

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 200 DB 2015
Petitioner	:	
	:	File Nos. C1-12-243 & C1-14-360
v.	:	
	:	Attorney Registration No. 15268
ELLIOTT TOLAN	:	
Respondent	:	(Philadelphia)

PUBLIC REPRIMAND

Elliott Tolan, you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline.

Mr. Tolan, you are being reprimanded today for your conduct in two separate matters. The first matter involved a conflict of interest. You entered your appearance on behalf of two passengers and the driver of an automobile in a two car collision case. Subsequently, both passengers and driver settled with the other driver's insurance carrier. The initial settlements between the passengers represented by you and the driver of the other car were limited and did not allegedly fully compensate any of the three plaintiffs for their injuries. A limited tort release was signed by those three parties, ending all claims by the initial three parties against the driver of the other car. You then sought to prosecute your complaint on behalf of the two passengers against the driver of the car in which the two passenger-clients had been riding. All three were your clients. It was only after you sought discovery from the driver of the car your passenger-clients rode in that the judge conflicted you out of the case.

The second matter involved your association with disbarred attorney Allen Feingold. You filed a case, *Hill v. Wakefern Food Corporation DBA Shoprite* in the Court of Common Pleas of Philadelphia County, referred to you by Allen Feingold subsequent to Mr. Feingold's disbarment. You made a number of ethical errors in conjunction with your handling of this matter. You did not have a written fee agreement with the plaintiff, and you were unprepared when the case came to trial, having failed to subpoena any necessary witnesses and having failed to videotape your expert medical witness's testimony prior to the start of trial. The trial judge *non-prossed* the plaintiff's complaint. Since the plaintiff's complaint was time barred after the *non pros*, the matter was concluded.

However, the complainant filed a new complaint, allegedly *pro se*, which included all the old defendants of the *Hill v Wakefern* matter, and added new defendants that included defense counsel and the defendant's insurance carrier in a conspiracy case. The conspiracy case involved allegations and averments that were nearly identical to allegations and averments in a court case filed by Mr. Feingold some years previously. The new complaint, allegedly prepared by the plaintiff *pro se*, was served on the defendant law firm by Allen Feingold. The filing fees were paid by you, and you subsequently entered your appearance on behalf of the plaintiff. Similar to the first *Hill v. Wakefern* case, you did not have a written fee agreement with the client. You made a number of additional ethical errors when you deposited the client's filing fees and court costs in your general account, used client funds held in your business account to pay for filing and service fees for the second complaint, and when you failed to deposit client funds into your IOLTA account.

You proceeded to conduct discovery and motions practice in a manner consistent with Mr. Feingold's way of doing business. You were linked in your law practice to Mr. Feingold, yet had not filed a Notice of Engagement identifying Mr. Feingold as a formerly admitted attorney whom you were supervising in your law office. After discussing this matter with your counsel and Disciplinary Counsel, you withdrew from the *Hill v. Wakefern* matter.

Your conduct in this matter has violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.2(c) - A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent
3. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
4. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
5. RPC 1.9(a) - A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent.

6. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer’s own property. Such property shall be identified and appropriately safeguarded.
7. RPC 1.15(i) – A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.
8. RPC 1.15(l) – All Fiduciary Funds shall be placed in a Trust Account (which if the Fiduciary Funds are also qualified Funds, must be an IOLTA Account), or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.
9. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.
10. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
11. RPC 3.3(a)(1) - A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.
12. RPC 4.1(a) – In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

13. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
14. RPC 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another.
15. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
16. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.
17. Pa.R.D.E. 217(j)(1), (5) & (6) – A formerly admitted attorney and his supervising attorney must file a notice of engagement when such formerly admitted attorney is hired and the supervising attorney must monitor the formerly admitted attorney’s activities for compliance with the Rules.

We note that in a law career that has lasted some 48 years, you have no record of professional discipline.

Mr. Tolan, your conduct in this matter is now fully public. This Public Reprimand is a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to abide by the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction will subject you to disciplinary action.

This Public Reprimand shall be posted on the Disciplinary Board's website at www.padisciplinaryboard.org.



Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Trooper, Pennsylvania, on April 13, 2016.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at the District II Office located at 820 Adams Avenue, Suite 170, Trooper, PA on April 13, 2016.



Elliott Tolan