

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2658 Disciplinary Docket No 3
	:	
Petitioner	:	No. 175 DB 2019 and File Nos. C3-19-733;
	:	C3-19-750; C3-19-156; C3-19-787; C3-19-
v.	:	804; C3-20-27; C3-20-719
	:	
DAVID W. HARRIS, III,	:	Attorney Registration No. 75708
	:	
Respondent	:	(Lackawanna County)

ORDER

PER CURIAM

AND NOW, this 15th day of January, 2021, upon consideration of the Verified Statement of Resignation, David W. Harris, III, is disbarred on consent from the Bar of this Commonwealth, retroactive to November 8, 2019. See Pa.R.D.E. 215. Respondent shall comply with all of the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board, pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 01/15/2021

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2658 DD No. 3
Petitioner	:	
	:	No. 175 DB 2019
v.	:	
	:	Atty. Reg. No. 75708
DAVID W. HARRIS, III	:	
Respondent	:	(Lackawanna)

RESIGNATION
UNDER Pa.R.D.E. 215

David W. Harris, III, hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Rule 215, Pa.R.D.E. ("Enforcement Rules"), 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 June 8, 1995. His attorney registration number is 75708.

2. By Order dated November 8, 2019, the Supreme Court placed him on immediate temporary suspension until further definitive action by the Court. See Pa.R.D.E. 208(f)(2). A copy of the Order is attached hereto and made a part hereof as "Exhibit A."

3. He desires to submit his resignation as a member of said bar. He respectfully requests his resignation be applied retroactively to the date of November 8, 2019.

4. His resignation 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 resignation.

5. He is aware that there are presently pending investigations into allegations that he has been guilty of misconduct, based upon his conviction of criminal charges as more fully set forth in the Criminal Complaint and Affidavit of Probable Cause for Arrest, a true and correct copy of which is attached hereto and made a part hereof as "Exhibit B."

6. On October 20, 2020, he entered a guilty plea and was convicted in the Lackawanna County Court of Common Pleas—Criminal Division of a criminal offense relating to one count of theft by unlawful taking 18 Pa.C.S.A § 3921(a), graded as a felony of the third degree, which conviction constitutes a per se ground for discipline under Enforcement Rule 203(b)(1). See *Commonwealth v. David W. Harris*, CP-35-CR-0000821-2020. A true and correct copy of his Guilty Plea Agreement is attached hereto and made a part hereof as "Exhibit C."

7. He is aware that there are presently pending investigations into allegations that he has been guilty of additional misconduct involving 13 separate matters, as more fully set forth in the 13 separate DB-7 Requests by Office of Disciplinary Counsel ("ODC") at Nos. C3-18-867; C3-18-892; C3-19-156; C3-19-239; C3-19-360; C3-19-587; C3-19-648; C3-19-733;

C3-19-750; C3-19-787; C3-19-804; C3-20-27; and C3-20-719. True and correct copies of ODC's DB-7 Requests are attached hereto, made a part hereof, and marked as "Exhibit D," collectively.

8. He acknowledges that the material facts upon which the allegations of the Criminal Complaint (Exhibit B) and DB-7 Requests (Exhibit D) are based are true.

9. He submits the within resignation because he knows that if charges were predicated upon the misconduct under investigation, he could not successfully defend himself against them.

10. He submits the within resignation because the said conviction stands as a per se ground for discipline under Enforcement Rules 214(e) and 203(b)(1), and because he is guilty of the crime.

11. He submits the within resignation because he knows that if charges were predicated upon the conviction, he could not successfully defend against them.

12. He is fully aware that submission of this Resignation Statement is irrevocable and that he can only apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b) and (c).

13. He is aware that pursuant to Enforcement Rule 215(c), the fact that he has tendered this resignation shall become a matter of public record immediately upon delivery of

the resignation statement to Disciplinary Counsel or the Secretary of the Board.

14. Upon entry of the order disbarring him on consent, he will promptly comply with the notice, withdrawal, resignation, trust accounting, and cease-and-desist provisions of subdivisions (a), (b), (c) and (d) of Enforcement Rule 217.

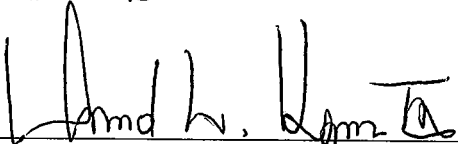
15. After entry of the order disbarring him on consent, he will file a verified statement of compliance as required by Enforcement Rule 217(e)(1).

16. He is aware that the waiting period for eligibility to apply for reinstatement to the practice of law under Enforcement Rule 218(b) shall not begin until he files the verified statement of compliance, and if the order of disbarment contains a provision that makes the disbarment retroactive to an earlier date, then the waiting period will be deemed to have begun on that earlier date.

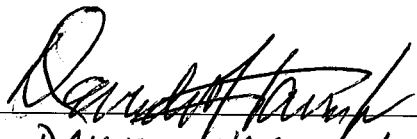
17. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has has not retained, consulted with and acted upon the advice of counsel in connection with his decision to execute the within resignation.

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

Signed this 11th day of December, 2020.



DAVID W. HARRIS, III

WITNESS: 
PRINT NAME: DAVID W HARRIS JR

EXHIBIT

A

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2658 Disciplinary Docket No 3
	:	
Petitioner	:	File Nos. C3-18-867; C3-18-892;
	:	C3-19-156; C3-19-239; C3-19-360;
v.	:	C3-19-587; C3-19-648
	:	
DAVID W. HARRIS, III,	:	Attorney Registration No. 75708
	:	
Respondent	:	(Lackawanna County)

ORDER

PER CURIAM


AND NOW, this 8th day of November, 2019, in the absence of a response to this Court's Rule to Show Cause why Respondent should not be placed on temporary suspension, the Rule is made absolute. It is provided that:

1. Respondent is placed on temporary suspension until further definitive action by this Court;
2. Respondent shall comply with the provisions of Pa.R.D.E. 217;
3. The President Judge of the Court of Common Pleas of Lackawanna County shall enter such orders as may be necessary to protect the rights of Respondent's clients or fiduciary entities with which he is involved, see Pa.R.D.E. 217(g); and
4. All financial institutions in which Respondent holds fiduciary funds shall freeze such accounts pending further action.

Respondent's rights to petition for dissolution or amendment of this order and to request accelerated disposition of charges underlying this order pursuant to Pa.R.D.E. 208(f)(6), are specifically preserved.

This Order constitutes an imposition of public discipline pertaining to confidentiality. See Pa.R.D.E. 402.

A True Copy Patricia Nicola
As Of 11/08/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

EXHIBIT

B

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF **LACKAWANNA**

Magisterial District Number: **45-3-01**

MDJ Hon. **PAUL KEELER**
Address: **104 SHADY LANE**
BOX 427
CHINCHILLA, PA 18410
Telephone: **570-587-1909**



POLICE CRIMINAL COMPLAINT
COMMONWEALTH OF PENNSYLVANIA

VS.

DEFENDANT:

(NAME and ADDRESS)

DAVID **W** **HARRIS** **III**
First Name Middle Name Last Name Gen.
435 WHITMORE AVENUE
MAYFIELD, PA 18433

NCIC Extradition Code Type

- ☐ 1 - Felony Full ☐ 5 - Felony Pend. ☐ C - Misdemeanor Surrounding States ☐ Distance: _____
☐ 2 - Felony Ltd. ☐ 6 - Felony Pend. Extradition Determ. ☐ D - Misdemeanor No Extradition
☒ 3 - Felony Surrounding States ☐ A - Misdemeanor Full ☐ E - Misdemeanor Pending
☐ 4 - Felony No Ext. ☐ B - Misdemeanor Limited ☐ F - Misdemeanor Pending Extradition Determ.

DEFENDANT IDENTIFICATION INFORMATION

Docket Number CR-128-19	Date Filed 10-16-19	OTN/LiveScan Number U759866-2	Complaint/Incident Number 20190911M0249	Request Lab Service? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
GENDER <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	DOB	POB	Add'l. DOB	Co-Defendants? <input type="checkbox"/>
AKA	First Name	Middle Name	Last Name	Gen.
RACE <input checked="" type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Native American <input type="checkbox"/> Unknown	ETHNICITY <input type="checkbox"/> Hispanic <input checked="" type="checkbox"/> Non-Hispanic <input type="checkbox"/> Unknown			
HAIR COLOR <input checked="" type="checkbox"/> Gry (Gray) <input type="checkbox"/> Red (Red/Auburn) <input type="checkbox"/> SDY (Sandy) <input type="checkbox"/> BLU (Blue) <input type="checkbox"/> PLE (Purple) <input type="checkbox"/> BRO (Brown) <input type="checkbox"/> Blk (Black) <input type="checkbox"/> Ong (Orange) <input type="checkbox"/> WHI (White) <input type="checkbox"/> XXX (Ink./Bald) <input type="checkbox"/> GRN (Green) <input type="checkbox"/> PNK (Pink) <input type="checkbox"/> Bln (Blonde / Strawberry)				
EYE COLOR <input type="checkbox"/> Blk (Black) <input checked="" type="checkbox"/> Blu (Blue) <input type="checkbox"/> BRO (Brown) <input type="checkbox"/> GRN (Green) <input type="checkbox"/> GRY (Gray) <input type="checkbox"/> HAZ (Hazel) <input type="checkbox"/> MAR (Maroon) <input type="checkbox"/> PNK (Pink) <input type="checkbox"/> MUL (Multicolored) <input type="checkbox"/> XXX (Unknown)				
DNA <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO DNA Location				WEIGHT (lbs.)
FBI Number	MNU Number			
Defendant Fingerprinted <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				Ft. HEIGHT in.
Fingerprint Classification				

DEFENDANT VEHICLE INFORMATION

Plate #	State	Hazmat <input type="checkbox"/>	Registration Sticker (MM/YY)	Comm'l Veh Ind. <input type="checkbox"/>	School Veh. <input type="checkbox"/>	Oth. NCIC Veh. Code	Reg. Same as Def. <input type="checkbox"/>
VIN	Year	Make	Model	Style	Color		

Office of the attorney for the Commonwealth ☒ Approved ☐ Disapproved because: _____

(The attorney for the Commonwealth may require the complaint, arrest warrant affidavit, or both, be approved by the attorney for the Commonwealth prior to filing. See PA. R. Crim. P 507.)

JUDITH G. PRICE, ESQ. FIRST ASST

(Name of the attorney for the Commonwealth - Please Print or Type)

(Signature of the attorney for the Commonwealth)

10-15-19
(Date)

I, DET. LISA BAUER

(Name of the Affiant)

of **LACKAWANNA COUNTY DISTRICT ATTORNEY'S OFFICE**

(Identify Department or Agency Represented and Political Subdivision)

2/12154

PSP/MPOETC - Assigned Affiant ID Number & Badge #

PA0352800

(Police Agency ORI Number)

do hereby state:

1. ☒ I accuse the above named defendant who lives at the address set forth above
☐ I accuse the defendant whose name is unknown to me but who is described as _____

☐ I accuse the defendant whose name and popular designation are unknown to me and whom I have therefore designated as John Doe or Jane Doe

with violating the penal laws of the Commonwealth of Pennsylvania at [**1**] **LACKAWANNA COUNTY**
(Subdivision Code) (Place-Political Subdivision)
409 DAVIS STREET, CLARKS SUMMIT, PA

in **LACKAWANNA** County [**35**] on or about **01/17/2018 to 01/26/2018**
(County Code) (Offense Date)

**POLICE CRIMINAL COMPLAINT**

Docket Number CR-128-19	Date Filed 10-16-19	OTN/LiveScan Number U 759866-2	Complaint/Incident Number 20190911M0249
Defendant Name	First DAVID	Middle W	Last HARRIS

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.
 (Set forth a brief summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated. In addition, social security numbers and financial information (e.g. PINs) should not be listed. If the identity of an account must be established, list only the last four digits. 204 PA §§ 213. - 213.7.)

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older 0			
<input checked="" type="checkbox"/> Lead?	1	3921	A	of the	18	1	F3
	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Safety Zone		<input type="checkbox"/> Work Zone	

Statute Description (Include the name of statute or ordinance):

Theft By Unlaw Taking-Movable Prop

Acts of the accused associated with this Offense:

THEFT BY UNLAWFUL TAKING OR DISPOSITION - In that the said David W. Harris, III, between January 17, 2018 and January 26, 2018, in the County of Lackawanna, did unlawfully take or exercise unlawful control over \$30,000.00, belonging to the Estate of Joanne Shepherd, with the intent to deprive the owner thereof, to wit: The said David W. Harris, III, while acting as Attorney for the Estate of Joanne Shepherd, did receive \$75,000.00 from the Co-Executors of the Estate to be used in its entirety to pre-pay inheritance taxes to the Lackawanna County Register of Wills, and the said Attorney David W. Harris, III only paid \$45,000.00 and kept the remaining \$30,000.00, in violation of Section 3921(a) of the Pennsylvania Crimes Code, Act of December 6, 1972, as amended, 18 Pa. C.S. 3921(a).

Inchoate Offense	<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older 0			
<input type="checkbox"/> Lead?	2	3925	A	of the	18	1	F3
	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade
PennDOT Data (if applicable)	Accident Number			<input type="checkbox"/> Safety Zone		<input type="checkbox"/> Work Zone	

Statute Description (Include the name of statute or ordinance):

RECEIVING STOLEN PROPERTY

Acts of the accused associated with this Offense:

RECEIVING STOLEN PROPERTY - In that the said Attorney David W. Harris, III, between January 17, 2018 and January 26, 2018, in the County of Lackawanna, intentionally received, retained or disposed of \$30,000.00 belonging to the Estate of Joanne Shepherd, with no intent to restore it to the owner, knowing that such property was stolen or believing that it had probably been stolen, to wit: David W. Harris, III, while acting as attorney for the Estate of Joanne Shepherd, did receive \$75,000.00 from the Co-Executors of the Estate to be used in its entirety to pay inheritance taxes to the Lackawanna County Register of Wills, and the said Attorney David W. Harris, III only paid \$45,000.00, and kept the remaining \$30,000.00, in violation of Section 3925(a) of the Pennsylvania Crimes Code, Act of December 6, 1972, as amended, 18 Pa. C.S. Section 3925(a)

**POLICE CRIMINAL COMPLAINT**

Docket Number CR-128-19	Date Filed 10-16-19	OTN/LiveScan Number U 759566-2	Complaint/Incident Number 20190911M0249
Defendant Name	First DAVID	Middle W	Last HARRIS

- I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
- I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of section 4904 of the Crimes Code (18 PA C.C. 4904) relating to unsworn falsification to authorities.
- This complaint is comprised of the preceding page(s) numbered 1 through 2.
- I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of Assembly, or in violation of the statutes cited.
(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)

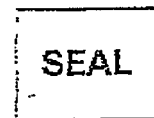
10-15, 2019
 (Date)

Det Lisa Bauer
 (Signature of Affiant)

AND NOW, on this date 10-18-19 I certify that the complaint has been properly completed and verified.
 An affidavit of probable cause must be completed before a warrant can be issued.

45-3-01
 (Magisterial District Court Number)

Paul Felle
 (Issuing Authority)





POLICE CRIMINAL COMPLAINT

Docket Number CR-2819	Date Filed 10-16-19	OTN/LiveScan Number Q 759866-2	Complaint/Incident Number 20190911M0249
Defendant Name	First DAVID	Middle W	Last HARRIS

AFFIDAVIT of PROBABLE CAUSE

SEE ATTACHED AFFIDAVIT OF PROBABLE CAUSE

I, **DET. LISA BAUER (2)**, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAN NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.


(Signature of Affiant)

Sworn to me and subscribed before me this 18 day of Oct, 2019
Date Paul Heuler, Magisterial District Judge

My commission expires first Monday of January, 2022

SEAL

CR-128-19

AFFIDAVIT OF PROBABLE CAUSE FOR ARREST
DAVID W. HARRIS, III, ESQUIRE

I am Detective Lisa Bauer of the Lackawanna County District Attorney's Office. I am assigned to the Criminal Investigation Division, and have been employed in this capacity for approximately thirty-one (31) years.

On or about September 3, 2019, this Detective received a telephone call from Attorney Marjorie Barlow. Attorney Barlow stated that she was contacted by John Shepherd and Bethany McCann, Co-Executors for the Estate of Joanne Shepherd, (hereinafter referred to as "Co-Executors"). Attorney Barlow further advised this Detective that the Co-Executors are the surviving children of Joanne Shepherd, and requested that she represent the Estate because they have reason to believe their previously engaged Estate attorney, David Harris, illegally took money from the Estate. This Detective met with Attorney Barlow and the Co-Executors and they relayed the following information to this Detective:

On October 28, 2017, Joanne Shepherd passed away. On November 7, 2017, her last will and testament was filed on at the Register of Wills of Lackawanna County, docketed to 35-17-1310. Also on this date, David W. Harris, III, Esquire (Attorney PA ID number 75708) entered his appearance as attorney for the Estate. Pursuant to a fee agreement dated November 7, 2017 for the Estate of Joanne Shepherd, on November 17, 2017, the Co-Executors issued check #100 drawn on Wells Fargo Bank account ending in #6327, in the amount of \$7,500.00 payable to the "Harris Law Office and/or Harris Law Firm". The Co-Executors stated to this Detective that subsequent to issuing the initial \$7,500.00 retainer fee check, they were directed by Attorney Harris to issue two (2) more checks. On September 8, 2018, the Co-Executors issued check #104 from the Estate of Joanne Shepherd Merrill Lynch account ending in #8667, payable to "Harris Law Offices" in the amount of \$25,000.00; and on September 11, 2018, issued check #1025 from the Estate of Joanne Shepherd Wells Fargo Account ending in #6327, payable to "Harris Law Office" in the amount of \$6,234.00. The total attorney's fees paid to Attorney Harris by the Co-Executors and at his direction is \$38,734.00.

Attorney Harris further requested that the Co-Executors issue him a check in the amount of \$75,000.00 made payable to the "Harris Law Firm", representing to them that he would use the \$75,000.00 as pre-prepayment of the inheritance tax. Attorney Harris additionally indicated to the Co-Executors that if the inheritance tax was paid within ninety (90) days of the decedent's death, there would be a 5% discount on the total amount of inheritance taxes they would have to pay.

On January 16, 2018, the Co-Executors gave Attorney Harris Estate Check #101 drawn from the Estate of Joanne Shepherd's Merrill Lynch account ending in #8667, in the amount of \$75,000.00 payable to the "Harris Law Firm". There was a notation on the memo line marked "Inheritance Tax". The aforementioned check was deposited into First National Bank account ending in #6989. The Co-Executors subsequently learned from the Lackawanna County Register of Wills Office that on January 26, 2018, Attorney Harris made an inheritance tax payment to the Register of Wills of only \$45,000.00, instead of the \$75,000.00 he indicated he

CR-128-19

was going to pay. PA Inheritance and Estate Tax Official Receipt No LC 026428 reveals that \$45,000.00 payment was in fact made on behalf of the Estate of Joanne Shepherd. The Co-Executors stated that Attorney Harris never informed them he was going to pay only \$45,000.00 for the inheritance tax, nor has he ever explained to them what was done with the remaining \$30,000.00. The Co-Executors also stated that they learned that an Inheritance Tax Return along with an inventory of the estate was required to be filed at the Lackawanna County Register of Wills by Attorney Harris by July 28, 2018, but neither were ever filed by Attorney Harris.

The Co-Executors further stated to this Detective that the Decedent, Joanne Shepherd, owned a home at 118 Maggies Road, South Abington Township, Lackawanna County, Pennsylvania, and Attorney Harris, as the legal representative of the estate, was supposed to transfer the home to the Co-Executors, but failed to do so. The Co-Executors further advised this Detective that Attorney Harris drafted a deed conveying the decedent's home to the Co-Executors, and had the Co-Executors sign the deed, but Attorney Harris never recorded the deed.

The Co-Executors advised this Detective that their mother also owned a home at 17 Birch Road, Sebago, Maine, and Attorney Harris was supposed to retain an attorney in Maine in order to have the property transferred into the Co-Executor's names, but failed to do so.

The Co-Executors also stated to this Detective that they started becoming concerned because Attorney Harris became difficult to get in touch with or locate, as he stopped answering the telephone or returning messages. The Co-Executors stated to this Detective that they both stopped at his office multiple times and on each occasion found the office to be dark inside, and closed with a sign on the door indicating to call the office phone number (570) 587-5051 or Attorney Harris's cell phone (570) 504-4632. The Co-Executors attempted to telephone Attorney Harris at his Law Office only to find that the number had been disconnected, and left messages on his cell phone, but never received a return call from Attorney Harris.

On March 28, 2019, April 2, 2019, April 15, 2019 and April 28, 2019 the Co-Executors sent letters to Attorney Harris advising that they have been trying to reach him, but have been unsuccessful.

On May 28, 2019, the Co-Executors sent a letter to Attorney Harris at Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, PA 18411. In the letter, they advised Attorney Harris that they had hired Attorney Barlow to represent the Estate, and they instructed him to take no further action on behalf of the Estate. The Co-Executors further requested that Attorney Harris release the Estate file to them along with a full accounting of the work he performed for the legal fees and expenses they paid to him, and a full refund of any attorney's fees remaining. The Co-Executors also demanded Attorney Harris return the remaining \$30,000.00 from the \$75,000.00 inheritance tax check they sent to him since he only paid \$45,000.00, and has not returned the remaining \$30,000.00. This letter was sent to Attorney Harris both first class mail and certified mail, return receipt requested. The regular first class mail was not returned, and Attorney Harris never signed for the certified letter.

On May 29, 2019, Attorney Barlow forwarded a Withdrawal of Appearance letter to Attorney Harris at his Davis Street, Clarks Summit, PA Law Office requesting that he sign and return it to Attorney Barlow. To date, Attorney Harris has not returned the original signed withdrawal of

appearance, released the Estate file, provided an accounting of his work done for the legal fees paid to him, nor has he refunded any money to the Co-Executors of the Estate.

On or about July 5, 2019, Attorney Barlow filed a Petition for Removal of Attorney of Record for the Estate of Joanne Shepherd. On July 12, 2019, Judge Vito Geroulo signed an order discharging and removing Attorney Harris as counsel for the Estate of Joanne Shepherd. Attorney Harris has never responded to any of the requests made to him by the Co-Executors or Attorney Barlow.

On September 9, 2019, this Detective met with Fran Kovaleski of the Lackawanna County Register of Wills Office for the purpose of reviewing the file of the Estate of Joanne Shepherd. Upon review of the file, Mrs. Kovaleski advised this Detective that Attorney Harris, as attorney for the estate, had an obligation to file the Inheritance Tax Return by July 28, 2018, and to date has not done so. Mrs. Kovaleski further advised that it is "unheard of" for Estate Attorneys to have Executors of an Estate make the inheritance tax check payable to an attorney or a law firm. Mrs. Kovaleski advised this Detective that the Inheritance Tax Check given to Attorney Harris by the Co-Executors should have been made payable to "Register of Wills - Agent", not the Harris Law Firm as Attorney Harris directed them to do.

On September 13, 2019, this Detective obtained a Search Warrant issued by Judge Vito Geroulo to search for and seize all records for First National Bank IOLTA/ESCROW account ending in #6989 in the name of David W. Harris, III, Esquire and/or Harris Law Offices, P.C., and any accounts in the name of the Harris Law Offices or the Harris Law Firm. Also on this date, this Detective served said Search Warrant on First National Bank.

On September 25, 2019, in compliance with the search warrant, this Detective received the records for two (2) accounts at First National Bank. One account, IOLTA/ESCROW account ending in #6989 in the name of Harris Law Offices, PC, David Harris, III, and the other, Operating Account ending in #8607 in the name of Harris Law Offices PC, Operating Account, David W. Harris, III, 409 Davis St., Clarks Summit, PA 18411.

The records demonstrate that between October 30, 2017 and November 26, 2018, several electronic transactions have been made transferring \$116,975.00 from IOLTA/ESCROW account #6989 into the Operating Account #8607, and transferring \$111,100.00 from IOLTA/ESCROW account ending in #6989 and into First National Bank account ending in #9466.

Bank records obtained as a result of the search warrant further reveal that from January 17, 2018, (the date that the Shepherd Estate \$75,000.00 inheritance tax check was deposited into the IOLTA/ESCROW account ending in #6989) through January 30, 2018, seven (7) electronic transfers totaling \$12,200.00 were made from IOLTA/ESCROW account ending in #6989 into First National Bank account ending in #9466. Also during this same time frame, electronic transfers totaling \$3,700.00 were made from IOLTA/ESCROW account #6989 into Operating Account #8607. None of these transfers were used for payment of any obligations associated with the Estate of Joanne Shepherd.

CR-128-19

On September 26, 2019, this Detective obtained a Search Warrant issued by Judge Vito Geroulo to search for and seize all records for First National Bank account ending in #9466, and on this date, this Detective served said Search Warrant on First National Bank. Records obtained as a result of the Search Warrant show that the account ending #9466 is in the name of David W. Harris, III, Esquire t/a Harris Land Abstract, Inc., 409 Davis Street, Clarks Summit, PA 18411.

The bank records obtained as a result of the search warrant further reveal that on January 17, 2018, the balance in Harris Land Abstract, Inc. account ending in #9466 was \$-1,668.57. On January 26, 2018, even after the \$12,200.00 was transferred into Harris Land Abstract, Inc. account ending in #9466, the balance of that account was \$-440.00.

Bank records obtained further reveal that on January 18, 2019, Operating account #8607 was closed with a negative balance of \$-3,236.63, and Harris Land Abstract, Inc. account ending in #9466 was charged off and closed by the Bank with a negative balance of \$-4,447.83.

Bank records obtained also reveal that from October 30, 2017 through January 18, 2019 (the date the Abstract account ending in #9466 was closed), many purchases were made at Pubs, Restaurants, Beer and Liquor Stores, tobacco shops, grocery stores, and mini marts. There are charges at the beach, music stores, payments for Netflix and a Browns Gym membership. There are also a few charges made from this account to Drug and Alcohol Treatment of Scranton. None of the funds from this account went to pay any of the \$30,000.00 owed to the Estate of Joanne Shepherd.

Bank records obtained for IOLTA/ESCROW account ending in #6989 reveal that between December 10, 2018 and September 24, 2019, fifty-seven (57) checks totaling \$38,935.00 were made payable to David W. Harris, III, and cashed at various First National Bank branches with the name David W. Harris, III endorsed on them. Two additional checks totaling \$600.00 were made payable to cash and cashed at First National Bank and endorsed with the name David W. Harris, III.

On August 12, 2019, the balance on the IOLTA/ESCROW account ending in #6989 was \$28.63.

On September 11, 2019, this Detective telephoned David W. Harris, III at his Law Office telephone number (570) 587-5051 and found the number was not in service. On September 27, 2019 and October 2, 2019, this Detective telephoned David W. Harris, III on the cell phone number listed on the sign on his door obtained from the victims, (570) 504-4632. This Detective left messages for him to return this Detective's call regarding complaints made by his clients regarding funds paid to him. To date David W. Harris, III has failed to return this Detective's calls.

CR-128-19

For all of the above reasons, your affiant believes that probable cause exists for the issuance of a warrant for the arrest of David W. Harris, III.

The information in the within Affidavit is true and correct to the best of my knowledge, information, and belief.

10-15-2019
Date

Detective Lisa Bauer
Detective Lisa Bauer

EXHIBIT

C

Entered 10-7-20

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
VS. : OF LACKAWANNA COUNTY
DAVID W. HARRIS, III : CRIMINAL DIVISION
NO.: 2020-CR-821

GUILTY PLEA COLLOQUY

PLEA DATE: 10/07/2020

You are present before this Court because you or your lawyer has stated that you wish to plead guilty to some or all of the criminal offenses with which you have been charged. Please answer fully all of the questions on this document. If you do not understand any question, do not answer that question. If you do understand the question, you should answer "yes" or "no", or fill in another appropriate answer.

This is a sworn statement. After you have finished reading this form and filling it out, you should sign it on the last page, on the line that says "Defendant". You should also initial each page at the bottom, but only if you have read and have understood that page. If there is anything that you do not understand, you should tell your lawyer and the judge who hears your case, so that they can explain it to you fully, to make sure that you understand all your rights.

Most of these questions can be answered "yes" or "no". Where general information is requested, please answer fully.

1. What is your full name?

David William Harris, III

2. Do you wish to plead guilty to the charge of:

COUNT I:
THEFT BY UNLAWFUL TAKING
18 PaCSA § 3921(a) (F-3)

As laid out in criminal action 2020-CR-821? yes

DWH

3. How old are you? 56
4. How far did you go in school? 12th grade
5. Do you read and write the English language? yes
6. Have you had an opportunity to read the charges pending against you?
yes
7. Therefore do you know exactly what you are charged with and what you are pleading to?
yes
8. Have you ever been in a mental institution or received treatment for a mental disease?
~~no~~ yes
9. Have you had any alcoholic beverages or drugs within the last 24 hours?
no, except for prescription medication
10. Have you fully discussed your case with your attorney and are you fully satisfied that he knows all the facts of your case and has had sufficient time to look into any questions either he or you may have about the case?
yes
11. Are you satisfied with your attorney? yes
12. Do you understand that even though you are guilty or may be guilty you are presumed to be innocent and you have a right to go to trial either before a judge or before a jury of 12 individuals and the Commonwealth must prove to the satisfaction of each and every one of the 12 jurors or to the satisfaction of the judge that you are guilty beyond a reasonable doubt?
yes

DWA

13. Do you understand that you and your attorney have a right to participate in the selection of a jury?

YES

14. Do you understand that if you want to go to trial your attorney will be permitted to cross-examine the Commonwealth's witnesses and to call witnesses on your behalf, but if you plead guilty, you will lose the right to call witnesses or to cross-examine the Commonwealth's witnesses?

YES

15. Do you understand that by pleading guilty you are admitting that you did the things you are charged with and that if you plead not guilty, the Commonwealth cannot force you to take the stand and either admit or deny that you did the things you are charged with?

YES

16. Do you understand that by pleading guilty you are giving up your right to appeal any question in this case except for those concerning the right of this Court to try you (jurisdiction over the subject matter) or the legality or propriety of the sentence imposed?

YES

17. State specifically in detail any plea agreement with the District Attorney.

- a. Defendant pleads guilty to:

COUNT I:
THEFT BY UNLAWFUL TAKING
18 PaCSA § 3921(a) (F-3);

- b. Commonwealth shall *nolle prosequere* all remaining counts in the within information as well as all counts in the criminal informations docketed to No.: 2020-CR-819 and No.: 2020-CR-820 at the time of sentencing;

- c. Defendant shall pay the total sum of \$79,525.98 as full and total restitution in all criminal matters against Defendant; and,

- d. For sentencing purposes, the amount involved in the within matter is \$30,000.00 resulting in a corresponding Offense Gravity Score of Six (6).

DHA

DHA

18. Has the District Attorney made any other promises to you in exchange for your guilty plea other than what is mentioned above?

NON-PROSECUTION AGREEMENT RELATIVE TO OTHER POTENTIAL VICTIMS
TO WHOM ASSISTANCE HAS BEEN MADE.

19. Have you been threatened or coerced in any manner to enter this guilty plea?

No

20. Are you entering this guilty plea of your own free will after discussing the merits of your case with your attorney?

Yes

21. Do you understand that the court is not bound by the agreement you made with the District Attorney?

Yes

22. Do you understand that the maximum penalty to the charge you are pleading guilty to is:

COUNT I:
THEFT BY UNLAWFUL TAKING
18 PaCSA § 3921(a) (F-3)

Up to seven (7) years imprisonment and \$15,000.00 fine?

Yes

23. If you are pleading guilty to more than one charge, do you understand that the judge may impose consecutive sentences?

Yes

If the answer to the preceding question is yes, state the total sentence that may be imposed on you:

N/A

DWH

24. Do you understand that certain crimes carry mandatory minimum penalties?

YES

Did your attorney advise you that any mandatory penalties apply to your case?

NO

If the preceding answer is yes, state the mandatory provisions that apply to your case:

N/A

25. The elements of the crime charged are as follows:

COUNT I:
THEFT BY UNLAWFUL TAKING
18 PaCSA § 3921(a) (F-3)

Unlawfully taking, or exercising unlawful control over, movable property of another with intent to deprive him thereof.

26. Do you understand these are the elements of the crime charged that you are pleading to?

YES

27. The District Attorney indicates this is what you did on the date of the crimes charged:

Between January 17, 2018 and January 26, 2018, in Lackawanna County, while acting in my capacity as Attorney for the Estate of JoAnne Shepherd, I did receive \$75,000.00 from the co-executors of the Estate which was to be used to pre-pay inheritance taxes and other estate-related expenses. I paid \$45,000.00 to the Lackawanna County Register of Wills and kept the remaining \$30,000.00 with the intent to deprive the owner thereof.

28. Do you admit that you did the above stated act(s)?

YES

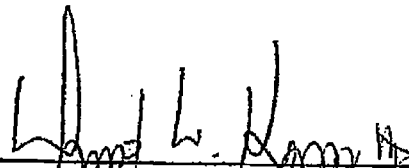
DWH

29. Understanding the full meaning of the plea of guilty as stated above, do you still wish to plead guilty?

yes


I affirm that I have read the above document in its entirety and have reviewed it with my attorney. I affirm that I am aware of the full implications of pleading guilty and nevertheless wish to plead to the specified offense(s). I further affirm that my signature on this Guilty Plea Colloquy and initials on each page of this document are true and correct.

DATE: 10/7/2020


DEFENDANT: DAVID W. HARRIS, III

I, GEORGE E. GRETZ, ESQUIRE, Attorney for DAVID W. HARRIS, III, state that I have advised my client of the contents and meanings of the document; it is my belief he fully comprehends the implication of pleading guilty and is pleading guilty of his own free will.

DATE: 10-07-2020


GEORGE E. GRETZ, ESQUIRE
Attorney for Defendant

Suite 301A, King Building
304 N. Washington Ave.
Scranton, PA 18503
(570) 343-8111
PA BAR NO.: 70268

EXHIBIT

D

Paul J. Killion
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

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Robin B. Godfrey
Mark F. Gilson
Elizabeth J. Rubin

August 21, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411-1868

Re: Complaint of Eric Bleich
File No. C3-18-867

DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Mr. Eric Bleich, 1212 Audubon Drive, S. Abington Township, PA 18411. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

1. On or around June 20, 2018, Mr. Eric Bleich:
 - a. retained you to provide legal services to, *inter alia*, protect Mr. Bleich's interest in real property located at 380-384 South Franklin Street, Wilkes-Barre, Pennsylvania 18702;
 - b. signed a written "Attorney—Client Fee Agreement" ("fee agreement") dated June 19, 2018, agreeing to pay you \$250/hour for "office and research time, court time, and travel time," as well as reimburse "costs and expenses in performing legal services under this Agreement"; and
 - c. provided check no. 936 in the amount of \$2,500 to you as an initial retainer for your services.
2. You agreed to assist Mr. Bleich in the creation and formation of a limited liability corporation ("LLC") on his behalf.
3. The fee agreement provided, in ¶ 8, that "You [Mr. Bleich] may discharge us at any time," and further, upon discharge:
 - a. "we will, upon request, deliver your file to you, along with any funds or property of yours in our possession."
4. By email dated June 27, 2018, 1:08 p.m., sent to your email address at: dharrisiii@harrislawpc.com, Mr. Bleich:
 - a. discharged you as counsel in this matter; and
 - b. requested you provide him any documents you prepared regarding the creation and formation of an LLC.
5. You received this email.
6. By email dated the same day, and sent at 2:46 p.m. to Mr. Bleich's email address at: erich417@hotmail.com, you responded, "No problem Eric, I'll forward the LLC documentation upon receipt."

David W. Harris, III, Esquire
August 21, 2019
Page 3

7. Despite your email to the contrary, you failed to provide any documentation regarding an LLC to Mr. Bleich.

8. You failed to prepare any documentation regarding the creation and formation of an LLC for Mr. Bleich.

9. By email dated August 20, 2018, 6:17 p.m., sent to your email address as noted above, Mr. Bleich requested that you refund the initial retainer fee of \$2,500 to him.

10. You received this email.

11. You failed to refund any money to Mr. Bleich.

12. By email dated August 21, 2018, 10:13 a.m., sent to Mr. Bleich's email as noted above, you stated, *inter alia*, "I am in the process of putting together an itemized invoice for the time spent on your file. Of course, I'll return any unused portion of the retainer."

13. Despite your email to the contrary, you failed to provide Mr. Bleich with:

- a. an invoice and/or accounting for services provided and/or legal fees; or
- b. a refund of any portion of the retainer he paid you.

14. By email dated September 17, 2018, 12:51 p.m., sent to your email address as noted above, Mr. Bleich inquired of you as to the status of:

- a. "the return of my retainer fee from back in June"; and
- b. "the invoice you were working on almost a month ago."

15. You received this email.

16. You failed to:

- a. respond to Mr. Bleich's email;

David W. Harris, III, Esquire
August 21, 2019
Page 4

- b. reply to Mr. Bleich's request for information;
- c. provide Mr. Bleich an accounting for any legal services rendered;
- d. refund to Mr. Bleich the \$2,500 retainer fee upon his request; or
- e. refund to Mr. Bleich any advance payment of fees that had not been earned or incurred.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.15(e); and RPC 1.16(d).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

David W. Harris, III, Esquire
August 21, 2019
Page 5

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

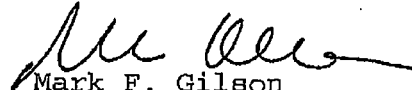
If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated

David W. Harris, III, Esquire
August 21, 2019
Page 6

cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL


Mark F. Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killian
Chief Disciplinary Counsel

District I Office
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Suite 3320
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August 22, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411

RE: Complaint of Office of Office of Disciplinary Counsel
File No. C3-18-892
DB-7 Request for Statement of Respondent's Position

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you opened on motion of Office of Disciplinary Counsel. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your alleged conduct may have violated the Rules of Professional Conduct and/or Pennsylvania Rules of Disciplinary Enforcement.

It is also important for you to understand that it is the obligation of our office to develop all information relevant to a complaint, including that information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Your statement of position, if you choose to file one, may result in a decision to dismiss this complaint against you. However, since this complaint has survived our initial screening process, you should retain or consult with counsel before submitting a statement of your position.

David W. Harris, III, Esquire
August 22, 2019
Page 2

The alleged facts presently under consideration are as follows:

1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C.

3. At all times relevant hereto, you maintained an Interest on Lawyers Trust Account ("IOLTA account") ending in account number 6989 with First National Bank.

4. You have sole signature authority over the IOLTA account.

5. On September 26, 2018, the Pennsylvania Lawyers Fund For Client Security ("the Lawyer's Fund"), received notification from First National Bank that on September 24, 2018, check number 7400 in the amount of \$2,327.56 had been presented against insufficient funds in the IOLTA account.

6. The transaction created a negative balance in the amount of \$718.21 in the IOLTA account.

7. By letter dated September 26, 2018, the Lawyer's Fund requested an explanation and certain documentation from you relating to the overdraft and negative balance in the IOLTA account.

8. You received this letter

9. By letter dated October 17, 2018, you responded to the Lawyer's Fund and, *inter alia*, explained that:

- a. the negative balance in the IOLTA account was "due to my inadvertent transfer of funds from said account on September 24, 2018 into my Operating Account"; and
- b. you "immediately contacted my bank and stopped payment on the same date reversing the transfer to bring said account out of the negative balance."

David W. Harris, III, Esquire
August 22, 2019
Page 3

10. You provided copies of July, August, and September 2018 bank statements for the IOLTA account as requested by the Lawyer's Fund.

11. The September 2018 bank statement for the IOLTA account indicated that on September 24, 2018:

- a. you transferred \$4,500 from the IOLTA account into First National Bank account ending in account number 9466;
- b. the IOLTA account balance after the transfer described *supra* was \$1,609.35;
- c. check no. 7400 made payable to "Tax Claim Bureau" in the amount of \$2,327.56 was presented for payment on the IOLTA account;
- d. there were insufficient funds in the IOLTA account to fully transact check no. 7400; and
- e. the IOLTA account was overdrawn leaving a negative balance of \$718.21.

12. You failed to maintain sufficient funds in the IOLTA account to transact check no. 7400.

13. You failed to properly safeguard, identify and maintain fiduciary funds held in the IOLTA account.

14. On September 25, 2018, you transferred \$2,000 from First National Bank account ending in account number 9466 into the IOLTA account.

15. Contrary to your written statement to the Lawyer's Fund contained in your letter dated October 17, 2018, as set forth more fully in ¶ 9(b) *supra*, you failed to "immediately contact[] my bank and stop[] payment on the same date reversing the transfer to bring said account [IOLTA account] out of the negative balance."

16. On September 26, 2018, check no. 7400 in the amount of \$2,327.56 was transacted for payment on the IOLTA account.

David W. Harris, III, Esquire
August 22, 2019
Page 4

17. A review of the IOLTA account bank statements you provided to the Lawyer's Fund indicate that on:

- a. July 9, 2018, you made an epayment to American Express in the amount of \$100.00.
- b. July 10, 2018, you made an epayment to:
 - i. American Express in the amount of \$300.00; and
 - ii. Fortiva in the amount of \$100.00; and
- c. September 7, 2018, you made a payment to Comcast Cable in the amount of \$611.49.

18. By letter dated October 19, 2018, the Lawyer's Fund:

- a. informed you that "... a review of your IOLTA account statement indicates several debits to the IOLTA account to American Express ... Fortiva ... [and] Comcast ..." and
- b. requested that you explain "if these disbursements were made on behalf of client(s)" from your IOLTA account.

19. By letter dated October 31, 2018, you responded to the Lawyer Fund and stated, *inter alia*:

- a. "It has always been my practice to transfer legal fees into my operating accounts and thereby pay office vendors"; and
- b. "The remaining debits in question represent payment of legal fees owed to my office directly to said vendors."

20. Your statement that the debits from the IOLTA account to American Express, Fortiva and Comcast were direct payments to office vendors from the IOLTA account was inconsistent with your statement that you transfer legal fees into your operating account to pay office vendors.

David W. Harris, III, Esquire
August 22, 2019
Page 5

21. The disbursements from the IOLTA account to American Express, Fortiva and Comcast as described more fully in ¶ 16 *supra* were not made on behalf of any client(s).

22. The disbursements from the IOLTA account to American Express, Fortiva and Comcast as described more fully in ¶ 16 *supra* were made to pay office vendors.

23. The disbursements from the IOLTA account to American Express, Fortiva and Comcast as described more fully in ¶ 16 *supra* should have been made out of your operating account because the expenses incurred were not client related.

24. You used fiduciary funds from the IOLTA account to pay office vendors.

25. You failed to promptly transfer earned legal fees from your IOLTA account.

26. You failed to keep earned legal fees separate from fiduciary funds held in the IOLTA account.

27. You commingled earned fees and fiduciary funds in your IOLTA account.

If the above allegations are true, we are concerned that you may have violated Pennsylvania Rules of Professional Conduct: RPC 1.15(b), and RPC 1.15(h).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within thirty 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

David W. Harris, III, Esquire
August 22, 2019
Page 6

Additionally, provide the following records/information:

- a. identify the source of the opening balance in the amount of \$3,372.26 in IOLTA account no. 6989 as of 6/30/18 by identifying the client(s), and amount attributable to each client for those funds;
- b. provide your general ledger for IOLTA account no. 6989, which should include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date and amount of each deposit, and the matter involved for each transaction for the period of at least June 30, 2018, through October 1, 2018;
- c. provide an individual ledger for each client whose funds were held in IOLTA account no. 6989 during June 30, 2018, through October 1, 2018;
- d. provide the complete individual client ledger for the clients identified in subparagraph c reflecting all receipts and disbursements for those clients, even those made before or after June 30, 2018, and October 1, 2018;
- e. identify the deposit of funds into IOLTA account no. 6989 relating to the check no. 7400 you wrote in the amount of \$2,327.56; and
- f. provide monthly reconciliations for IOLTA account no. 6989 for the months of July, August and September 2018

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally, as previously stated,

David W. Harris, III, Esquire
August 22, 2019
Page 7

you may wish to consult with counsel before replying to the allegations.

In any reply which you may make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item-by-item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

...that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information and belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information and belief as to the remainder.

If we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and can proceed to make our recommendation for an appropriate disposition on the basis of the information and material contained in our file. However, we would certainly prefer to have the benefit of your position before making our recommendation.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated

David W. Harris, III, Esquire
August 22, 2019
Page 8

cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL

A handwritten signature in black ink, appearing to read "Mc Ue", written over the printed name of Mark F. Gilson.

Mark F. Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killion
Chief Disciplinary Counsel

District I Office
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August 27, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411-1868

Re: Complaint of Robert Bolus, Jr.,
File No. C3-19-156
DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Mr. Robert Bolus, Jr., 3608 Springer Street, Moosic, PA 18507. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

Disciplinary Counsel-in-Charge
Anthony P. Sodroski

Disciplinary Counsel
Richard Hernandez
Gloria Randall Ammons
Harriet R. Brumberg
Michael D. Gottsch
Jeffrey M. Krulik
Robin B. Godfrey
Mark F. Gilson
Elizabeth J. Rubin

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1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411.

3. At all times relevant hereto, you maintained an Interest on Lawyers Trust Account ("IOLTA account") ending in account number 6989 with First National Bank, 125 North State Street, Clarks Summit, Pennsylvania 18411.

4. You have sole signature authority over the IOLTA account.

5. In or around October 2017, Mr. Robert Bolus, Jr., retained you to provide legal services to, *inter alia*, represent him in the purchase of real property located at 704 Hollenbeck Street ("Hollenbeck property"), Moosic, Pennsylvania 18507.

6. On or about October 25, 2017, Mr. Bolus authorized a wire transfer of \$115,000 from Mr. Bolus' Janney Montgomery Scott account no. xxxx-7735 to your IOLTA account to be applied towards settlement/closing costs for the purchase of the Hollenbeck property.

7. You received these funds in your IOLTA account.

8. On November 17, 2017:

a. the settlement conference/closing for the Hollenbeck property occurred; and

b. you attended the settlement conference/closing and represented Mr. Bolus.

9. The settlement statement (HUD-1) for the Hollenbeck property indicated, *inter alia*, Mr. Bolus paid settlement/closing costs in the amount of:

a. \$447.95 for the purchase of title insurance;

b. \$150.00 for government recording charges; and

c. \$1,277.05 for your legal fees.

10. You received these funds from Mr. Bolus.
11. You were required to timely:
 - a. obtain title insurance for the Hollenbeck property; and
 - b. record the deed to the Hollenbeck property with the Lackawanna County Recorder of Deeds Office.
12. You failed to timely:
 - a. obtain title insurance; and
 - b. record the deed for the Hollenbeck property.
13. By email dated February 14, 2019, 5:17 p.m., sent to your email address at dharrisiii@harrislawpc.com, Mr. Bolus inquired, "... I need to [know] if U filed the deed today or not??"
14. You received this email.
15. You failed to reply to this email.
16. By email dated February 15, 2019, 2:06 p.m., sent to your email address as noted, *supra*, realtor Charisse Weissman of Berkshire Hathaway Realtor HomeServices wrote: "We need to speak with you regarding Robert Bolus deed issue: we understand that it still has not been recorded since we closed a year ago. This is urgent: Please reply or contact Robert Bolus asap."
17. You received this email.
18. By email dated the same date at 4:21 p.m., sent in reply to Ms. Weissman's email, you wrote: "The deed presented at closing was rejected by the Lackawanna County Recorder of Deeds, requiring a Corrective Deed. You may recall this was a foreclosure property. It took several months to receive the fully executed Corrective Deed which has been filed and accepted by the Records Office."
19. You failed to record the deed to the Hollenbeck property until February 15, 2019.
20. By email dated the same date at 5:18 p.m., sent to Mr. Bolus' email address at bbolus@hotmail.com, you forwarded to Mr.

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Bolus a copy of the Lackawanna County Recorder of Deeds' recording fee receipt for the deed for the Hollenbeck property.

21. By email dated the same date at 5:27 p.m., sent in reply to your email above, Mr. Bolus acknowledged receipt of your email, and inquired, "do you send me the final deed and the title insurance policy or does that come from the recorder of deeds?"

22. You received this email.

23. By email dated the same date at 5:39 p.m., sent in reply to Mr. Bolus' email, you wrote: "The Recorder of Deed will return your original deed via my courthouse mailbox, usually takes 3-4 weeks in Lackawanna County for processing, upon receipt I will forward the same to you together with Insured Certification of Title for your records."

24. Despite your email to the contrary, you failed to:

- a. send Mr. Bolus the final, recorded, original deed for the Hollenbeck property;
- b. obtain title insurance for the Hollenbeck property; and
- c. provide Mr. Bolus proof of title insurance for the Hollenbeck property.

25. Mr. Bolus was not able to pay 2018 county real estate taxes on the Hollenbeck property until the deed was recorded in his name on February 15, 2019.

26. Mr. Bolus incurred penalties and interest as a result of failing to timely pay the 2018 county real estate taxes for the Hollenbeck property.

27. By email dated February 20, 2019, 12:30 p.m., sent to your email address as noted above, Mr. Bolus informed you:

- a. he "paid all the back taxes from 2018 on the Hollenbeck property today"; and
- b. attached a receipt from the Lackawanna County Tax Claim Bureau for penalties and interest paid in the amount of \$293.31.

28. You received this email.

29. By email dated the same date at 12:40 p.m., sent in reply to Mr. Bolus' email, you responded: "I'll get a check out to you at your Springer Street Address."

30. You agreed to reimburse Mr. Bolus in the amount of \$293.31 for penalties and interest he incurred as described *supra*.

31. Despite your statement to the contrary, you failed to send Mr. Bolus a check or reimburse him in the amount of \$293.31.

32. Mr. Bolus incurred a \$60.00 filing fee from the Lackawanna County Tax Claim Bureau for the late payment of his 2018 county real estate taxes.

33. By email dated the same date at 1:17 p.m., sent in reply to your email, Mr. Bolus responded: "thanks dave forgot to add the \$60.00 in filing fees."

34. You received this email.

35. By email dated the same date at 1:18 p.m., sent in reply to Mr. Bolus' email, you responded: "Roger that"

36. You agreed to reimburse Mr. Bolus in the amount of \$60.00 for the filing fee as described *supra*.

37. You failed to reimburse Mr. Bolus the \$60.00 filing fee he incurred.

38. By email dated March 15, 2019, 12:54 p.m., sent to your email address as noted above, Mr. Bolus wrote, "Hi Dave, it's almost 4 weeks do you know when you'll be sending me my deed, title ins policy and check. Thanks Bob."

39. You received this email.

40. You failed to reply to this email.

41. By email dated March 19, 2019, 1:11 p.m., sent to your email address as noted above, Mr. Bolus wrote: "Hi dave, here's the 2 amounts that I originally sent to you..one is for \$60.00 which was the filing fee the other was \$293.31 which was for the penalties and interest grand total \$351.31 thanks Bob."

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42. You received this email.

43. You failed to reply to this email.

44. By email dated March 26, 2019, 8:42 a.m., sent to your email address as noted above, Mr. Bolus inquired, "Hi Dave any news on the documents for the Hollenbeck house"

45. You received this email.

46. By email dated the same date at 2:38 p.m., sent in reply to Mr. Bolus's email, you wrote: "To date, I have not received the original deed from the courthouse. I have a hearing on Friday and will stop at the Records Office to inquire. In the meantime, attached is a copy of the recorded deed for your records."

47. By email dated April 4, 2019, 1:34 p.m., sent to Mr. Bolus, you wrote, "Attached is your recorded deed back from the courthouse. I dropped the original in the mail today's date."

48. Despite your statement to the contrary, you failed to mail the original recorded deed to the Hollenbeck property to Mr. Bolus on April 4, 2019.

49. By email dated the same date at 4:50 p.m., sent in reply to your email, Mr. Bolus wrote, "Thanks are you sending the title insurance policy with it"

50. You received this email.

51. By email dated the same date at 6:13 p.m., sent in reply to Mr. Bolus' email, you responded, "Once the underwriter sends the final policy I'll forward it on, your fully covered per the Commitment issued at closing."

52. By email dated April 17, 2019, 7:13 a.m., sent to your email address as noted above, Mr. Bolus inquired, "Hey dave never received the deed that you mailed apirl (sic) 4th did u send it by pony Express? Thanks Bob"

53. You received this email.

54. You failed to reply to this email.

55. By email dated April 22, 2019, 10:17 a.m., sent to your email address as noted above, Mr. Bolus wrote, "Dave did u fall

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off the planet again, still haven't received the deed u mailed on april 4 according to ur email"

56. You received this email.

57. You failed to reply to this email.

58. On or about June 26, 2019, you provided Mr. Bolus the original, recorded deed to the Hollenbeck property.

59. By email dated June 26, 2019, 7:40 p.m., sent to your email address as noted above, Mr. Bolus inquired, "Dave where's my title insurance policy?"

60. You received this email.

61. You failed to reply to this email.

62. By email dated July 22, 2019, 12:50 p.m., sent to your email address as noted above, Mr. Bolus wrote, "Dave still haven't received title insurance policy or monies that you were supposed to pay thanks bob"

63. You received this email.

64. You failed to reply to this email.

65. To date, you failed to:

- a. obtain title insurance for the Hollenbeck property;
- b. provide Mr. Bolus proof of title insurance for the Hollenbeck property; and
- c. reimburse Mr. Bolus in the amount of \$351.31 for penalty, interest and filing fees he incurred for the late payment of 2018 county real estate taxes for the Hollenbeck property.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); 1.15(e) and RPC 8.4(c).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with

respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Even if you chose not to respond, provide the following information and materials:

1. Identify the account by financial institution and account number into which you deposited Mr. Bolus' funds and, from October 2017 to the date the funds were fully distributed provide:

- a. all periodic records provided by the financial institution, including monthly statements, copies of cancelled checks, deposited items, and details of any wire or ACH transaction;
- b. an individual client ledger accounting for Mr. Bolus' funds;
- c. if the account held the funds of other clients identify those clients and provide individual ledgers for each client;
- d. your general ledger for the account;
- e. monthly reconciliations for the account; and
- f. proof that you purchased and paid for title insurance for the Hollenbeck property, including the cancelled check and a copy of the policy.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a

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material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

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If you have any questions, you or your counsel should hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark F. Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killian
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-8296
FAX (215) 560-4528

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA



OFFICE OF DISCIPLINARY COUNSEL
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Disciplinary Counsel
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Mark F. Gilson
Elizabeth J. Rubin

August 29, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411-1868

Dear Mr. Harris:

Re: Complaint of Theodore J. Alexander, III

File No. C3-19-239

DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Philadelphia, PA 19103-2337

Dear Mr. Harris:

Please be advised that this office is currently considering

a complaint against you from Mr. Theodore J. Alexander, III, 6

Robin Road, Amherst NY 14228. It is important for you to understand

that issuance of this letter means that the complaint against you

has survived this office's initial screening process and that,

based upon the information currently available to us, it appears

that your conduct may have violated the Rules of Professional

Conduct.

It is also important for you to understand that it is the

obligation of this office to develop all information relevant to

a complaint, including the information which may justify or

exonerate the alleged actions of the respondent-attorney or

mitigate the seriousness of any violations that may have occurred.

Since this complaint has survived our initial screening process

you should retain or consult with counsel before submitting a

statement of your position.

The alleged facts presently under consideration are as

follows:

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1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411.

3. On or about August 22, 2018, Mr. Theodore J. Alexander, III, and his wife, Ms. Misha J. Alexander:

- a. retained you to provide legal services to, *inter alia*, "represent [the Alexanders] regarding a Listing Contract Dispute with Agency Real Estate Group"; and
- b. signed a written "Attorney—Client Fee Agreement" ("fee agreement") dated August 22, 2018; and
- c. agreed to pay you:
 - i. a "minimum fee/retainer of \$2,500"; and
 - ii. \$250/hour for "office and research time, court time, and travel time," as well as reimburse "costs and expenses in performing legal services under this Agreement."

4. You agreed to represent Mr. & Mrs. Alexander and signed the fee agreement.

5. Pursuant to the terms of the fee agreement, Mr. & Mrs. Alexander paid you a retainer fee of \$2,500.

6. On or about November 8, 2018, you filed a complaint in the Lackawanna Court of Common Pleas captioned: *Theodore J. and Misha J. Alexander v. The Agency Real Estate Group*, Docket No. 2018-05987.

7. By email dated November 27, 2018, sent to Mr. Alexander at his email address, alexchance2000@hotmail.com; you wrote: "Sheriff's office advised service was completed November 9th. Defendant has 20 days to Answer the Complaint following service. If they fail to do so, the next step is to file a 10 day notice of intent to enter a default judgment. If they fail to respond within 10 days, I will preacipe (sic) the court for judgment."

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8. The defendant failed to file an answer to the complaint within the required time period.

9. You failed to:

a. file a 10 day notice of intent to enter a default judgment with the court; and

b. praecipe the court to enter a default judgment.

10. By letter dated January 14, 2019, 4:19 p.m., sent to you via first class mail to your law office, and your email address at dharrisiii@harrislawpc.com, Mr. Alexander wrote, *inter alia*:

After giving them [defendant] a 15 day extension, I would have expected you to file the notice of intent, as you mentioned here, on or shortly after December 14th (35 days total after they were served). As of this writing it is nearly 2 months since we have had any communication with you and 31 days since the time they had to respond to our complaint after giving them a 15 day extension. My wife and I both have sent multiple emails to you and left multiple messages at your office and on your cell phone, all of which have gone directly to voicemail and with no response from you whatsoever. For a full month we have had no idea of the status of our case, if the defendants ever responded, if the notice of intent was filed, etc. I am asking that you respond to this letter by the end of the business day one week from this writing which will be Monday, January 21, 2019. If you do not answer by 5 pm on that date, I will assume you have abandoned our case and will be requesting a full refund of the \$2500.00 we gave you so that I may pursue our case with another attorney.

11. You received this letter.

12. By email dated the same date at 6:07 p.m., sent in response to Mr. Alexander's email *supra*, you wrote, "Unfortunately, I have not heard from Defense Counsel, since our

phone conversation last month. Per your directive, I will proceed to file the requisite 10 day notice tomorrow."

13. Despite your statement to the contrary, you failed to file a 10 day notice of intent to enter a default judgment with the court.

14. By email dated the same date at 6:12 p.m., sent in reply to your email *supra*, Mr. Alexander wrote, "Please enlighten me why it has taken a month beyond the date for them to respond for you to get back to us and to file the 10 day notice."

15. You received this email.

16. By email dated the same date at 7:55 p.m., sent in response to Mr. Alexander's email *supra*, you wrote, "I don't believe it's been a month since we last communicated. However, I do recall my last communication requested the status of the sale of your home which has a direct impact as to the damages, And never received."

17. By email dated the same date at 9:26 p.m., sent in reply to your email *supra*, Mr. Alexander wrote, *inter alia*:

You told us plainly here that you would file a notice of intent followed by a praecipe if they don't respond after 10 days. I would have expected this to be done by now because, well, you said you would do it in your email. I'm really wondering why this wasn't done ... Sir, it's a simple fact that you have ignored our multiple attempts to contact you via email, your office phone, and your cell phone for a very long period of time, and you didn't do what you said you were going to do. When 31 full days have passed since you told us in writing that we would be taking action, and then nothing happens and you don't contact us or return our messages, can you blame us for thinking perhaps you have abandoned our case? Even a simple "I am very busy - will get back to you in a couple of days" would suffice to let us know at least that you haven't left us out to dry ... I'm sitting here tonight, stressed out from dealing with my new job in a new state, living in a crummy small attached

townhouse and trying to figure out how I am going to deal with my current situation of paying a mortgage on a house that we no longer live in and could very well be un-sellable at a price we can afford, plus of course having to pay for our current living situation (did I mention that our insurance shot up quite a bit for having a vacant house? It did.) and an unscrupulous and nasty realtor who royally screwed us, and now our lawyer, who we were hoping would be on our side, just unnecessarily added another month delay to our case? How would that make you feel, sir? I can tell you how it makes me feel. It makes me feel like I might end up hospitalized before all this is over. I really, really want to believe that you are with us on this. We NEED an lawyer who is with us on this, but I'm getting no reassurances from you.

18. You received this email.

19. You failed to respond to this email.

20. By email dated January 25, 2019, 10:31 a.m., sent to your email address as noted above, Mr. Alexander wrote: "I am still waiting for an answer as to why the 10-day notice of intent was not filed a full month after you said you were going to do it when their original 20 days to respond plus the 15 day extension was up back on December 14th. Was this ever filed? If so then when, and when will the 10 days be up?"

21. You received this email.

22. You failed to:

- a. respond to this email; and
- b. file a 10 day notice of intent to enter a default judgment with the court.

23. By email dated February 1, 2019, 1:20 p.m., sent to your email address as noted above, Mr. Alexander wrote, *inter alia*:

It has now been another week since my last email and again you do not respond to my

inquiries. I am still awaiting an answer to the following: Was our 10 day notice of intent filed? If so, when, and when will the 10 days be up? If not, why not? You said you would file it on January 15th. It has been 17 days since then and we should have an update by now...in fact, a week ago ... Why do you continually ignore our inquiries? ... Sir, do you not wish to handle our case any longer? If [not] then I ask that you please promptly return the funds we have given you so that we can pursue our case with another attorney. If you DO wish to continue with our case, I request that I be given satisfactory answers to all my above questions in addition to some form of assurance that future service be given with reasonable response times to both our inquiries and actions regarding our case.

24. You received this email.

25. You failed to:

- a. timely respond to this email; and
- b. file a 10 day notice of intent to enter a default judgment with the court.

26. By email dated February 7, 2019, 12:36 p.m., sent to Mr. Alexander at his email address as noted above, you wrote:

To date, I still have yet to hear from defendants counsel. As such, attached is requisite 10 Day Notice of Intent to enter Default Judgment for your review and comment. Despite my best efforts, it appears I am unable to provide you with the attention level you require. Please note our engagement agreement allows you to seek other legal counsel if you feel my representation is not a good fit. Please advise as to whether you want me to forward the Notice. I am happy to continue as your attorney.

27. A notice of intent to enter a default judgment is not a pleading that needs to be reviewed by the client before filing with the court.

28. You failed to file a 10 day notice of intent to enter a default judgment with the court.

29. By email dated the same date at 5:10 p.m., sent in reply to your email *supra*, Mr. Alexander wrote:

You have done nothing whatsoever with our case since 11/14/18. Since then you have made written statements that you would file out 10 day notice of intent, a simple one page document, which should have been filed on or about **December 14th 2018 nearly 2 months ago**, but for whatever reason, you chose not to do it. You have offered no explanation for this despite my repeated asking and have given no reason for prolonged periods of ignoring email and phone messages. You state these are your 'best efforts'. I find this hard to believe. I'm asking now that you prepare a file and send it to me via email no later than **FRIDAY FEBRUARY 15TH 2019** and that the file contain all relevant matter regarding our case that I may present to another attorney who will pursue our case. I also ask for the return of the \$223.25 as stated in the PDF of your bill dated 11/14/18 as the amount remaining from the retainer we sent you.

(original emphasis)

30. You received this email.

31. You failed to:

- a. reply to this email;
- b. provide a copy of the file to Mr. Alexander; and
- c. refund the unearned portion of the retainer fee to Mr. Alexander.

32. By email dated February 15, 2019, 9:08 a.m., sent to your email address as noted above, Mr. Alexander:

- a. terminated you as his attorney in this matter;
- b. notified you he had retained Ryan P. Campbell, Esquire to represent him;
- c. requested you provide Mr. Campbell a copy of the file; and
- d. requested you return the unearned portion of the retainer fee to him.

33. You received this email.

34. You failed to:

- a. reply to this email;
- b. provide a copy of the file to Mr. Alexander or Mr. Campbell; and
- c. refund the unearned portion of the retainer fee to Mr. Alexander.

35. By email dated February 22, 2019, 12:56 p.m., sent to your email address as noted above, Mr. Alexander wrote: "Mr. Harris, I have not had a reply from you. Please tell me when you will be returning the unused portion of the retainer that was paid to you."

36. You received this email.

37. You failed to:

- a. reply to this email; and
- b. refund the unearned portion of the retainer fee to Mr. Alexander.

38. By email dated February 27, 2019, 3:05 p.m., sent to your email address as noted above, Mr. Alexander wrote: "When are you going to pay me back the unused retainer money I gave you, Mr. Harris? Is it not your intention to pay it back? Please let me know so that I can take the appropriate action."

39. You received this email.

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40. By email dated the same date at 3:25 p.m., sent in response to Mr. Alexander's email *supra*, you wrote, "I hope to have a final statement of account to you by weeks end. Thank you."

41. Despite your statement to the contrary, you failed to provide Mr. Alexander a "final statement of account ... by weeks end."

42. By email dated the same date at 8:25 p.m., sent in reply to your email *supra*, Mr. Alexander wrote, "I already have your invoice dated 11/19/18. It states that \$160.06 was unused at that time. Since that date you have done nothing with our case, so I expect the \$160.06 returned."

43. You received this email.

44. You failed to:

- a. reply to this email;
- b. refund the unearned portion of the retainer fee to Mr. Alexander; and
- c. hold separate the disputed portion of any funds.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(2); RPC 1.4(a)(3); RPC 1.4(a)(4); RPC 1.15(e); and RPC 1.16(d).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

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Even if you chose not to respond, provide the following information and materials:

1. Identify the account by financial institution and account number into which you deposited Mr. and Mrs. Alexander's funds and, from August 2018 to the date the funds were fully distributed provide:

- a. copy of the bank statement reflecting deposit into your IOLTA account of the Alexander's funds on or around August 22, 2018;
- b. copy of all bank statements reflecting distribution of the Alexander funds up and until the date the funds were fully distributed;
- c. an individual client ledger accounting for the Alexander funds; and
- d. copy of the check register for the account in which the Alexander funds were deposited.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact
not appearing of record or a denial of

David W. Harris, III, Esquire
August 29, 2019
Page 11

fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

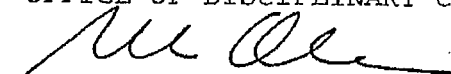
Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark F. Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killian
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6296
FAX (215) 560-4528

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA



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September 18, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411-1868

Paul J. Killian
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

Re: Complaint of Lori Ann Chuck
File No. C3-19-360

DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Ms. Lori Ann Chuck, 291 Reynolds Road, Factoryville, PA 18419. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process, you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

David W. Harris, III, Esquire
September 18, 2019
Page 2

1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411.

3. On or about February 19, 2008, you prepared the *Last Will of Kathryn Ann Dolechek* ("the will") for Ms. Dolechek.

4. The will provided, *inter alia*, for Ms. Dolechek's daughter, Ms. Lori Ann Chuck, to be named executrix for the estate upon Ms. Dolechek's death.

5. On January 14, 2017, Ms. Kathryn Ann Dolechek died.

6. On or about January 23, 2017, Ms. Chuck:

a. retained you to represent and assist her in the Estate Administration of Kathryn Ann Dolechek ("the Dolechek Estate"); and

b. agreed to pay you an initial retainer fee of \$2,500.

7. You failed to provide Ms. Chuck with a written fee agreement.

8. On or about January 23, 2017, you:

a. agreed to act as estate attorney and assist Ms. Chuck in administering the Dolechek Estate; and

b. entered your appearance as estate attorney for the Dolechek Estate.

9. By check dated January 23, 2017, drawn on account no. XXXXX4070, PNC Bank, N.A. ("PNC Bank"), made payable to "Harris Law Firm," Ms. Chuck paid you the retainer fee of \$2,500.

10. You received and negotiated the check.

11. On January 23, 2017, you:

David W. Harris, III, Esquire
September 18, 2019
Page 3

- a. submitted the will for probate to the Wyoming County Register of Wills Office ("Register's Office"); and
- b. obtained letters testamentary for Ms. Chuck to act as the personal representative for the Dolechek Estate.

12. On February 24, 2017, you filed a *Certification of Notice Under Pa.O.C. Rule 10.5*, indicating notice of estate administration had been provided to the beneficiaries: Mr. Carl Dolechek, Mr. August Dolecheck, III, and Ms. Chuck.

13. On or about March 18, 2017, you requested Ms. Chuck:

- a. provide you with funds in the amount of \$5,000 to be applied towards the prepayment of the Pennsylvania Inheritance and Estate Tax ("estate inheritance tax"); and
- b. make the check for \$5,000 payable to the "Harris Law Firm."

14. By check no. 112, dated March 18, 2017, drawn on account no. XXXXX4070, PNC Bank, made payable to "Harris Law Office P.C." in the amount of \$5,000, Ms. Chuck provided you funds to apply towards prepayment of the estate inheritance tax.

15. You received and negotiated the check.

16. On August 29, 2017, over five months later, you made a prepayment of the estate inheritance tax in the amount of \$7,200 to the Register's Office.

17. Thereafter, you failed to take further action to promptly and diligently complete the administration of the Dolechek Estate.

18. The Pennsylvania Inheritance and Estate Tax Return ("Inheritance Tax Return") was due on or before nine months from the date of death, i.e., October 14, 2017.

19. You failed to timely file the Inheritance Tax Return by the deadline.

David W. Harris, III, Esquire
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Page 4

20. The Pennsylvania Code requires that the estate representative immediately after the grant of letters publish a notice of the decedent's death once a week for three successive weeks. See 20 Pa Cons Stat § 3162 (2014).

21. If an estate representative fails to advertise the grant of letters, but makes distribution to the legatee, such distribution is an "at risk" distribution.

22. If a creditor of the estate has not filed written notice of a claim with the personal representative within one year from the first complete advertisement of letters, and the personal representative is not aware of the claim, the personal representative may distribute personal and real property without the necessity of an accounting and without liability to such claimant. See 20 Pa Cons Stat § 3532(b)(1) (2014).

23. The one year anniversary of Ms. Dolechek's death was January 14, 2018.

24. You failed to timely publish death notice information or advertise the Dolechek Estate as required by Pennsylvania law.

25. In or around April 2018, you informed Ms. Chuck that you would require a final payment of your fee in the amount of \$5,000 in order to complete the administration of the Dolechek Estate.

26. By check no. 134, dated April 4, 2018, drawn on account no. XXXXX4070 with PNC Bank, made payable to "Harris Law Offices," Ms. Chuck provided you funds in the amount of \$5,000 to complete the administration of the Dolechek Estate.

27. You received and negotiated the check.

28. Your fee to administer the Dolechek Estate was paid in full by Ms. Chuck.

29. You failed to honor your promise to complete the administration of the Dolechek Estate.

30. As per the *Amendments to Supreme Court Orphans' Court Rules, No. 103 Supreme Court Rules Docket No 1*, for decedents dying on or after July 1, 1992, the personal representative or her counsel, within two years of the decedent's death, shall file with

David W. Harris, III, Esquire
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Page 5

the Register of Wills a Status Report of completed or uncompleted administration.

31. The two year anniversary of Ms. Dolechek's death was January 14, 2019.

32. The administration of the Dolechek Estate was not completed by the two year deadline.

33. By letter dated December 18, 2018, mailed to your office address at 409 Davis Street, Clarks Summit, PA 18411, the Register of Wills for Wyoming County, Mr. Dennis Montross, provided you notice that the *Status Report by Personal Representative* ("Status Report"), required pursuant to Orphan's Court Rule 10.6, was due to be filed on January 14, 2019, for the Dolechek Estate.

34. You received this letter.

35. You failed to timely file the required Status Report by the prescribed deadline.

36. By letter dated January 17, 2019, captioned *Notice Of Failure To File Status Report*, and mailed to your office address as noted above, Mr. Montross informed you that:

- a. you failed to timely file the Status Report required by Rule 10.6, as more fully described *supra*; and
- b. if you did not file the Status Report with the Register's Office, he would request that the court conduct a hearing to determine whether sanctions should be imposed upon you.

37. You received this letter.

38. On January 23, 2019, you:

- a. filed the Status Report with the Register's Office;
- b. indicated on the Status Report that:
 - i. the administration of the Dolechek Estate was not complete; and

ii. you "reasonably believe that the administration will be complete [in] 6 months."

39. Despite your statement to the contrary, *supra*, you failed to complete the administration of the Dolechek Estate.

40. A carbon copy of Mr. Montross' January 17, 2019 letter, more fully described *supra*, was also mailed to Ms. Chuck.

41. After receipt of Mr. Montross' January 17, 2019 letter described *supra*, and continuing over a period of several months thereafter, Ms. Chuck made multiple, repeated attempts to contact you both by telephone, and in person at your office, for information regarding the status of the administration of the Dolechek Estate.

42. During the relevant time period in which Ms. Chuck attempted to contact you:

- a. your office telephone number was temporarily disconnected and/or no longer in service;
- b. when your office telephone was working, a pre-recorded message advised the caller that "someone will be with you shortly. Please hold," but no one answered the call;
- c. you were not keeping or maintaining regular office hours at your law firm;
- d. no one was regularly staffing your office during business hours;
- e. your office was closed and/or not open to clients during regular business hours; and
- f. Ms. Chuck was not able to make contact with you due to your failure to make yourself available to her.

43. The last time you contacted Ms. Chuck and provided her with any information regarding the status of the Dolechek Estate was in or around November 2018.

44. You failed to keep Ms. Chuck reasonably informed as to the status of the administration of the Dolechek Estate.

45. To date, you have failed to:

- a. timely publish death notice information and/or advertise the Dolechek Estate as required by Pennsylvania law;
- b. file the Inheritance Tax Return;
- c. file an accounting of the Dolechek Estate with the Register's Office;
- d. diligently and promptly administer the Dolechek Estate;
- e. complete the administration of the Dolechek Estate; and
- f. respond to Ms. Chuck's requests for information regarding the status of your efforts to complete the administration of the Dolechek Estate.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); RPC 1.5(b); RPC 3.2; RPC 8.4(c) and RPC 8.4(d).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Even if you chose not to respond, you are directed to provide the following information and materials to this office within 30 days:

1. The full and complete Dolechek Estate file;
2. The written fee agreement;
3. All invoices, receipts and/or detailed time entries for work performed on the Dolechek Estate matter;
4. Any and all estate financial records and/or accounting documentation in your possession, custody or control;
5. Identify the account(s) by financial institution(s) and account number(s) into which you deposited all funds received from Ms. Chuck, to include attorney's fees, retainers, and funds received for payment of costs, expenses or estate inheritance taxes and, from January 2017 to the date the funds were fully distributed, provide:
 - a. a copy of the bank statement reflecting deposit into your IOLTA account of any and all funds received from Ms. Chuck;
 - b. a copy of all bank statements reflecting distribution of funds up and until the date the funds were fully distributed;
 - c. monthly statements of account for any and all estate funds including the prepayment of estate taxes and/or all deposited legal fees including cancelled checks and deposited items for the estate account(s) from date of deposit to the present;
 - d. the individual client ledger accounting; and
 - e. a copy of the check register for the account into which funds for the estate matter were deposited.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a

David W. Harris, III, Esquire
September 18, 2019
Page 9

material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position,

David W. Harris, III, Esquire
September 18, 2019
Page 10

we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killian
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6286
FAX (215) 560-4528

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA



OFFICE OF DISCIPLINARY COUNSEL
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September 10, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411-1868

Re: Complaint of Bethany A. McCann
File No. C3-19-587

DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Ms. Bethany A. McCann, 118 Maggies Road, South Abington Township PA 18411. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

Disciplinary Counsel-in-Charge
Anthony P. Sodroski

Disciplinary Counsel
Richard Hernandez
Gloria Randall Ammons
Harriet R. Brumberg
Michael D. Gottsch
Jeffrey M. Krulik
Robin B. Godfrey
Mark F. Gilson
Elizabeth J. Rubin

David W. Harris, III, Esquire
September 10, 2019
Page 2

1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411.

3. On or about February 19, 2008, you prepared the *Last Will of Jo Anne R. Shepherd* ("the will") for Ms. Shepherd.

4. The will provided, *inter alia*, for Ms. Shepherd's son, Mr. John P. Shepherd, III, and daughter, Ms. Bethany A. Shepherd-McCann, to be named co-executors of her estate upon Ms. Shepherd's death.

5. On October 28, 2017, Ms. Jo Anne R. Shepherd died.

6. On or about November 7, 2017, Mr. Shepherd and Ms. McCann:

a. retained you to "represent [them] in the Estate Administration of Jo Anne R. Shepherd ("Shepherd Estate");

b. signed a written "Attorney—Client Fee Agreement" ("fee agreement") dated November 7, 2017; and

c. agreed to pay you:

i. a "minimum fee/retainer of \$7,500"; and

ii. an hourly rate of \$250 for "office and research time, court time, and travel time, however not to exceed 5% of gross estate assets."

7. You signed the fee agreement and agreed to act as estate attorney for the administration of the Shepherd Estate.

8. On November 7, 2017, you:

a. submitted the will for probate to the Lackawanna County Register of Wills Office; and

b. obtained Letters Testamentary for Mr. Shepherd and Ms. McCann ("the executors") to act as personal representatives for the Shepherd Estate.

David W. Harris, III, Esquire
September 10, 2019
Page 3

9. Thereafter, you failed to take any other action to diligently administer the Shepherd Estate.

10. By check no. 0100, dated November 14, 2017, drawn on account no. XXXXXX6327, Wells Fargo Bank, N.A. ("Wells Fargo"), made payable to "Harris Law Firm," the executors paid you the retainer fee of \$7,500.

11. You received and negotiated the check.

12. On or about January 16, 2018, you requested the executors:

- a. provide you with funds in the amount of \$75,000 to be applied towards the prepayment of the Pennsylvania Inheritance and Estate Tax ("estate inheritance tax"); and
- b. make the check for \$75,000 payable to the "Harris Law Firm."

13. By check no. 101, dated January 16, 2018, drawn on account no. XXX-X1026, Merrill Lynch Bank of America Corporation ("Merrill Lynch"), made payable to "Harris Law Firm" in the amount of \$75,000, the executors provided you the requested funds to apply towards prepayment of the estate inheritance tax.

14. You received and negotiated the check.

15. On January 26, 2018, you made a partial prepayment of the estate inheritance tax in the amount of \$45,000 to the Lackawanna County Register of Wills Office.

16. You failed to:

- a. remit the full amount of the \$75,000 to prepay the estate inheritance tax;
- b. provide an accounting to the executors of the \$45,000 in funds used to prepay the estate inheritance tax;
- c. provide an accounting to the executors for the \$30,000 fund balance;

- d. remit the balance of \$30,000 in funds you received to pay the estate inheritance tax; and
 - e. remit the balance of \$30,000 in funds to the executors or the estate.
17. You misappropriated \$30,000 in funds to your own use.
18. Your misappropriation of \$30,000 in funds was knowing and intentional.
19. The Pennsylvania Inheritance and Estate Tax Return ("Inheritance Tax Return") was due on or before nine months from the date death, i.e., July 28, 2018.
20. You failed to timely file the Inheritance Tax Return by the deadline.
21. The Pennsylvania Code requires that the estate representative immediately after the grant of letters publish a notice of the decedent's death once a week for three successive weeks. See 20 Pa Cons Stat § 3162 (2014).
22. If an estate representative fails to advertise the grant of letters, but makes distribution to the legatee, such distribution is an "at risk" distribution.
23. If a creditor of the estate has not filed written notice of a claim with the personal representative within one year from the first complete advertisement of letters, and the personal representative is not aware of the claim, the personal representative may distribute personal and real property without the necessity of an accounting and without liability to such claimant. See 20 Pa Cons Stat § 3532(b)(1) (2014).
24. The one year anniversary of Ms. Shepherd's death was October 28, 2018.
25. You failed to timely publish death notice information or advertise the Shepherd Estate as required by Pennsylvania law.
26. Prior to her death, Ms. Shepherd owned real property located at 118 Maggies Road, South Abington Township, PA 18411 ("the Pennsylvania property").

David W. Harris, III, Esquire
September 10, 2019
Page 5

27. The executors requested your assistance in having the Pennsylvania property transferred into the executors' names.

28. By email dated March 12, 2018, 1:59 p.m., sent to your email address as noted above, Ms. McCann wrote, *inter alia*: "Second question is about getting the house put into John's and my name. I believe we have until the end of April to get the homeowners insurance put into our names, but I wasn't sure if we could do that before the house is deeded in our names. This past week we just paid the mortgage off."

29. You received this email.

30. By email sent 9 days later and dated March 21, 2018, 4:30 p.m., sent to Ms. McCann's email address as noted above, you replied, *inter alia*, " - great I'll draw a deed conveying the property to you and John, you both need to swing by the office to sign doesn't have to be at the same time. Contact the office and let me know what's convenient so I have it ready, with John's work schedule he can come in on Saturday, just let me know when."

31. Both executors stopped by your office and called you multiple times in an effort to contact you so they could sign the new deed for the Pennsylvania property, but were unsuccessful in reaching you.

32. You received their telephone messages.

33. You failed to return the executors' calls or otherwise make yourself available for them to timely sign the new deed.

34. By May 2018, the executors were finally able to make contact with you and sign a new deed to transfer ownership of the Pennsylvania property into their names.

35. You failed to record the new deed for the Pennsylvania property with the Recorder of Deeds Office.

36. On or about September 2018, you informed the executors that you would require an additional \$31,234 in funds in order to complete the administration of the Shepherd Estate.

37. By check no. 104, dated September 8, 2018, drawn on account no. XXX-X1026 with Merrill Lynch, made payable to "Harris Law Firm," the executors provided you funds in the amount of

David W. Harris, III, Esquire
September 10, 2019
Page 6

\$25,000 to apply towards the funds needed to complete the administration of the Shepherd Estate.

38. You received and negotiated the check.

39. By check no. 1025, dated September 11, 2018, drawn on account no. XXXXXX6327 with Wells Fargo, made payable to "Harris Law Firm," the executors provided you the remaining funds in the amount of \$6,234 to apply towards the final payment needed to complete the administration of the Shepherd Estate.

40. You received and negotiated the check.

41. Your fee to administer the Shepherd Estate was paid in full by the executors.

42. You failed to make good on your promise to complete the administration of the Shepherd Estate.

43. Prior to her death, Ms. Shepherd opened a custodial account with Merrill Lynch ("the account") for Ms. McCann's minor son, Robert McCann ("Robert"), age four.

44. Merrill Lynch required Ms. McCann obtain a document naming her as Robert's legal guardian in order to add her name onto the account.

45. In or around December 2018, Ms. McCann retained you to assist her in obtaining the necessary document to name her legal guardian of her son, Robert.

46. By check no. 266, dated December 5, 2018, drawn on account no. XXXXXX1803, PNC Bank, N.A., made payable to "Harris Law Firm," Ms. McCann paid you a retainer fee of \$2,500 to handle the guardianship matter.

47. You received and negotiated the check.

48. You assured Ms. McCann that you had a contact in Orphan's Court, and would be able to quickly obtain the necessary documents she required.

49. You failed to provide any legal services or take any action to obtain guardianship for Ms. McCann of her son, Robert.

50. You failed to;

David W. Harris, III, Esquire
September 10, 2019
Page 7

- a. provide an accounting to Ms. McCann for \$2,500 in funds she paid you; and
- b. refund the \$2,500 to Ms. McCann.

51. You misappropriated \$2,500 in funds Ms. McCann paid you to assist her in obtaining guardianship to your own use.

52. Your misappropriation of \$2,500 in funds was knowing and intentional.

53. Prior to her death, Ms. Shepherd owned real property located at 17 Birch Road, Sebago, Maine 04029 ("the Maine property").

54. The executors requested your assistance in having the Maine property transferred into the executors' names.

55. You agreed to retain an attorney in Maine to assist in having the Maine property transferred into the executors' names.

56. By email dated February 15, 2019, 10:16 a.m., sent to your email address at dharrisiii@harrislawpc.com, Ms. McCann inquired, *inter alia*, "... what the progress has been on the Shepherd Estate. I believe we were waiting for the lawyer in Maine. What is the word there? Also, has the date been set in the court for the guardianship of Robert for his Merrill Lynch account? Please let us know. Thank you, Bethany."

57. You received this email.

58. By email dated February 19, 2019, 1:42 p.m., sent to Ms. McCann's email address at horse241@aol.com, you replied, *inter alia*, "I have a call into the Maine attorneys and will contact you once I hear back. I've yet to receive a hearing date from the courthouse regarding Roberts guardianship. I'll follow up and advise."

59. Despite your statements to the contrary, *supra*, you failed to follow up or provide any information to Ms. McCann regarding:

- a. transferring ownership of the Maine property; and
- b. obtaining guardianship for Ms. McCann of her son, Robert.

60. By email dated March 28, 2019, 1:09 p.m., sent to your email address as noted above, Ms. McCann wrote, *inter alia*:

I would like an update on the status of the Shepherd estate please. My brother has tried to stop by the office a few times and each time nobody is there. He's left a message at the office and I left a message on your cell phone.

Last month in an email you said you were going to get in touch with the lawyer in Maine as well as follow up with the court regarding an appointment for guardianship of Robert. Where do we stand on those issues?

Please let me know where we stand. Thank you.

61. You received this email.

62. You failed to respond to this email.

63. By email dated April 2, 2019, 4:11 p.m., sent to your email address as noted above, Ms. McCann wrote:

Hello, I've been trying to reach you for the last two weeks, I sent you an email, left messages on the office phone as well as your cell, and tried stopping by the office twice. The last I heard from you was over a month ago, I would like an update on the Shepherd estate please. Last I heard you were going to follow up with the lawyer in Maine. If you could please respond, even if it's with no news, I'd appreciate it. Thank you. Bethany McCann [telephone number omitted]

64. You received this email.

65. By email dated the same date at 4:20 p.m., sent in response to Ms. McCann's email *supra*, you replied, "My apologies for not getting back to you, most busy on my end. I will reach out to the Maine attorneys once again and contact you with any new developments to finalize the estate."

66. Despite your statement to the contrary, *supra*, you failed to:

- a. contact the "Maine attorneys"; and
- b. take any action to "finalize the estate."

67. By email dated April 15, 2019, 11:07 a.m., sent to your email address as noted above, Ms. McCann wrote, "Hello, I'm wondering what the lawyer in Maine said the status is of getting the cabin put in our name. Please let me know. Thanks, Bethany McCann."

68. You received this email.

69. You failed to respond to this email.

70. By email dated April 28, 2019, 7:15 p.m., sent to your email address as noted above, Ms. McCann wrote, "Hello, would you please provide me with the name and contact information for the lawyer in Maine that you've enlisted to change the deed into our names. Thank you, Bethany."

71. You received this email.

72. By email dated April 29, 2019, 9:39 a.m., sent in response to Ms. McCann's email *supra*, you replied, *inter alia*, "Hi Bethany: I'm out of the office today, I'll forward the information upon my return."

73. By email dated the same date at 9:53 a.m., sent in response to your email *supra*, Ms. McCann responded, *inter alia*, "Thank you, I appreciate it ... Also, where do we stand with getting a court date for Robert's guardianship? Thanks, Bethany."

74. You received this email.

75. You failed to:

- a. respond to this email;
- b. provide the name of any lawyer in Maine whom you contacted for assistance in having ownership of the Maine property transferred to the executors; and
- c. provide information regarding the status of any efforts on your part to obtain guardianship for Ms. McCann of her son, Robert.

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76. By email dated May 13, 2019, 10:21 a.m. sent to your email address as noted above, Mr. Shepherd wrote, *inter alia*:

Bethany and I are becoming increasingly concerned and frustrated with the lack of progress on the estate. We are also upset with the poor communication we receive when we inquire about the status. For several months now, the most we get in response from you is that you will check and get back to us, but then never do. We feels as if we have been put on the back burner despite having paid you in full. We would appreciate it if you would provide us with a detailed update on where all of the remaining matters currently stand. We would like a timeline on how much longer you expect these remaining items to complete. We would also like the contact info for the lawyer in Maine.

77. You received this email.

78. You failed to respond to this email.

79. By text message dated May 17, 2019, 5:05 p.m., sent from your cell phone to Ms. McCann's cell phone, you wrote: "Hi Bethany: I got your voicemail, I've recently relocated to Mayfield and only see clients at my office in Clark's Summit by appointment. I'll work on your file over the weekend and get back to you with a status to wrap up your file on Monday. Thanks for your patience. To contact me directly please email or call (570) 504-4632. I'm no longer using the main office line. Thanks, Dave."

80. By text message dated the same day at 5:19 p.m. sent in reply to your cell phone, Ms. McCann wrote, "Ok, I'll expect to hear from you on Monday."

81. By text message dated May 20, 2019, 9:35 p.m., sent from your cell phone to Ms. McCann's cell phone, you wrote, *inter alia*:

I reviewed your file, to wrap things up we need to file the tax return, as you are aware the tax was prepaid, once more I've prepared the return, but held off filing ... I see no reason not to file the return. Although no bearing on The estate raised here in

Pennsylvania, The Maine property is still an issue, despite reassurances from the Maine attorney I contacted, I've been unable to get the status as to the transfer of the property from your late parents to you and John. I've been in touch with the Main Surrogate Court, at this juncture I will make the filing myself.

I anticipate the above will be concluded within 30 days

82. Despite your statements to the contrary, you failed to:

- a. file the Inheritance Tax Return; and
- b. file any documents with a Maine court to have ownership of the Maine property transferred to the executors.

83. By email dated May 21, 2019, 1:20 p.m., sent to your email address as noted above, Ms. McCann wrote, *inter alia*, "I received your text last night ... I'm glad to hear you paid the inheritance tax and will be able to file it. Can you please provide me with a copy of the receipt for prepaying the inheritance tax? I would like it for my records. Also, you told us that you were having us overpay and we could expect a refund. I was wondering if you know how much the refund may be and when we may expect it"

84. You received this email.

85. You failed to respond to this email.

86. By email dated May 24, 2019, 12:23 p.m., sent to your email address as noted above, Ms. McCann inquired, "Hello Dave, Can you please provide me the new office address in Mayfield? Thank you! Bethany McCann."

87. You received this email.

88. You failed to respond to this email.

89. By text message dated May 24, 2019, 12:21 p.m., sent from Ms. McCann's cell phone to your cell phone, Ms. McCann inquired, "Hi Dave, can you please provide me with your new office address in Mayfield? Thank you!"

90. You received this text message.

91. You failed to reply to this text message.

92. By text message dated May 28, 2019, 12:25 p.m., sent from Ms. McCann's cell phone to your cell phone, Ms. McCann inquired, "Hello, I hope you had a nice holiday weekend. Will you please tell me your new address in Mayfield? Thank you!"

93. You received this text message.

94. By email dated May 28, 2019, 12:25 p.m., sent to your email address as noted above, Ms. McCann inquired, "Hello, I hope you had a nice holiday weekend. Will you please tell me your new address in Mayfield? I appreciate it. Thank you, Bethany McCann."

95. You received this email.

96. By email dated May 29, 2019, 8:43 a.m., sent in response to Ms. McCann's email *supra*, you replied, *inter alia*, "I continue to maintain my Clarks Summit Office meeting clients by appointment. I reside at Mayfield ... [and] work from home. I no longer use the office land lines. Please feel free to call my cell (570) 504-4632. Attached is the paid inheritance tax receipt for your file. I'll continue working towards wrapping up the return and contact you and John to meet, review and sign. Thanks, Dave"

97. Despite your promises to the contrary, you failed to:

- a. complete the Inheritance Tax Return for the executors' signatures; and
- b. file the Inheritance Tax Return.

98. By letter dated May 29, 2019, mailed to your office address as noted above, in regards to your representation of Ms. McCann in seeking guardianship of her son, Robert, as more fully described *supra*, Ms. McCann:

- a. terminated you as her attorney in this matter;
- b. notified you that she had retained Marjorie DeSanto Barlow, Esquire to represent her;
- c. directed that you "Please take no further action on this matter";

- d. requested you provide her a "detailed accounting of the time spent" on the matter; and
- e. requested you refund "the full \$2,500 retainer" she paid you.

99. You received this letter.

100. You failed to respond to this letter.

101. By letter dated May 29, 2019, mailed to your office address as noted above, in regards to your representation of the Shepherd Estate as more fully described *supra*, the executors:

- a. terminated you as their attorney in this matter;
- b. notified you they had retained Marjorie DeSanto Barlow, Esquire to represent them;
- c. directed that you "Please take no further action on this matter";
- d. requested that you provide Attorney Barlow:
 - i. the full Shepard Estate file;
 - ii. the name and contact information for the attorney in Maine, as well as any receipt or cancelled check for services provided by the lawyer;
 - iii. a copy of the new deed for the Pennsylvania property, more fully described *supra*;
- e. requested you provide the executors:
 - i. "documentation for expenses paid on behalf of the estate;
 - ii. "an itemized accounting of all the time spent you expended on the estate";
 - iii. a full refund of the \$30,000 balance from funds allocated to pay the estate inheritance tax, more fully described *supra*; and

iv. "a refund for all unused attorney' fees we have paid you."

102. You received this letter.

103. You failed to respond to this letter.

104. By letter dated May 29, 2019, mailed to your office address as noted above, in regards to your representation of the Shepherd Estate as more fully described *supra*, Marjorie DeSanto Barlow, Esquire:

- a. notified you that she had been retained by the executors to represent the Shepherd Estate;
- b. directed that you "not perform any further legal services on behalf of the estate";
- c. requested you provide her:
 - i. "the entire file";
 - ii. the name and contact information for the Maine attorney;
 - iii. the new deed for the Pennsylvania property;
- d. requested you provide the executors within 14 days of the date of her letter:
 - i. "a full and itemized accounting of the legal services you performed;
 - ii. a refund of "any unused attorney's fees"; and
- e. enclosed a "Withdrawal of Appearance" form and requested you sign it and return it to her in a self-addressed envelope she provided for your convenience.

105. You received this letter.

106. You failed to respond to this letter.

107. By letter dated May 30, 2019, mailed to your office address as noted above, in regards to the matter involving your

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representation of Ms. McCann in seeking guardianship of her son, Robert, Attorney Barlow:

- a. notified you that she had been retained by Ms. McCann to represent her in this matter;
- b. directed that you "not perform any further legal services in this matter";
- c. requested you refund Ms. McCann the \$2,500 retainer she paid you; and
- d. enclosed a "Withdrawal of Appearance" form and requested you sign it and return it to her in a self-addressed envelope she provided for your convenience.

108. You received this letter.

109. You failed to respond to this letter.

110. By email dated July 3, 2019, 6:58 p.m., sent to your email address as noted above, Ms. Jackie Tetherow, paralegal for Attorney Barlow:

- a. attached a copy of a petition captioned: *Petition For Removal Of Attorney Of Record* for the Shepard Estate matter; and
- b. wrote, "Please see attached correspondence and copy of Petition which the attorney intends to present in Orphans Court Motion Court on Thursday, July 11, 2019."

111. You received this email.

112. You failed to timely respond to this email.

113. By email dated July 10, 2019, 2:25 p.m., sent seven days later and in reply to Ms. Tetherow's email, you:

- a. attached an executed "Withdraw of Appearance" form for the Shepherd Estate matter;
- b. wrote, *inter alia*, "attached is a substitution of counsel to be filed with the court ... I'll continue

my best efforts to forward the file to you as well as final invoice for my services to date."

114. Despite your statements to the contrary *supra*, you failed to:

- a. file the "Withdraw of Appearance" form with the court;
- b. "forward the file" to Attorney Barlow; and
- c. provide a "final invoice for my services to date."

115. On or about July 12, 2019, Attorney Barlow presented the court in the Shepherd Estate matter:

- a. an "Entry of Appearance" for her to represent the executors as counsel; and
- b. a *Petition For Removal Of Attorney Of Record* to have you removed as counsel.

116. By Order dated July 12, 2019, the court granted the petition, and discharged and removed you as counsel for the Shepherd Estate.

117. By email dated July 12, 2019, 4:10 p.m., sent to your email address as noted above, Ms. McCann wrote, "I am writing to see about scheduling a day and time where I can come and pick up the Shepherd Estate files. If you please let me know when you are available, I would greatly appreciate it. Thank you."

118. You received this email.

119. You failed to respond to this email.

120. By email dated July 21, 2019, 11:43 a.m., sent to your email address as noted above, Ms. McCann wrote, "Attorney Harris, I would like to schedule a day and time to pick up the files for my mother's estate, Jo Anne R. Shepherd. Please kindly respond with what would be convenient for your schedule."

121. You received this email.

122. You failed to respond to this email.

123. To date, despite multiple requests, you have failed to:

- a. refund the \$2,500 retainer Ms. McCann paid you as more fully described *supra*;
- b. refund the \$30,000 in funds provided to you to prepay the estate inheritance tax as more fully described *supra*;
- c. refund all unearned attorney's fees;
- d. provide an accounting of any and all legal work you performed; and
- e. provide the file to either the executors or Attorney Barlow.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); RPC 1.5(a); RPC 1.15(b); RPC 1.15(e); RPC 1.15(i); RPC 1.16(d); RPC 3.2; RPC 8.4(b); RPC 8.4(c) and RPC 8.4(d).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Even if you chose not to respond, you are directed to provide the following information and materials to this office within 30 days:

1. The client file(s) for both the estate matter and the guardianship matter;

2. The written fee agreements for both the estate matter and the guardianship matter;

3. all invoices, receipts and/or detailed time entries for work performed on either matter;

4. any and all estate financial records and/or accounting documentation in your possession, custody or control;

5. the full name and contact information for any "Maine attorney" you had contact with in this matter, and any and all letters, emails, text messages or other correspondence by and between any such attorney and yourself;

6. identify the account(s) by financial institution(s) and account number(s) into which you deposited all funds received in both matters, to include attorney's fees, retainers, and funds received for payment of costs, expenses or estate inheritance taxes and, from November 2017 to the date the funds were fully distributed, provide:

- a. a copy of the bank statement reflecting deposit into your IOLTA account of any and all funds received for both the estate matter and the guardianship matter;
- b. a copy of all bank statements reflecting distribution of the funds for both the estate matter and the guardianship matter up and until the date the funds were fully distributed;
- c. monthly statements of account for any and all estate funds including the prepayment of estate taxes and/or all deposited legal fees for both the estate matter and the guardianship matter including cancelled checks and deposited items for the estate account(s) from date of deposit to the present;
- d. the individual client ledger accounting for both the estate matter and the guardianship matter funds; and
- e. copy of the check register for the account in which both the estate matter and the guardianship matter funds were deposited.

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Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

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Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killian
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6296
FAX (215) 560-4528

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September 12, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411-1868

Re: Complaint of Nicholas Moraitis
File No. C3-19-648

DE-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Mr. Nicholas Moraitis, 220 Rilyn Drive, West Palm Beach, FL 33405. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process, you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

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1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411.

3. Mr. Nicholas Moraitis is an individual residing at 220 Rilyn Drive, West Palm Beach, FL 33405.

4. David R. Schwartz, Esquire, is an attorney licensed to practice law in the State of Florida.

5. At all times relevant hereto, Attorney Schwartz represented Mr. Moraitis as his counsel in a matter more fully described *infra*.

6. In or around March 2018, Attorney Schwartz contacted you to request you provide legal services to effectuate conveyance to Mr. Moraitis of real property located at 131 Karl Hope Boulevard, Lackawaxen (Pike County), PA 18435 ("the Pennsylvania property").

7. You agreed to:

- a. provide legal services to Mr. Moraitis;
- b. assist in having title to the Pennsylvania property conveyed to Mr. Moraitis; and
- c. prepare and provide a written fee agreement regarding your services to Mr. Moraitis.

8. On or about March 16, 2018, Mr. Moraitis:

- a. retained you to "represent [him] regarding the conveyance of lands situated in, Lackawaxen, Pike County, PA" i.e., the Pennsylvania property;
- b. signed a written "ATTORNEY-CLIENT FEE AGREEMENT" ("fee agreement") dated March 16, 2018, agreeing to pay you:
 - i. a "minimum fee/retainer of \$2,500";
 - ii. \$250/hour for "office and research time, court time, and travel time," as well as reimburse

"costs and expenses in performing legal services under this Agreement"; and

- c. provided you check no. 1596, dated March 16, 2018, drawn on account no. xxxxxx1329, JP Morgan Chase Bank, N.A., made payable to "Harris Law Offices P.C." in the amount of \$2,500 as payment for your retainer fee pursuant to the fee agreement.

9. By letter dated March 23, 2018, sent to your office address, 409 Davis Street, Clarks Summit, PA 18411, Attorney Schwartz, *inter alia*:

- a. enclosed the signed fee agreement and retainer check in the amount of \$2,500; and
- b. requested you "Kindly keep [him] advised of your title search and any other requirements."

10. You:

- a. received the letter;
- b. received and negotiated the retainer check; and
- c. signed the fee agreement and agreed to represent Mr. Moraitis in this matter.

11. By email dated April 9, 2018, sent from your email address, dharrisiii@harrislawpc.com, to Attorney Schwartz's email address, drschwartzlaw@comcast.net, you:

- a. acknowledged receipt of the retainer check described supra; and
- b. attached a copy of the executed fee agreement bearing your signature.

12. By email dated April 30, 2018, 11:16 a.m., sent to your email address noted above, Attorney Schwartz wrote, "David, Can you please provide me with a status update on this matter. thank you."

13. You received this email.

14. You failed to respond to this email.

15. By email dated May 30, 2018, 12:14 p.m., sent to your email address noted above, Attorney Schwartz wrote, "David, Please advise the status of the title search with regard to Mr. Moraitis' property at 131 Karl Hope Blvd., Lackawaxen, PA. thank you."

16. You received this email.

17. You failed to respond to this email.

18. By email dated July 24, 2018, 10:58 a.m., sent to your email address noted above, Attorney Schwartz wrote, "David, Please call me to advise of the status of this matter. thank you."

19. You received this email.

20. You failed to reply to this email.

21. In addition to the emails described *supra*, during this same time period Attorney Schwartz made multiple, repeated attempts to contact you by telephone at your office number, (570) 587-5051, seeking information regarding the status of Mr. Moraitis' matter.

22. Attorney Schwartz was unable to contact you by telephone.

23. You failed to return any of Attorney Schwartz's telephone calls.

24. You failed to respond to any of Attorney Schwartz's requests for information regarding the status of this matter.

25. By email dated August 17, 2018, 2:58 p.m., sent to your email address as noted above, Attorney Schwartz wrote:

David,
Please advise me of the status of your handling of this matter. You have not returned my telephone calls or answered my emails. I would appreciate hearing from you. I need to know the status of this matter. If you are not going to handle this then my client's retainer of \$2,500 must be returned. Thank you for your prompt attention to this matter.

26. You received this email.

27. You failed to timely respond to this email.

28. By email dated August 23, 2018, 4:30 p.m., sent six days later in response to Attorney Schwartz's email *supra*, you replied, "Hi David: I've been trying to email the documentation from the title search and new deed but its kicking back stating to large for your server. Should I overnight it to you?"

29. By email dated the same day at 4:45 p.m., sent to Attorney Schwartz's email as noted above, you wrote, "David, Attached is proposed deed, let me know if any revisions. I truly appreciate your patience."

30. By letter dated August 24, 2018, sent to Attorney Schwartz's office at 6801 Lake Worth Road, Suite 330, Greenacres, FL 33467, you provided: 1) "contents of title search performed on the Pike County property, together with the Certificate of Title"; and 2) a proposed deed for the Pennsylvania property.

31. By email sent August 24, 2018, 2:48 p.m., sent in reply to your email *supra*, Attorney Schwartz, *inter alia*:

- a. informed you he had reviewed the proposed deed you emailed to him;
- b. requested several revisions to the proposed deed;
- c. specifically listed and described the revisions he requested, including having the Pennsylvania property titled in the wife, Ms. Teresita Moraitis', name; and
- d. wrote, "Please revise the deed accordingly."

32. You received this email.

33. By email dated September 14, 2018, 2:36 p.m. sent to Attorney Schwartz, you attached a copy of the revised deed with instructions regarding how to properly complete the deed in order to have it filed and recorded.

34. By letter dated February 7, 2019, mailed to your office address as noted above, Attorney Schwartz:

- a. provided you a fully executed original deed transferring ownership of the Pennsylvania property to Ms. Moraitis; and
- b. requested you:
 - i. file and record the deed; and
 - ii. send back to him the original recorded deed "once you receive it back from recording."

35. You received this letter.

36. You failed to record the deed to the Pennsylvania property.

37. By email dated June 13, 2019, 12:31 p.m., sent to your email address as noted above, Mr. and Ms. Moraitis' son, Mr. Rogelio Moraitis wrote:

Dear Mr. Harris,
I tried contacting you by phone but it seems that your line is disconnected. I'm emailing you on behalf of my mother, Teresita Moraitis, concerning a property at the following address:
131 Karl Hope Boulevard, Lackawaxen, PA
It has been approximately 3 months since Mr. David Schwartz, her attorney in Florida, has sent you the necessary paperwork to transfer the above mentioned property under her name. What is the status of this matter?
Please advise as soon as possible and provide a working number so that we may discuss over the phone.

38. You received this email.

39. By email dated the same day at 1:15 p.m., sent to your email address as noted above, Attorney Schwartz wrote:

David,
I mailed you the deed for recording in February. I have not heard back from you. Please advise me of the status of the recording of the deed concerning the Pike

County property. I tried calling your office, but a recording came on that your telephone number was not in service. I look forward to hearing from you. Thank you.

40. You received this email.

41. During the relevant time period described *supra*, your office telephone number, (570) 587-5051, was disconnected and/or no longer in service.

42. By email dated the same date at 2:45 p.m., sent in reply to Attorney Schwartz's and Mr. Roger Moraitis' emails above, you wrote, "Gentlemen: I am out of the office returning Monday June 17th, upon my return I'll contact you with an update. Please note I can be reached directly by phone at (570) 504-4632."

43. By email dated the same date at 3:07 p.m., sent in reply to your email *supra*, Attorney Schwartz responded, "David, Thank you for the prompt response. I look forward to speaking to you on Monday."

44. Despite your email to the contrary, you failed to contact Attorney Schwartz with an update regarding the status of your efforts to record the deed for the Pennsylvania property as promised.

45. By email dated June 23, 2019, 2:56 p.m., sent to both your email address as noted above, and Attorney Schwartz's email address as noted above, Mr. Moraitis' son, Mr. Roger Moraitis, wrote: "Gentlemen, hopefully you both had a chance to speak last week. Where are we on this matter?"

46. You received this email.

47. You failed to respond to this email.

48. By email dated June 24, 2019, 2:24 p.m., sent to your email address as noted above, Attorney Schwartz wrote, "David, Please give me a call and advise me of the status of this matter. You had advised that you would call me last Monday but I have not heard from you. I look forward to speaking."

49. You received this email.

50. You failed to:

- a. respond to this email; or
- b. call Attorney Schwartz.

51. By email dated July 9, 2019, 12:11 p.m., sent to your email address as noted above, Attorney Schwartz wrote:

David,
please let me hear from you. It has now been almost a month since you emailed me that you would call, and I am still waiting. My client is quite upset that this matter has been taking so long. I sent you the deeds in February and you were to have them recorded. Pike County shows no record of the deeds having been recorded. Please advise me of the status of the matter. I expect to hear from you by the end of this week. Please be advised that if I do not hear from you, my client wants to take action against you. He has been extremely patient, but if you continue to avoid any response, he will have no other choice.

52. You received this email.

53. You failed to respond to this email.

54. By email dated July 16, 2019, 4:46 p.m., sent to your email address as noted above, Attorney Schwartz wrote, "David, I still have not heard from you. If you have not sent the deed to recording, then I request that you send the deed back to me so that I may record it. Thank you."

55. You received this email.

56. You failed to:

- a. respond to this email; or
- b. provide the original, executed deed to Attorney Schwartz.

57. To date, you failed to:

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- a. file and/or record the deed to the Pennsylvania property with the Pike County Recorder of Deeds Office; or
- b. provide the original, executed deed to Attorney Schwartz.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); RPC 8.4(c) and RPC 8.4(d).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Even if you chose not to respond, provide the following information and materials:

1. Identify the account by financial institution and account number into which you deposited Mr. Moraitis' retainer check and, from March 2018 to the date the funds were fully distributed provide:

- a. all periodic records provided by the financial institution, including monthly statements, copies of cancelled checks, deposited items, and details of any wire or ACH transaction;
- b. an individual client ledger accounting for Mr. Moraitis' funds;
- c. if the account held the funds of other clients identify those clients and provide individual ledgers for each client;

David W. Harris, III, Esquire
September 12, 2019
Page 10

- d. your general ledger for the account; and
- e. monthly reconciliations for the account.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and

David W. Harris, III, Esquire
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Page 11

materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark F. Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killion
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6296
FAX (215) 560-4528

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October 3, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411-1868

Re: Complaint of Kenneth B. Reen
File No: C3-19-733

DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Mr. Kenneth B. Reen, 928 Green Street, Perkasio, PA 18944. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred.

Since this complaint has survived our initial screening process, you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

David W. Harris, III, Esquire
October 3, 2019
Page 2

1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411.

3. In or around April 2019, Mr. Kenneth B. Reen and his wife, Mrs. Carol S. Reen, owned residential apartments located at 422-424 Monroe Avenue, Scranton, PA 18510 ("the apartments").

4. By Agreement of Sale dated April 4, 2019, Mr. and Mrs. Reen agreed to sell the apartments to a limited liability corporation, 422 Monroe, LLC, through its member, Mr. Matthew Ross, for the sum of \$265,000 ("Ross Agreement of Sale").

5. Pursuant to the Ross Agreement of Sale, Mr. Ross agreed to, *inter alia*:

- a. provide an initial deposit/earnest money in the amount of \$12,000 to be applied towards the purchase of the apartments, to be held in escrow by his attorney, John J. McGovern, Jr., Esquire; and
- b. complete the closing and settlement for the sale of the apartments on or before April 26, 2019.

6. Mr. Ross failed to complete settlement and close on the apartments by the April 26, 2019, deadline.

7. On or around April 26, 2019, Mrs. Reen:

- a. contacted you by telephone to request your assistance in voiding the sale of the apartments to Mr. Ross due to his breach of the Ross Agreement of Sale; and
- b. emailed you a copy of the Ross Agreement of Sale for your review.

8. You agreed to:

- a. provide legal services to Mr. and Mrs. Reen;

David W. Harris, III, Esquire

October 3, 2019

Page 3

- b. assist Mr. and Mrs. Reen in the sale of the apartments; and
- c. prepare and provide a written fee agreement to Mr. and Mrs. Reen regarding your legal representation.

9. On April 27, 2019, Mr. and Mrs. Reen:

- a. retained you to "represent [them] regarding the sale of 422-424 Monroe Avenue, Scranton PA";
- b. signed a written "ATTORNEY-CLIENT FEE AGREEMENT" dated April 27, 2019, agreeing to pay you:
 - i. a "minimum fee/retainer of \$2,500.00"; and
 - ii. \$250/hour for "office and research time, court time, and travel time," as well as reimburse "costs and expenses in performing legal services under this Agreement."

10. On April 27, 2019, you:

- a. travelled to the apartments in Scranton to meet Mr. and Mrs. Reen;
- b. presented Mr. and Mrs. Reen the fee agreement while at the apartments and requested they sign it; and
- c. instructed Mr. and Mrs. Reen to electronically wire the \$2,500 retainer fee to: First National Bank, "Harris Law Offices PC-IOLTA Escrow Account" ("the IOLTA account"), account no. XXXX6989.

11. By email dated April 28, 2019, sent from your email address, dharrisiii@harrislawpc.com, to Mrs. Reen's email address, kreenbuilder@verizon.net, you provided your bank name, bank routing number, and the account name and number for the IOLTA account in order to effectuate the electronic wire transfer of the \$2,500 retainer fee.

12. On or about April 29, 2019, Mrs. Reen electronically wired the \$2,500 retainer fee from her bank account with American Heritage FCU to the IOLTA account per your instructions.

13. You received the \$2,500 wire transfer into the IOLTA account.

14. By letter dated May 10, 2019, addressed to Mr. Ross, 321 Spruce Street, Suite 201, Scranton, PA 18503, you informed Mr. Ross that, *inter alia*:

- a. you represented Mr. and Mrs. Reen;
- b. Mr. Ross was in breach of the Ross Agreement for Sale;
- c. your clients "are no longer willing to extend the closing date" beyond April 26, 2019; and
- d. you have been directed by your clients to "seek all available legal remedies, including but not limited to their receipt of the \$12,000.00 deposit monies."

15. By Agreement of Sale dated May 10, 2019, Mr. and Mrs. Reen agreed to sell the apartments to Mr. Donald F. Mammano, Jr., for the sum of \$270,000 ("Mammano Agreement of Sale").

16. Pursuant to the Mammano Agreement of Sale, Mr. Mammano agreed, *inter alia*, to provide an initial deposit/earnest money in the amount of \$10,000 to be applied towards the purchase of the apartments.

17. By check no. 328, dated May 6, 2019, drawn on TD Bank account no. XXXXXX8391, made payable to Kenneth and Carol Reen in the amount of \$10,000, Mr. Mammano paid the deposit/earnest money pursuant to the Mammano Agreement of Sale as noted *supra*.

18. Mrs. Reen deposited the funds from the check Mr. Mammano provided her into her bank account with American Heritage FCU.

19. After Mrs. Reen deposited the funds into her account, you instructed Mrs. Reen to electronically wire \$10,000 in funds into the IOLTA account.

20. You informed Mr. and Mrs. Reen that you:

- a. would hold the \$10,000 in deposit/earnest money in your escrow account; and

- b. return it to Mr. and Mrs. Reen at the time of the settlement/closing conference.

21. On or about May 13, 2019, Mrs. Reen electronically wired the \$10,000 deposit/earnest money from her bank account to the IOLTA account per your instructions.

22. You received the \$10,000 wire transfer into the IOLTA account.

23. On May 22, 2019, Mr. Ross' attorney, John J. McGovern, Jr., Esquire, filed a Writ of Summons, Praecipe For Lis Pendens, and an Acceptance of Service in the Lackawanna County Court of Common Pleas naming Mr. and Mrs. Reen as defendants in a civil action relating to the sale of the apartments.

24. You were served a copy of the legal documents described in ¶ 22, *supra*.

25. On or about June 17, 2019, you and Attorney McGovern negotiated a written "Mutual Release and Termination of Agreement of Sale for Real Estate" that was signed by both Mr. and Mrs. Reen, and Mr. Ross.

26. On June 21, 2019, Attorney McGovern filed a Discontinuance of Lis Pendens and Praecipe to Discontinue Action in the Lackawanna County Court of Common Pleas.

27. On or about July 19, 2019, Mr. and Mrs. Reen signed a purchase agreement with Mr. Mammano for the sale of the apartments.

28. On August 21, 2019:

- a. the settlement/closing conference for sale of the apartments to Mr. Mamanno occurred;
- b. you attended the settlement/closing conference and represented Mr. and Mrs. Reen; and
- c. you provided check no. 7489, dated August 22, 2019, drawn on the IOLTA account in the amount of \$10,000 to Mr. and Mrs. Reen ("the 10,000 check").

29. The settlement statement prepared for the settlement/closing conference indicated that, *inter alia*:

- a. Mr. Mammano had previously paid \$10,000 in "deposits or earnest money" to Mr. and Mrs. Reen; and
- b. the \$10,000 deposit/earnest money was "due to Seller;" namely, Mr. and Mrs. Reen.

30. The \$10,000 check:

- a. represented the return of the deposit/earnest money you were holding in escrow from the sale of the apartments;
- b. bore the handwritten inscription: "Monroe Ave. Deposit" on the memo line;
- c. was not signed and/or endorsed with a signature on the "authorized signature" line; and
- d. was provided to Mr. and Mrs. Reen in a sealed envelope.

31. You failed to sign and/or endorse the check with your signature.

32. Your failure to sign and/or endorse the \$10,000 check was knowing and intentional.

33. On or about August 22, 2019, Mrs. Reen presented the \$10,000 check for deposit at her bank, American Heritage FCU.

34. On or about August 23, 2019, American Heritage FCU notified Mr. and Mrs. Reen that the \$10,000 check failed to have a signature on the "authorized signature" line.

35. On or about August 23, 2019, Mr. and Mrs. Reen attempted to contact you regarding your failure to sign the \$10,000 check by:

- a. calling your office telephone number, (570) 587-5051;
- b. calling and sending text messages to your cellphone number, (570) 504-4632; and

c. emailing you at your email address as noted above.

36. In or around August 2019, your office telephone number was disconnected and no longer in service.

37. In or around August 2019, you failed to maintain a working office telephone number for clients to contact you.

38. You received the voice mail messages left on your cellphone.

39. You received the text messages sent to your cellphone.

40. You received the emails sent to your email address.

41. By email dated August 26, 2019, 9:20 a.m., sent in reply to an email you received from Mr. and Mrs. Reen, you wrote: "Hi Ken and Carol; Just got your messages, my apologies. I will reissue the check and mail to you; also contact the Credit Union for return of the original. Regards, Dave."

42. Despite your promise, you failed to reissue to \$10,000 check to Mr. and Mrs. Reen.

43. By email dated August 26, 2019, 10:14 a.m., sent to your email address as noted above, Mrs. Reen wrote, "David. Please contact me. The check you gave us was not signed. I know this is an oversight. But that check needs to be cancelled and we need a new check Fedex to us. Thank you. Carol."

44. You received this email.

45. You failed to reply to this email.

46. By letter dated August 26, 2019, American Heritage FCU informed Mr. Reen that the \$10,000 check had been returned due to the lack of sufficient funds in your IOLTA account to transact the amount of the check.

47. You failed to maintain sufficient funds in your IOLTA account to permit the \$10,000 check to be transacted.

48. You failed to identify and preserve client fiduciary funds in your IOLTA account.

David W. Harris, III, Esquire
October 3, 2019
Page 8

49. On or about August 27, 2019, Mr. and Mrs. Reen retained Jeffrey K. Landis, Esquire to represent them.

50. By letter dated August 27, 2019, sent via Federal Express and first-class mail to your office address as noted above, as well as by email to you email address as noted above, Mr. Landis, *inter alia*:

- a. informed you that he represented Mr. and Mrs. Reen; and
- b. made demand from you for payment of \$10,000 in the form of a cashier's check to be delivered on or before "noon time on Friday, August 30, 2019."

51. You received this letter.

52. You failed to respond to this letter.

53. You failed to provide a cashier's check in the amount of \$10,000 by the deadline set forth in the letter.

54. To date, you have failed to return the \$10,000 in funds from the deposit/earnest money that is owed to Mr. and Mrs. Reen from the sale of the apartments to Mr. Mammano.

55. You misappropriated \$10,000 of your client's funds to your own personal use.

56. Your misappropriation of your client's fiduciary funds was knowing and intentional.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); RPC 1.15(b); RPC 1.15(e); RPC 1.16(d); RPC 8.4(b); and RPC 8.4(c).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel

David W. Harris, III, Esquire
October 3, 2019
Page 9

will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b) (7).

Even if you chose not to respond, you are directed to provide the following information and materials to this office within 30 days:

1. The full and complete client file for Kenneth and Carol Reen's matter;
2. The written fee agreement;
3. All invoices, receipts and/or detailed time entries for work performed on Mr. and Mrs. Reen's matter;
4. Any and all financial records and/or accounting documentation in your possession, custody or control for Mr. and Mrs. Reen's matter;
5. A copy of the bank statement(s) reflecting deposit into your IOLTA account of any and all funds received from Mr. and Mrs. Reen; to include the \$2,500 retainer fee and the \$10,000 deposit/earnest money;
6. A copy of all bank statements reflecting distribution of all funds received from Mr. and Mrs. Reen's up and until the date the funds were fully distributed;
7. The individual client ledger accounting for Mr. and Mrs. Reen's matter; and
8. A copy of the check register for the account into which funds received from Mr. and Mrs. Reen were deposited.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a

David W. Harris, III, Esquire
October 3, 2019
Page 10

material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do

David W. Harris, III, Esquire
October 3, 2019
Page 11

provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark F. Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killian
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
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Mark F. Gilson
Elizabeth J. Rubin

October 15, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411-1868

Re: Complaint of Chang W. Lesh
File No. C3-19-750

DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Ms. Chang W. Lesh, 14082 Upper Maple Drive, Clarks Summit, PA 18411. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

David W. Harris, III, Esquire
October 15, 2019
Page 2

1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411 ("law office").

3. Ms. Chang W. Lesh is the owner of a property located at 14082 Upper Maple Drive, Clarks Summit, PA 18411.

4. Mr. Jason Bird and Ms. Julie Bird ("Mr. and Ms. Bird") are the owners of a property located at 14042 Upper Maple Drive, Clarks Summit, PA 18411.

5. Ms. Chang sold the property located at 14042 Upper Maple Drive to Mr. and Ms. Bird.

6. In or before August 2018, Ms. Lesh and Mr. and Ms. Bird were involved in a property boundary dispute involving their above-referenced properties.

7. On August 1, 2018, Ms. Lesh:

a. retained you to "represent [her] regarding a Residential Boundary Dispute" with Mr. and Ms. Bird involving the properties referenced above;

b. signed a written "ATTORNEY-CLIENT FEE AGREEMENT" ("fee agreement") dated August 1, 2018, agreeing to pay you:

i. a "minimum fee/retainer of \$2,500.00"; and

ii. \$250/hour for "office and research time, court time, and travel time," as well as reimburse "costs and expenses in performing legal services under this Agreement"; and

c. provided you check no. 1870, dated August 1, 2018, made payable to "Harris Law Offices, P.C." in the amount of \$2,500 as payment for your retainer ("retainer check").

8. You:

- a. agreed to represent and provide legal services to Ms. Lesh;
 - b. signed the fee agreement; and
 - c. transacted and deposited the retainer check described *supra*.
9. Mr. and Ms. Bird were represented by Patrick J. Lavelle, Esquire, in this matter.
10. By letter dated November 7, 2018, addressed to Mr. Lavelle, you, *inter alia*:
 - a. informed Mr. Lavelle that you represented Ms. Lesh; and
 - b. put forth a proposal to settle and resolve the property boundary dispute between the parties.
11. On November 7, 2018, you:
 - a. provided a copy of your November 7, 2018 letter to Ms. Lesh via email sent from your email address, dharrisiii@harrislawpc.com, to Ms. Lesh's email address, changlesh@yahoo.com; and
 - b. spoke to Ms. Lesh via telephone about the November 7, 2018, letter you sent to Mr. Lavelle.
12. By letter dated November 13, 2018, addressed to you at your law office, Mr. Lavelle replied to your November 7, 2018 letter and rejected your proposed offer to settle and resolve the property boundary dispute.
13. You received Mr. Lavelle's letter.
14. By email dated November 29, 2018, sent to Ms. Lesh's email address as noted above, you provided her a copy of Mr. Lavelle's November 13, 2018 letter, and requested that Ms. Lesh "Please contact my office going forward."
15. On December 5, 2018, Ms. Lesh called your law office telephone number, (570) 587-5051, and spoke to you regarding the necessity to retain and hire a surveyor, Mr. Robert Mendola, to assist in her legal matter.

David W. Harris, III, Esquire
October 15, 2019
Page 4

16. As further described in your November 7, 2018 letter, Mr. Mendola had "performed a survey and proposed an alternative line adjustment in line with Newton Township zoning requirement."

17. On December 6, 2018, Ms. Lesh:

- a. met with you in your law office; and
- b. provided you check no. 1892, postdated December 10, 2018, made payable to "Harris Law Office" in the amount of \$2,500 as funds to be used to hire a surveyor.

18. You:

- a. transacted and deposited the check;
- b. failed to hire Mr. Mendola;
- c. failed to hire another surveyor; and
- d. misappropriated the funds provided to you by Ms. Lesh hire either Mr. Mendola or another surveyor to your own personal use.

19. You never hired a surveyor with the funds Ms. Lesh provided you specifically for that purpose.

20. You failed to return the funds to Ms. Lesh.

21. Your misappropriation of the funds was knowing and intentional.

22. By email dated March 14, 2019, 5:23 p.m., sent to your email address as noted above, Ms. Lesh wrote: "I called and left messages many times, but I haven't responded from you. I also stop by your office few times, but no one in the office. Please call or e-mail me back & let me know what's going on my property boundary issue. Truly! Chang Lesh."

23. You received this email.

24. During the relevant time period in which Ms. Lesh attempted to contact you:

- a. you were not keeping or maintaining regular office hours at your law office;
 - b. no one was regularly staffing your law office during business hours; and
 - c. your law office was closed and/or not open to clients during regular business hours.
25. You failed to make yourself reasonably available to Ms. Lesh at your law office.
26. By email dated March 15, 2019, 12:42 p.m., sent in reply to Ms. Lesh's email, you wrote: "Mrs. Lesh, My apologies for missing your call. I will contact you as soon as I receive a survey date. Please feel free to contact me via cell phone listed below. Thank you. David W. Harris, III, Esq."
27. Despite your promise in your email *supra*, you failed to contact Ms. Lesh with a "survey date."
28. You failed to contact a surveyor in regards to Ms. Lesh's legal matter.
29. The March 15, 2019, email was the last communication Ms. Lesh received from you in regards to her legal matter.
30. You failed to keep Ms. Lesh reasonably informed of the status of her legal matter.
31. You failed to diligently represent Ms. Lesh in her legal matter.
32. You failed to competently represent Ms. Lesh in her legal matter.
33. By email dated April 2, 2019, 5:59 a.m., sent to your email address as noted above, Ms. Lesh wrote: "Good morning Harris, I'm sorry to say this but I don't want you to be my lawyer any more & please I want my money back. Because you haven't done any progress on my land issue nor called surveyor. Please, I want my money back."
34. You received this email.
35. You failed to reply to this email.

36. You failed to return any funds to Ms. Lesh.
37. On or about April 9, 2019, Ms. Lesh filed a fee dispute complaint against you with the Lackawanna Bar Association.
38. By letter dated June 4, 2019, mailed to your office address as noted above, The Lackawanna Bar Association Fee Dispute Committee ("the Committee"):
 - a. notified you of Ms. Lesh's complaint;
 - b. requested you provide:
 - i. "any Fee Agreement";
 - ii. "bill(s) submitted for services rendered"
 - iii. "any other supporting documentation you wish the committee to consider;" and
 - c. advised you that a hearing date to consider the matter was scheduled for June 13, 2019, at 3:30 p.m., 233 Penn Street, Scranton, PA.
39. You received this letter.
40. You failed to:
 - a. provide the documents requested by the Committee as described *supra*; and
 - b. attend the June 13, 2019, hearing.
41. By letter dated August 14, 2019, mailed to your office address as noted above, the Committee informed you that:
 - a. it had considered Ms. Lesh's fee dispute complaint at the June 13, 2019 hearing;
 - b. Ms. Lesh appeared at the hearing and submitted documents for the Committee to review; and
 - c. "[i]t was the consensus of the Committee that the total fee paid by Ms. Lesh in the amount of \$5,000 on August 1, 2018 and December 10, 2018 was clearly excessive for the work performed by Attorney Harris

as described by Complainant. We strongly encourage Attorney Harris to contact his client and consider refunding a portion of his fee."

42. You received this letter.

43. You failed to refund any portion of your fee to Ms. Lesh.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); RPC 1.5(a); RPC 1.15(e); RPC 1.16(d) and RPC 8.4(c).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Even if you chose not to respond, provide the following information and materials:

1. Identify the account by financial institution and account number into which you deposited Ms. Lesh's funds and, from October 2018 to the date the funds were fully distributed, provide:

- a. all periodic records provided by the financial institution, including monthly statements, copies of cancelled checks, deposited items, and details of any wire or ACH transaction;
- b. an individual client ledger accounting for Ms. Lesh's funds;
- c. if the account held the funds of other clients identify those clients and provide individual ledgers for each client;

- d. your general ledger for the account;
- e. monthly reconciliations for the account; and
- f. proof that you contacted, hired, retained and/or consulted a surveyor regarding Ms. Lesh's legal matter.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

David W. Harris, III, Esquire
October 15, 2019
Page 9

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark F. Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul J. Killion
Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6296
FAX (215) 560-4528

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OF THE
SUPREME COURT OF PENNSYLVANIA



OFFICE OF DISCIPLINARY COUNSEL
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November 4, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
435 Whitmore Avenue
Mayfield, PA 18433

Re: Complaint of Jeffrey Baldan
File No. C3-19-787

DE-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Mr. Jeffrey Baldan, 2067 Maplewood Road, Jefferson Township, PA 18435. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

Disciplinary Counsel-in-Charge
Anthony P. Sodroski

Disciplinary Counsel
Richard Hernandez
Gloria Randall Ammons
Harriet R. Brumberg
Michael D. Gottsch
Jeffrey M. Krullik
Robin B. Godfrey
Mark F. Gilson
Elizabeth J. Rubin

David W. Harris, III, Esquire

November 4, 2019

Page 2

1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. In 2017, you were a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411.

3. Sometime prior to 2017, Mr. Harry Baldan and Ms. Ludmilla Baldan (husband and wife) transferred title and ownership of real property located at Half Moon Lake, Jefferson Township, Pa. ("the Half Moon Lake property") to their nephew, Mr. Jeffrey Baldan.

4. Subsequent to the transfer, Mr. Jeffrey Baldan became aware of several issues regarding his not having been provided clear title to the Half Moon Lake property from his uncle and aunt.

5. On or around August 25, 2017, Mr. Jeffrey Baldan:

a. retained you to provide legal services to, *inter alia*, "represent [Mr. Jeffrey Baldan] regarding providing marketable title to lands at Half moon Lake, Jefferson Twp., PA.";

b. signed a written "Attorney--Client Fee Agreement" ("fee agreement") dated August 25, 2017, agreeing to pay you "\$250 an hour for office and research time, court time, and travel time," as well as reimburse "costs and expenses in performing legal services under this Agreement"; and

c. provided check no. 1773 dated August 25, 2017, made payable to "Harris Law Office P.C." in the amount of \$5,000 to you as an initial retainer for your legal services ("retainer check").

6. You:

a. received and negotiated the retainer check from Mr. Jeffrey Baldan;

b. signed the fee agreement; and

c. agreed to assist Mr. Jeffrey Baldan with resolving any title and deed issues relating to the transfer of the Half Moon Lake property.

David W. Harris, III, Esquire

November 4, 2019

Page 3

7. A full and complete title search for the Half Moon Lake property had previously been conducted on April 7, 2017, by Oak Settlement Services through attorney Paul Keeler, Esquire.

8. Mr. Jeffrey Baldan provided you a copy of the Oak Settlement Services title search.

9. You billed and charged Mr. Jeffrey Baldan a fee of \$1,000 to allegedly conduct another, second title search of the Half Moon Lake property on September 12, 2017 ("September 2017 title search").

10. You failed to:

- a. conduct the September 2017 title search of the Half Moon Lake property; or
- b. provide a copy of the September 2017 title search to Mr. Jeffrey Baldan.

11. The \$1,000 fee charged to Mr. Jeffrey Baldan for the alleged September 2017 title search of the Half Moon Lake property was:

- a. for a title search that was not actually conducted or performed; or
- b. an excessive, unnecessary, and/or a duplicative fee.

12. You misappropriated \$1,000 in funds to your own personal use.

13. Your misappropriation of the \$1,000 in funds was knowing and intentional.

14. On May 2, 2009, Mr. Jeffrey Baldan's mother, Ms. Genevieve Jean Baldan, a.k.a. Jean T. Baldan, died in Lackawanna County.

15. At the time of her death, it was believed that Ms. Baldan had died intestate and without a will.

16. On or about August 2, 2013, Mr. Jeffrey Baldan, his sister, Ms. Judith Milewski, and his brother, Mr. Mark Baldan ("the co-administrators") were issued Letters of Administration by the

Register of Wills of Lackawanna County to co-administer the estate of their deceased mother, Ms. Baldan ("the Baldan Estate").

17. In or around January 2019:

- a. a dispute involving the administration of the Baldan Estate arose between Mr. Jeffrey Baldan and the co-administrators;
- b. the co-administrators retained Paul A. Kelly, Jr., Esquire to represent them and their interests in this dispute; and
- c. Mr. Jeffrey Baldan retained you to represent him and his interests in this dispute.

18. You:

- a. agreed to represent Mr. Jeffrey Baldan in the dispute with the co-administrators;
- b. charged Mr. Jeffrey Baldan an additional fee of \$5,000 for your representation of him in the Baldan Estate matter; and
- c. failed to provide Mr. Jeffrey Baldan a written fee agreement regarding your representation of him in the Baldan Estate matter.

19. On January 7, 2019, Mr. Jeffrey Baldan:

- a. endorsed a check in the amount of \$5,000 drawn on his Fidelity brokerage made payable to him; and
- b. provided the endorsed check to you as payment for your fee as described above.

20. You:

- a. received the \$5,000 check from Mr. Jeffrey Baldan;
- b. co-endorsed the check by writing "Harris Law Offices, P.C." on the back of it; and
- c. negotiated the check and received funds in the amount of \$5,000.

21. Your fee for your representation of Mr. Jeffrey Baldan in the Baldan Estate matter was paid in full.

22. On January 23, 2019, Mr. Kelly filed a "Petition To Remove Jeffrey Baldin As Co-Administrator Of Estate" ("the Petition to Remove") in the Court of Common Pleas of Lackawanna County.

23. Lackawanna County Court of Common Pleas Judge Vito P. Geroulo signed a Rule To Show Cause dated January 23, 2019, that:

- a. set a Rule Returnable date of February 12, 2019, for you to file a response to the Petition to Remove; and
- b. scheduled a hearing to be held on February 13, 2019, to address the Petition to Remove.

24. Your response to the Petition to Remove was not filed until February 13, 2019.

25. Your response was untimely.

26. You failed to file a timely response to the Petition to Remove.

27. Prior to the date of the February 13, 2019, hearing you failed to:

- a. meet with Mr. Jeffrey Baldan to prepare him for his testimony;
- b. discuss the matter with Mr. Jeffrey Baldan and adequately familiarize yourself with the underlying facts; and
- c. adequately prepare for the cross-examination of witnesses.

28. You failed to competently represent Mr. Jeffrey Baldan at the hearing held before Judge Geroulo on February 13, 2019.

29. By Order dated March 8, 2019, Judge Geroulo granted the Petition to Remove, and ordered Mr. Jeffrey Baldan be removed from his position as co-administrator of the Baldan Estate.

30. In or around April 2019, Mr. Jeffrey Baldan located a copy of Ms. Baldan's will.

31. By email dated April 23, 2019, sent to your email address, dharrisiii@harrislawpc.com, Mr. Jeffrey Baldan's wife, Ms. Susan Baldan, provided you a copy of the *Last Will and Testament of Jean T. Baldan*, and wrote, *inter alia*: "Attached you will find the scanned copy."

32. You received this email and a copy of Ms. Baldan's will.

33. By email dated May 29, 2019, sent to Mr. Jeffrey Baldan's email address, odin2370@yahoo.com, you wrote, "Hi Jeff. Attached is a petition to admit mom's will to probate. I'll be presenting the same to the court Monday, June 3, 2019. I'll contact you going forward with hearing date and time. Give me a call with any questions. Thank you. David W. Harris, III, Esq."

34. Despite your statements to the contrary, you failed to:

- a. file a petition with the court to admit Ms. Baldan's will for probate; and
- b. contact Mr. Jeffrey Baldan with any information regarding a hearing date scheduled to address such a petition.

35. You never filed a petition with the court to admit Ms. Baldan's will for probate.

36. Your May 29, 2019, email was the last communication Mr. Jeffrey Baldan received from you.

37. By email dated June 27, 2019, sent to your email address as noted above, Ms. Susan Baldan wrote, "Atty Harris, Please confirm if the will has been filed and next steps. We would like the status **BEFORE** the holiday. Susan and Jeff." (original emphasis)

38. You received this email.

39. You failed to respond to this email.

40. During the course of representation, Mr. Jeffrey Baldan provided you original documents and other materials relating to his legal matter.

41. The fee agreement provided, in ¶8, that "You [Mr. Jeffrey Baldan] may discharge us at any time," and further, upon discharge:

- a. "we will, upon request, deliver your file to you, along with any funds or property of yours in our possession."

42. By email dated July 11, 2019, sent to your email address as noted above, Ms. Susan Baldan:

- a. notified you that you were being discharged as counsel in this matter; and
- b. requested that you return "any and all paperwork, including the notarized documentation showing Harry Baldan turning over his land to Jeff Baldan ... as soon as possible."

43. You received this email.

44. You failed to:

- a. respond to this email; and
- b. return any documents to Mr. Jeffrey Baldan.

45. By email dated August 9, 2019, sent to your email address as noted above, Ms. Susan Baldan requested you return "any and all original paperwork," offered to "meet you at a location of your choosing to pick them up," and stated, "We are truly only looking to get our original documents returned."

46. You received this email.

47. You failed to:

- a. respond to this email; and
- b. return any documents to Mr. Jeffrey Baldan.

48. By letter dated October 11, 2019, sent via certified mail, return receipt requested, and first-class mail, postage prepaid, to your office address as noted above, Mr. Jeffrey Baldan and Ms. Susan Baldan requested, *inter alia*:

- a. "a refund of the costs of the title search";

- b. "a full accounting of your charges to determine if additional refunds are required" and
 - c. "all original documents be returned; especially the notarized copy of my uncle Harry Baldan signing over the property."
49. You received this letter.
50. You failed to:
- a. respond to this letter;
 - b. provide a refund of any funds; and
 - c. return any documents.
51. To date, you have failed to:
- a. "provid[e] marketable title to lands at Half moon Lake, Jefferson Twp., PA." as set forth and provided for in the fee agreement;
 - b. file a petition with the court to probate the will of Ms. Baldan;
 - c. respond to requests for information regarding the status of Mr. Jeffrey Baldan's legal matters;
 - d. return requested documents;
 - e. provide an accounting for any legal services rendered;
 - f. refund the \$1,000 fee charged to allegedly conduct the September 2017 title search on the Half Moon Lake property; or
 - g. refund any advance payment of fees that had not been earned or incurred.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); RPC 1.5(a); RPC 1.5(b); 1.15(e); RPC 1.15(i); RPC 1.16(d); and RPC 8.4(c).

David W. Harris, III, Esquire
November 4, 2019
Page 9

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Even if you chose not to respond, provide the following information and materials:

1. Identify the account by financial institution and account number into which you deposited Mr. Jeffrey Baldan's funds and, from the initial date of receipt of all funds to the date the funds were fully distributed, provide:

- a. all periodic records provided by the financial institution, including monthly statements, copies of cancelled checks, deposited items, and details of any wire or ACH transaction;
- b. an individual client ledger accounting for Mr. Jeffrey Baldan's funds;
- c. if the account held the funds of other clients identify those clients and provide individual ledgers for each client;
- d. your general ledger for the account; and
- e. monthly reconciliations for the account.

2. Proof that you either conducted or requested to be conducted a title search on the Half Moon Lake property.

3. An invoice, bill, or other demand for payment for a title search conducted for the Half Moon Lake property.

David W. Harris, III, Esquire
November 4, 2019
Page 10

4. Proof of payment, e.g., check, receipt, etc., for a title search conducted for the Half Moon Lake property.

5. A copy of the title search prepared for the Half Moon Lake property.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for

David W. Harris, III, Esquire
November 4, 2019
Page 11


an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark Gilson

Disciplinary Counsel

MFG:rbc

CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND FIRST CLASS MAIL, POSTAGE PREPAID

Paul J. Killian
Chief Disciplinary Counsel

District I Office
1801 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6296
FAX (215) 560-4528

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October 17, 2019

PERSONAL AND CONFIDENTIAL

David W. Harris, III, Esquire
409 Davis Street
Clarks Summit, PA 18411

RE: Complaint of Office of Office of Disciplinary Counsel
File No. C3-19-804
DB-7 Request for Statement of Respondent's Position

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you opened on motion of Office of Disciplinary Counsel. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your alleged conduct may have violated the Rules of Professional Conduct and/or Pennsylvania Rules of Disciplinary Enforcement.

It is also important for you to understand that it is the obligation of our office to develop all information relevant to a complaint, including that information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Your statement of position, if you choose to file one, may result in a decision to dismiss this complaint against you. However, since this complaint has survived our initial screening process, you should retain or consult with counsel before submitting a statement of your position.

David W. Harris, III, Esquire
October 17, 2019
Page 2

The alleged facts presently under consideration are as follows:

1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. You are a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, PA 18411.

3. At all times relevant hereto, you maintained an Interest on Lawyers Trust Account ("the IOLTA account") ending in account number 6989 with First National Bank.

4. You have sole signature authority over the IOLTA account.

5. On August 23, 2019, the Pennsylvania Lawyers Fund For Client Security ("the Lawyer's Fund"), received notification from First National Bank that on August 22, 2019, check number 7489 in the amount of \$10,000.00 had been presented against insufficient funds in the IOLTA account.

6. The transaction created a negative balance in the amount of \$6,148.14 in the IOLTA account.

7. By letter dated August 26, 2019, addressed to "Harris Law Office," 409 Davis Street, Clarks Summit, PA 18411 ("the law office"), and sent via regular mail, the Lawyer's Fund requested an explanation and certain documentation from you relating to the overdraft and negative balance in the IOLTA account.

8. You received this letter

9. You failed to respond to this letter.

10. By letter dated September 10, 2019, addressed in the same manner as the letter referenced *supra*, the Lawyer's Fund sent a follow up inquiry via regular mail and certified mail requesting an explanation and certain documentation from you relating to the overdraft and negative balance in the IOLTA account.

David W. Harris, III, Esquire
October 17, 2019
Page 3

11. The letter sent via certified mail was returned marked "UTF," and "Not deliverable as addressed unable to forward."

12. The letter sent via regular mail was not returned.

13. You received this letter.

14. You failed to respond to this letter.

15. By letter dated September 17, 2019, addressed directly to you, "David Harris, III, Esquire," the Lawyer's Fund sent a third follow up inquiry via regular mail and certified mail to your registered address, 409 Davis Street, Clarks Summit, PA 18411, requesting an explanation and certain documentation relating to the report of the overdraft and negative balance in the IOLTA account.

16. To date, the certified mailing has not been signed for.

17. The letter sent via regular mail was not returned.

18. You received this letter.

19. You failed to respond to this letter.

20. You also failed to:

- a. respond to the Lawyer's Fund's request that you provide an explanation for the overdraft and negative balance in the IOLTA account;
- b. respond to the Lawyer's Fund's request that you provide certain documentation; and
- c. cooperate with the Lawyer's Fund inquiry into the overdraft and negative balance in the IOLTA account.

21. You further failed to:

- a. maintain sufficient funds in the IOLTA account to transact check no. 7489; and

David W. Harris, III, Esquire
October 17, 2019
Page 4

- b. properly identify, safeguard and maintain fiduciary funds held in the IOLTA account.

22. You breached your fiduciary duties and obligations.

If the above allegations are true, we are concerned that you may have violated Pennsylvania Rule of Professional Conduct RPC 1.15(b), and Pennsylvania Rule of Disciplinary Enforcement 203(b)(3) via Pa.R.D.E. 221(g).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within thirty 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Additionally, provide the following records/information:

- a. Complete bank records of the IOLTA account from 1/1/19 to date, including monthly statements, deposit slips, copies of deposited items, front and back of cancelled checks, withdrawal slips, transfer memos and records, and records of electronic transactions;
- b. The general ledger and check register for the IOLTA account during that same time period;
- c. Itemized statements or records identifying the source of funds and the client/fiduciary matter for every deposit or transfer of funds into the IOLTA account during that same time period;
- d. Records of monthly reconciliations for the IOLTA account during that same time period;

David W. Harris, III, Esquire
October 17, 2019
Page 5

- e. The individual client ledgers, fee agreements or fee letters, and complete accountings (including distribution statements and settlement sheets) for any client matter in which you maintained, received or distributed client or fiduciary funds during that same time period; and
- f. Identify each client whose funds were held in the IOLTA account, as well as the amount held on behalf of those clients during that same time period.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally, as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply which you may make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item-by-item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

...that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information and belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified

David W. Harris, III, Esquire
October 17, 2019
Page 6


statement may be based upon personal
knowledge as to a part and upon information
and belief as to the remainder.

If we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and can proceed to make our recommendation for an appropriate disposition on the basis of the information and material contained in our file. However, we would certainly prefer to have the benefit of your position before making our recommendation.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. We look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL

A handwritten signature in dark ink, appearing to read 'Mark Gilson', is written over the typed name.

Mark Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas J. Farrell
Chief Disciplinary Counsel

Raymond S. Wierciszewski
Deputy Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

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OFFICE OF DISCIPLINARY COUNSEL
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February 25, 2020

PERSONAL AND CONFIDENTIAL

David W. Harris, III
435 Whitmore Avenue
Mayfield, PA 18433

Re: Complaint of Keith I. Wells
File No. C3-20-27

DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Mr. Keith I. Wells, 114 Urie Avenue, Factoryville, PA 18419. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

David W. Harris, III, Esquire
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Page 2

1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. At all times relevant hereto, you were a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411.

3. At all times relevant hereto, you maintained an Interest on Lawyers Trust Account ("IOLTA account") ending in account number 6989 with First National Bank, 125 North State Street, Clarks Summit, Pennsylvania 18411.

4. You have sole signature authority over the IOLTA account.

5. On or around May 30, 2019, Mr. Keith I. Wells:

a. retained you to provide legal services to, *inter alia*, represent him in the purchase of real property located at 1406 SR, South Tunkhannock Pennsylvania 18657 from his father-in-law, Mr. Frank H. Scango, Jr. ("Scango property");

b. signed a written "Attorney—Client Fee Agreement" ("fee agreement") dated May 30, 2019, agreeing to pay you:

i. a "minimum fee/retainer" of \$2,500; and

ii. \$250/hour for "office and research time, court time, and travel time," as well as reimburse "costs and expenses in performing legal services under this Agreement."

6. By email dated May 30, 2019, sent by you from your email account, dharrisiii@harrislawpc.com to Mr. Wells' email account, kwinstall@frontier.com, you:

a. directed Mr. Wells to "go to your local bank and wire the funds [for the \$2,500 fee/retainer] directly into my account"; and

b. provided wiring instructions to effectuate the transfer of those funds into your IOLTA account.

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7. On or about May 31, 2019, Mr. Wells authorized a wire transfer of \$2,500 from Mr. Wells' Peoples Security Bank & Trust account no. xxx5562 ("Peoples Bank account") to your IOLTA account as a fee/retainer pursuant to the terms of the fee agreement.

8. You received \$2,500 in funds for the fee/retainer into your IOLTA account.

9. Pursuant to the terms of an Agreement Of Sale For Real Estate entered into by and between the parties, Mr. Scango agreed to sell the Scango property to Mr. Wells for \$80,000.

10. You agreed to act as the settlement agent for the sale and purchase of the Scango Property.

11. By email dated June 3, 2019, sent to Mr. Wells' email address as noted above, you wrote, *inter alia*: "If Frank [Scango] has an open mortgage on the [Scango] property, please forward the most recent invoice with bank contact information so I can order a payoff."

12. Mr. Scango had an outstanding mortgage loan with PNC Bank for the Scango property.

13. As of June 13, 2019, Mr. Scango owed a total payoff amount of \$69,055.41 to PNC Bank to pay the outstanding mortgage loan for the Scango property in full.

14. The Settlement Statement prepared for the sale and purchase of the Scango property, *inter alia*, required Mr. Wells to pay total settlement/closing costs in the amount of \$80,638.77 ("settlement funds").

15. The Settlement Statement, *inter alia*, required that:

- a. \$69,055.41 of the settlement funds be applied to "Payoff First Mortgage to PNC Bank/xxxxxx9722" to payoff Mr. Scango's mortgage loan; and
- b. \$10,873.36 of the settlement funds be provided to Mr. Scango as "CASH TO SELLER."

16. Upon receipt of the settlement funds, and the sale and purchase of the Scango property, you were required to use a portion of the settlement funds to, *inter alia*:

- a. payoff Mr. Scango's outstanding mortgage loan to PNC Bank in the amount of \$69,055.41; and
- b. disburse \$10,873.36 to Mr. Scango.

17. By email dated June 25, 2019, sent to Mr. Wells' email address as noted above, you:

- a. attached and provided a copy of the settlement statement;
- b. informed Mr. Wells that "[t]otal closing costs are \$80,638.77" (original emphasis); and
- c. provided wiring instructions for Mr. Wells to effectuate the transfer of the settlement funds into your IOLTA account.

18. On or about June 26, 2019, Mr. Wells authorized a wire transfer of \$80,638.77 in settlement funds from his Peoples Bank account to your IOLTA account.

19. By email dated June 26, 2019, sent to Mr. Wells' email account as noted above, you confirmed receipt of \$80,638.77 in settlement funds from Mr. Wells into your IOLTA account.

20. You received \$80,638.77 in settlement funds into your IOLTA account.

21. On June 26, 2019:

- a. the settlement conference/closing for the Scango property took place at your law office;
- b. you attended the settlement conference/closing, represented Mr. Wells, and acted as settlement agent; and
- c. the sale and purchase of the Scango property from Mr. Scango to Mr. Wells was completed.

22. By email dated June 27, 2019, sent to Mr. Wells' email address as noted above, you:

- a. informed Mr. Wells that you had wired \$69,055.41 from your IOLTA account to PNC Bank in order to

payoff Mr. Scango's outstanding mortgage loan for the Scango property; and

- b. "attached [a] mortgage payoff receipt for your [Mr. Wells'] records" as proof that you had used a portion of the settlement funds to pay the PNC mortgage loan in full.

23. You:

- a. failed to remit to Mr. Scango \$10,873.36 in funds that he was entitled to receive after the sale and purchase of the Scango property had been completed;
- b. misappropriated the \$10,873.36 in funds due and owing to Mr. Scango to your own personal use; and
- c. unlawfully stole \$10,873.36 in funds that were due and owing to Mr. Scango.

24. Your misappropriation of the \$10,873.36 in funds was knowing and intentional.

25. Between June 27 and September 26, 2019, Mr. Wells made multiple attempts to contact you by telephone, text message and email regarding your failure to disburse \$10,873.36 in funds due and owing to Mr. Scango.

26. You:

- a. received Mr. Wells telephone messages, text messages and emails;
- b. knew and/or were aware Mr. Wells was attempting to contact you;
- c. were intentionally avoiding contact with Mr. Wells; and
- d. failed to contact Mr. Wells and/or reply to any of his telephone calls, text messages and emails.

27. On or about September 26, 2019, Mr. Wells contacted Detective Lisa Bauer of the Lackawanna County District Attorney's Office and reported your theft of \$10,873.36 in funds owed to Mr. Scango.

28. On or about October 15, 2019, Detective Bauer prepared an affidavit of probable cause for your arrest on criminal charges of felony theft by unlawful taking or disposition, 18 PaCSA § 3921, and felony receiving stolen property, 18 PaCSA § 3925.

29. On or about October 16, 2019:

- a. Magisterial District Judge Paul Keeler signed a Criminal Complaint and issued an arrest warrant for your arrest; and
- b. you were taken into custody and charged with the criminal offense described above.

30. To date, you have failed to disburse \$10,873.36 in funds due and owing to Mr. Scango as more fully described above.

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); 1.15(b); 1.15(e); 8.4(b) and RPC 8.4(c).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Even if you chose not to respond, provide the following information and materials:

1. Identify the account by financial institution and account number into which you deposited all funds received from Mr. Wells, and from May 2019 to date provide:

- a. all periodic records provided by the financial institution, including monthly statements, copies of cancelled checks, deposited items, and details of any wire or ACH transaction;
- b. an individual client ledger accounting for Mr. Wells' funds;
- c. if the account held the funds of other clients identify those clients and provide individual ledgers for each client;
- d. your general ledger for the account; and
- e. monthly reconciliations for the account.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

In any reply that you make, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. Generally, it is most helpful if your response deals item by item with the allegations contained in the numbered paragraphs in this letter, as well as with the cited Rules.

Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability

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to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

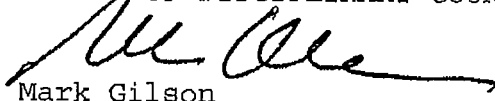
Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. WE look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL



Mark Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas J. Farrell
Chief Disciplinary Counsel

Raymond S. Wierciszewski
Deputy Chief Disciplinary Counsel

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6296
FAX (215) 560-4528

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA



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November 20, 2020

PERSONAL AND CONFIDENTIAL

David W. Harris, III
9141 Valley View Road
Clarks Summit, PA 18411

Re: Complaint of Richard S. Reid
File No. C3-20-719

DB-7 REQUEST FOR STATEMENT OF RESPONDENT'S POSITION

Dear Mr. Harris:

Please be advised that this office is currently considering a complaint against you from Mr. Richard S. Reid, 305 Hemlock Drive, Clarks Summit, PA 18411. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your conduct may have violated the Rules of Professional Conduct.

It is also important for you to understand that it is the obligation of this office to develop all information relevant to a complaint, including the information which may justify or exonerate the alleged actions of the respondent-attorney or mitigate the seriousness of any violations that may have occurred. Since this complaint has survived our initial screening process you should retain or consult with counsel before submitting a statement of your position.

The alleged facts presently under consideration are as follows:

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1. You were admitted to the practice of law in Pennsylvania on June 8, 1995.

2. At all times relevant hereto, you were a licensed attorney and manager of a law firm known as Harris Law Offices, P.C., 409 Davis Street, Clarks Summit, Pennsylvania 18411 ("law office").

3. In or around May 2019, Mr. Richard S. Reid met with you at your law office and retained you to represent him in filing for divorce from his wife, Ms. Mary Elizabeth Reid.

4. By email dated May 15, 2019, 11:19 a.m., sent by Mr. Reid from his email address, reid18504@yahoo.com to your email address, dharrisiii@harrislawpc.com, Mr. Reid, *inter alia*:

a. provided you an updated worksheet you had requested from him; and

b. inquired: "When you and I spoke the other day, I never asked about the cost - can you tell me a little more about how much this might be, please? Particularly with my job ending in the very near future...I hate to say it but the money part is a concern."

5. You received this email.

6. By email dated the same day and sent at 12:38 p.m., you replied to Mr. Reid's email referenced in ¶ 4 above:

Hi Rich:

Thanks for returning the info sheet, just need to know the date of your marriage to prepare the complaint.

As to costs, in litigation matters I bill an hourly rate of \$250.00 per hour for my time spent on your case. Although I cant [sic] tell you exactly what the final costs will be at this time, considering your holdings, custody and support issues, I estimate a range between 5-10k when all is said and done. If you and Beth can agree and cooperate to get this matter resolved without unnecessary court

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hearings, your costs will be significantly reduced.

The bar association prefers we enter into an Engagement Agreement setting forth the scope of my representation. At the signing of the Agreement I collect a retainer check to be applied to my hourly rate and court filing fees as the case progresses.

My standard retainer amount is \$5,000.00. Let me know if this amount is doable on your end. Of course I'll work with you if it presents a problem.

Please call my cell going forward, as I only see clients at my Clarks Summit office by appointment.

Thank you.

David W. Harris, III, Esquire

7. Mr. Reid received your email.
8. Despite your statement to the contrary, you failed to provide Mr. Reid an "Engagement Agreement" as promised in your email.
9. By email dated May 22, 2019, sent to Mr. Reid's email address as noted above, you, *inter alia*:
 - a. provided Mr. Reid a draft of a divorce complaint for his "review and comment";
 - b. wrote "we need to get together to sign a verification to get the ball rolling," and
 - c. requested Mr. Reid call you at (570) 504-4632.
10. Mr. Reid received your email.
11. By email dated June 1, 2019, sent to Mr. Reid's email address as noted above, you:

- a. provided Mr. Reid a copy of the divorce complaint and a verification form; and
- b. requested Mr. Reid sign and date the verification form.

12. Mr. Reid:

- a. received your email;
- b. signed and dated the verification form; and
- c. returned the verification form to you.

13. You received the signed and dated verification form provided by Mr. Reid.

14. On or about June 1, 2019, Mr. Reid mailed to your law office via certified mail, Citizen's Bank check no. 515532403 dated May 31, 2019, made payable to "Harris Law Office" in the amount of \$5,000 as a retainer for your legal services ("retainer check").

15. You received, transacted and negotiated the retainer check from Mr. Reid.

16. On July 22, 2019, you filed a complaint in divorce in the Lackawanna County Court of Common Pleas captioned: *Richard Reid v. Mary Elizabeth Reid*, Case No. 2019-41026.

17. The filing of the divorce complaint on July 22, 2019, was the last action you took on Mr. Reid's behalf in your representation of him in his legal matter.

18. Beginning in July 2019, and continuing thru to December 2019, Mr. Reid made multiple attempts to contact you by telephone at the number you provided him in ¶ 9, and left voicemail messages requesting you contact him with an update regarding the status of his legal matter.

19. You:

- a. received Mr. Reid's telephone messages;
- b. knew and/or were aware Mr. Reid was attempting to contact you;

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November 20, 2020
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- c. failed to contact Mr. Reid and/or reply to any of his telephone calls; and
 - d. were intentionally avoiding contact with Mr. Reid.
20. By email dated December 13, 2019, sent to your email address as noted above, Mr. Reid wrote:

Hey Dave,

I hope all is well. I've tried calling you a few times but seems like your phone is off - it just goes to "not accepting calls". I wanted to get with you on the status of the divorce stuff. I was speaking with Deb Johnson about upcoming tax issues because Beth firmly believes we can file single for this year....but I don't know that is true or not. And I don't know what the current status is...am I separated or anything?

Pal, I'm stuck in the middle here and I don't know what to do. I'm out of work and can't find anything, I don't know if Beth is right (filing single or not is a big deal money wise), I certainly don't want any trouble with the IRS and...I would very like to be divorced already as amicably as possible.

Please give me a call or drop me a line as soon as you can.

Thanks much,

Rich 570-337-0553

21. You denied and/or blocked Mr. Reid's access to your email address so that his email was unable to be delivered.
22. You failed to keep Mr. Reid reasonably informed about the status of his legal matter.
23. You failed to diligently represent Mr. Reid in his legal matter.

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Page 6

24. You failed to competently represent Mr. Reid in his legal matter.

25. You abandoned Mr. Reid in your representation of him in his legal matter.

26. As a result of your misconduct, Mr. Reid was required to retain new counsel to represent him in his legal matter.

27. You failed to refund to Mr. Reid any advance payment of fees and costs that had not been earned or incurred.

28. By Order dated November 8, 2019, the Pennsylvania Supreme Court:

a. temporarily suspended you from the practice of law; and

b. ordered you to comply with the provisions of Pa.R.D.E. 217.

29. You failed to notify Mr. Reid of your suspension as required by Pa.R.D.E. 217(b).

If the above allegations are true, we are concerned that you may have violated the following Rules of Professional Conduct: RPC 1.1; RPC 1.3; RPC 1.4(a)(3); RPC 1.4(a)(4); RPC 1.15(e); RPC 1.16(d); RPC 8.4(d) and Pa.R.D.E. 217(b).

The Office of Disciplinary Counsel will make no recommendation for the disposition of this complaint until you have been afforded an opportunity to state your position with respect thereto within thirty (30) days of the date of this letter. Please note that failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement. The Office of Disciplinary Counsel will only agree to a limited extension of the thirty-day deadline when the request is made for specific reasons constituting good cause. If you do not respond or provide good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Even if you chose not to respond, provide the following information and materials:

David W. Harris, III
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1. Identify the account by financial institution and account number into which you deposited all funds received from Mr. Reid, and from May 2019 to date provide:

- a. all periodic records provided by the financial institution, including monthly statements, copies of cancelled checks, deposited items, and details of any wire or ACH transaction;
- b. an individual client ledger accounting for Mr. Reid's funds;
- c. if the account held the funds of other clients identify those clients and provide individual ledgers for each client;
- d. your general ledger for the account; and
- e. monthly reconciliations for the account.

Please be assured that we are not prejudging the alleged facts and charges. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify the statements in your answer just as we do with the statements made to us by other persons. For this reason, and because a lawyer can be subject to discipline for making a materially false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements. Additionally as previously stated, you may wish to consult with counsel before replying to the allegations.

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Please be advised that §85.13 of the Disciplinary Board Rules requires that any response to this letter:

... that contains an averment of fact not appearing of record or a denial of fact shall include or be accompanied by a verified statement signed by the respondent-attorney

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that the averment or denial is true based upon knowledge or information or belief. The respondent-attorney need not aver the source of the information or expectation of ability to prove the averment or denial. The verified statement may be based upon personal knowledge as to a part and upon information or belief as to the remainder.

Although you are required to file a response to this letter, if we do not hear from you within thirty (30) days, we will assume that you do not desire to submit your position with respect to this complaint and we may proceed to make our recommendation for an appropriate disposition on the basis of information and materials contained in our file, including your failure to respond in violation of Rule 203(b)(7), Pa.R.D.E. However, we would certainly prefer to have the benefit of your position before making our recommendation.

Keep in mind that we may provide the complainant with a copy of your statement of position or a summary of it for the express purpose of obtaining a replication, unless you request that the content of your answer, either in total or in part, not be revealed and state reasons therefor which represent good cause. If we do provide the complainant with a copy or summary of your position, we will remind the complainant of the confidentiality of our inquiry.

If you have any questions, you or your counsel should not hesitate to contact this office. Thank you for your anticipated cooperation and assistance in this important matter. WE look forward to receiving your response.

Very truly yours,

OFFICE OF DISCIPLINARY COUNSEL




Mark F. Gilson
Disciplinary Counsel

MFG:rbc
CERTIFIED MAIL, RETURN RECEIPT REQUESTED; AND
EMAIL TO: davidharris19641964@gmail.com

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: 

Name: Mark F. Gilson, Disciplinary Counsel

Attorney No.: 46400