

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1808 Disciplinary Docket No. 3
Petitioner :
 : No. 26 DB 2011 and File Nos. C4-10-83,
 : C4-10-405, C4-10-677, C4-10-903,
v. : C4-10-997, C4-11-51, C4-11-168,
 : C4-11-907, C4-11-961 and C4-11-1032
 :
NICHOLAS EDWARD TIMPERIO, JR., : Attorney Registration No. 69207
Respondent : (Fayette County)

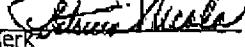
ORDER

PER CURIAM;

AND NOW, this 7th day of May, 2012, there having been filed with this Court by Nicholas Edward Timperio, Jr., his verified Statement of Resignation dated April 16, 2012, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of Nicholas Edward Timperio, Jr., is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 5/7/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

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

| | | |
|--------------------------------|---|--|
| OFFICE OF DISCIPLINARY COUNSEL | : | No. 1808 Disciplinary Docket No. 3 |
| Petitioner | : | |
| | : | No. 26 DB 2011 and File Nos. C4-10-83, |
| | : | C4-10-405, C4-10-677, C4-10-903, |
| | : | C4-10-997, C4-11-51, C4-11-168, |
| v. | : | C4-11-907, C4-11-961 and C4-11-1032 |
| | : | |
| | : | Attorney Registration No. 69207 |
| | : | |
| NICHOLAS EDWARD TIMERIO, JR. | : | |
| Respondent | : | (Fayette County) |

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

Re: Office of Disciplinary Counsel
v. NICHOLAS EDWARD TIMPERIO, JR.
No. 1808 Disciplinary Docket No. 3
No. 26 DB 2011 and File Nos.
C4-10-83; C4-10-405, C4-10-677, C4-10-903,
C4-10-997, C4-11-51, C4-11-168, C4-11-907,
C4-11-961 and C4-11-1032
Attorney Registration No. 69207
(Fayette County)

RECORD OF PRIOR DISCIPLINE

None

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1808 Disciplinary Docket
: No. 3
Petitioner :
: No. 26 DB 2011
: vs. : and
: File Nos. C4-10-83, C4-10-405,
: C4-10-677, C4-10-903, C4-10-997,
: C4-11-51, C4-11-168, C4-11-907,
: C4-11-961 and C4-11-1032
NICHOLAS EDWARD TIMPERIO, JR., : Attorney Registration No. 69207
: Respondent : (Fayette County)

RESIGNATION
UNDER RULE 215, Pa.R.D.E.

Nicholas Edward Timperio, Jr. hereby states that he is a member of the Bar of the Supreme Court of Pennsylvania and is the Respondent named in the Petition for Discipline filed with the Disciplinary Board of the Supreme Court of Pennsylvania at the number indicated above. In conformity with Rule 215 of the Pennsylvania Rules of Disciplinary Enforcement, he further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about November 29, 1993. His attorney registration number is 69207.

2. He wishes to resign from the Bar, 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 his resignation.

3. He is aware that there is presently pending an investigation into allegations that he has been guilty of misconduct, the nature and specifics of which have been made known to him by the Petition for Discipline filed at the number shown above, a copy of which is attached hereto and incorporated herein as Exhibit 1, and by the Letters of Inquiry sent to him in file numbers C4-10-83, C4-10-405, C4-10-677, C4-10-903, C4-10-997, C4-11-51, C4-11-168, C4-11-907, C4-11-961 and C4-11-1032, attached as Exhibits 2 - 11, respectively.

4. He acknowledges that the material facts, upon which are predicated the allegations of professional misconduct so lodged against him in said Petition and Letters of Inquiry, are true.

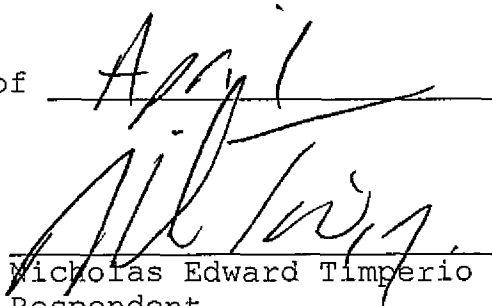
5. He submits his resignation because he knows that he could not successfully defend himself against the said charges of misconduct.

6. He is fully aware that the 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).

7. He has not consulted with counsel in regard to submitting his resignation.

In accordance with Rule 215, Pa.R.D.E., this statement is made by the signatory subject to the penalties of 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities).

Signed this 16th day of April, 2012.



Nicholas Edward Timperio
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner

No. 20 DB 2011

v.

NICHOLAS EDWARD TIMPERIO, JR., :

Attorney Registration No. 69207

Respondent

(Fayette County)

PETITION FOR DISCIPLINE

NOTICE TO PLEAD

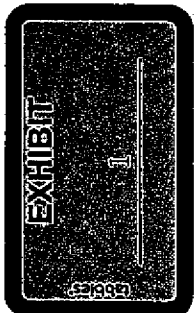
To: Nicholas Edward Timperio, Jr.:

Rule 208(b)(3) of the Pennsylvania Rules of Disciplinary Enforcement provides: Within twenty (20) days of the service of a petition for discipline, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Disciplinary Board. Any factual allegation that is not timely answered shall be deemed admitted.

Rule 208(b)(4) provides: Following the service of the answer, if there are any issues raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee or a special master. No evidence with respect to factual allegations of the complaint that have been deemed or expressly admitted may be presented at any hearing on the matter, absent good cause shown.

A copy of your answer should be served upon Disciplinary Counsel at the District IV Office of Disciplinary Counsel, Suite 1300, Frick Building, 437 Grant Street, Pittsburgh, PA 15219-4407, and the original and three (3) conformed copies filed with the Disciplinary Board Executive Office, Pennsylvania Judicial Center, 601 Commonwealth Ave., Ste. 5600, P. O. Box 62625, Harrisburg, PA 17106-2625. [Disciplinary Board Rule §89.3(a)(1)]

Further, pursuant to Disciplinary Board Rule §85.13, your answer, if it contains an averment of fact not appearing of record or a denial of fact, shall contain or be accompanied by a verified-statement signed by you that the averment or denial is true based upon your personal knowledge or information an belief.



BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
 :
Petitioner : No. 26 DB 2011
 :
v. :
 :
NICHOLAS EDWARD TIMPERIO, JR., : Attorney Registration No. 69207
 :
Respondent : (Fayette County)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and David M. Lame, Disciplinary Counsel, files the within Petition for Discipline, and charges Respondent, Nicholas Edward Timperio, Jr., with professional misconduct in violation of the Rules of Professional Conduct as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of an attorney

We hereby certify the within to be
a true and correct copy.

Dr. M. Lame

David M. Lame, Disciplinary Counsel

admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Nicholas Edward Timperio, Jr., was born on April 3, 1968. He was admitted to practice law in the Commonwealth of Pennsylvania on November 29, 1993. Respondent's attorney registration mailing address is Tonozzi & Timperio, 80 E. Main Street, Uniontown, Pennsylvania 15401. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

CHARGE I: THE MINERD MATTER

3. On July 1, 2003, Cory A. Minernd (hereinafter, Mr. Minernd) entered into a verbal agreement with Roy DeWitt (hereinafter, Mr. DeWitt), t/d/b/a 3-D Development Corporation, for Mr. DeWitt to perform excavating and construction services at the site of Mr. Minernd's home.

4. On about August 11, 2003, Mr. Minernd paid Mr. DeWitt \$6,040 for excavating and construction services, which Mr. DeWitt subsequently did not complete.

5. During April 2004, Respondent met with Mr. Minernd, at which time he verbally agreed to represent Mr. Minernd for the sum of \$450 in a civil action against Mr. DeWitt.

6. Respondent did not either at the time he met with Mr. Minernd or within a reasonable time thereafter communicate in writing to Mr. Minernd the basis or rate of his fee.

7. On April 13, 2004, Respondent filed a civil action on behalf of Mr. Minernd at Magisterial District Judge Randy S. Abraham's office captioned, *Cory A. Minernd v. Roy DeWitt, et al*, at docket number CV-0000026-04.

8. Respondent was listed as counsel of record for Mr. Minernd.

9. On July 2, 2004, a Default Judgment was entered in favor of Mr. Minernd in the amount of \$6,192.

10. On July 13, 2004, Mr. DeWitt, through his counsel, filed a Notice of Appeal from the Magisterial District Court judgment in the Court of Common Pleas of Fayette County, at civil docket number 1531 of 2004 GD.

11. The Notice of Appeal and Rule to File a Complaint were served upon Respondent.

12. On July 20, 2004, in response to the Rule issued, Respondent on behalf of Mr. Minernd, filed a pleading described in the docket entries of the Fayette County Prothonotary as being a Civil Complaint.

13. The docket entries do not reflect that this pleading was ever served upon Mr. DeWitt or his counsel.

14. Sometime in October of 2004, the firm of Tonozzi and Timperio (hereinafter, the firm) hired Jason Taylor as an associate attorney, a position he would keep until his position was terminated in or around November/December 2007.

15. Upon his hiring, Mr. Taylor, under Respondent's supervision, began working on various cases, including Mr. Miner's case.

16. By a Notice of Proposed Termination of Court Case, dated July 26, 2006, sent pursuant to Pa.R.C.P. Rule 230.2, to the parties and counsel of record, Respondent and the law firm of Tonozzi and Timperio were notified by Lance Winterhalter, Prothonotary of the Fayette County Court of Common Pleas, that the court intended to terminate the civil action at case 1531 of 2004 GD without further notice because the docket reflected no activity in the matter for at least two years. That Notice advised that:

(a) In order to prevent the termination of the case, a Statement of Intention to Proceed had to be filed with the Prothonotary on or before September 28, 2006; and,

(b) If the Statement of Intention to Proceed was not filed the matter would be terminated.

17. Although the Notice of Proposed Termination was also sent to Mr. Miner, it was not until September of 2006 that Respondent, through Mr. Taylor, communicated with Mr. Miner about the Notice of Proposed Termination.

18. In early September 2006, Mr. Taylor, on behalf of Tonozzi and Timperio, requested an additional \$1,000 from Mr. Miner as the firm's full fee for representation in the appeal filed by Mr. DeWitt.

19. Mr. Miner was told that the \$1,000 was a "flat fee" and the full fee for the representation.

20. Neither Mr. Taylor, nor any other representative of the firm, provided Mr. Miner at any time with a document which communicated, in writing, the basis or rate of the fee.

21. On September 5, 2006, twenty-three days prior to the deadline set forth in Mr. Winterhalter's Notice of Proposed Termination letter dated July 26, 2006, Mr. Miner paid Respondent's firm \$1,000 in cash, to handle the appeal from the Magisterial District Court judgment.

22. Mr. Miner was given a receipt for his payment, upon which it was noted the payment was made in cash.

23. The \$1,000 payment was not deposited into escrow and maintained until such time as it was earned.

24. The Statement of Intention to Proceed was not filed by September 28, 2006, and on September 29, 2006, Mr. Miner's case at 1531 of 2004 GD was dismissed with prejudice for failure to proceed in accordance with Pa.R.C.P. 230.2.

25. Despite having received notice of the dismissal from the Prothonotary, neither Respondent nor Mr. Taylor informed Mr. Miner that the matter had been dismissed.

26. In early October 2006, upon direction of the Respondent, Mr. Taylor met with Mr. Miner to prepare a civil complaint for filing.

27. On October 11, 2006, Mr. Taylor filed or caused to be filed a civil complaint on behalf of Mr. Miner at case number 1531 of 2004 GD.

28. With the filing of the complaint, Mr. Taylor was listed on the docket as counsel of record.

29. Mr. Taylor sent Mr. Miner a copy of the complaint Mr. Taylor filed on his behalf.

30. After receiving the complaint in the mail from Mr. Taylor, Mr. Miner made frequent attempts to reach Mr. Taylor or Respondent by telephone to ask about the status of his case. Mr. Miner spoke to Mr. Taylor and also with a secretary in the office and was told that the matter was still in arbitration.

31. The amount sought as damages in the complaint was within the Fayette County arbitration limits.

32. By a letter to Respondent dated January 4, 2007, Richard Miner, Cory's father, told Respondent that:

(a) They wanted to know the status of the case;

(b) Since Cory and he worked during Respondent's business hours, Respondent could forward a written response to Barbara Miner;

(c) Respondent was given written authorization to communicate with Barbara Miner, Cory's mother about this matter; and,

(d) The additional \$250 (in addition to the \$1,000) was for payment to the Sheriff's Office to seize a piece of equipment from Mr. Dewitt.

33. Respondent did not communicate with the Miners after their January 4, 2007, letter was sent to him.

34. The \$250 paid to Respondent was an advanced cash payment of a cost to be paid to the Fayette County Sheriff for seizing a piece of Mr. DeWitt's equipment.

35. The \$250 in entrusted funds was not deposited into the firm's IOLTA Account.

36. Mr. Taylor did not serve the complaint on Mr. DeWitt until August 7, 2007.

37. On August 14, 2007, Joseph M. George, Esquire, attorney for Mr. DeWitt, filed Preliminary Objections, personally serving Mr. Taylor with a copy that same day.

38. On August 17, 2007, Court of Common Pleas Judge Gerald R. Solomon entered an Order regarding case 1531 of 2004 GD. The Court's Order directed in pertinent part:

(a) Any party opposing the Preliminary Objections shall file an amended pleading; an answer in compliance with Pa.R.C.P 1017; or a responsive brief if there are no objections raising factual issues;

(b) The filings directed in paragraph (a) are due within twenty (20) days from the date of the Order; and,

(c) Defendant's counsel is to provide prompt written notice to the Court in the event that neither an answer nor amended pleading was filed, as the failure to do one or the other would result in the entry of relief without further proceedings.

39. The Order was sent to Mr. Taylor, as counsel of record, at the Tonozzi and Timperio law office address.

40. Mr. Taylor did not communicate with Mr. Minerd about Judge Solomon's Order, and no response was filed.

41. By an Order of Court issued by Judge Solomon dated September 7, 2007, Judge Solomon granted the Preliminary Objections and dismissed Mr. Minerd's case with prejudice.

42. A copy of the September 7, 2007 Order was sent to Mr. Taylor.

43. No other action on behalf of Mr. Minerd was taken and nobody from Respondent's firm communicated to Mr. Minerd that the matter had been dismissed.

44. Respondent, as Mr. Taylor's supervising attorney, failed to monitor and make certain that Mr. Taylor conducted himself and represented Mr. Minerd in accordance with the Rules of Professional Conduct.

45. In or around November/December 2007, Mr. Taylor's position with the firm was terminated.

46. Although Respondent and the Tonozzi and Timperio law firm received \$1,000 as the full fee to represent Mr. Minerd in the appeal filed by Mr. DeWitt, and \$250 as costs advanced for the seizing of equipment, only a Complaint was filed on behalf of Mr. Minerd and no equipment was seized from Mr. DeWitt.

47. Respondent has not refunded to Mr. Minerd the unearned portion of the \$1,000 he was paid nor has he refunded the \$250 in advanced costs he was paid.

48. By his conduct as alleged in Paragraphs 3 through 47 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) Rule of Professional Conduct 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

(c) Rule of Professional Conduct 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information.

(d) Rule of Professional Conduct 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.

(e) Rule of Professional Conduct 1.15(a) (for conduct occurring before September 20, 2008) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property.

Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

(f) Rule of Professional Conduct 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

(g) Rule of Professional Conduct 5.1(c)(2) - A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(h) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(i) Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

CHARGE II: THE WELCH MATTER

49. On September 3, 2003, in Uniontown, Fayette County, Virginia L. Welch (hereinafter, Ms. Welch) was injured while riding as a passenger in a car driven by Lynda J. Brown (hereinafter, Ms. Brown) which was struck by a car driven by Lynn Wilttrout (hereinafter, Ms. Wilttrout).

50. On July 13, 2004, both Ms. Welch and Ms. Brown together met with Attorney Arthur Tonozzi of the firm to discuss the possibility of pursuing a personal injury action against Ms. Wilttrout.

51. Mr. Tonozzi had been Ms. Brown's family attorney for approximately 30 years, and he agreed to represent both women in civil actions against Ms. Wilttrout on a contingent fee basis.

52. Ms. Welch executed a contingent fee agreement with Mr. Tonozzi, by which she retained the firm of Tonozzi and Timperio to represent her in this matter.

53. A claim had already been filed with Ms. Wiltrout's insurance carrier, State Farm Insurance, at claim No. 38K-263-707.

54. In July of 2005, Mr. Tonozzi informed Ms. Welch that Respondent would be fully taking over her case.

55. On August 4, 2005, Respondent filed or caused to be filed a civil complaint on behalf of Ms. Welch in the Court of Common Pleas of Fayette County at case number 1916-2005 G.D., captioned as *Virginia Welch v. Lynn Ann Wiltrout*.

56. On September 16, 2005, a Fayette County Sheriff return was filed which indicated that Ms. Wiltrout had not been found.

57. Subsequently, Respondent filed Praecipes to Reinstate Complaint on September 19, October 11, November 4, November 30, December 27, 2005, February 9, and February 24, 2006, with no new directions given to the Sheriff for service of the complaint.

58. Respondent never completed service of Ms. Welch's complaint and it was not until July 2008 that new counsel for Ms. Welch effectuated service of the complaint.

59. During January 2008 Respondent met with Ms. Welch at his office. At that time he represented to her that:

(a) Sometime in July of 2008, she would likely receive a settlement check in an amount between \$2,500 to \$10,000; and,

(b) He was still negotiating with State Farm Insurance a settlement amount for her case.

60. The statements Respondent made to Ms. Welch about a potential settlement and on-going negotiations with State Farm Insurance were false as there were no negotiations taking place because State Farm Insurance was not agreeable to a settlement.

61. By a Notice of Proposed Termination of Court Case pursuant to Pa.R.C.P. 230.2 dated April 8, 2008, Respondent as counsel of record was notified by Lance Winterhalter, Prothonotary of the Fayette County Court of Common Pleas, that the court intended to terminate the civil action without further notice because there was no docket activity shown in Ms. Welch's case for at least two years. That Notice advised that:

(a) In order to prevent the termination of the case, a Statement of Intention to Proceed should be filed with the Prothonotary on or before June 13, 2008; and,

(b) If a Statement of Intention to Proceed was not filed the case would be terminated.

62. Ms. Welch also received a copy of the Prothonotary's mailing.

63. Respondent did not communicate with Ms. Welch as to what action, if any, he would take on her behalf in response to the Notice of Proposed Termination.

64. Respondent took no action and failed to file the Statement of Intention to Proceed by the June 13, 2008 deadline established in Mr. Winterhalter's Notice.

65. On June 18, 2008, the Fayette County Court of Common Pleas dismissed Ms. Welch's civil action against Lynn Wiltrout with prejudice for failure to proceed in accordance with Pa.R.C.P. 230.2.

66. As is the local practice in Fayette County, a copy of the dismissal was placed in Respondent's box in the Prothonotary's Office.

67. Respondent did not notify Ms. Welch that her case was dismissed, and that she was barred from litigating her claim against Ms. Wiltrout.

68. Near the end of June 2008, Ms. Welch visited the Fayette County Prothonotary's Office and discovered that her case was dismissed.

69. On July 3, 2008, Ms. Welch came to Respondent's law office to speak with him about her case, but Respondent was not available to speak with her.

70. While at Respondent's office, Ms. Welch informed Respondent's secretary that Respondent was fired as her attorney and that she wanted her file returned to her.

71. That same day, Ms. Welch telephoned the law firm to speak with Respondent, but when Respondent was still not available, she spoke with Mr. Tonozzi who confirmed that the secretary had written a note to Respondent with her request for the case file and Respondent's termination as her counsel, or words to that effect.

72. On July 4, 2008 and again on July 7, 2008, Ms. Welch telephoned Respondent demanding that he release her file to her. On each occasion Respondent spoke to Ms. Welch and informed her that he had already mailed the file to her.

73. Because she had not received the file in the mail, on July 10, 2008, Ms. Welch telephoned Respondent's office and left a message with his secretary requesting that he contact her.

74. Respondent did not return Ms. Welch's telephone call on that day.

75. On July 16, 2008, Respondent telephoned Ms. Welch and asked her to come to his office to retrieve her file, which she did.

76. By his conduct as alleged in Paragraphs 49 through 75 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) Rule of Professional Conduct 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

(c) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(d) Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

CHARGE III: THE BROWN MATTER

77. On September 3, 2003, in Uniontown, Fayette County, Lynda Joyce Brown (hereinafter, Ms. Brown) was injured in an automobile accident when the vehicle she was driving was struck by a vehicle driven by Lynn Wiltrout (hereinafter, Ms. Wiltrout).

78. Virginia Welch, (hereinafter, Ms. Welch) was a passenger in the vehicle operated by Ms. Brown and was also injured during the accident.

79. Ms. Brown executed a fee agreement with Mr. Tonozzi, by which she retained the firm of Tonozzi and Timperio to represent her in this matter.

80. A claim had already been made with Ms. Wiltrout's insurance carrier, State Farm Insurance; under claim number 38K-263-707.

81. In July of 2005, Mr. Tonozzi informed Ms. Brown that Respondent would be fully taking over her case.

82. On August 4, 2005, Respondent filed or caused to be filed a civil complaint on behalf of Ms. Brown in the Court of Common Pleas of Fayette County at case number 1917 of 2005 G.D., captioned as *Lynda J. Brown vs. Lynn Ann Wiltrout*.

83. On September 16, 2005, a Fayette County Sheriff's return was filed which indicated that Ms. Wiltrout had not been found.

84. Subsequently, Respondent filed Praecipes to Reinstate Complaint on September 19, October 11, November 4, November 30, December 27, 2005, February 9, and February 24, 2006, with no new directions given to the Sheriff for service of the complaint.

85. Respondent never completed service of Ms. Brown's complaint.

86. On his PA Attorney Annual Fee Form for 2007-2008 dated May 14, 2007, Respondent identified that his firm (Tonozzi & Timperio) maintained an IOLTA Account with National City Bank of PA at account number 649954204.

87. Sometime early in 2008 Respondent informed Ms. Brown of a settlement of her case with Ms. Wiltrout's insurance carrier, State Farm.

88. Ms. Brown did not authorize Respondent to settle her case with State Farm.

89. Respondent's statements to Ms. Brown about a settlement were false as State Farm had not settled any case with Mr. Timperio regarding Ms. Brown.

90. On March 5, 2008, while meeting with Ms. Brown, Respondent drew check numbered 1381 on his firm IOLTA Account at National City Bank, account number 649954204, made the check payable to "Linda Brown" in the amount of \$4,000, and informed Ms. Brown that the check represented a portion of the settlement proceeds that she would be receiving from State Farm Insurance.

91. State Farm Insurance Company did not settle any claim with Ms. Brown nor did State Farm send Respondent any check as partial settlement for Ms. Brown's claim.

92. While meeting with Ms. Brown on March 5, 2008, Respondent presented her with a document entitled Full and Final Release, the terms of which

released and discharged Respondent and his law firm from any claim(s) Ms. Brown might have against them.

93. Respondent requested that Ms. Brown sign the document.

94. Ms. Brown did not have a new attorney representing her.

95. Respondent did not advise Ms. Brown in writing of the desirability of seeking nor was given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

96. Ms. Brown signed the document.

97. Only upon signing the document was Ms. Brown given the \$4,000 check.

98. Several days later, Ms. Brown met with Mr. Tonozzi about her receipt of the check for \$4,000.

99. Mr. Tonozzi told Ms. Brown that there had been no deposit made to the IOLTA Account relating to a settlement with State Farm Insurance and he had no idea why these monies were being disbursed to her as it was his understanding after checking with Respondent that Respondent was still involved in negotiations with State Farm, and that the check had been taken care of, or words to that effect.

100. Mr. Tonozzi suggested that Ms. Brown photocopy the check for future reference.

101. By a Notice of Proposed Termination of Court Case pursuant to Pa.R.C.P. Rule 230.2 dated April 8, 2008, and sent to Respondent as counsel of record, Lance Winterhalter, Prothonotary of the Fayette County Court of Common Pleas, told Respondent that the court intended to terminate the civil action at case No. 1917 of 2005 GD, without further notice because the court docket reflected no activity in the matter for at least two years. That Notice advised that:

(a) In order to prevent the termination of the case, a Statement of Intention to Proceed had to be filed with the Prothonotary on or before June 13, 2008; and,

(b) If the required Statement of Intention to Proceed was not filed the matter would be terminated.

102. Respondent did not notify Ms. Brown about the proposed termination and what action, if any, he would take in response to the Notice of Proposed Termination of her case.

103. Respondent did not file the Statement of Intention to Proceed or take any other action on behalf of Ms. Brown by the June 13, 2008 deadline.

104. On June 18, 2008, the Court of Common Pleas of Fayette County dismissed Ms. Brown's case with prejudice for failure to proceed in accordance with Pa.R.C.P 230.2.

105. As a result of the dismissal with prejudice, Ms. Brown was barred from litigating her claim against Ms. Wiltrout.

106. Respondent did not notify Ms. Brown that her case was dismissed.

107. On September 2, 2008, Ms. Brown came to Respondent's office at which time Respondent drew a second check numbered 1489 from his firm's National City IOLTA Account made payable to "Linda Brown," in the amount of \$3,000.

108. At that time, Respondent again informed Ms. Brown that:

(a) The proceeds from the check represented a partial settlement;
and,

(b) She would receive additional checks in the future.

109. These statements by Respondent were false.

110. The monies paid to Ms. Brown by Respondent on March 5 and September 2, 2008, did not represent the proceeds of any settlement paid out by

State Farm, but rather were Respondent's personal funds which remained in the IOLTA Account from fees Respondent had not taken out of the account.

111. After receiving the second check, Ms. Brown and her husband went to Respondent's office in early January 2009 to inquire about the status of Ms. Brown's case, at which time Respondent told Ms. Brown that he had been in contact with State Farm.

112. Later in January Ms. Brown and her husband again went to Respondent's office, and spoke with Respondent's secretary, Laura, who told them there was nothing new on the case, or words to that effect.

113. By letter to Respondent sent by certified mail, return receipt requested, dated March 4, 2009, Ms. Brown requested that her file be returned to her by March 13, 2009.

114. On March 13, 2009, Ms. Brown telephoned and spoke to Respondent about her file and was told that her file would be ready for her to pick up on March 16, 2009 before noon.

115. On March 16, 2009, Ms. Brown returned to Respondent's office and received from Respondent a sealed envelope purportedly containing her file.

116. When the envelope was opened, the only contents were Ms. Brown's medical records and nothing relating to a settlement with State Farm Insurance.

117. By his conduct as alleged in Paragraphs 77 through 116 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) Rule of Professional Conduct 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

(c) Rule of Professional Conduct 1.8(h)(1) - A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement.

(d) Rule of Professional Conduct 1.8(h)(2) - A lawyer shall not settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(e) Rule of Professional Conduct 1.15(a) (for conduct occurring before September 20, 2008) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

(f) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(g) Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

CHARGE IV: THE RITENOUR MATTER

118. On September 28, 2007, Georgiann Ritenour (hereinafter, Ms. Ritenour) met with Respondent at his office to discuss a breach of contract matter. At that time:

(a) Ms. Ritenour provided Respondent with all of the necessary information relating to the breach of contract matter including the names, addresses and telephone numbers of all relative parties;

(b) Respondent agreed to represent Ms. Ritenour in filing a civil case for breach of contract;

(c) Respondent told Ms. Ritenour that he needed \$500 for his representation of her in the contract suit;

(d) Ms. Ritenour gave Respondent a check, numbered 3314, drawn on a National City Bank of Pennsylvania account and made payable to Tonozzi and Timperio in the amount of \$500; and,

(e) Respondent told Ms. Ritenour that he would contact the person whose signature appeared on the contract and speak to them or their attorney to initiate negotiations or words to that effect.

119. Respondent had not previously represented Ms. Ritenour and he did not at the time of their meeting, or within a reasonable time thereafter, provide to her a written document which set forth the basis or rate of his fee.

120. On October 3, 2007, Respondent negotiated Ms. Ritenour's check numbered 3317 and deposited the proceeds into his firm's bank account number 1015331093 held with PNC Bank captioned "Tonozzi & Timperio."

121. According to Respondent's 2006-2007, 2007-2008, 2008-2009 Annual Attorney Registration forms, PNC Bank Account number 1015331093 is not an IOLTA Account.

122. Respondent did not deposit and maintain the \$500 received from Ms. Ritenour until such time as he earned the money.

123. Respondent did not initiate communication with the opposing party as he promised he would do.

124. After negotiating and depositing Ms. Ritenour's check, Respondent did not file or cause to be filed any civil action on behalf of Ms. Ritenour.

125. Shortly after her meeting with Respondent, Ms. Ritenour made several attempts to speak with Respondent and left several messages for him requesting that he return her call.

126. Respondent did not return Ms. Ritenour's calls.

127. On one occasion, in November of 2007, Ms. Ritenour spoke to Respondent by telephone and was told by Respondent that a hearing would be held in the near future.

128. At the time of that statement to Ms. Ritenour, no civil action had yet been filed on behalf of Ms. Ritenour and no hearing date was scheduled.

129. Despite occasional attempts to speak with Respondent by telephone, Ms. Ritenour received no communication from Respondent during the calendar year 2008.

130. In March of 2009, Ms. Ritenour was successful in speaking with Respondent by telephone at which time she demanded that Respondent return to her the \$500 she had paid him.

131. In response to Ms. Ritenour's request for a refund of the \$500, Respondent asked her "Didn't Vince do anything yet?" or words to that effect.

132. By a certified letter to Respondent dated April 27, 2009, Ms. Ritenour wrote that because Respondent had not rendered any services for her breach of contract matter, she was again requesting that he return the \$500 she had paid to him.

133. In that same letter, Ms. Ritenour further wrote that as she had allowed Respondent ample time to return the proceeds, and she had not heard from Respondent or received a refund, she was setting May 11, 2009 as a deadline and if the \$500 was not returned by then, she would "take this matter to the Magistrate's Office."

134. Respondent did not return the \$500 or any portion thereof to Ms. Ritenour by her May 11, 2009 deadline.

135. On May 21, 2009, Ms. Ritenour filed a civil complaint against Respondent at Magisterial District Court 14-1-01, in which she alleged that on September 28, 2007, Respondent was paid \$500 for professional services and no legal services were provided.

136. A hearing was scheduled for June 22, 2009 before Magisterial District Judge Rubish.

137. On June 22, 2009:

(a) Respondent failed to appear at the hearing; but,

(b) Respondent contacted the court by telephone and requested a continuance.

138. A continuance was granted and a new hearing date was scheduled for July 8, 2009.

139. On July 8, 2009 a hearing was held before Judge Rubish, at which time:

(a) Respondent again failed to appear for the hearing; and,

(b) Judgment was entered in favor of Ms. Ritenour for \$500 plus \$71 in court costs for a total of \$571.

140. Respondent did not appeal that judgment.

141. By letter from Kathryn J. Peifer, Executive Director of the Pennsylvania Lawyers Fund for Client Security to Respondent dated August 28, 2009, Ms. Peifer notified Respondent that Ms. Ritenour had filed a claim with the Lawyers Fund for Client Security.

142. On March 10, 2010, the Lawyers Fund for Client Security approved Ms. Ritenour's claim and awarded her \$500.

143. Respondent has not repaid any portion of the \$500 to the Lawyers Fund.

144. By his conduct as alleged in Paragraphs 118 through 143 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) Rule of Professional Conduct 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

(c) Rule of Professional Conduct 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information.

(d) Rule of Professional Conduct 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.

(e) Rule of Professional Conduct 1.15(a) (for conduct occurring before September 20, 2008) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

(f) Rule of Professional Conduct 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

(g) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

CHARGE V: THE SMETANKA MATTER

145. On January 9, 2007, John E. Smetanka, Jr. (hereinafter, Mr. Smetanka) was injured in an automobile accident in Fayette County after his car was hit by a car driven by Mandie Hall (hereinafter, Ms. Hall).

146. Ms. Hall was insured by Nationwide Mutual Insurance Company (hereinafter, Nationwide).

147. Mr. Smetanka was insured by State Farm Insurance Company (hereinafter, State Farm.)

148. Sometime in October 2007, Mr. Smetanka met with Respondent to discuss Respondent's representation of him in a personal injury action against Ms. Hall.

149. At the conclusion of the meeting Respondent agreed to represent Mr. Smetanka and a Contingent Fee Agreement was signed whereby Respondent would receive a 40 percent fee on any settlement award, and Mr. Smetanka would be responsible for costs.

150. After meeting with Respondent, on October 17, 2007, Mr. Smetanka initiated a claim with Nationwide at claim number 54-37-D-478463-01092007-01.

151. By letter to Respondent dated November 15, 2007, from Kathleen D. Holben, AIC, of the Claims Department with Nationwide, Ms. Holben extended a written settlement offer to Respondent on behalf of Mr. Smetanka in the amount of \$3,000.

152. Also on November 15, 2007, Ms. Holben telephoned Respondent to personally extend the settlement offer of \$3,000, at which time Respondent informed Ms. Holben that he would confer with Mr. Smetanka and call her back.

153. Respondent did not convey either the oral settlement offer from Ms. Holben to Mr. Smetanka, nor did he send him a copy of Ms. Holben's letter.

154. Respondent did not communicate with Ms. Holben as he said he would.

155. On November 30, 2007, Mr. Smetanka was injured in another automobile accident, which occurred in Connellsville, Fayette County, PA.

156. Mr. Smetanka submitted a claim to State Farm Insurance under claim number 38-L-2103.

157. Shortly after the November 2007 accident, Respondent agreed to represent Mr. Smetanka with regard to the November 30, 2007 automobile accident.

158. Mr. Smetanka signed another Contingent Fee Agreement whereby Respondent would receive a 40 percent fee on any settlement award, and Mr. Smetanka was responsible for costs

159. After signing the second fee agreement, Mr. Smetanka made regular efforts during the first few months of 2008 to telephone Respondent and inquire about the status of any settlement relating to the first accident of January 2007.

160. Instead of speaking directly with Respondent, Mr. Smetanka often spoke with Respondent's secretary, Laura, who told Mr. Smetanka that she could not understand why it was taking so long to receive something from Nationwide, or words to that effect.

161. By responsive letter to Vince Tiberi of Respondent's office dated April 23, 2008, Ms. Holben conveyed that per a telephone conversation held the same day with Mr. Tiberi, she was the Adjuster for the claim filed with Nationwide Insurance and she was requesting that she be provided with Mr. Smetanka's family physician's records for the five years prior to the January 2007 accident.

162. On May 27, 2008, Mr. Smetanka, in response to questions from the staff at his doctor's office (Health First Medical) about his growing balance owed for treatment, telephoned Brianne Donaldson with Health First Medical (hereinafter, HFM) Insurance Department and provided her with Respondent's name as his counsel for both accident cases.

163. Later that same day, Mr. Smetanka left a telephone message for Respondent informing him of the Health First inquiry, as well as leaving Respondent Ms. Donaldson's name and telephone number.

164. On June 5, 2008, Mr. Tiberi of Respondent's office, telephoned Ms. Donaldson at HFM at which time:

(a) Mr. Tiberi requested the total balances for both claims; and,

(b) Ms. Donaldson asked Mr. Tiberi to provide a Letter of Protection (hereinafter, LOP).

165. By a fax dated June 5, 2008, Ms. Donaldson provided Mr. Tiberi with the total balance due for both claims as being \$14,265, and again requested Respondent to provide HFM with a LOP.

166. By letter dated June 12, 2008, Ms. Donaldson notified Mr. Smetanka that medical bills with HFM totaled \$13,960. The letter also, in part, explained that:

(a) Mr. Smetanka's first party medical benefit on his auto insurance policy with State Farm was exhausted;

(b) The \$13,960 balance was for treatment rendered from July 25, 2007 to May 5, 2008;

(c) On June 5, 2008, in response to a request from Respondent, she faxed him the dates and amounts of the claims;

(d) HFM needed the LOP as soon as possible;

(e) If a LOP was not provided by July 10, 2008, HFM would be forced to initiate collection against Mr. Smetanka personally for the entire balance; and,

(f) A copy of her letter to Mr. Smetanka was being sent to Mr. Smetanka's attorney.

167. By a fax dated June 12, 2008, Ms. Donaldson sent Mr. Tiberi a copy of her letter to Mr. Smetanka and told Mr. Tiberi that a LOP was needed by July 10, 2008 or she would be required to release the balance of Mr. Smetanka's account to him and pursue collections on it.

168. On July 9, 2008, a letter from Ms. Donaldson on behalf of HFM marked "Final Notice" was mailed to Mr. Smetanka and as Mr. Donaldson had written in her letter, a copy of that same letter was being sent by fax transmission to Respondent regarding the HFM claims.

169. In her same July 9, 2008 letter, Ms. Donaldson notified Mr. Smetanka that the total of all of his claims with HFM was \$13,960.

170. On July 9, 2008, Ms. Donaldson spoke to Mr. Tiberi, who said that he could not issue a LOP for the claims.

171. During July of 2008, Respondent telephoned Ms. Donaldson and asked if there could be a reduction in the costs of Mr. Smetanka's bill so that everything could be settled.

(a) At that time Ms. Donaldson told Respondent that she would take \$5,000 for all services on both claims if this was paid in a timely manner of about 30 to 40 days; and,

(b) Respondent told Ms. Donaldson that the matter would be settled as soon as possible.

172. In August of 2008, Ms. Donaldson contacted Respondent's law office and spoke with Laura, Respondent's secretary, in an attempt to determine if there were any developments in the case.

173. Because HFM did not receive either a LOP, or reimbursement for the medical expenses on behalf of Mr. Smetanka, the outstanding balance was turned over to a collections company.

174. Sometime in late February or early March 2009, Respondent telephoned Mr. Smetanka and asked him to come to his law office.

175. Mr. Smetanka met with Respondent in early March 2009 at which time Respondent:

(a) Presented Mr. Smetanka with a Settlement Agreement/Authorization document in the amount of \$14,000;

(b) Requested that Mr. Smetanka sign the Settlement Agreement/Authorization;

(c) Explained the settlement to Mr. Smetanka by saying that Nationwide would issue a total settlement of \$14,000 "by three installment payments" or words to similar effect;

(d) Told Mr. Smetanka that the first portion of the settlement would be disbursed by check from Nationwide on April 15, 2009 in the amount of \$4,000; and,

(e) Told Mr. Smetanka that Nationwide would disburse the balance of the settlement proceeds by two additional checks each totaling \$5,000.

176. Thereafter, although he had not authorized a settlement, Mr. Smetanka signed the document and returned it to Respondent.

177. Respondent did not provide Mr. Smetanka with either a photocopy of the signed Settlement Agreement/Authorization or Respondent's written statement reflecting the remittance to Mr. Smetanka and the determination of how the settlement was to be paid by Nationwide.

178. The statements Respondent made to Mr. Smetanka about a settlement were false as Nationwide had not settled any case with Respondent involving Mr. Smetanka for the sum of \$14,000.

179. Neither on April 15, 2009, nor at any time thereafter, did Mr. Smetanka receive any portion of the settlement proceeds from Nationwide.

180. Mr. Smetanka subsequently tried on a number of occasions to telephone Respondent about the status of the settlement, leaving messages with Respondent's secretary, Laura, asking for Respondent to return his calls or otherwise communicate with him.

181. Respondent did not return Mr. Smetanka's telephone calls nor did he communicate with him in any way.

182. In late April 2009, Mr. Smetanka telephoned Ms. Holben of Nationwide about the settlement proceeds, who advised him that:

(a) There had been no settlement reached between Nationwide and Respondent for \$14,000; and,

(b) Nationwide's only offer to settle was the previously conveyed offer of \$3,000.

183. Thereafter, Mr. Smetanka repeatedly telephoned Respondent's law office and left messages with Laura demanding that Respondent provide him with a photocopy of the Settlement Agreement for \$14,000 and that Respondent return his calls.

184. Respondent did not return any of Mr. Smetanka's telephone calls nor did he give him a copy of the requested document.

185. On one occasion in late April or early May 2009, Mr. Smetanka spoke directly to Respondent by telephone at which time he again demanded that Respondent provide him with a photocopy of the Settlement Agreement/Authorization.

186. Respondent told Mr. Smetanka that a copy of the signed Settlement Agreement would be sent to him by mail or words to that effect.

187. Respondent did not provide Mr. Smetanka with a copy of the Settlement Agreement/Authorization at that time or any time thereafter.

188. Respondent did not initiate any civil action on Mr. Smetanka's behalf against Ms. Hall and/or Nationwide within the two year statute of limitations.

189. By letter to Respondent dated May 26, 2009, Attorney William L. Glosser notified Respondent that:

(a) His law office now represented Mr. Smetanka concerning the matter of his potential recovery as a result of an accident which occurred on January 9, 2007;

(b) Mr. Smetanka had told Mr. Glosser that although a timely offer of settlement had been made, "no settlement nor filing of a Complaint to toll the statute of limitations has occurred"; and,

(c) Respondent was asked to provide information about the status of the November 2007 accident for which Respondent's firm also represented Mr. Smetanka.

190. By letter to Respondent dated June 25, 2009, Mr. Glosser wrote:

(a) That as Respondent did not respond to his letter dated May 26, 2009, it was strongly suggested that Respondent contact his malpractice carrier regarding the passage of the statute of limitations without taking appropriate action to toll same regarding Mr. Smetanka's claim; and,

(b) Respondent was requested to provide Mr. Glosser the name, address, agent, and policy number of his malpractice carrier.

191. On or about September 15, 2009, after Mr. Glosser had undertaken representation of Mr. Smetanka, a settlement was reached with State Farm Insurance regarding Mr. Smetanka's second accident.

192. By his conduct as alleged in Paragraphs 145 through 191 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) Rule of Professional Conduct 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

(c) Rule of Professional Conduct 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information.

(d) Rule of Professional Conduct 1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(e) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(f) Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

CHARGE VI: THE FLOYD MATTER

193. On August 26, 2006, Angela N. Floyd (hereinafter, Ms. Floyd) was injured in an automobile accident while driving her vehicle in Fayette County, Pennsylvania.

194. Shortly after the accident, Ms. Floyd filed a claim with her insurance carrier, State Farm Insurance (hereinafter, State Farm).

195. In September of 2006, Ms. Floyd met with Respondent who agreed to represent Ms. Floyd on a contingent fee basis in a personal injury action against the driver who hit her in August of 2006.

196. The terms of Respondent's fee agreement were reduced to writing whereby Respondent would receive 33 1/3 percent contingent fee of any settlement awarded to Ms. Floyd.

197. During the meeting, Respondent told Ms. Floyd that he would either negotiate a settlement with the other driver's insurance carrier or initiate a civil action on her behalf in the Court of Common Pleas of Fayette County.

198. At the time of her meeting with Respondent, Ms. Floyd did not have any information relating to the identity of the driver of the other vehicle or the driver's insurance information. She did however tell Respondent about her claim with State Farm and the name of the claim representative with whom she was dealing.

199. In the early spring of 2007, Ms. Floyd communicated with Respondent by telephone and was told by Respondent that he had other cases with the insurance carrier of the driver who caused the accident, and as a result he would be discussing her case with that insurance company's representative.

200. Respondent did not provide any specific information to Ms. Floyd about his communications with the insurance company or the identity of the insurance company.

201. During November 2007, Respondent advised Ms. Floyd that her personal injury matter would be settled in the near future, or words to that effect.

202. Thereafter, Ms. Floyd heard nothing from Respondent with regard to any negotiations or settlement offers made by the insurance company.

203. From November 2007 through June 2008, Ms. Floyd telephoned Respondent's office on a regular basis to inquire about the status of her case. During those calls, Ms. Floyd spoke with Respondent's secretary, Laura, who, each time, told Ms. Floyd that Respondent was still working on her case or words to that effect.

204. Sometime in the late summer or early fall of 2008, Respondent telephoned Ms. Floyd and set up an appointment for her to come to his law office to discuss her case.

205. At the last moment Respondent called and canceled the meeting.

206. Respondent scheduled subsequent meetings with Ms. Floyd, but canceled or postponed each rescheduled meeting.

207. On August 27, 2008, Respondent filed a Praecipe for Writ of Summons in Civil Action on behalf of Ms. Floyd in the Court of Common Pleas of Fayette County captioned *Angela Floyd v. Shawn Pengilly and Ernst Trenching Inc.*, at case number 2784 of 2008 G.D.

208. The Praecipe for Writ of Summons Respondent filed on August 27, 2008 was filed without instructions for service of the Writ, and the Writ appears on its face to have been filed beyond the two (2) year statute of limitations as the accident occurred on August 26, 2006.

209. After receiving the copy of the Praecipe for Writ of Summons filed on her behalf, Ms. Floyd telephoned Respondent's office on several occasions and asked to speak with him.

210. In each instance Ms. Floyd was told Respondent was not available to speak with her and she left messages with Respondent's secretary asking that he return her call(s).

211. Respondent did not return Ms. Floyd's telephone calls or communicate with her during the remainder of 2008.

212. Ms. Floyd continued with her attempts to communicate with Respondent by telephone during 2009 and was usually told by Respondent's staff that Respondent was not available because he was in court, on the telephone or in a meeting.

213. In early October of 2009, Ms. Floyd telephoned Respondent's law office and spoke to him about the status of her case. At that time Respondent:

- (a) Told Ms. Floyd that everything was settled; and,
- (b) Invited her to come to his law office to "sign papers" or words to that effect.

214. Respondent's representation to Ms. Floyd that everything was settled was false as her case had not been settled.

215. Later the same day, Respondent telephoned Ms. Floyd and canceled the scheduled meeting because "the papers were not in," or words to that effect, and another meeting was scheduled for October 24, 2009.

216. On October 24, 2009, Ms. Floyd met with Respondent in the lobby of his law office to sign "the papers" which Ms. Floyd believed were the settlement documents.

217. Although Ms. Floyd asked about the settlement amount, Respondent did not review the documents with her but instead he only told her where her signature was needed.

218. After signing the document at the space Respondent directed, Respondent did not provide Ms. Floyd with a copy of the documents.

219. The document, which Respondent presented and directed Ms. Floyd to sign, did not relate to any Claim, Release, Authorization or Settlement Award as the case was not settled.

220. Ms. Floyd's insurance carrier, State Farm, has no record of any settlement of Ms. Floyd's claim.

221. Ms. Floyd's case still remains pending on the Fayette County Prothonotary civil docket.

222. About a week after the face to face meeting with Respondent, Ms. Floyd telephoned Respondent's law office to ask when her settlement money would be released. She did not speak with Respondent, and no one provided her with any information about the case. All that resulted was the person Ms. Floyd spoke with took her name and telephone number and promised a return call.

223. Approximately three weeks later, after not receiving a return call, Ms. Floyd again contacted Respondent's law office by telephone and spoke with Respondent telling him that she would like to have her file returned to her since it appeared nothing had been done to reach a settlement on her behalf.

224. Respondent did not disagree with Ms. Floyd.

225. On December 4, 2009, Ms. Floyd again telephoned Respondent, spoke with him about her case, and requested the return of her file. At that time Respondent:

(a) Advised her that nothing further was being done on her file;
and,

(b) Told Ms. Floyd that the file would be mailed to her by the end of the day.

226. Later the same day, Ms. Floyd called Respondent back and told him she wanted to be contacted once the file was compiled and that she would pick up the file to guarantee it would not be lost.

227. Respondent agreed with Ms. Floyd's request, but neither Respondent nor any representative of his office telephoned Ms. Floyd to tell her that her file was ready to be picked up.

228. Approximately a week and a half later, Ms. Floyd telephoned Respondent's office and spoke with him at which time he told her that he would personally place the file in the mail and send it to her.

229. Ms. Floyd did not receive her file.

230. By letter and e-mail to Respondent dated December 20, 2009, Ms. Floyd again contacted him about returning her file to her and the status of her settlement.

231. Thereafter, Ms. Floyd did not receive her file, nor any information about a settlement.

232. By letter to Respondent dated January 8, 2010, Ms. Floyd wrote to Respondent and, in part, advised him that:

(a) She had not heard from Respondent in regard to receiving her file since a follow-up email request was made to him on December 20, 2009;

(b) She had yet to receive her file Respondent said he previously mailed to her;

(c) She asked Respondent to bring her up to date on the status of the settlement;

(d) She asked Respondent to provide her with information with regard to the accident which occurred on August 26, 2006;

(e) She specifically asked if Respondent had filed a claim with the other party's insurance carrier on her behalf; and,

(f) She requested that Respondent provide her with the insurance company information of the responsible party as well as a photocopy of the document she signed on October 24, 2009 within five business days from the receipt of the letter.

233. Respondent did not respond to Ms. Floyd's requests for information relating to the personal injury matter or supply any of the information she requested in her January 8, 2010 letter.

234. Ms. Floyd has not received any settlement proceeds from the driver or the driver's insurance carrier as a result of the August 2006 accident, and the only entry of record in the case Respondent filed on August 27, 2008 is the Praecipe for Writ of Summons.

235. By his conduct as alleged in Paragraphs 193 through 234 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) Rule of Professional Conduct 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

(c) Rule of Professional Conduct 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information.

(d) Rule of Professional Conduct 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

(e) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.


(f) Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., 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 

David M. Lame
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BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

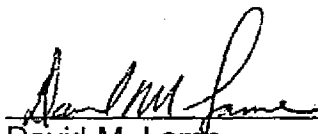
OFFICE OF DISCIPLINARY COUNSEL, :
: Petitioner : No. 26 DB 2011
v. :
NICHOLAS EDWARD TIMPERIO, JR., : Attorney Registration No. 69207
: Respondent : (Fayette County)

VERIFICATION

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

2-8-2011

Date



David M. Lane
Disciplinary Counsel

EXHIBITS 2 – 11

HAVE NOT BEEN POSTED
DUE TO THE FACT THAT THE
LENGTH OF THOSE EXHIBITS
EXCEED 200 PAGES