

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1546 Disciplinary Docket No. 3
Petitioner :
 : No. 171 DB 2009
v. :
 : Attorney Registration No. 55219
ANN-MARIE MacDONALD PAHIDES, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 21st day of December, 2010, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated November 4, 2010, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Ann-Marie MacDonald Pahides is suspended on consent from the Bar of this Commonwealth for a period of one year and one day and she shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola

As of: December 21, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

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 said Rules of Disciplinary Enforcement.

2. Respondent, Ann-Marie MacDonald Pahides, was admitted to practice law in the Commonwealth on June 9, 1989. According to attorney registration records, Respondent's public access address is 835 W. Lancaster Avenue, Suite 200, Bryn Mawr, PA 19010.

3. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. In connection with ODC File No. C1-09-868 ("the conviction file"), by letter dated October 14, 2009, Petitioner advised the Prothonotary of the Supreme Court of Pennsylvania of Respondent's conviction and sentence in the 33rd Judicial District for the State of Michigan on the misdemeanor offense of No Operators Permit on Person, in violation of M.C.L.A. 257.904.

5. By Order dated December 4, 2009, which was docketed at No. 1546 Disciplinary Docket No. 3, the Supreme Court of Pennsylvania referred the matter of Respondent's

conviction to the Disciplinary Board pursuant to Pa.R.D.E. 214(g).

6. By Reference for Proceedings in Response to Conviction dated December 4, 2009, and assigned No. 171 DB 2009, the Disciplinary Board referred the matter of Respondent's conviction to Petitioner for appropriate action pursuant to Pa.R.D.E. 214 and Disciplinary Board Rule §91.35.

7. In connection with ODC File No. C1-09-132, Respondent received a Request for Statement of Respondent's Position (Form DB-7) dated May 7, 2009.

8. By letter dated July 10, 2009, Respondent submitted a counseled response to the DB-7 letter.

9. After further investigation, Petitioner sent to Respondent a Supplemental Request for Respondent's position (Form DB-7A) dated February 22, 2010.

10. By letter dated April 23, 2010, Respondent submitted a counseled response to the DB-7A letter.

11. In connection with ODC File No. C1-09-1189, Respondent received a DB-7 letter dated February 19, 2010.

12. By letter dated May 24, 2010, Respondent submitted a counseled response to the DB-7 letter.

13. In connection with ODC File No. C1-09-1199, Respondent received a DB-7 letter dated December 18, 2009.

14. By letter dated January 4, 2010, Respondent submitted a counseled response to the DB-7 letter.

15. After further investigation, Petitioner sent to Respondent a DB-7A letter dated September 14, 2010.

16. In connection with ODC File No. C1-10-121, Respondent received a DB-7 letter dated April 12, 2010.

17. By letter dated May 24, 2010, Respondent submitted a counseled response to the DB-7 letter.

18. In connection with ODC File No. C1-10-798, Respondent received a DB-7 letter dated September 14, 2010.

19. On September 15, 2010, Respondent's counsel, Samuel C. Stretton, Esquire, advised Petitioner that Respondent had agreed to enter into a joint recommendation for consent discipline.

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

20. Respondent hereby stipulates that the following factual allegations drawn from the conviction file, the DB-7 letters, and the DB-7A letters, as referenced above, are true and correct and that she violated the charged Rules of Professional Conduct as set forth herein.

CHARGE I: THE MICHIGAN CONVICTION

21. On June 22, 2007, Respondent, while operating a vehicle in Michigan, was stopped by an officer after she

was observed passing a vehicle in a no-passing zone. Respondent was unable to produce a valid license because her Pennsylvania driver's license was suspended.

22. Respondent was issued a citation for having violated M.C.L.A. 257.904, the misdemeanor offense of No Operators Permit on Person, which, *inter alia*, prohibits a person from operating a motor vehicle if that person's driver's license is suspended, and M.C.L.A. 257.640, the offense of Improper Passing, which is deemed a civil infraction. See M.C.L.A. 257.640(3).

23. A criminal case was filed against Respondent in the 33rd Judicial District Court for the State of Michigan, said case captioned *City of Trenton v. AnnMarie MacDonald-Pahides*, Criminal Case No. 07T26633A.

24. On August 4, 2009, Respondent appeared before the Honorable Michael K. McNally and pled guilty to the misdemeanor offense of No Operators Permit on Person, in violation of M.C.L.A. 257.904, which is punishable by imprisonment for up to ninety-three (93) days. See M.C.L.A. 257.904(3)(a).

25. On August 4, 2009, Judge McNally sentenced Respondent to probation for three months and to pay a fine of \$100.00 and court costs in the amount of \$152.00.

26. The crime of which Respondent was convicted does not constitute a "serious crime," as defined by Pa.R.D.E. 214(i).

27. Respondent admits that by her conduct as set forth in Paragraphs 21 through 26 above, Respondent violated the following Rule of Professional Conduct:

- a. RPC 8.4(b), which provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

CHARGE II: ODC FILE NO. C1-09-132

28. At all times relevant hereto, Respondent was employed as a *per diem* attorney by the law firm of Erik B. Jensen, P.C. ("the firm").

THE EXPUNGEMENT CASES

29. Sometime in September 2007, Mr. Troy Nixon retained the firm to represent him in obtaining an expungement of his criminal record.

30. Mr. Nixon was seeking to have the following three criminal cases expunged:

- a. a criminal case that was filed in the Philadelphia Court of Common Pleas, said case captioned *Commonwealth of Pennsylvania v. Troy Nixon*, docket number CP-51-CR-0920401-1991 ("the Philadelphia drug case");
- b. a criminal case that was filed in the Philadelphia Court of Common Pleas, said case captioned *Commonwealth of Pennsylvania v. Troy Nixon*, docket number MC-51-CR-0305011-2002 ("the Philadelphia theft case"); and
- c. a criminal case that was filed in the Bucks County Court of Common Pleas, said case captioned *Commonwealth of Pennsylvania v. Troy Nixon*, docket number CP-09-CR-0000620-2000 ("the Bucks County criminal case").

31. In the Philadelphia drug case, Mr. Nixon was found guilty of possession with intent to deliver a controlled substance.

- a. On May 20, 1999, Mr. Nixon was sentenced to a term of imprisonment of not less than six months to not more than twelve months.

32. On May 1, 2002, the court dismissed the criminal charges against Mr. Nixon in the Philadelphia theft case.

33. On or about May 17, 2000, Mr. Nixon pled guilty to the charge of receiving stolen property in connection with the Bucks County criminal case.

a. On that date, Mr. Nixon was sentenced to the Bucks County Correctional Facility for not less than time served to not more than twelve months.

34. On or about November 19, 2007, Mr. Jensen filed two separate Petitions to Expunge Criminal Record ("the Petitions") in the Philadelphia drug case and the Philadelphia theft case.

35. On November 28, 2007, Mr. Jensen filed a Petition to Expunge Criminal Record ("the Bucks County Petition") in the Bucks County criminal case.

36. In or about December 2007, Respondent was assigned to handle the expungement of Mr. Nixon's three criminal cases.

37. On December 24, 2007, Respondent attended a hearing that was scheduled in connection with the Petitions filed in the Philadelphia drug case and the Philadelphia theft case.

38. By e-mail dated December 24, 2007, Mr. Jensen inquired of Respondent what transpired at the hearing.

39. By e-mail dated December 26, 2007, Respondent, *inter alia*, replied to Mr. Jensen that:

- a. the judge did not appear for the hearing and the matter was rescheduled to January 22, 2008;
- b. the assigned Assistant District Attorney ("the ADA") opposed the Petitions because Mr. Nixon pled guilty and that Respondent needed to "file a corrected Motion to Redact which will give him [Mr. Nixon] an expungement";
- c. Respondent and the ADA were to meet "in Courtroom 504 next Friday" to "negotiate" the Motion to Redact and that upon Mr. Jensen's return, the Motion would be filed, with the ADA's approval; and
- d. Respondent also intended to call the ADA "next Thursday."

40. By e-mail dated December 26, 2007, Mr. Jensen, *inter alia*, asked Respondent to call the ADA in an effort to resolve the matter.

41. By e-mail dated December 27, 2007, Respondent, *inter alia*, replied to Mr. Jensen that Respondent and the

ADA would "talk next week" and she would follow up with Mr. Jensen.

42. Respondent failed to prepare a "corrected Motion to Redact" for filing in the Philadelphia drug case and the Philadelphia theft case prior to the January 22, 2008 hearing on the Petitions.

43. By Order dated January 22, 2008, the court denied the Petitions.

44. The firm received the January 22, 2008 Order.

45. Respondent reviewed the January 22, 2008 Order.

46. Respondent failed to advise Mr. Nixon of the court's entry of the January 22, 2008 Order.

47. After the court's entry of the January 22, 2008 Order, Respondent failed to promptly prepare a "corrected Motion to Redact" for filing in the Philadelphia drug case and the Philadelphia theft case.

48. By e-mail dated March 3, 2008, Mr. Jensen told Respondent that he:

- a. appreciated Respondent advising him about Mr. Nixon's hearing scheduled for that day because it was not on Respondent's "outlook" calendar;

- b. needed Respondent to provide him with her case summary and hours, and to make arrangements to meet with him; and
- c. was "clueless" as to "what [Respondent was] doing" in terms of what assignments she was performing on a day-to-day basis.

49. By e-mail dated March 3, 2008, Respondent reported to Mr. Jensen that, *inter alia*:

- a. Mr. Nixon's Delaware County case was scheduled for trial on April 7, 2008 at 9:00 a.m.;
- b. the Delaware County District Attorney's Office was "aware" that there was an expungement petition pending in Bucks County and a "Redaction in Philadelphia"; and
- c. Respondent had spent time with a Delaware County Assistant District Attorney discussing Mr. Nixon's "record expungement on earlier cases and redaction hearing pending in both Philadelphia and Bucks County."

50. As of March 3, 2008, Respondent had not filed a petition to have the Philadelphia drug case and the Philadelphia theft case "redacted."

51. As of March 3, 2008, there were no hearings scheduled in connection with the Bucks County criminal case, the Philadelphia drug case or the Philadelphia theft case.

52. By letter dated February 19, 2008, which was sent by Bucks County Assistant District Attorney Maureen A. Flannery to Mr. Jensen on March 3, 2008, ADA Flannery, *inter alia*:

- a. enclosed a copy of the Commonwealth's Answer to Petition for Expungement ("the Answer"), and a proposed Expungement Order, which ADA Flannery suggested be resubmitted when a Motion to Make the Rule Absolute was filed;
- b. advised that upon receiving the signed "Expungement Order," Mr. Jensen would have to forward certified copies to the agencies that must expunge Mr. Nixon's record; and
- c. listed the agencies generally involved.

53. The Answer stated that the Commonwealth did not oppose the expungement of the charges filed in the Bucks County criminal case other than the charge of receiving stolen property.

54. The firm received the February 19, 2008 letter, with enclosures.

55. Respondent reviewed the February 19, 2008 letter, with enclosures.

56. Respondent failed to advise Mr. Nixon:

- a. that the firm received the February 19, 2008 letter, with enclosures; and
- b. of the Commonwealth's position regarding the Petition for Expungement filed in the Bucks County criminal case.

57. By letter dated May 5, 2008, addressed to Vivian T. Miller, the Quarter Session Clerk, Respondent, *inter alia*:

- a. requested the "entire criminal records history for Mr. Troy A. Nixon" for the Philadelphia drug case and the Philadelphia theft case;
- b. enclosed a copy of an Entry of Appearance form; and
- c. stated that she was representing Mr. Nixon on behalf of the firm "in connection with each of the above-referenced matters."

58. On or about May 5, 2008, Respondent prepared a letter addressed to Philadelphia Assistant District Attorney George S. Yacoubian, Jr., in which Respondent, *inter alia*:

- a. referred to the docket number for the Philadelphia theft case;
- b. stated the letter was a "follow-up to a previously filed Petition to Expunge of our client, Mr. Troy Nixon";
- c. enclosed a draft of a proposed "Order to Redact Criminal Record" along with a Petition to Expunge;
- d. requested confirmation that the enclosed documents would "correct the defects of the previously filed Petition to Expunge Mr. Nixon's records"; and
- e. suggested that, if convenient, Respondent could meet with ADA Yacoubian sometime over the "next ten (10) days" to resolve the matter.

59. By hand-written note dated May 9, 2008, Ms. Diane A. Sears, an employee of the firm, advised Respondent that the May 5, 2008 letter to ADA Yacoubian could not "be sent out as Petition to Redact Criminal Record is not completed."

60. Respondent received this note.

61. On May 12, 2008, Respondent's entry of appearance on behalf of Mr. Nixon was filed in the Philadelphia drug case and the Philadelphia theft case.

62. Respondent prepared a Petition for Redaction of Criminal Record concerning the Philadelphia drug case.

63. Respondent failed to:

- a. file a Petition for Redaction of Criminal Record in the Philadelphia drug case and the Philadelphia theft case;
- b. mail to ADA Yacoubian the May 5, 2008 letter Respondent drafted and to pursue further discussions with him regarding the expungement/redaction of the Philadelphia drug case and the Philadelphia theft case; and
- c. pursue any other action concerning the expungement/redaction of the Philadelphia drug case and the Philadelphia theft case.

64. On or about May 5, 2008, Respondent prepared a letter addressed to the Clerk of Courts for Bucks County in which she, *inter alia*:

- a. requested the "entire criminal records history for Mr. Troy A. Nixon" for the Bucks County criminal case; and

- b. enclosed a copy of an Entry of Appearance form, which reflected that she was representing Mr. Nixon.

65. By hand-written note dated May 12, 2008, Ms. Sears advised Respondent that the May 5, 2008 letter to the Bucks County Clerk of Courts could not be sent until Respondent's entry of appearance had been filed.

66. Respondent received this note.

67. By e-mail dated May 15, 2008, Ms. Sears, *inter alia*:

- a. noted that Respondent had "requested the generation of an Expungement Petition" for the Bucks County criminal case;
- b. advised Respondent that the docket entries reflected that a "Motion for Expungement" had been filed, that the court had ordered the filing of an answer, and that the "Bucks County District Attorney's Office filed an Answer which appears to have opposed the granting of the Expungement Motion";
- c. requested that Respondent advise Ms. Sears how she wanted Ms. Sears to proceed; and
- d. attached the docket report for the Buck County criminal case.

68. Respondent received this e-mail.

69. Respondent failed to:

- a. review the docket report and the underlying documents related to the Bucks County criminal case;
- b. have her entry of appearance filed in the Bucks County criminal case; and
- c. file the motion and proposed Expungement Order suggested by ADA Flannery in her February 19, 2008 letter.

70. By letter dated June 6, 2008, addressed to Respondent, Ms. Miller responded to Respondent's May 5, 2008 letter.

71. Respondent failed to advise Mr. Nixon that she was no longer pursuing on his behalf the expungement/redaction of the Philadelphia drug case, the Philadelphia theft case, and the Bucks County criminal case.

72. In October 2008, Respondent left the employ of the firm.

73. Respondent failed to advise Mr. Jensen that she had not completed the expungement/redaction of the Philadelphia drug case, the Philadelphia theft case, and the Bucks County criminal case.

74. Respondent admits that by her conduct as set forth in Paragraphs 28 through 73 above, 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 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- d. 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; and
- e. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

THE CHILD SUPPORT CASE

75. Sometime in early March 2008, Respondent learned from Mr. Nixon that a bench warrant had been issued by the court in connection with a child support case.

76. Respondent told Mr. Nixon that for \$500.00, the firm could have the bench warrant lifted.

77. Mr. Nixon paid Respondent \$500.00 in cash.

78. After receiving the payment, Mr. Nixon accompanied Respondent to the Bench Warrant Unit for Family Court.

79. At Respondent's direction, Mr. Nixon waited in the hall while Respondent spoke to an employee in the Bench Warrant Unit.

80. Thereafter, Respondent told Mr. Nixon that the two of them would have to return to Family Court the following week to complete the process of having the bench warrant lifted.

a. Respondent told Mr. Nixon the specific day that they would have to appear at Family Court.

81. By e-mail dated March 3, 2008, sent by Respondent to Mr. Jensen, Ms. Ruth Maldonado, Ms. Brenda L. Reyes, and Ms. Theresa Miller, Respondent, *inter alia*, advised that:

- a. she was reporting on matters related to Mr. Nixon's Delaware County case; and
- b. Mr. Nixon had paid her \$500.00.

82. On or about March 3, 2008, Respondent turned the \$500.00 cash payment over to the firm.

83. Respondent failed to:

- a. identify, to Mr. Jensen or any other employee of the firm, the \$500.00 cash payment received by the firm as having been paid for representation of Mr. Nixon in having a bench warrant lifted; and
- b. ensure that Mr. Nixon was represented by an attorney from the firm at the hearing scheduled the following week at Family Court.

84. Mr. Nixon appeared at Family Court the following week.

85. Respondent contacted Family Court by telephone and advised that she was unable to attend and represent Mr. Nixon.

86. Mr. Nixon was represented at the listing by a Public Defender.

87. Respondent admits that by her conduct as set forth in Paragraphs 75 through 86 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client; and
- b. former RPC 1.15(a) [effective 4-23-05], which states that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

THE PENNYPACKER CASE

88. Mr. David Pennypacker, who was referred to Respondent by Joseph A. Gembala, III, Esquire, retained Respondent to represent him in a landlord-tenant case that was filed in Berks County, said case captioned *Darlene Gassant v. Dave Pennypacker*, docket number LT-0000001-09 ("the Pennypacker case").

a. The Pennypacker case was assigned to Magisterial District Judge Dean R. Patton.

89. Respondent's fee for the representation was \$1,000.00.

90. At Respondent's request, Mr. Pennypacker paid the requested fee in cash.

a. Respondent did not provide Mr. Pennypacker with a receipt for his cash payment.

91. The Pennypacker case was listed for a hearing before Judge Patton on January 12, 2009.

92. Respondent knew that the Pennypacker case was listed for a hearing on January 12, 2009.

93. Respondent failed to appear on behalf of Mr. Pennypacker at the January 12, 2009 hearing for the Pennypacker case.

94. Respondent failed to advise either Mr. Pennypacker or the court that she would not be appearing at the January 12, 2009 hearing for the Pennypacker case.

95. Mr. Pennypacker appeared at the January 12, 2009 hearing.

96. Judge Patton entered a judgment against Mr. Pennypacker in the amount of \$2,100.00 and awarded possession of the premises to Ms. Gassant.

97. On January 21, 2009, Respondent filed a Notice of Appeal from the January 12, 2009 judgment with the Court of Common Pleas of Berks County, said case captioned *Darlene Gassant v. David Allen Pennypacker*, docket number 09-633 ("the Pennypacker appeal").

- a. On the same form Respondent used to file the Notice of Appeal, she also filed a Praecipe to Enter Rule to File Complaint and Rule to File Complaint ("the Praecipe").

98. Respondent failed to file with the Berks County Prothonotary's Office proof of service of the Notice of Appeal and the Praecipe upon Ms. Gassant within ten days after the filing of the Notice of Appeal, as required by Pa.R.C.P.M.D.J. Rule 1005B.

99. On February 6, 2009, counsel for Ms. Gassant filed a Praecipe to Strike Appeal, based upon Respondent's failure to timely comply with Pa.R.C.P.M.D.J. Rule 1005B.

a. Respondent received a copy of the Praecipe to Strike Appeal.

100. Upon the filing of the Praecipe to Strike Appeal, the Berks County Prothonotary's Office automatically struck the Pennypacker appeal.

101. On February 9, 2009, Respondent filed with the Berks County Prothonotary's Office an untimely Proof of Service of Notice of Appeal and Rule to File Complaint.

102. Respondent failed to advise Mr. Pennypacker that the Pennypacker appeal had been stricken because of her failure to timely comply with Pa.R.C.P.M.D.J. Rule 1005B.

103. From time to time, Mr. Pennypacker would call and leave Respondent messages inquiring about the status of the Pennypacker appeal.

104. Respondent failed to return Mr. Pennypacker's messages.

105. Following the termination of Respondent's representation by operation of law, Respondent failed to refund to Mr. Pennypacker the advance payment of her fee that went unearned.

106. Respondent admits that by her conduct as set forth in Paragraphs 88 through 105 above, 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 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- d. RPC 1.4(a)(4), which states that a lawyer shall 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; and

f. 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. The lawyer may retain papers relating to the client to the extent permitted by other law.

THE CUSTODY CASE

107. Mr. David Pennypacker, who was referred to Respondent by Joseph A. Gembala, III, Esquire, retained Respondent to represent him in a custody case that was filed in the Court of Common Pleas of Berks County, said case captioned *David Allen Pennypacker vs. Nissa Yvette Pennypacker*, docket number 05-16814 ("the custody case").

a. The custody case commenced in June 2008.

108. Respondent's fee for the representation, which also included a fee for representing Mr. Pennypacker in a DUI case filed in the Court of Common Pleas of Berks County, said case captioned *Commonwealth of Pennsylvania v.*

David Pennypacker, docket number CP-06-CR-0001743-2008, was \$5,000.00.

109. At Respondent's request, Mr. Pennypacker paid the requested fee in cash.

a. Respondent did not provide Mr. Pennypacker with receipts for his cash payments.

110. The custody case was listed for a Child Custody Conference on December 11, 2008, at 1:00 p.m.

111. Notice was sent to the parties of the scheduling of the Child Custody Conference for December 11, 2008, at 1:00 p.m.

112. Respondent failed to notify Mr. Pennypacker that the Child Custody Conference was scheduled for December 11, 2008, at 1:00 p.m.

113. Respondent failed to appear at the Child Custody Conference on December 11, 2008 at 1:00 p.m.

a. Mr. Pennypacker also did not appear.

114. On December 22, 2008, the Custody/Support Master, Molly B. Kleinfelter, Esquire, filed a Proposed Custody Order.

115. On January 12, 2009, Respondent filed on behalf of Mr. Pennypacker Exceptions to the Proposed Custody Order.

116. On January 23, 2009, the court entered an Order scheduling a pretrial conference on February 17, 2009.

117. Respondent received the January 23, 2009 Order.

118. On February 9, 2009, Ms. Pennypacker's attorney, Frederick R. Mogel, Esquire, filed a Pretrial Conference Memorandum of Defendant, Nissa Yvette Pennypacker.

119. Respondent failed to file a Pretrial Conference Memorandum on behalf of Mr. Pennypacker.

120. By letter dated February 13, 2009, Respondent asked the court to continue the pretrial conference because she had to appear in federal court on a case.

121. By Order dated February 17, 2009, the court rescheduled the pretrial conference for March 5, 2009.

122. Respondent received the February 17, 2009 Order.

123. Over the next several weeks, Mr. Pennypacker attempted to reach Respondent by telephone to discuss with her the custody case.

124. Respondent failed to return Mr. Pennypacker's messages.

125. Due to Mr. Pennypacker's inability to reach Respondent regarding his custody case, Mr. Pennypacker resolved the custody case by directly negotiating with Ms. Pennypacker.

- a. Mr. Mogel memorialized the agreement reached between Mr. Pennypacker and Ms. Pennypacker.

126. On March 4, 2009, Mr. Mogel filed a Proposed Custody Order by Agreement with Appendix.

127. On March 6, 2009, the court entered a Stipulated Custody Order with Appendix.

128. Respondent received a copy of the March 6, 2009 Order.

129. Following the termination of the representation by operation of the March 6, 2009 Order, Respondent failed to:

- a. refund to Mr. Pennypacker the advance payment of her fee that went unearned; and
- b. return to Mr. Pennypacker the documents she had that related to Mr. Pennypacker's custody case.

130. Thereafter, Mr. Pennypacker left Respondent messages inquiring about:

- a. a partial refund of the fee that Mr. Pennypacker paid Respondent for the representation; and
- b. the return of Mr. Pennypacker's documents that related to the custody case.

131. Respondent failed to return Mr. Pennypacker's messages.

132. Respondent admits that by her conduct as set forth in Paragraphs 107 through 131 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- c. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- d. 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; and
- e. 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. The lawyer may retain papers relating to the client to the extent permitted by other law.

CHARGE IV: ODC FILE NO. C1-09-1199

133. On May 11, 2009, Ms. Herta B. Ehret ("the decedent"), a resident of Delaware County, died testate.

134. At the time of her death, the decedent's estate consisted of, at a minimum, several bank accounts, which had an approximate value of \$340,000.00, and stock certificates, with an approximate value of \$30,000.00.

135. The beneficiaries of the decedent's Will were Mr. Chris Robert Ehret (decedent's son) and his wife, and Joan Marie Ehret Freitag (decedent's daughter).

136. Under the decedent's Will:

- a. Mr. Chris Ehret and his wife were to receive 50% of decedent's estate and Ms. Freitag was to receive 50% of decedent's estate;
- b. Mr. Paul Martin Ehret (decedent's son) was appointed Executor of decedent's Will; and

c. it was specifically stated that no bequest was made to Mr. Paul Ehret.

137. Shortly after decedent's death, Mr. Paul Ehret decided to retain Respondent to provide legal assistance to him in administering the decedent's estate.

138. Respondent had not regularly represented Mr. Paul Ehret.

139. Respondent failed to communicate to Mr. Paul Ehret the basis or rate of her fee, in writing, before or within a reasonable time after commencing the representation.

140. On or about May 18, 2009, Respondent filed with the Register of Wills for Delaware County ("the Register") a "Petition for Grant of Letters" and Oath of Personal Representative to have Mr. Paul Ehret appointed Executor of the decedent's estate.

a. In the Petition for Grant of Letters, the value of decedent's personal property was listed at \$370,000.

b. On May 20, 2009, the Register granted to Mr. Paul Ehret Letters Testamentary.

141. On or about May 18, 2009, Respondent assisted Mr. Paul Ehret in establishing an estate account at Citizens Bank, account number 6220959071, titled "Estate of Herta B. Ehret Paul M. Ehret Executor" ("the estate account").

- a. The opening balance in the estate account consisted of a deposit of funds totaling \$38,455.90.
- b. On May 21, 2009, there was an additional deposit of \$22.56.
- c. On May 22, 2009, there was a third deposit of \$84,107.58.
- d. Mr. Paul Ehret had signature authority for the estate account.

142. On May 21, 2009, at Respondent's request, Mr. Paul Ehret paid Respondent \$7,500.00 by check number 991, drawn on the estate account, which went towards Respondent's fee for the representation.

- a. Placed by hand on the "For" section of the check were the words "Esquire Retainer."

143. On June 5, 2009, Mr. Paul Ehret made a pre-payment of inheritance tax in the amount of \$17,500.00.

144. On June 8, 2009, at Respondent's request, Mr. Paul Ehret went to a branch of Citizens Bank and debited the estate account in the amount of \$17,500.00, which went towards her fee for the representation.

- a. Placed by hand on the "For" section of the Checking Debit slip were the words "Retainer/Legal Fees."

145. As of June 8, 2009, Respondent received from Mr. Paul Ehret the total sum of \$25,000.00 as fees for her representation.

146. Respondent failed to deposit the \$25,000.00 advance payment of the fee that she received from Mr. Paul Ehret for the representation into a trust account.

147. Respondent did not have Mr. Paul Ehret's informed consent, in writing, to handle the \$25,000.00 advance payment of her fee in a manner different than that prescribed by Rule of Professional Conduct 1.15(i).

148. Respondent immediately expended the \$25,000.00 advance payment of her fee.

149. During the period Respondent represented Mr. Paul Ehret in his capacity as Executor of decedent's estate, Respondent received from Mr. Paul Ehret original documents related to the estate that consisted of: receipts for payments made on behalf of the estate; the bank statements and other financial documents related to the estate account; tax-related documents; and stock certificates.

150. After assisting Mr. Paul Ehret in obtaining Letters Testamentary, Respondent failed to:

- a. mail written notice of estate administration to Mr. Chris Ehret and Ms. Freitag, as required by O.C. Rule 5.6(a); and

- b. file with the Register of Wills a certification of compliance with O.C. Rule 5.6(a) within three months after the grant of letters, as required by O.C. Rule 5.6(a).

151. During the period Respondent represented Mr. Paul Ehret, Respondent did not finalize for filing the inheritance tax return or an inventory of estate assets.

152. Sometime in September 2009, Mr. Paul Ehret decided to relinquish his position as Executor of decedent's estate to Mr. Chris Ehret and Ms. Freitag.

153. On or about September 18, 2009, Ms. Freitag called Respondent and spoke to her on the telephone.

- a. During this telephone conversation, Ms. Freitag questioned Respondent on the progress in administering the decedent's estate and the lack of compliance with O.C. Rule 5.6(a).
- b. Respondent blamed Mr. Paul Ehret for the lack of compliance with O.C. Rule 5.6(a), claiming that Mr. Paul Ehret failed to provide Respondent with the addresses for Mr. Chris Ehret and Ms. Freitag.
- c. Respondent also told Ms. Freitag that the records she received in connection with the

decedent's estate were voluminous and that it would be expensive for Respondent to review them.

- d. During this telephone conversation, Respondent inquired if Ms. Freitag and Mr. Chris Ehret were interested in retaining Respondent to pursue a claim against Mr. Paul Ehret for having obtained the decedent's former residence through undue influence prior to decedent's death.
- e. Ms. Freitag told Respondent that she had no interest in pursuing such a claim against Mr. Paul Ehret.
- f. Respondent advised Ms. Freitag that Respondent had to meet with an accountant in order to complete the administration of the decedent's estate.
- g. Respondent told Ms. Freitag that she would call her in a few days with an update on the status of the decedent's estate and with a timetable for future progress on the decedent's estate.

154. By e-mail dated September 25, 2009, sent to Respondent by Ms. Freitag, and copied to Mr. Chris Ehret, Ms. Freitag, *inter alia*:

- a. stated that Mr. Paul Ehret advised that Respondent was in possession of the stock certificates;
- b. inquired as to when Mr. Paul Ehret would "meet with [Respondent] to sign over executorship";
- c. referred to an appointment with an accountant Respondent had scheduled for the following week;
- d. advised that she and Mr. Chris Ehret required copies of all documents that had been filed in connection with the estate;
- e. mentioned a meeting between Respondent and Mr. Chris Ehret that was to occur at some future date at the Delaware County Courthouse regarding the stock certificates;
- f. asked that she and Mr. Chris Ehret be "brought up to speed on the original fee agreement" and how to proceed moving forward;
- g. opined that decedent's estate was not complicated;

- h. expressed her disapproval of taking any legal action concerning decedent's former residence; and
- i. requested that Respondent copy Mr. Chris Ehret when Respondent answered Ms. Freitag's e-mails and that Respondent copy Ms. Freitag when answering Mr. Chris Ehret's e-mails.

155. Respondent received this e-mail.

156. Sometime after this e-mail Respondent and Ms. Freitag spoke on the telephone.

- a. Respondent told Ms. Freitag that everything was "fine" regarding decedent's estate.
- b. Respondent informed Ms. Freitag that Respondent had yet to meet with an accountant.
- c. Respondent advised Ms. Freitag that Respondent would contact Ms. Freitag with an update on the status of the decedent's estate and a timetable for future action.

157. By e-mail dated October 1, 2009, sent to Respondent by Ms. Freitag, and copied to Mr. Chris Ehret, Ms. Freitag, *inter alia*:

- a. referred to a telephone conversation Respondent and Ms. Freitag had almost a week earlier;
- b. stated that she and Mr. Chris Ehret had sent Respondent e-mails regarding the estate, but that none of the matters discussed in their e-mails had been addressed;
- c. noted that "yesterday [Respondent's] cell phone voicemail has been full, so it was not possible to contact [Respondent]";
- d. advised Respondent that she and Mr. Chris Ehret would be proceeding with another plan on Monday (October 5, 2009);
- e. informed Respondent that Mr. Paul Ehret was prepared to "sign over executorship to the designated alternate" and that Mr. Chris Ehret was prepared to complete the paperwork concerning the stock certificates; and
- f. stated that Respondent's lack of communication was unacceptable.

158. Respondent received this e-mail.

159. On October 2, 2009, Respondent left a voicemail message on Ms. Freitag's cell phone in which Respondent

stated that everything was "fine" with the decedent's estate and provided her new office location.

160. Over the following week, Ms. Freitag attempted to contact Respondent on Respondent's cell phone number.

- a. Ms. Freitag was unable to leave Respondent a message because Respondent's cell phone's voicemail was full.

161. By letter dated October 15, 2009, mailed to Respondent at 835 West Lancaster Avenue, Suite 200, Bryn Mawr, Pennsylvania 19010 ("the Bryn Mawr address"), Peter E. Bort, Esquire, *inter alia*:

- a. advised that he represented Ms. Freitag and Mr. Chris Ehret, beneficiaries under the decedent's Will;
- b. stated that he was told that Mr. Paul Ehret no longer wished to serve as Executor for the decedent's estate and that Respondent "may no longer be representing the estate";
- c. informed Respondent that he was told by Ms. Freitag and Mr. Chris Ehret that they and Mr. Paul Ehret were not able to communicate with Respondent and obtain information regarding the decedent's estate; and

d. requested a reply to his letter within seven days and absent a response, he would assume that Respondent no longer represented the decedent's estate and that he could contact Mr. Paul Ehret directly.

162. Respondent received this letter.

163. Respondent failed to respond to this letter.

164. On or about October 27, 2009, Mr. Bort filed with the Orphans' Court Division of the Court of Common Pleas of Delaware County a "Petition to Substitute Joan Marie Ehret Freitag and Chris Robert Ehret as Co-Executors in Place of Paul Martin Ehret" ("the Petition").

165. On October 27, 2009, Respondent telephoned Mr. Bort and promised to provide him with the file for the decedent's estate on November 3, 2009.

166. By letter dated October 28, 2009, mailed to Respondent at the Bryn Mawr address and 176 Brooklea Road, Rosemont, Pennsylvania, 19010 ("the Rosemont address"), Mr. Bort, *inter alia*:

a. thanked Respondent for telephoning him on October 27, 2009 regarding the decedent's estate; and

- b. confirmed that Respondent would provide him with the file for the decedent's estate on Tuesday, November 3, 2009.

167. Respondent received this letter.

168. Respondent failed to provide Mr. Bort with the file for the decedent's estate by November 3, 2009, as promised.

169. By Final Decree dated November 4, 2009 ("the Decree"), the Orphans' Court granted the Petition.

170. By letter dated November 5, 2009, mailed to Respondent at the Bryn Mawr address and the Rosemont address, Mr. Bort, *inter alia*:

- a. reiterated that Respondent told him that she would provide him with the estate file on or before November 3, 2009;
- b. noted that as of the date of his letter, he had yet to receive from Respondent the file for the decedent's estate; and
- c. requested that Respondent contact him immediately to make arrangements to transfer the file for the decedent's estate.

171. Respondent received this letter.

172. On November 11, 2009, Respondent telephoned Mr. Bort and promised to provide him with the file for the decedent's estate on November 16, 2009.

173. By letter dated November 11, 2009, mailed to Respondent at the Bryn Mawr address and the Rosemont address, Mr. Bort, *inter alia*:

- a. confirmed that Respondent had telephoned his office that day and stated that she would provide him with the file for the decedent's estate by Monday, November 16, 2009.

174. Respondent received this letter.

175. Respondent failed to provide Mr. Bort with the file for the decedent's estate by November 16, 2009.

176. Following termination of Respondent's representation, Respondent failed to return to Mr. Bort, Ms. Freitag, or Mr. Chris Ehret the "starter checks" for the estate account and the original documents that she received from Mr. Paul Ehret that relate to the decedent's estate.

177. Following termination of Respondent's representation, Respondent failed to refund to Ms. Freitag or Mr. Chris Ehret the advanced payment of her fee that went unearned.

178. Sometime after Mr. Paul Ehret had retained Respondent to provide him with legal assistance in

administering the decedent's estate, Respondent prepared a pleading titled "Petition to Remove Paul Martin Ehret as Executor of the Estate and to Appoint Herta(sic) Ehret a Successor Executrix" ("the Petition to Remove").

179. Mr. Paul Ehret did not authorize Respondent to prepare the Petition to Remove.

180. Ms. Freitag did not authorize Respondent to prepare the Petition to Remove.

181. Respondent admits that by her conduct as set forth in Paragraphs 133 through 180 above, 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 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. A lawyer may take such action

on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify;

- 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)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- e. 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;
- f. 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; and

g. 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. The lawyer may retain papers relating to the client to the extent permitted by other law.

CHARGE V: ODC FILE NO. C1-10-121

182. On February 9, 2009, Ms. Jean T. Lee, who was referred to Respondent by Joseph A. Gembala, III, Esquire, met with Respondent and decided to retain her to represent Ms. Lee in securing guardianship over Mr. Thomas Bright, Ms. Lee's mentally ill cousin.

- a. The meeting with Ms. Lee took place at the law office of Gembala & Associates.
- b. At the meeting, Ms. Lee provided Respondent with three original life insurance policies that Mr. Bright's mother had purchased prior to her death in January 2009.
- c. Respondent told Ms. Lee that Respondent would "look into" Ms. Lee's claim that Mr. Bright's "half aunt," Marie Holt, had deprived Mr. Bright of the proceeds of the policies.
- d. Ms. Lee was advised that the fee for the representation was \$2,500.00.

183. Ms. Lee made five separate payments toward the \$2,500.00 fee until the balance was paid in full.

184. From February 2009 through June 2009, Ms. Lee would call Respondent from time to time and leave messages inquiring about the status of the guardianship proceedings and the return of the original life insurance policies.

185. Respondent failed to return Ms. Lee's messages.

186. On two separate occasions between February 2009 and early June 2009, Ms. Lee made arrangements to meet with Respondent at the law office of Gembala & Associates to retrieve the life insurance policies.

- a. Respondent failed to appear for the scheduled meetings.

187. Sometime in May 2009, Respondent contacted Ms. Lee and made arrangements to meet Ms. Lee at Ms. Lee's place of employment so that Ms. Lee could sign a document that would authorize Respondent to obtain information from one of the insurance companies that had issued a life insurance policy for Mr. Bright's mother.

- a. On the scheduled meeting date, Respondent appeared at Ms. Lee's place of employment with the authorization form, which Ms. Lee executed.
- b. Respondent told Ms. Lee that Respondent would contact Ms. Lee regarding the life insurance policies.

188. By e-mail dated June 17, 2009, sent to Respondent by Ms. Lee, Respondent was, *inter alia*:

- a. advised that Ms. Lee had been trying to reach Respondent; and
- b. requested to have the life insurance policies available for Ms. Lee to retrieve from the law office of Gembala & Associates on the morning of June 19, 2009, so that Ms. Lee could provide the life insurance

policies to the Economic Crime Unit of the Philadelphia District Attorney's Office.

189. Respondent received this e-mail.

190. Ms. Lee also telephoned Respondent and left her a message regarding Ms. Lee's intention to retrieve the life insurance policies on the morning of June 19, 2009.

191. Respondent failed to make the life insurance policies available to Ms. Lee when she appeared at the law office of Gembala & Associates on June 19, 2009.

192. By e-mail dated June 19, 2009, sent to Respondent by Ms. Lee, Respondent was, *inter alia*:

- a. advised that Respondent's representation was terminated; and
- b. asked to immediately return to Ms. Lee the life insurance policies.

193. Respondent received this e-mail.

194. On June 19, 2009, Ms. Lee sent Respondent a text message, in which she advised Respondent that on the morning of June 22, 2009, Ms. Lee would appear at the law office of Gembala & Associates to retrieve the life insurance policies.

195. Respondent received this text message.

196. Respondent failed to make the life insurance policies available to Ms. Lee when she appeared at the law office of Gembala & Associates on June 22, 2009.

197. On June 23, 2009, Respondent and Ms. Lee had a telephone conversation.

- a. Respondent represented to Ms. Lee that Respondent would immediately provide the Philadelphia District Attorney's Office with copies of the life insurance policies.

198. By e-mail dated June 25, 2009, sent to Respondent by Ms. Lee, Respondent was, *inter alia*:

- a. advised that Ms. Lee had discovered that Respondent had misrepresented to her that Respondent had forwarded the life insurance policies to the Philadelphia District Attorney's Office; and
- b. informed that Ms. Lee would take action to address Respondent's failure to return the life insurance policies.

199. Respondent received this e-mail.

200. Respondent failed to respond to this e-mail.

201. By letter dated August 6, 2009, sent to Respondent by regular mail and addressed to her at 1500

Walnut Street, Suite 2000, Philadelphia, PA 19102, Mr. Albertine Y. DuFrayne, Esquire, *inter alia*:

- a. advised Respondent that his law office had been retained by Ms. Lee to handle the guardianship proceedings regarding Mr. Bright; and
- b. requested that Respondent immediately return "all original paperwork" to Ms. Lee or make it available for Ms. Lee to retrieve.

202. By e-mail dated December 12 2009, sent by Respondent in response to Ms. Lee's June 25, 2009 e-mail, Respondent, *inter alia*:

- a. accused Ms. Lee of defaming Respondent through use of the Internet; and
- b. stated that Respondent was unaware of the attorney "handling" Ms. Lee's "matters," but requested that Respondent be advised of that attorney's identity so that Respondent's attorney "can serve them with proper documents."

203. During the course of Respondent's representation of Ms. Lee, Respondent failed to take action to initiate guardianship proceedings regarding Mr. Bright.

204. Following Ms. Lee's termination of Respondent's representation, Respondent failed to return to Ms. Lee the original life insurance policies.

205. Respondent admits that by her conduct as set forth in Paragraphs 182 through 204 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- c. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information; and
- d. 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. The lawyer may retain papers relating to the client to the extent permitted by other law.

CHARGE VI: ODC FILE NO. C1-10-798

206. Sometime in June 2009, Mr. Seneca T. Willoughby, Sr., went to the law office of Joseph A. Gembala, III, Esquire, to obtain assistance with a legal matter.

207. Mr. Gembala decided not to represent Mr. Willoughby in his legal matter.

208. At the time Mr. Willoughby met with Mr. Gembala, Respondent occasionally performed legal work for Mr. Gembala on a *per diem* basis.

- a. From time to time, Mr. Gembala would refer to Respondent cases he declined to accept.

209. Mr. Gembala referred Mr. Willoughby to Respondent.

210. Mr. Willoughby met with Respondent and explained that:

- a. in July 2009, a property located at 2713 W. Jefferson Street, Philadelphia, Pennsylvania ("the property"), was scheduled for a sheriff's sale because of an unpaid tax delinquency in the amount of \$10,000.00;

- b. the property was titled in the name of Mr. Willoughby's deceased great grandmother, Geraldine Willoughby ("the decedent");
- c. the decedent's Will had not been probated;
- d. Mr. Willoughby's mother, also named Geraldine Willoughby ("Ms. Willoughby"), resided in the property; and
- e. Mr. Willoughby wanted an attorney to have the property taken off the list of properties to be sold at a sheriff's sale, to probate the decedent's Will, and to have Ms. Willoughby granted ownership of the property.

211. Respondent told Mr. Willoughby that for a fee of \$2,500.00, she would:

- a. have the property removed from the list of properties scheduled to be sold at a sheriff's sale and negotiate a reduction of the tax delinquency and a repayment plan;
- b. probate the decedent's Will; and
- c. transfer ownership of the property to Ms. Willoughby.

212. Mr. Willoughby agreed to retain Respondent.

213. By no later than September 2009, Mr. Willoughby paid in full Respondent's quoted fee of \$2,500.00 by making several installment payments.

214. Respondent had not previously represented either Mr. Willoughby or Ms. Willoughby.

215. Respondent failed to provide either Mr. Willoughby or Ms. Willoughby with a written fee agreement before or within a reasonable time after commencing the representation.

216. Respondent failed to deposit the \$2,500.00 advance payment of the fee that she received from Mr. Willoughby into a trust account.

217. Respondent did not have Mr. Willoughby's or Ms. Willoughby's informed consent, in writing, to handle the \$2,500.00 advance payment of her fee in a manner different than that prescribed by Rule of Professional Conduct 1.15(i).

218. On June 14, 2009, Respondent filed a Chapter 13 bankruptcy petition on behalf of Ms. Willoughby with the United States Bankruptcy Court for the Eastern District of Pennsylvania, said case captioned *In Re: Geraldine B. Willoughby*, Bankruptcy No. 09-14400-bif ("the Willoughby bankruptcy case").

- a. Respondent failed to pay the \$299.00 filing fee or file an application for installment payments.

219. Respondent filed the Willoughby bankruptcy case for the primary purpose of staying the sheriff's sale of the property.

220. By Order dated June 15, 2009, the bankruptcy court, *inter alia*:

- a. stated that the Matrix List of Creditors, the Certification Concerning Credit Counseling and/or the Certificate of Credit Counseling, and the Chapter 13 Plan had not been filed in the Willoughby bankruptcy case;
- b. directed that the Matrix List of Creditors, the Certificate of Credit Counseling, or the Request for a Waiver from the Credit Counseling Requirement had to be filed within 7 days of the filing of the bankruptcy petition or else the Willoughby bankruptcy case could be dismissed without additional notice or hearing; and
- c. ordered that all other missing documents were to be filed within 15 days of the

filing of the bankruptcy petition or the Willoughby bankruptcy case could be dismissed without additional notice or hearing after June 29, 2009.

221. Respondent received a copy of this Order.

222. On June 16, 2009, Respondent filed with the bankruptcy court a Certificate of Credit Counseling.

223. Respondent failed to file with the bankruptcy court a Matrix List of Creditors or the Chapter 13 Plan.

224. On June 18, 2009, the bankruptcy court issued a Notice of Show Cause Hearing to determine whether the case should be dismissed for failure to pay the filing fee.

225. By Order dated July 1, 2009, the bankruptcy court dismissed the Willoughby bankruptcy case because Respondent failed to timely file the documents required by the June 15, 2009 Order.

226. After obtaining a stay of the sheriff's sale of the property, Respondent failed to:

- a. probate the decedent's Will;
- b. negotiate a reduction of the tax delinquency and a repayment plan; and
- c. transfer ownership of the property to Ms. Willoughby.

227. Following the dismissal of the Willoughby bankruptcy case, Mr. Willoughby would telephone Respondent from time to time to ascertain the progress Respondent was making on his and his mother's legal matter.

228. On those occasions when Mr. Willoughby would reach Respondent on the telephone, Respondent would either:

- a. advise Mr. Willoughby that she was working on his legal matter; or
- b. arrange for Mr. Willoughby to meet with her at Mr. Gembala's law office to discuss the progress she was making and to have him execute certain documents.

229. On every occasion that Respondent scheduled a meeting with Mr. Willoughby, Respondent failed to meet with Mr. Willoughby at Mr. Gembala's law office at the agreed upon date and time.

230. Sometime in January 2010, Jerome M. Charen, Esquire, telephoned Respondent on behalf of Mr. Willoughby.

231. As a result of this telephone conversation, Mr. Charen sent Respondent a letter dated January 29, 2010, in which Mr. Charen, *inter alia*:

- a. enclosed a copy of a pleading that he believed would provide Respondent "with the guidance [she] need[ed]";

- b. requested that Respondent advise him if she needed further assistance;
- c. provided Respondent with his e-mail address and in turn, asked for her e-mail address; and
- d. stated that he was copying Mr. Willoughby on his letter to Respondent so that Mr. Willoughby knew that both of them were "moving the matter forward and dealing with the unanticipated complications."

232. Respondent received this letter.

233. By letter dated February 23, 2010, sent to Respondent by regular mail, Mr. Charen, *inter alia*:

- a. stated that it was "imperative that [Respondent] return [his] phone calls and messages left at [her] office";
- b. advised Respondent that Mr. Willoughby was concerned that the property would be sold at a sheriff's sale;
- c. noted that when the both of them last spoke, Respondent conveyed to Mr. Charen that she was "moving forward";

- d. remarked that he had sent to Respondent a pleading in an adverse possession case as a form for her use;
- e. inquired as to the status of the legal matter; and
- f. expressed his willingness to assist Respondent.

234. Respondent received this letter.

235. By letter dated March 8, 2010, sent to Respondent by regular mail, Mr. Charen, *inter alia*:

- a. stated that when the both of them had last spoken, Respondent had discussed her plan to visit the sheriff's office regarding the property;
- b. expressed that he awaited Respondent's subsequent telephone call to discuss the status of Mr. Willoughby's legal matter and the next action to take, which information would be conveyed to Mr. Willoughby; and
- c. requested that Respondent call him because "[t]he circumstances may be critical."

236. Respondent received this letter.

237. Respondent failed to respond to this letter.

238. By letter dated March 19, 2010, sent to Respondent by regular mail, Mr. Charen, *inter alia*:

- a. referred to his March 8, 2010 letter, which requested a telephone call following Respondent's meeting "with the Sheriff"; and
- b. requested that Respondent call him.

239. Respondent received this letter.

240. Respondent failed to respond to this letter.

241. By letter dated March 26, 2010, sent to Respondent by regular mail, Mr. Charen, *inter alia*:

- a. noted that he had tried contacting Respondent by telephone and mail;
- b. requested a response from Respondent; and
- c. expressed his willingness to assist Respondent.

242. Respondent received this letter.

243. Respondent failed to respond to this letter.

244. By letter dated March 30, 2010, sent to Respondent by regular mail, with copy to Mr. Willoughby, Mr. Charen, *inter alia*, informed Respondent that Mr. Willoughby terminated her representation, wanted a refund of the \$2,500.00 fee, and sought the return of the documents she received from Mr. Willoughby.

245. Respondent received this letter.

246. Respondent failed to:

- a. respond to this letter;
- b. contact Mr. Willoughby regarding the letter's contents;
- c. refund to Mr. Willoughby the \$2,500.00 fee; and
- d. return to Mr. Willoughby his documents.

247. By letter dated May 19, 2010, sent to Respondent by regular mail, Mr. Charen, *inter alia*, enclosed documents that he planned to file on Mr. Willoughby's behalf with the Disciplinary Board on May 26, 2010, unless Respondent contacted him.

248. Respondent contacted Mr. Charen in response to this letter and scheduled a meeting.

249. Respondent failed to attend the meeting.

250. By letter dated June 8, 2010, sent to Respondent by certified mail, return receipt requested, and regular mail, Mr. Charen, *inter alia*:

- a. stated that Respondent had failed to attend the scheduled meeting and that she had not contacted him "for many days";
- b. informed Respondent that he was unable to reach her at two different telephone numbers because for one telephone number the

voicemail box was full and for the second telephone number the line disconnected after several rings;

- c. remarked on earlier appointments Respondent had failed to make; and
- d. advised Respondent that if he did not receive the file and a \$2,500.00 check, less "actual out of pocket costs" as both of them had previously agreed, within 48 hours, he would proceed without further communication from Respondent.

251. Respondent received this letter.

252. Sometime prior to July 12, 2010, Respondent and Mr. Charen met, at which meeting Respondent:

- a. provided Mr. Charen with two money orders, each in the amount of \$500.00;
- b. agreed to pay the remaining balance owed on the \$2,500.00 fee by making two weekly installment payments commencing a week after the meeting, less actual costs expended;
- c. stated that she would provide Mr. Charen with Mr. Willoughby's file; and

- d. consented to Mr. Charen's suggestion that she confirm the agreement by providing him with a letter by July 12, 2010.

253. By letter dated July 15, 2010, sent to Respondent by regular mail, Mr. Charen, *inter alia*:

- a. expressed his disappointment that Respondent had not provided him with a "letter of our understanding" by July 12, 2010;
- b. stated that Respondent had failed to deliver the first of two checks she had promised by July 14, 2010, with the second check due a week later, both checks totaling \$1,250.00; and
- c. advised Respondent that by July 21, 2010, he intended to file with the Disciplinary Board forms that Mr. Willoughby had signed.

254. Respondent received this letter.

255. In September 2010, Respondent satisfied Mr. Willoughby's request for a refund.

256. Respondent admits that by her conduct as set forth in Paragraphs 206 through 255 above, 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 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(1), which states that a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- d. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- e. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- f. 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;

- g. 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; and
- h. 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;
- i. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- j. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

257. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of one year and one day.

258. Respondent hereby consents to that discipline being imposed upon her 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 she consents to the recommended discipline, including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

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

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and her consent to receiving a suspension of one year and one day;
- c. Respondent is remorseful for her misconduct and understands she should be disciplined,

as is evidenced by her consent to receiving a suspension of one year and one day; and

d. during the period Respondent engaged in misconduct, she had been evicted from an office she had been renting from an attorney, was embroiled in marital difficulties, and was required to attend to her and her children's medical needs.

260. Respondent has a record of discipline, which is an aggravating factor in determining the discipline to impose.

a. On June 6, 2006, Respondent received an informal admonition for two matters. In one matter, Respondent was found to have violated RPC 1.1, RPC 1.3, RPC 1.4(a)(4), RPC 1.16(d), RPC 3.1, RPC 3.3(a)(1), RPC 3.5(b), RPC 8.4(c), and RPC 8.4(d); in the second matter, Respondent violated RPC 1.16(d) and RPC 8.4(c).

261. Respondent's misconduct can best be characterized as involving incompetence, neglect, lack of communication, and failure to refund unearned fees and return documents. In two client matters, Respondent failed to provide fee agreements, failed to deposit advance payment of fees in a

trust account, and made misrepresentations. In one client matter, Respondent violated RPC 1.2(a) and RPC 8.4(d).

There is precedent that supports imposing a suspension of one year and one day for an attorney who engages in a pattern of lack of competence, neglect, lack of communication, and failure to refund unearned fees. See, e.g., *Office of Disciplinary Counsel v. Eric M.D. Levande*, No. 72 DB 1999 (S.Ct. Order 4/2/01) (suspension of one year and one day for an attorney who violated Rules of Professional Conduct 1.1, 1.3, 1.4(a), 1.15(a), 1.15(b), 1.16(d) and 8.4(d) in eight client matters; aggravating factors were two informal admonitions and an unwillingness to accept responsibility and mitigating factors were health problems and marital difficulties); *Office of Disciplinary Counsel v. Charles Elias Sieger, Jr.*, No. 142 DB 1999 (S.Ct. Order 5/8/01) (suspension of one year and one day for lack of competence, neglect, and lack of communication in three client matters, with a misrepresentation occurring in one of the three client matters; aggravating factor was three prior informal admonitions and mitigating factors were Respondent's marital problems and a heart attack he suffered, which rendered Respondent unable to control his law practice); and *Office of Disciplinary Counsel v. Michael G. Bowen*, Nos. 10 and 28 DB 2003 (S.Ct. Order

10/22/04) (suspension of one year and one day for incompetence, neglect, lack of communication, failure to account, and failure to refund unearned fees in six client matters; aggravating factors were a private reprimand, lack of remorse, failure to take responsibility, and failure to address problems with his law practice).

Of the aforementioned cases, **Levande** and **Bowen** engaged in misconduct that most resembles Respondent's misconduct.

In **Levande**, the attorney failed to provide competent and diligent representation to eight clients who sought legal assistance in bankruptcy and/or divorce actions. Generally, Respondent Levande received his requested retainer at the outset of the representation, failed to take prompt action to pursue bankruptcy or divorce on behalf of his clients, or alternatively, filed documents that contained erroneous information. Respondent Levande failed to advise his clients of developments in their cases, and failed to respond to his clients' inquiries. In four of the client matters, Respondent Levande failed to refund unearned fees following termination of his representation. In addition, in four of the eight client matters, Respondent Levande failed to deposit fees and costs in a trust account. Respondent Levande was also

found to have negligently mishandled his trust and operating accounts, which led to commingling of fiduciary funds with Respondent Levande's funds, the dishonoring of several checks drawn on the trust account, and the trust account being overdrawn on one occasion. Respondent Levande's misconduct occurred from 1996 through 1997.

Like Respondent Levande, Respondent MacDonald Pahides has engaged in incompetence (four of five client matters), neglect (five client matters), lack of communication (five client matters), failure to deposit advance payment of fees into a trust account (two client matters), and failure to refund unearned fees (two client matters).

Respondent MacDonald Pahides' misconduct is unlike Respondent Levande's in that she: failed to return documents to her clients (two client matters); engaged in misrepresentations (two client matters); failed to provide a written fee agreement (two client matters); failed to obtain her client's authority to draft a pleading (one client matter); failed to identify and safeguard client property (one client matter); engaged in conduct prejudicial to the administration of justice (one client matter); and was convicted of a non-serious crime. In contrast, Respondent MacDonald Pahides did not mishandle her trust and operating accounts as Respondent Levande had.

Because Respondent MacDonald Pahides engaged in misrepresentations in two client matters, her misconduct should be considered more egregious than Respondent Levande's misconduct, which was not deemed dishonest.

Moreover, the facts in Respondent Levande's matter and Respondent MacDonald Pahides' matter overlap in the area of aggravating and mitigating factors, in that each received informal admonitions and each experienced marital and health problems. However, unlike Respondent MacDonald Pahides, whose tendering of the within Petition demonstrates remorse and acceptance of responsibility, Respondent Levande failed to establish remorse or acceptance of responsibility at the disciplinary hearing.

In *Bowen*, the attorney was charged in connection with six different clients matters with failing to: provide competent and diligent representation; respond to his clients' inquiries and advise his clients of developments in their cases; refund unearned fees; and provide an accounting. Respondent Bowen's clients sought his assistance in filing for bankruptcy, appearing and advocating on their behalf before federal and state tax authorities, or compromising a federal tax obligation. Respondent Bowen's misconduct occurred from July 2000 through October 2002.

Both Respondent Bowen and Respondent MacDonald Pahides engaged in a pattern of incompetence, neglect, lack of communication, and failure to refund unearned fees, with Respondent Bowen having mishandled one more client matter than Respondent MacDonald Pahides. However, Respondent MacDonald Pahides' matter involves more types of misconduct than Respondent Bowen's matter, as discussed *supra*. Respondent MacDonald Pahides' misconduct can be deemed more serious than Respondent Bowen's misconduct because Respondent MacDonald Pahides' misconduct is broader and involves misrepresentations in two client matters.

In *Bowen*, the Disciplinary Board found no mitigating factors, although several aggravating factors were considered in determining Respondent Bowen's discipline: a private reprimand administered in 2000; no demonstration of remorse; failure to take responsibility; and failure to address problems with his law practice. Respondent MacDonald Pahides has a prior informal admonition; however, unlike Respondent Bowen, Respondent MacDonald Pahides has several mitigating factors, as discussed *supra*, in ¶ 259.

In sum, both *Levande* and *Bowen* establish that attorneys with a prior record of private discipline who have engaged in a pattern of incompetence, neglect, lack of communication, and failure to refund unearned fees will

receive a suspension of one year and one day. Because Respondent's misconduct is similar, although not identical, to the misconduct committed by the attorneys in *Levande* and *Bowen*, a suspension of one year and one day would be appropriate discipline for Respondent's misconduct. Respondent's mitigating factors also support the imposition of a suspension of one year and one day, which will require Respondent to prove at a reinstatement hearing that her marital and health problems are sufficiently resolved so that she can resume the practice of law without endangering the public.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent receive a suspension of one year and one day.
- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an order for Respondent to pay the necessary

expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition, and that all expenses be paid by Respondent before the imposition of discipline under Pa.R.D.E. 215(g).

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

October 7, 2010
Date

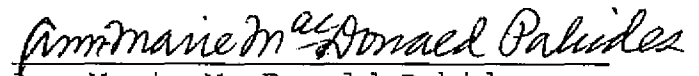
By



Richard Hernandez
Disciplinary Counsel

10-5-2010
Date

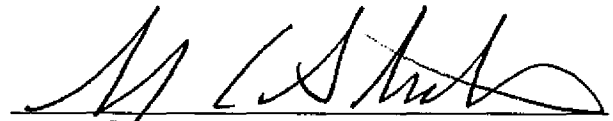
By



Ann-Marie MacDonald Pahides
Respondent

10/5/2010
Date

By



Samuel C. Stretton, Esquire
Respondent's Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1546 Disciplinary Docket
Petitioner : No. 3
:
:
v. : No. 171 DB 2009; ODC File
: Nos. C1-09-132; C1-09-1189
: C1-09-1199; C1-10-121; and
: C1-10-798
:
: Atty. Reg. No. 55219
ANN-MARIE MacDONALD PAHIDES, :
Respondent : (Philadelphia)

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

Respondent, Ann-Marie MacDonald Pahides, hereby states that she consents to the imposition of a suspension of one year and one day, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

1. Her consent is freely and voluntarily rendered; she is not being subjected to coercion or duress; she is fully aware of the implications of submitting the consent; and she has consulted with Samuel C. Stretton, Esquire, in connection with the decision to consent to discipline;

2. She is aware that there is presently pending investigations into allegations that she has been guilty of misconduct as set forth in the Joint Petition;

3. She acknowledges that the material facts set forth in the Joint Petition are true; and

4. She consents because she knows that if charges predicated upon the matters under investigation were filed, she could not successfully defend against them.

Ann-Marie MacDonald Pahides
Ann-Marie MacDonald Pahides, Esquire
Respondent

Sworn to and subscribed

before me this 5
day of October, 2010.

Cheryl L. McMenamin
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Cheryl L. McMenamin, Notary Public
West Chester Boro, Chester County
My Commission Expires June 21, 2012
Member, Pennsylvania Association of Notaries