

IN THE SUPREME COURT OF PENNSYLVANIA

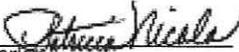
OFFICE OF DISCIPLINARY COUNSEL, : No. 2037 Disciplinary Docket No. 3
: :
Petitioner : No. 20 DB 2014
: :
v. : Attorney Registration No. 308229
: :
ANTHONY J. MOSES, : (Luzerne County)
: :
Respondent : :
: :

ORDER

PER CURIAM

AND NOW, this 27th day of April, 2016, upon consideration of the Verified Statement of Resignation, Anthony J. Moses is disbarred on consent from the Bar of the Commonwealth of Pennsylvania, see Pa.R.D.E. 215, and he shall comply with the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 4/27/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

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

| | | |
|--------------------------------|---|------------------------------------|
| OFFICE OF DISCIPLINARY COUNSEL | : | No. 2037 Disciplinary Docket No. 3 |
| Petitioner | : | |
| | : | No. 20 DB 2014 |
| v. | : | |
| | : | Attorney Registration No. 308229 |
| ANTHONY J. MOSES | : | |
| Respondent | : | (Luzerne County) |

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

5. He acknowledges that the material facts upon which the allegations contained in Exhibit "A" are based are true.

6. 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.

7. He is fully aware that the within resignation statement is irrevocable and that he can apply for reinstatement to the practice of law only pursuant to the provisions of Rule 218, Pa.R.D.E.

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

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

Signed this 13 day of April, 2016

ASM
Anthony J. Moses, Respondent

WITNESS:

Charlene Moses

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : 20 DB 2014
Petitioner :
:
v. :
:
: Attorney Registration No.308229
ANTHONY J. MOSES, :
Respondent : (Luzerne)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, ("ODC") by Paul J. Killion, Esquire, Chief Disciplinary Counsel, and by Kristin A. Wells, Esquire, Disciplinary Counsel, files the within Petition for Discipline and charges Respondent, Lisa Jo Fanelli-Greer, with professional misconduct in violation of the Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), as follows:

1. Petitioner, whose principal office is located at PA Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62625, Harrisburg, PA 17106-2625, is invested pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance

FILED

FEB 09 2016

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Anthony J. Moses, was born in 1979 and was admitted to practice law in the Commonwealth of Pennsylvania on April 12, 2010.

3. Respondent's registered address is 235 Butler Street, Kingston, Pennsylvania, 18704.

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

5. This matter concerns Respondent's neglect of client matters, unauthorized practice of law while suspended, failure to respond to ODC's numerous DB-7 Requests for Respondent's Position, and failure to appear pursuant to a Pennsylvania Supreme Court Subpoena to produce documentation.

The Beckwith Matter

6. In or about February 2013, Joan Beckwith (Beckwith) retained Respondent on behalf of her son, Paul Beckwith's (Paul), for representation in his criminal matter.

7. On or about February 28, 2013, Beckwith paid Respondent a \$1,500 retainer for his services; no writing was executed setting forth the basis or rate of Respondent's fee.

8. At the time of Respondent's engagement, the Luzerne County Public Defender's Office had already entered an appearance on Paul's behalf.

9. Respondent failed to take any action in this matter.

10. In or about April 2013, Beckwith requested a refund of the \$1,500 retainer, noting that Respondent had failed to perform any work on the matter.

11. Respondent immediately returned \$600.00, and promised to return the remaining \$900.00 by check.

12. On April 11, 2013, Respondent provided Beckwith with a check in the amount of \$900.00 drawn on an Attorney at Law account with First Liberty Bank and Trust, which is not an IOLTA account.

13. When Beckwith attempted to negotiate the check, it was returned for insufficient funds.

14. To date, Respondent has failed to provide Beckwith with the remaining \$900.00 of her refund or provide Paul with his file.

15. Respondent failed to properly identify and safeguard the \$1500.00 retainer paid in this case in that he failed to deposit the same into his IOLTA account and draw upon it only after earning such fees.

16. By Supreme Court Subpoena dated October 8, 2013, which was personally served on Respondent October 17, 2013, Respondent

was directed to, *inter alia*, produce financial records and other material in connection with his representation of Paul.

17. The Subpoena return date was 10:00 AM on October 23, 2013, at which time Respondent was to appear at the Pennsylvania Judicial Center and produce the subpoenaed documents.

18. Respondent failed to appear, and to date has failed to provide ODC with the subpoenaed documents.

19. By letter dated December 1, 2014, ODC requested Respondent's position as to allegations concerning his failure to abide by the October 8, 2013, Subpoena. The certified mailing was returned as unclaimed, but the first class mailing was not returned.

20. Respondent failed to respond to the DB-7 by the 30-day deadline.

21. On March 23, 2015, an ODC Investigator hand-delivered the December 1, 2014, DB-7 to Respondent.

22. To date, Respondent has failed to respond to the DB-7.

23. By letter dated October 9, 2013, ODC requested Respondent's position as to the above-summarized allegations concerning his representation of Paul, and that Respondent produce all documents pertaining to his representation in this matter along with all financial records for the deposit and maintenance of the \$1500.00 retainer fee. The certified mailing

was returned as unclaimed, but the first class mailing was not returned.

24. Respondent failed to respond to the DB-7 or to provide the requested documentation by the 30-day deadline.

25. Respondent was personally served with the DB-7 on October 17, 2013.

26. Respondent failed to respond to the DB-7 or provide the requested documents.

27. The DB-7 request was re-sent on December 19, 2013. The certified mailing was returned as unclaimed, but the first class mailing was not returned.

28. Respondent again failed to respond or provide the requested documents.

29. On March 23, 2015, an ODC Investigator hand-delivered the October 9, 2013, DB-7 to Respondent.

30. To date, Respondent has failed to respond to the DB-7 or to provide the requested documents.

31. By letter dated May 20, 2013, Intake Counsel Suzy Moore requested information from Respondent.

32. Respondent failed to respond to this communication.

33. On May 29, 2013, Ms. Moore again attempted to contact Respondent by leaving a voicemail at his registered contact phone number.

34. Respondent failed to respond to this communication.

35. On June 10, 2013, Ms. Moore again left a voicemail for Respondent at his registered contact phone number.

36. Respondent failed to respond to this communication.

37. On June 18 and 24, 2013, Ms. Moore attempted to call Respondent at his registered contact phone number, but the call would not go through.

38. On August 27, 2013, then-Disciplinary Counsel Joseph Huss called Respondent's cell phone. During the ensuing conversation, Respondent indicated he would review the matter as soon as he returned to the office and would call Disciplinary Counsel Huss back with updated information as to the status of the refund.

39. Respondent failed to further communicate with Disciplinary Counsel Huss or otherwise provided the requested information.

40. By his conduct as alleged in paragraphs 6 through 39 above, Respondent violated the following Rule:

- a. RPC 1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client";
- b. RPC 1.4(a)(2), which states, "A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished";

- c. RPC 1.5(b), which states, "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";
- d. RPC 1.15(b), which states, "A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and properly safeguarded";
- e. RPC 1.15(e), which states, in pertinent part, "[A] lawyer shall promptly deliver to the client ... any property, including but not limited to Rule 1.15 Funds, that the client ... is entitled to receive";
- f. RPC 1.16(d), which states, in pertinent part, "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee or expense that has not been earned or incurred";
- g. RPC 8.1(b), which states, in pertinent part, "[A] lawyer in connection with ... a disciplinary matter,

shall not ... knowingly fail to respond to a lawful demand for information from ... disciplinary authority”;

- h. RPC 8.4(b), which states, “It is professional misconduct for a lawyer to ... commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects”;
- i. RPC 8.4(c), which states, “It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation”;
- j. RPC 8.4(d), which states, “It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice”;
- k. Pa.R.D.E. 203(b)(4), which states, “The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master”; and
- l. Pa.R.D.E. 203(b)(7), which states, “The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to respond to

Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney's position."

The Shaw Matter

41. In or about May 2013, Beverly Gunter (Gunter) retained Respondent on behalf of her son, Kevin Shaw (Shaw), for representation in his criminal matter.

42. Respondent requested a \$1,500.00 retainer for the representation, and an agreement was reached whereby Gunter would pay \$1000.00 upfront and then the remaining \$500.00 upon Respondent's completion of the case.

43. No writing was executed setting forth the basis or rate of Respondent's fee.

44. On May 3, 2013, Gunter paid Respondent \$1000.00 by check.

45. Respondent failed to properly identify and safeguard the \$1000.00 retainer paid in this case in that he failed to deposit the same into his IOLTA account and draw upon it only after earning such fees.

46. When Respondent failed to take any action on Shaw's behalf, the Luzerne County Public Defender's Office entered its appearance in the matter.

47. In or about June 2013, the Luzerne County Public Defender's Office successfully had Shaw's charges dismissed.

48. Thereafter, Gunter contacted Respondent requesting a refund based on Respondent's failure to perform any work in the matter. Respondent requested more time to work on the case, but Gunter informed him that the matter had already been resolved through the Public Defender's representation. Respondent then assured Gunter that he would provide her with a full refund of the retainer fee.

49. Thereafter, Gunter unsuccessfully attempted to contact Respondent on numerous occasions herself and through New York Public Defender Ashley Cooper.

50. To date, Respondent has failed to provide Gunter with a refund or provide Shaw with his file.

51. By Supreme Court Subpoena dated October 8, 2013, which was personally served on Respondent October 17, 2013, Respondent was directed to, *inter alia*, produce financial records and other material in connection with his representation of Shaw.

52. The Subpoena return date was 10:00 AM on October 23, 2013, at which time Respondent was to appear at the Pennsylvania Judicial Center and produce the subpoenaed documents.

53. Respondent failed to appear, and to date has failed to provide ODC with the subpoenaed documents.

54. By letter dated December 1, 2014, ODC requested Respondent's position as to allegations concerning his failure to abide by the October 8, 2013, Subpoena. The certified mailing was returned as unclaimed, but the first class mailing was not returned.

55. Respondent failed to respond to the DB-7 by the 30-day deadline.

56. On March 23, 2015, an ODC Investigator hand-delivered the December 1, 2014, DB-7 to Respondent. To date, Respondent has failed to respond to the DB-7.

57. By letter dated October 31, 2013, ODC requested Respondent's position as to the above-summarized allegations concerning his representation of Shaw, and that Respondent produce all documents pertaining to his representation in this matter along with all financial records for the deposit and maintenance of the \$1000.00 retainer fee. The certified mailing was returned as unclaimed, but the first class mailing was not returned.

58. Respondent failed to respond to the DB-7 or to provide the requested documentation by the 30-day deadline.

59. The DB-7 was re-sent on December 19, 2013. The certified mailing was returned as unclaimed, but the first class mailing was not returned.

60. Respondent again failed to respond or provide the requested documents.

61. On December 20, 2013, and March 23, 2015, an ODC Investigator hand-delivered the October 31, 2013, DB-7 to Respondent.

62. To date, Respondent has failed to respond to the DB-7 or to provide the requested documents.

63. By his conduct as alleged in paragraphs 41 through 62 above, Respondent violated the following Rules:

- a. RPC 1.3, which states, "A lawyer shall act with reasonable diligence and promptness in representing a client";
- b. RPC 1.4(a)(2), which states, "A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished";
- c. RPC 1.5(b), which states, "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";
- d. RPC 1.15(b), which states, "A lawyer shall hold all Rule 1.15 Funds and property separate from the

lawyer's own property. Such property shall be identified and properly safeguarded";

- e. RPC 1.15(e), which states, in pertinent part, "[A] lawyer shall promptly deliver to the client ... any property, including but not limited to Rule 1.15 Funds, that the client ... is entitled to receive";
- f. RPC 1.16(d), which states, in pertinent part, "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee or expense that has not been earned or incurred";
- g. RPC 8.1(b), which states, in pertinent part, "[A] lawyer in connection with ... a disciplinary matter, shall not ... knowingly fail to respond to a lawful demand for information from ... disciplinary authority";
- h. RPC 8.4(b), which states, "It is professional misconduct for a lawyer to ... commit a criminal act that reflects adversely on the lawyer's honesty,

trustworthiness or fitness as a lawyer in other respects”;

- i. RPC 8.4(c), which states, “It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation”;
- j. RPC 8.4(d), which states, “It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice”;
- k. Pa.R.D.E. 203(b)(4), which states, “The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master”; and
- l. Pa.R.D.E. 203(b)(7), which states, “The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney’s position.”

The Vassello Matter

64. On or about May 30, 2013, Ryan Vassello contacted Respondent for representation in an appeal from an Unemployment Compensation Board of Review determination to the Commonwealth Court.

65. On June 15, 2013, Respondent entered his appearance on Vassello's behalf.

66. By Order dated September 16, 2013, the Commonwealth Court directed Respondent to file a brief within 14 days.

67. Respondent failed to file a brief or request additional time to file the same within the allotted time period.

68. On October 2, 2013, Vassello filed a *pro se* brief, following his repeated unsuccessful attempts to communication with Respondent.

69. By letter dated October 2, 2013, to Vassello, Respondent acknowledged his failure to timely file a brief in this matter.

70. On October 7, 2013, Respondent filed an Application for Extension of Time to File Brief along with a Brief he alleged was filed by mail on August 9, 2013, but not received by the Court for unknown reasons. Respondent further alleged that he never received the Court's September 16, 2013, Order because it was sent to a law firm where he had not worked in 15 months.

71. By Order dated October 9, 2013, the Commonwealth Court directed that Vassello's *pro se* brief be deemed timely filed, but declined to accept Respondent's brief based on its failure to conform to the Rules of Appellate Procedure. The Court directed Respondent to file an amended brief by October 23, 2013, and warned that failure to do so would lead to dismissal of the case.

72. Respondent failed to make any further filings on Vassello's behalf and failed to inform Vassello of the Court's October 9, 2013, Order.

73. By Order dated November 1, 2013, the Commonwealth Court dismissed Vassello's appeal.

74. By letter dated November 21, 2014, ODC requested Respondent's position as to the above-summarized allegations. The certified mailing was returned as unclaimed, but the first class mailing was not returned.

75. Respondent failed to respond to the DB-7 by the 30-day deadline.

76. On March 23, 2015, an ODC Investigator hand-delivered the November 21, 2014, DB-7 to Respondent.

77. To date, Respondent has failed to respond to the DB-7.

78. By his conduct as alleged in paragraphs 64 through 78 above, Respondent violated the following Rules:

- a. RPC 1.1, which states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation";
- b. RPC 1.4(a)(3), which states, "A lawyer shall keep the client reasonably informed about the status of the matter";
- c. RPC 1.4(a)(4), which states, "A lawyer shall promptly comply with reasonable requests for information";
- d. RPC 1.4(b), which states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation";
- e. RPC 8.1(b), which states, in pertinent part, "[A] lawyer in connection with ... a disciplinary matter, shall not ... knowingly fail to respond to a lawful demand for information from ... disciplinary authority";
- f. RPC 8.4(c), which states, "It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation";

- g. RPC 8.4(d), which states, "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice"; and
- h. Pa.R.D.E. 203(b)(7), which states, "The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney's position."

Respondent's Criminal Conviction

79. On September 26, 2014, Respondent pled guilty to driving under the influence and was sentenced to six months Intermediate Punishment Plan.

80. Respondent failed to report his conviction to the Office of Disciplinary Counsel within 20 days, as required by Disciplinary Board Rules and Procedures §91.31.

81. By letter dated November 21, 2014, ODC requested Respondent's position as to the above-summarized allegations. The certified mailing was returned as unclaimed, but the first class mailing was not returned.

82. Respondent failed to respond to the DB-7 by the 30-day deadline.

83. On March 23, 2015, an ODC Investigator hand-delivered the November 21, 2014, DB-7 Request to Respondent.

84. To date, Respondent has failed to respond to the DB-7.

85. By his conduct as alleged in paragraphs 79 through 84 above, Respondent violated the following Rules:

- a. RPC 8.1(b), which states, in pertinent part, "[A] lawyer in connection with ... a disciplinary matter, shall not ... knowingly fail to respond to a lawful demand for information from ... disciplinary authority";
- b. RPC 8.4(b), which states, "It is professional misconduct for a lawyer to ... commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects";
- c. Pa.R.D.E. 203(b)(1), which states, "The following shall also be grounds for discipline ... Conviction of a crime";
- d. Pa.R.D.E. 214(a), which states, in pertinent part, "An attorney convicted of a crime shall report the fact of such conviction within 20 days to the Office of Disciplinary Counsel"; and
- e. Pa.R.D.E. 203(b)(7), which states, "The following shall also be grounds for discipline ... Failure by a

respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney's position."

Respondent's Administrative Suspension

86. By Pennsylvania Supreme Court Order dated September 18, 2013, Respondent was placed on Administrative Suspension, effective October 18, 2013.

87. After the effective date of his Administrative Suspension, Respondent continued to represent numerous clients in various matters before the Luzerne County Court of Common Pleas by appearing on their behalf in court.

88. Respondent failed to advise his clients or the court of his Administrative Suspension.

89. The following appearances by Respondent constituted the unauthorized practice of law:

- a. In *Commonwealth v. Crystal Barna*, 642, 1443, 1444 CR 2013, Respondent represented the defendant in entering guilty pleas to multiple charges on October 18, 2013. These pleas were subsequently vacated by Order of the Luzerne County Court dated October 28, 2013, based upon Respondent's representation of the defendant while administratively suspended.

- b. In *Commonwealth v. Daniel Smiley*, 3974 CR 2012, Respondent represented the defendant in entering a guilty plea on October 21, 2013. The plea was subsequently vacated and plea proceedings rescheduled by Order of the Luzerne County Court based on Respondent's representation of the defendant while administratively suspended.
- c. In *Commonwealth v. Nathan Richardson*, 137 CR 2013, Respondent appeared for a plea hearing as the defendant's counsel on October 21, 2013; the defendant refused to plea and requested a trial.
- d. In *Commonwealth v. Steven Zona*, 314 CR 2013, Respondent represented the defendant in entering a guilty plea and sentencing on October 21, 2013. The plea and sentenced were later vacated by Luzerne County Court Order dated November 5, 2013, based on Respondent's representation of the defendant while administratively suspended.
- e. In *Commonwealth v. Stacey Bradshaw*, 874 CR 2013, Respondent represented the defendant in entering a guilty plea and sentencing on October 21, 2013. The plea and sentence were later vacated by Luzerne County Court Order dated October 28, 2013, based on

Respondent's representation of the defendant while administratively suspended.

- f. In *Commonwealth v. Vance Dawson*, 1236 CR 2013, Respondent made a request for continuance on the defendant's behalf on October 21, 2013; the request was granted.
- g. In *Commonwealth v. Stephanie Torres*, 2260 CR 2012, Respondent represented the defendant on October 28, 2013, during which proceeding the defendant's ARD was revoked and a Bench Warrant was issued for his arrest. These actions were subsequently vacated by Luzerne County Court Order dated October 28, 2013, based on Respondent's representation of the defendant while administratively suspended.

90. On October 28, 2013, Respondent signed a DB-25 Statement of Compliance, which was then filed with the Secretary of the Board on October 29, 2013, one day after the 10-day deadline.

91. Respondent failed to serve a copy of the DB-25 on ODC.

92. Attached to the Statement of Compliance were 41 letters purportedly sent to Respondent's clients notifying them of his Administrative Suspension prior to October 18, 2013, including letters purportedly sent to Vassello, Nathan Richardson, Daniel Smiley, Stacey Bradshaw, Steven Zona, Vance

Dawson, Adrian Bannell, and Crystal Barna. No letter addressed to Stephanie Torres or the Luzerne County Court was attached.

93. Respondent failed to provide certified receipts for these notices or serve a copy of the same on ODC.

94. Respondent's attachment of these letters to his DB-25 amounted to a misrepresentation to the Board in that he did not send these notices to his clients.

95. On October 29, 2013, Respondent was returned to Good Standing.

96. By DB-7 dated December 18, 2013, ODC requested Respondent's position as to the above-summarized allegations and a copy of all communications between Respondent and the named clients, all communications between Respondent and the District Attorney or other law enforcement, and all communication between Respondent and any judicial officials or offices from September 18, 2013 until October 28, 2013. The certified mailing was returned as unclaimed, but the first class mailing was not returned.

97. To date, Respondent has failed to respond to the DB-7 or provide the requested documents.

98. By his conduct as alleged in paragraphs 86 through 97 above, Respondent violated the following Rules:

- a. RPC 1.4(a)(5), which states, "A lawyer shall ... consult with the client about any relevant

limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law";

- b. RPC 1.4(b), which states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation";
- c. RPC 1.16(a)(1), which states, in pertinent part, "[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in a violation of the Rules of Professional Conduct or other law";
- d. RPC 3.3(a)(1), which states, "A lawyers shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer";
- e. RPC 5.5(a), which states, "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";

- f. RPC 8.1(b) provides, in pertinent part, "[A] lawyer in connection with ... a disciplinary matter, shall not ... knowingly fail to respond to a lawful demand for information from ... disciplinary authority";
- g. RPC 8.4(c), which states, "It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation";
- h. RPC 8.4(d), which states, "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice";
- i. Pa.R.D.E. 203(b)(4), which states, "The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master";
- j. Pa.R.D.E. 203(b)(7) which states, "The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney's position";

- k. Pa.R.D.E. 217(a) and (b), which, in pertinent part, require formerly admitted attorneys to in writing notify, or cause to be notified, all clients of their suspension or administrative suspension, and consequent inability to act as an attorney after the effective date thereof, and advise them to seek legal counsel elsewhere. Further, the Rule requires that a copy of these notices and proofs of receipt be filed with the Secretary of the Board and served upon the Office of Disciplinary Counsel;
- l. Pa.R.D.E. 217(c)(3), which, in pertinent part, requires formerly admitted attorneys to in writing notify, or cause to be notified, any tribunal, court, agency, or jurisdiction in which the attorney is admitted to practice of their suspension or administrative suspension;
- m. Pa.R.D.E. 217(e), which, in pertinent part, requires formerly admitted attorneys to, within 10 days after the effective date of their suspension or administrative suspension, to file a verified statement with the Secretary of the Board and serve a copy on Disciplinary Counsel, which is to include averments and information delineated by the Rule;

- n. Pa.R.D.E. 217(j)(1) which states, in pertinent part, "A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements ... All law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth";
- o. Pa.R.D.E. 217(j)(2), which states, "A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements ... For purposes of this subdivision (j), the only law-related activities that may be conducted by a formerly admitted attorney are the following: (i) legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents; (ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and (iii) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting

regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client”;

p. Pa.R.D.E. 217(j)(3), which states, “A formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney, organization, or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney”; and

q. Pa.R.D.E. 217(j)(4), which states, in pertinent part “Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (i) performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm, organization or lawyer on or after

the date on which the acts which resulted in the ... suspension occurred, through and including the effective date of the ... suspension; (ii) performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis; (iii) performing any law-related services for any client who in the past was represented by the formerly admitted attorney; (iv) representing himself ... as a lawyer or person of similar status; (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3); (vi) rendering legal consultation or advice; (vii) appearing on behalf of a client in any hearing or proceeding or before any ... court ... ; negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction; (x) receiving, disbursing or otherwise handling client funds[.]”

The Llerena Matter

99. On October 23, 2013, Krystle Llerena (Llerena) contacted Respondent regarding representation for her father, Horatio Llerena (Horatio), who was in custody in New Jersey for

the theft of a tractor trailer in Pennsylvania, which he then drove to New Jersey.

100. Respondent agreed to accept the representation for a retainer fee of \$4,500.00.

101. No writing was executed setting forth the basis or rate of Respondent's fee.

102. Llerena sent Respondent \$2,500.00 through Western Union and then sent the remaining \$2,000.00 to Respondent's mother through the same service.

103. Respondent failed to properly identify and safeguard the \$4,500.00 retainer paid in this case in that he failed to deposit the same into his IOLTA account and draw upon it only after earning such fees.

104. Respondent's acceptance of this representation constituted the unauthorized practice of law in that he was on Administrative Suspension pursuant to Pennsylvania Supreme Court Order dated September 18, 2013, effective October 18, 2013.

105. In or about November 2013, Horatio was scheduled for an extradition hearing in New Jersey.

106. Despite Respondent's assurances that he would attend the hearing, he did not appear.

107. When Llerena contacted Respondent from the courthouse, he stated that he was on his way, but had gotten

lost and that he had informed the courthouse staff that he would be late.

108. When Llerena inquired with the courthouse staff as to whether Respondent had provided notice that he would be late, she was informed that no communication had been received from Respondent.

109. Respondent failed to enter his appearance on Horatio's behalf in New Jersey.

110. Approximately one week later, Horatio was extradited to Pennsylvania and a preliminary hearing was scheduled for November 19, 2013.

111. Respondent failed to appear for the preliminary hearing, and it was therefore continued until January 13, 2014.

112. In or about early January 2014, Respondent informed Horatio that he would no longer be representing him.

113. Upon Horatio's request, Respondent agreed to refund the retainer fee.

114. Since that date, despite numerous attempts, Llerena has been unable to communicate with Respondent, and he has failed to provide Llerena with a refund or provide Horatio with his file.

115. By his conduct as alleged in paragraphs 99 through 114 above, Respondent violated the following Rules:

- a. RPC 1.1, which states, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation";
- b. RPC 1.4(a)(4), which states, "A lawyer shall promptly comply with reasonable requests for information";
- c. RPC 1.4(a)(5), which states, "A lawyer shall ... consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law";
- d. RPC 1.4(b), which states, "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation";
- e. RPC 1.5(b), which states, "When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation";

- f. RPC 1.15(b), which states, "A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and properly safeguarded";
- g. RPC 1.15(e), which states, in pertinent part, "[A] lawyer shall promptly deliver to the client ... any property, including but not limited to Rule 1.15 Funds, that the client ... is entitled to receive";
- h. RPC 1.16(a)(1), which states, in pertinent part, "[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in a violation of the Rules of Professional Conduct or other law";
- i. RPC 1.16(d), which states, in pertinent part, "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee or expense that has not been earned or incurred";

- j. RPC 5.5(a), which states, "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";
- k. RPC 8.4(c), which states, "It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation";
- l. RPC 8.4(d), which states, "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice";
- m. Pa.R.D.E. 203(b)(4), which states, "The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master";
- n. Pa.R.D.E. 203(b)(7) which states, "The following shall also be grounds for discipline ... Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney's position";

- o. Pa.R.D.E. 217(j)(1) which states, in pertinent part, "A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements ... All law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth";
- p. Pa.R.D.E. 217(j)(2), which states, "A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements ... For purposes of this subdivision (j), the only law-related activities that may be conducted by a formerly admitted attorney are the following: (i) legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents; (ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and (iii) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting

regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client”;

- q. Pa.R.D.E. 217(j)(3), which states, “A formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney, organization, or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney”; and
- r. Pa.R.D.E. 217(j)(4), which states, in pertinent part “Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (i) performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm, organization or lawyer on or after

the date on which the acts which resulted in the ... suspension occurred, through and including the effective date of the ... suspension; (ii) performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis; (iii) performing any law-related services for any client who in the past was represented by the formerly admitted attorney; (iv) representing himself ... as a lawyer or person of similar status; (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3); (vi) rendering legal consultation or advice; (vii) appearing on behalf of a client in any hearing or proceeding or before any ... court ... ; negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction; (x) receiving, disbursing or otherwise handling client funds[.]”

Respondent's Emergency Temporary Suspension

116. On February 19, 2014, ODC filed a Petition for Emergency Temporary Suspension and Related Relief Pursuant to Pa.R.D.E. 208(f), summarizing the misconduct detailed above.

117. A Rule to Show Cause was entered February 28, 2014.

118. Respondent did not file a Response.

119. By Order dated March 21, 2014, Respondent was placed on Emergency Temporary Suspension.

120. As of February 5, 2016, Respondent has failed to file the required Statement of Compliance and has failed to comply with the provisions of Rule 217.

121. By his conduct as alleged in paragraphs 116 through 120 above, Respondent violated the following Rules:

- a. Pa.R.D.E. 217(a) and (b), which, in pertinent part, require formerly admitted attorneys to in writing notify, or cause to be notified, all clients of their suspension or administrative suspension, and consequent inability to act as an attorney after the effective date thereof, and advise them to seek legal counsel elsewhere. Further, the Rule requires that a copy of these notices and proofs of receipt be filed with the Secretary of the Board and served upon the Office of Disciplinary Counsel;
- b. Pa.R.D.E. 217(c)(3), which, in pertinent part, requires formerly admitted attorneys to in writing notify, or cause to be notified, any tribunal, court, agency, or jurisdiction in which the attorney

is admitted to practice of their suspension or administrative suspension;

c. Pa.R.D.E. 217(e), which, in pertinent part, requires formerly admitted attorneys to, within 10 days after the effective date of their suspension or administrative suspension, to file a verified statement with the Secretary of the Board and serve a copy on Disciplinary Counsel, which is to include averments and information delineated by the Rule; and

d. Pa.R.D.E. 217(h), which, in pertinent part, requires formerly admitted attorneys to surrender to the Board the certificate issued by the Attorney Registration Office under Rule 219(e) and any certificates of good standing, admission, licensure, or of limited admission.

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Pa.R.D.E. 205, a Hearing Committee to hear testimony and receive evidence in support of the foregoing charges and upon completion of said hearing to make such findings of fact, conclusions of law, and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

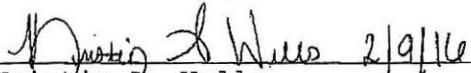
OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion
Chief Disciplinary Counsel

By: Kristin A. Wells 2/9/16
Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, Pennsylvania 17106

VERIFICATION

I, Kristin A. Wells, Disciplinary Counsel, verify that the statements made in the foregoing Petition for Discipline are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.


Kristin A. Wells
Disciplinary Counsel