that is filed and served the divorce will be complete by the end of the month."

106. Respondent's representation as described in the preceding paragraph was false and/or misleading and Respondent knew it to be false/and or misleading because Respondent had not filed a divorce complaint on behalf of Chuck.

107. On October 1, 2014, Mrs. Flower emailed Respondent the following:

Joshua, your email on Monday, said that you were sending papers Tuesday for Chuck to sign and to be faxed back. Chuck was at our house Tuesday because I have a fax machine but never got any papers. I can't believe you didn't keep your word. I am thoroughly disappointed. What next?

108. On October 1, 2014, Respondent emailed Mrs. Flower the following:

Elizabeth: They were forwarded and attached again. I do apologize they were not received, however, if a situation like that occurs, please call me to advise that they were not received.

109. On October 1, 2014, Mrs. Flower faxed Chuck's signed *Plaintiff's Affidavit Under 3301(D) of the Divorce Code* to Respondent.

110. Between October 2, 2014 and November 3, 2014, Respondent did not communicate with Mrs. Flower or Chuck.

111. On November 3, 2014, Mrs. Flower emailed Respondent the following:

Joshua, I paid you \$1,000.00 for my son's divorce, money of which I didn't really have and am still paying on my credit card, so that my son could divorce and get on with his life and marry the partner he is living with. When can they plan a wedding? This has caused problems with me picking you out of the phone book. I trusted that this would proceed fast with Dennis signing the papers. In our last conversation you said the divorce would be final end of October. You have not answered my emails or calls. I am getting the blame for hiring you. I cannot afford another lawyer so I have to plead with you to get this divorce over with. Why are you taking on cases that you don't have time to at least keep your clients informed? Could you please let me know how much longer this is going to take? My son keeps asking me and I have no answers for him as I made a mistake of calling a lawyer out the phone book.

112. On November 4, 2014, Respondent emailed Mrs. Flower the following:

Hi Elizabeth, The Prothonotary is backlogged with filings at the moment. I expect Chuck's divorce to be granted within the next 1-2 weeks. When I give an estimate it is my best guess, I can't control when a Judge signs the decree but can only inform you to of the status. Once certain papers get filed, it is out of my hands and in control of the court, which it is at this point. I have his case marked to follow up on just about every 3 days. I will get an update to you again by Friday. There is nothing to worry about, no issues at all. Just simply waiting. Thank you."

113. Respondent's November 4, 2014 email was false and/or misleading and Respondent knew it to be false/ and or misleading because Respondent was aware that Chuck's divorce matter would not be granted within the next 1-2 weeks because Respondent had not filed a complaint in Chuck's divorce matter.

114. Between November 5, 2014 and December 22, 2014, Respondent did not communicate in any manner with Mrs. Flower or Chuck.

115. On December 23, 2014, Mrs. Flower emailed Respondent the following:

Joshua, I am starting to wake up to the fact that you never filed the divorce papers when you told me you did which was September 29th. This uncontested divorce would have never taken this long. I am extremely upset over giving you a thousand dollars of money I didn't really have so I could give my son this divorce so he could move on with his life. I can't sleep at night anymore over this whole thing. You assured me this would be over by Christmas. Are you really a lawyer? I think my money was taken from me and now the reality of it is that I'm not getting what I paid for. How can you take money from clients and not do what you say you are going to do? I am so upset and my husband is upset with me for hiring you! You have completely ruined my Christmas. Chuck refuses to talk about it and says he will try to get the money to hire another lawyer. My husband and I live on social security and cannot afford another lawyer. You have told me since October that this divorce would be any day. You are so disappointing. Now, I suppose you will tell me the divorce will be in January. I don't believe you anymore until I see the papers for myself. I will not be having a good Christmas! Thank you."

116. On December 23, 2014, Respondent emailed Mrs. Flower and requested she call Respondent.

117. On December 23, 2014, Mrs. Flower called Respondent, at which time:

- a) Respondent told Mrs. Flower that Respondent knew how stressful the whole thing was for her and Chuck, but reassured her that it would be over soon;
- b) Mrs. Flower replied she was tired of hearing this and wanted a better time frame;
- c) Respondent assured Mrs. Flower that Chuck's divorce would be final by spring; and
- d) Respondent told Mrs. Flower that Respondent believed the reason for the delay was that the Judge had something against gay people and that straight people's divorces are put through first.

118. Between December 24, 2014, and February 19, 2015, Respondent did not communicate in any manner with Mrs. Flower or Chuck.

119. On February 19, 2015, Mrs. Flower emailed Respondent the following:

Joshua, it was December 23 since I last heard from you, almost 2 months ago. Can you give me an update as to where we are now with this? I'm trying to hang in there but it's not easy as we

will be approaching a year since I first hired you to handle my son's divorce. I really need to know where we are with this. Thank you.

120. Respondent did not respond to Mrs. Flower's February 19, 2015 email.

121. On March 4, 2015:

- a) Mrs. Flower called Respondent at 7:54 a.m. and left a message;
- b) Respondent returned Mrs. Flower's call at 8:02 a.m.;
- c) Respondent told Mrs. Flower that Chuck's divorce was final on February 27, 2015; and
- d) Respondent represented to Mrs. Flower that Respondent would send the divorce papers to Chuck within a week or two.

122. Respondent's representation to Mrs. Flower that Chuck's divorce was final on February 27, 2015, was false and Respondent knew it to be false because Respondent had never filed a divorce complaint.

123. On April 7, 2015:

- a) Mrs. Flower called and told Respondent that neither she nor Chuck had received the divorce decree; and

b) Respondent represented to Mrs. Flower that Respondent would put the papers in the mail.

124. On April 10, 2015, Mrs. Flower called and left a message with Respondent's secretary, inquiring if she could pick up the divorce papers from Respondent's office.

125. Respondent did not respond to Mrs. Flower's April 10, 2015 phone call.

126. On April 15, 2015, Mrs. Flower called and left a message with Respondent's secretary that she was upset that Respondent was not returning her calls.

127. Respondent did not respond to Mrs. Flower's April 15, 2015 phone call.

128. On April 16, 2015, Mrs. Flower left a message with Respondent's secretary that she had been informed by the courthouse that there was no record of a divorce complaint filed for Chuck and requested Respondent to call.

129. Respondent did not respond to Mrs. Flower's April 16, 2015 phone call.

130. By letter to Respondent dated April 17, 2015, attorney Nicole L. McDonald:

a) advised that her office represented Elizabeth and Charles Flower;

- b) stated that she was concerned because the Chester County and Berks County Prothonotary Offices had confirmed to her that there had been no divorce filings in their counties under the names of Charles Flower or Dennis Ulrich;
- c) requested to be advised of the state/county of filing, the docket number and status for any complaint that Respondent filed in connection with Chuck's divorce;
- d) instructed Respondent to cease work on the Flower/Ulrich file;
- e) demanded a full refund of Mrs. Flower's \$1,000.00; and
- f) threatened to take the appropriate action to pursue the matter in a court of law if Respondent failed to issue a refund by May 4, 2015.

131. Respondent did not respond to Ms. McDonald until May 4, 2015.

132. On Monday, May 4, 2015, Respondent called Ms. McDonald and left a voicemail message that on Saturday Respondent had processed a reverse charge to Mrs. Flower's credit card account.

133. On May 6, 2015, Respondent spoke with Ms. McDonald on the telephone and promised to provide her proof for the reverse charge.

134. On May 13, 2015, Respondent advised Ms. McDonald that there had been an issue with the reverse credit.

135. By check dated May 12, 2015, payable to Elizabeth Flower, Respondent refunded Mrs. Flower's \$1,000.00.

136. Respondent never filed a divorce complaint on behalf of Chuck Flower.

C) KENNEDY COMPLAINT

137. In late August 2014, Bonnie Kennedy retained Respondent to represent her in a custody matter for her two sons.

138. Respondent told Ms. Kennedy his total fee was \$5,000.00 and requested an initial \$2,500.00 retainer.

139. Although Respondent had never previously represented Ms. Kennedy, he did not provide to her, within a reasonable time after commencing representation, a writing that communicated the rate or basis of his fee.

140. In order to raise funds for his fee, Ms. Kennedy had to take an early distribution from her IRA.

141. On or about September 17, 2014, Ms. Kennedy's significant other, Mario D'Orsaneo, met Respondent in a grocery

store parking lot and provided Respondent with \$2,500.00 cash belonging to Ms. Kennedy.

142. The \$2,500.00 represented a legal fee that had been paid in advance and belonged to Ms. Kennedy.

143. The \$2,500.00 constituted Rule 1.15 funds.

144. Respondent deposited Ms. Kennedy's \$2,500.00 into a non-trust account that contained other funds belonging to him.

145. Respondent converted Ms. Kennedy's funds when he deposited them into a non-trust account.

146. In mid-October 2014, Respondent advised Ms. Kennedy that she had a custody hearing scheduled for November 21, 2014.

147. Respondent's representation to Ms. Kennedy that she had a custody hearing scheduled for November 21, 2014 was false and Respondent knew it to be false because Respondent had not filed anything on behalf of Ms. Kennedy regarding custody.

148. On the morning of November 21, 2014:

- a) Ms. Kennedy called Respondent and inquired where she should meet Respondent; and
- b) Respondent told Ms. Kennedy that her scheduled custody hearing was cancelled because Master Lombardi had an emergency.

149. Respondent's representation to Ms. Kennedy that her scheduled custody hearing was cancelled for that day because

Master Lombardi had an emergency was false, and Respondent knew it to be false.

150. Shortly after November 21, 2014, Respondent informed Ms. Kennedy that a custody hearing had been scheduled for December 2014.

151. Respondent's representation to Ms. Kennedy that a custody hearing had been scheduled for December 2014 was false and Respondent knew it to be false because Respondent had not filed anything on behalf of Ms. Kennedy regarding custody.

152. On Monday, December 22, 2014:

- a) Ms. Kennedy arrived at a parking garage and proceeded towards the Chester County Courthouse;
- b) Respondent observed her walking and inquired where she was going;
- c) Ms. Kennedy informed Respondent she was present for the custody hearing; and
- d) Respondent advised Ms. Kennedy that he must have informed her of the wrong date because her custody hearing was scheduled for the next day.

153. Respondent's representation to Ms. Kennedy that her custody hearing was scheduled for the next day was false and Respondent knew it to be false because Respondent had not filed anything on behalf of Ms. Kennedy regarding custody.

154. On Tuesday, December 23, 2014:

- a) Ms. Kennedy arrived at the Chester County Courthouse;
- b) Respondent called Ms. Kennedy and advised her that he had reached an agreement with her ex-husband's attorney; and
- c) Respondent represented that Respondent would fax Ms. Kennedy the agreement in an hour.

155. Respondent's representation to Ms. Kennedy that Respondent had reached an agreement with her ex-husband's attorney was false and Respondent knew it to be false.

156. Between December 23, 2014 and January 14, 2015, Ms. Kennedy repeatedly asked Respondent to provide her with a copy of the purported agreement and update her as to the status of her custody matter.

157. Between December 23, 2014 and January 14, 2015, Respondent did not provide Ms. Kennedy with a copy of the purported agreement nor did Respondent update Ms. Kennedy as to the status of her custody matter.

158. On January 14, 2015, Respondent texted Ms. Kennedy that Respondent would call her that night.

159. Respondent did not call Ms. Kennedy on the evening of January 14, 2015, as promised.

160. On February 4, 2015, Respondent texted Ms. Kennedy and inquired if she could meet with Respondent on Friday because "it's important."

161. Ms. Kennedy replied to Respondent's February 4, 2015 text on the same date and requested Respondent to call her.

162. Respondent did not call Ms. Kennedy in response to her February 4, 2015 text nor did he meet with her on Friday February 6.

163. On February 17, 2015, Ms. Kennedy texted Respondent the following: "Joshua, I have given you more than enough time to call or text me back. I have been waiting for the agreement you said you and Rami came to on December 22, 2014. Today is February 17, 2015. I have suffered without my children for too long."

164. On February 18, 2015, Ms. Kennedy filed a complaint with the Chester County Bar Association Fee Dispute Committee requesting Respondent return her \$2,500.

165. Ms. Kennedy's fee dispute was assigned to Judy Weintraub, Esquire.

166. On Thursday March 5, 2015, a telephone conference was conducted between Respondent, Ms. Kennedy and Ms. Weintraub, at which time mediation was scheduled for March 11, 2015.

167. At the end of the conference call, Respondent inquired of Ms. Kennedy if she would be amenable to resolving the fee dispute prior to mediation.

168. On March 9, 2015, Ms. Kennedy called Respondent and advised she was amenable to meeting Respondent and working out her fee dispute.

169. On March 10, 2015, Respondent met Ms. Kennedy and Mr. D'Orsaneo at Bravo Pizza in Pottstown.

170. At the March 10, 2015 meeting, Respondent promised to obtain a new custody hearing date for Ms. Kennedy as soon as possible.

171. After her March 10, 2015 meeting with Respondent, Ms. Kennedy cancelled the scheduled fee dispute mediation and advised Ms. Weintraub that Respondent had apologized.

172. On March 12, 2015, Respondent called Ms. Kennedy and represented that she had a custody court date on April 16, 2015.

173. Respondent's representation to Ms. Kennedy that she had a custody court date on April 16, 2015, was false and Respondent knew it to be false because Respondent had not filed anything on behalf of Ms. Kennedy regarding custody.

174. On Tuesday, April 7, 2015, Ms. Kennedy texted Respondent the following: "Morning. What time is my custody

hearing on next Thursday April 16th? Hope you enjoyed the holiday."

175. On Friday, April 10, 2015, Ms. Kennedy texted Respondent the following:

Hi. My mail still doesn't come constantly. Could you please send me a picture via text of the docket # with custody court date (April 16th at 1:30) today? I'd appreciate it Josh. Thank you.

176. Respondent replied to Ms. Kennedy's April 10, 2015 text by leaving her a message requesting to meet with her before her purported court date of April 16.

177. On Saturday April 11, 2015, Ms. Kennedy texted Respondent the following: "Got your message. Thank you. Yes I can meet with you at any time Monday. Which Master do we have?"

178. On April 11, 2015, Respondent responded to Ms. Kennedy's text of that date by texting: "Cauley. I believe is the one handling them next week."

179. Respondent's representation to Ms. Kennedy that Cauley was the Master handling her purported April 16, 2015 custody hearing was false and/ or misleading because Respondent knew he had not filed anything regarding custody on behalf of Ms. Kennedy and that there was no scheduled hearing for Ms. Kennedy.

180. On Tuesday April 14, 2015, Ms. Kennedy met Respondent at his office and Respondent provided Ms. Kennedy with a paper

that listed a June 2, 2015 hearing, a May 7, 2015 parenting class, and Mediator Jane Shields.

181. On April 22, 2015, Respondent filed a Petition for Modification of Custody Order, a Notice & Order to Appear and an Affidavit in the matter captioned: *Thomas M. Ferazzi v. Bonnie Grace Kennedy*, Court of Common Pleas of Chester County, Pennsylvania, No. 2014-00232, In Custody.

182. On May 3, 2015, Ms. Kennedy texted Respondent the following: "More and more lies Josh... I will be at your office tomorrow morning to pick up my \$2,500."

183. On May 18, 2015, Ms. Weintraub conducted a fee dispute mediation between Respondent and Ms. Kennedy at the Chester County Bar Association.

184. At the May 18, 2015 fee dispute mediation, Respondent provided Ms. Kennedy for the first time, a fee agreement dated September 17, 2014.

185. On May 18, 2015, Respondent and Ms. Kennedy executed an Agreement wherein it was agreed that:

Joshua Janis will pay Bonnie Kennedy \$1250.00 by cashier's check by hand delivering to the CCBA on or before May 20, 2015. If payment is not made as specified then Joshua Janis agrees to pay Bonnie Kennedy \$2,500.00 plus interest of 7% commencing May 21, 2015.

186. Respondent did not make payment to Ms. Kennedy as specified in the May 18, 2015 agreement.

187. Ms. Kennedy has filed a civil complaint against Respondent with Magisterial District Judge Mark A. Bruno.

IV) MISREPRESENTATION TO CLIENT AND CLIENT NEGLECT

A) SUTKER COMPLAINT

188. On June 17, 2014, Stuart Sutker:

- a) met with Respondent at his Malvern office;
- b) paid Respondent a fee of \$500.00 via credit card;
and
- c) retained Respondent to represent his son, Joshua M. Sutker, in regards to Joshua's underage drinking citation in Chester County.

189. By letter dated June 24, 2014, Respondent:

- a) advised Magisterial District Judge Analisa Sondergaard that Respondent represented Joshua regarding his citation;
- b) entered a not guilty plea on Joshua's behalf; and
- c) requested a hearing be scheduled regarding the citation.

190. Joshua's summary trial was originally scheduled for August 18, 2014, before Judge Sondergaard.

191. On August 15, 2014, Stuart Sutker emailed Respondent: "Josh-my son's court date is this Monday at 8:45 and I have not heard from you-please contact me to discuss."

192. On August 15, 2014, Respondent responded to Mr. Sutker by emailing: "I apologize I had been caught up in trial. The hearing date is actually getting continued, I will call you tomorrow to discuss."

193. On August 18, 2014, Respondent faxed Judge Sondergaard the following:

I am following up with a discussion I had with your staff this morning pertaining to the above matter, which was scheduled to be heard this morning. To no fault of my client, I improperly advised of a different hearing date and time for this matter. Upon learning of the mistake, I was unable to attend as I was already scheduled for a state parole revocation hearing in Chester County this morning. In light of this, I am respectfully requesting a continuance of this matter to a future date. I do apologize for the error, and thank you for consideration of this request.

194. Joshua's summary trial was re-scheduled from August 18 to September 3, 2014.

195. By letter to Judge Sondergaard dated August 20, 2014, Respondent:

- a) advised he would be on vacation September 3rd; and
- b) requested Joshua's matter be re-listed for a date after September 6th.

196. Joshua's summary trial was re-scheduled from September 3, 2014 to September 15, 2014.

197. Respondent received notice of Joshua's September 15, 2014 summary trial date.

198. Respondent never informed the Sutkers that Joshua's summary trial had been re-scheduled for September 15, 2014.

199. On September 15, 2014:

- a) Joshua's summary trial was held before Judge Sondergaard;
- b) Neither Respondent nor the Sutkers appeared before Judge Sondergaard; and
- c) Judge Sondergaard found Joshua guilty of underage drinking and sentenced him to fines and costs.

200. Sometime after the September 15, 2014 hearing and before October 15, 2014, Respondent became aware that Joshua had been found guilty in absentia by Judge Sondergaard.

201. On October 15, 2014, Respondent filed a Notice of Appeal from Joshua's September 15, 2014 Summary Criminal Conviction.

202. At the time Respondent filed the Notice of Appeal, Respondent had not advised the Sutkers that on September 15, 2014 Judge Sondergaard found Joshua guilty in absentia.

203. A hearing on Joshua's Summary Appeal was scheduled for December 18, 2014 at 9:30 a.m. at the Chester County Justice Center.

204. Respondent received notice of the December 18, 2014 hearing date.

205. Prior to November 19, 2014, Respondent never advised the Sutkers that Respondent had filed a Notice of Appeal.

206. On November 19, 2014:

- a) Stuart Sutker texted Respondent at 8:30 a.m. the following message at 8:30 a.m.: "Can you please call me?- we got a notice of summary appeal for my son Josh to appear in court on December 18- What is going on?- need to hear from you today"; and
- b) Respondent had a telephone conversation with Stuart Sutker in which Respondent advised that the new Summary Appeal scheduled for December 18 was due to some error at the courthouse; reassured Mr. Sutker everything was OK; and promised that Respondent would take care of everything.

207. Respondent's representation to Stuart that the new December 18th date was due to some error at the courthouse was

false and Respondent knew it to be false because Respondent was aware that Joshua had been found guilty in absentia due to failure to appear.

208. Subsequent to Respondent's November 19, 2014 telephone conversation, Respondent had no communication with the Sutkers until December 18, 2014.

209. On December 18, 2014:

- a) Stuart Sutker texted Respondent at 8:29 a.m. and inquired whether Respondent would be appearing in court with Joshua for the scheduled 9:30 a.m. hearing;
- b) Respondent called Mr. Sutker back at 8:30 a.m. and told him the time for the hearing had changed to later in the day;
- c) Respondent texted Mr. Sutker at 9:57 a.m. and requested Josh's cell phone number;
- d) At approximately 10:00 a.m., Judge Carmody inquired in open court about Joshua's Summary Appeal and dismissed it when he was informed that Joshua was not present;
- e) Stuart Sutker texted Josh's phone number to Respondent at 10:03 a.m.;

- f) Respondent contacted Joshua at 10:26 a.m. and told Joshua the case was postponed until 11:30 a.m. and to meet Respondent at the courthouse;
- g) Joshua met Respondent at the courthouse at approximately 11:30 a.m.;
- h) Respondent told Joshua:
 - i. The case before him had gotten out of hand and there were complications;
 - ii. Respondent would contact Joshua regarding a new time for his court case;
 - iii. Joshua might have to do his case over the phone; and
- i) Respondent did not tell Joshua that the Summary Appeal had been dismissed that morning.

210. Respondent was aware that the time for Joshua's Summary Appeal hearing had not changed from the scheduled 9:30 a.m. time.

211. Respondent's representation to Stuart Sutker that the time for the Summary Appeal hearing had been changed to later in the day was false, and Respondent knew it to be false.

212. Respondent's representation to Joshua that the Summary Appeal hearing had been postponed until 11:30 a.m. was false and Respondent knew it to be false.

213. At the time Respondent met with Joshua at the courthouse on December 18, 2014, Respondent was aware that the

Summary Appeal had been dismissed due to Joshua's failure to appear.

214. Between December 18, 2014, and February 10, 2015, Stuart Sutker left numerous phone messages and text messages requesting Respondent to contact him as soon as possible.

215. Respondent did not return Mr. Sutker's messages or communicate with the Sutkers from December 18, 2014, through February 10, 2015.

216. On February 10, 2015, Respondent called Stuart Sutker and told him that:

- a) a new hearing for Joshua had been scheduled for Thursday, February 19;
- b) Joshua's case should not have been closed; and
- c) Respondent was going to fix the error.

217. Respondent's representation to Stuart Sutker that a new hearing had been scheduled for Thursday, February 19 was false and Respondent knew it to be false.

218. Between February 19, 2015, and February 26, 2015, Mr. Sutker left numerous phone messages and text messages requesting Respondent to contact him.

219. Respondent did not return Mr. Sutker's messages or communicate with the Sutkers from February 19, 2015, through February 25, 2015.

220. On February 20, 2015, Stuart Sutker personally went to the courthouse and was told Joshua's case was closed and that there was nothing in process.

221. On February 26, 2015, Stuart Sutker emailed Respondent, expressing dissatisfaction with Respondent's services and informing Respondent that he intended to file a disciplinary complaint against Respondent.

222. On February 26, 2015, Respondent replied to Mr. Sutker's email by emailing the following:

I was out last week dealing with a family issue. I did not say it was reopened. What I did say was that a petition for reconsideration was going to need to be put in to have it reopened and that I believe that it could be done without issue. I have it prepared and I am moving forward with that. In the meantime, your son needs to put in an application for an OLL while this remains pending. When we spoke I told you I am working to get this matter reopened and heard and I am continuing to do that. However, that is going to take some time and he needs to do that to be able to drive in the meantime.

223. Mr. Sutker terminated Respondent's representation by email dated February 26, 2015.

224. On April 13, 2013, M. Alexandra Bradley, Esquire, filed a Petition for Leave to Appeal *Nunc Pro Tunc* on behalf of Joshua.

225. The Petition for Leave to Appeal alleged, *inter alia*, that Respondent had "consistently and repeatedly failed to adequately advise and represent the Defendant."

226. On April 30, 2015:

- a) a hearing was conducted on the Petition for Leave to Appeal; and
- b) Judge Carmody reversed Joshua's conviction and reinstated the Appeal.

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED

227. By his conduct as alleged in paragraphs 3 through 226, Respondent violated the following Rules of Professional Conduct:

A. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;

B. RPC 1.2(a), which states in pertinent part, that subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued and a shall abide by a client's decision whether to settle a matter;

C. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

D. RPC 1.4(a)(2), (3), and (4) which state that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information;

E. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

F. RPC 1.5(b), which states that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation;

G. RPC 1.15(b), which states that upon receiving property of a client or third person in connection with a client-lawyer relationship, 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 or third person, a lawyer shall promptly deliver to the client or third person any 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;

H. RPC 1.15(d), which states, in pertinent part, that upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law;

I. RPC 1.15(e), which states, in pertinent part, that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, 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 the property;

J. RPC 1.15(h), which states that a lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose;

K. RPC 1.15(i), which states that a lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives

informed consent, confirmed in writing, to the handling of fees and expenses in a different manner;

L. RPC 1.16(a)(1), which states that except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the rules of professional conduct or other law;

M. RPC 1.16(a)(3), which states that except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged;

N. RPC 1.16(d), which states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred;

O. RPC 3.3(a)(1), which states that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

P. RPC 4.1(a), which states that, in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person; and

Q. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

228. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a five-year suspension.

229. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

230. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are mitigating circumstances:

- a) Respondent has demonstrated remorse by acknowledging he engaged in misconduct; admitting to violating the charged Rules of Professional Conduct; and by consenting to receive a five-year suspension;
- b) Respondent has no prior disciplinary history; and
- c) Respondent made refunds to Ms. DiDonato and Mrs. Flower.

231. Respondent's misconduct in this disciplinary matter was widespread and included: conversion of law firm funds; intentional misrepresentations to a tribunal; conversion and failure to safeguard client funds; extensive client neglect including misrepresentations and failure to communicate. Each of these categories of misconduct has resulted in lengthy suspensions in other cases: *See Office of Disciplinary Counsel v. Joan Gaughan Atlas*, No. 171 DB 2001 (D.B.D. Rpt. 3/24/04) (S.Ct. Order 6/29/04) (Three-year suspension for respondent who converted approximately \$35,000.00 in fees belonging to her former employer; commingled personal funds with fiduciary funds; failed to hold in trust client funds in several matters; made misrepresentations to her former employer; and filed false certifications with the Secretary's Office regarding her compliance with RPC 1.15); *See Office of Disciplinary Counsel v. Holston* (disbarment for respondent who forged a court order and then lied to the court when questioned about the order); *Office of Disciplinary Counsel v. Daniel E. Houlihan*, Nos. 208 DB 2003 & 110 DB 2004 (four-year suspension for respondent who, in addition to neglect and lack of communication in three client matters, presented an Acceptance of Service to

the Court he knew was false; *See Office of Disciplinary Counsel v. James Edward Elam, No. 160 DB 2010*, (three-year suspension for respondent who deposited a five thousand dollar advance fee into a personal account; failed to provide a written fee agreement; did minimal work and failed to provide accounting).

232. The parties agree that the particular facts of this case warrant a five-year suspension. In 2013, Respondent converted over \$13,000.00 from his former employer. Upon leaving that firm, Respondent continued in 2014 and 2015 to engage in misconduct that included extensive client neglect and failure to communicate, misrepresentation to clients and conversion of client funds totaling approximately \$5,000.00 by placing unearned retainers in non-trust accounts. Additionally, Respondent entered into a settlement directly contrary to his client's clear directive and then intentionally misrepresented to the court that the settlement was valid. The extent and seriousness of Respondent's misconduct require a minimum of a five-year suspension. Militating against disbarment is that Respondent has exhibited remorse as evidenced by his decision to enter into this consent decree and forgo a disciplinary hearing.

WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), a three-member panel of the Disciplinary Board

review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent receive a five-year suspension and that Respondent be ordered to pay all necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition.


Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION,
Chief Disciplinary Counsel
Attorney Reg. No. 20955

Date:

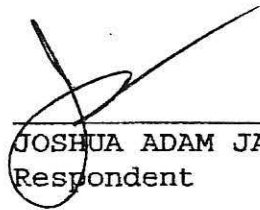
10/1/15



HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Attorney Reg. No. 51159
District II Office
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

Date:


9/22/15



JOSHUA ADAM JANIS, ESQUIRE
Respondent

Date:

9/30/15

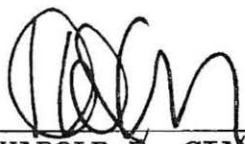


JAMES C. SCHWARTZMAN, ESQUIRE
Counsel for Respondent

VERIFICATION

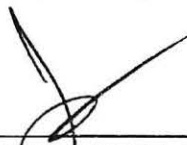
The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

10/1/15
Date



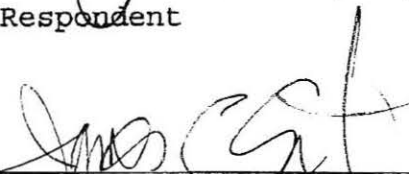
HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel

9/22/15
Date



JOSHUA ADAMS JANIS, ESQUIRE
Respondent

9/30/15
Date



JAMES C. SCHWARTZMAN, ESQUIRE
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. DB 2015
Petitioner :
v. :
: Attorney Reg. No. 203818
JOSHUA ADAM JANIS, :
Respondent : (Chester County)

CERTIFICATE OF SERVICE


I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

Overnight Mail, as follows:

James C. Schwartzman, Esquire
Stevens & Lee, P.C.
1818 Market Street, 29th Floor
Philadelphia, PA 19103

Dated:

10/11/15



HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Attorney Reg. No. 51159

Office of Disciplinary Counsel
District II Office
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. DB 2015
Petitioner :
:
v. :
: Attorney Reg. No. 203818
JOSHUA ADAM JANIS, :
Respondent : (Chester County)

AFFIDAVIT

UNDER RULE 215(d), Pa.R.D.E.

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF CHESTER:

JOSHUA ADAM JANIS, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of discipline in the form of a five-year suspension in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 18, 2006.

2. He desires to submit a Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d).

3. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress, and he is fully aware of the implications of submitting this affidavit.

4. He is aware that there is presently pending a proceeding into allegations that he has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent of

which this affidavit is attached hereto.

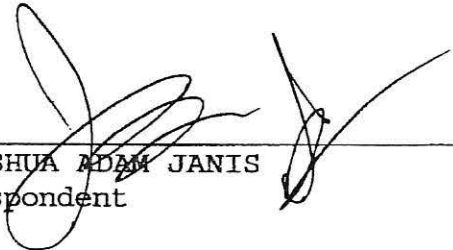
5. He acknowledges that the material facts set forth in the Joint Petition are true.

6. He submits the within affidavit because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted and acted upon the advice of counsel, James C. Schwartzman, Esquire, in connection with his decision to execute the within Joint Petition.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 22 day of September, 2015.



JOSHUA ADAM JANIS
Respondent

Sworn to and subscribed
before me this 22nd day
of September 2015.
Lisa Bateman
Notary Public

