

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2968 Disciplinary Docket No. 3
	:	
Petitioner	:	
	:	No. 6 DB 2023
v.	:	
	:	
	:	Attorney Registration No. 201250
MARY C. KILGUS,	:	
	:	
Respondent	:	(Lycoming County)

ORDER

PER CURIAM

AND NOW, this 18th day of April, 2023, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Mary C. Kilgus is suspended on consent from the Bar of this Commonwealth for a period of four years. Respondent shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 04/18/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner : No. 6 DB 2023
: and C3-22-547
v. :
: Atty. Reg. No. 201250
MARY C. KILGUS, :
Respondent : (Bradford)

JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT UNDER Pa.R.D.E. 215(d)

Petitioner, Office of Disciplinary Counsel ("Petitioner" or "ODC"), by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and by Jeffrey M. Krulik, Esquire, Disciplinary Counsel, and Respondent, Mary C. Kilgus, Esquire, who is represented by Josh J.T. Byrne, Esquire, file this Joint Petition In Support Of Discipline On Consent Under Pa.R.D.E. 215(d), and respectfully represent that:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), 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 with the various provisions of said Rules of Disciplinary Enforcement.

FILED
02/22/2023
The Disciplinary Board of the
Supreme Court of Pennsylvania

2. Respondent, Mary C. Kilgus, was born in 1962, and was admitted to practice law in the Commonwealth on October 11, 2005. Respondent maintains her office at the Bradford County District Attorney's Office, 301 Main Street, Towanda, Bradford County, Pennsylvania 18848.

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

4. On January 6, 2023, ODC filed a Petition for Discipline, charging Respondent with professional misconduct in two matters.

5. On January 10, 2023, Respondent accepted service of the Petition for Discipline.

6. By stipulation, Respondent's time to file an Answer to the Petition for Discipline was extended until February 21, 2023.

7. On January 12, 2023, ODC served Respondent with a DB-7 Request for Statement of Respondent's Position in Complaint file C3-22-547.

**FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED**

CHARGE I: THE DEVON FEASTER MATTER

8. On June 19, 2017, Devon Feaster was involved in a vehicle accident with John Gillespie, III ("Motor Vehicle Accident"); Mr. Feaster's Chevrolet Silverado was damaged in the accident.

9. By a Contingency Fee Agreement dated August 24, 2017, Mr. Feaster retained Respondent and her firm, Kilgus Law Offices, LLC ("Kilgus Law"), to represent him in connection with the Motor Vehicle Accident in exchange for a contingency fee of 1/3 of any recovery.

10. Mr. Gillespie's insurance company, Safeco Insurance, communicated a settlement offer of \$13,753.85 to Respondent.

11. Respondent forwarded Safeco Insurance's offer to Mr. Feaster.

12. By email dated November 22, 2017, Mr. Feaster:

- a. directed Respondent to reject the settlement offer;
- b. told Respondent that he would "be spending roughly 15,000 to buy a truck" like the one he

had, and wanted "another 3,000" as reimbursement for "the lift and tires";

c. told Respondent that he therefore would need \$18,000 "plus taxes" in order to be "close to what [he] had before [his] property was ruined"; and

d. told Respondent that he would need to have that amount "after you take your 1/3 of the pay."

13. On June 27, 2018, Respondent filed a Complaint on Mr. Feaster's behalf in the Court of Common Pleas of Lycoming County, PA.

14. By email dated July 19, 2018, Mr. Feaster informed Respondent that:

a. for him "to buy the exact same truck [as he had lost] it would cost around 15,000 plus tax [and] title";

b. he also wanted to be "reimbursed for the tires and lift that [he] had," which would be "another 3,500";

c. he wanted to be reimbursed for the 16 hours of work he had missed, which he valued at

\$466.56, and for time spent traveling to and from his physical therapy appointments; and

d. he estimated the total amount of recovery he wanted as "around 20,000 plus what I have to pay [Respondent]."

15. On or about December 2, 2019, prior to a pre-trial conference in Mr. Feaster's case, Respondent accepted an offer to settle Mr. Feaster's claims for \$15,000. If called at a hearing, Respondent would testify that she had a conference with opposing counsel and the Judge in the matter. Respondent would testify that opposing counsel, after speaking to an adjuster, advised Respondent and the Judge that \$15,000 was a final offer, and otherwise they would proceed to trial. Respondent would testify that Mr. Feaster authorized her to accept the \$15,000 as a settlement of all claims related to the Motor Vehicle Accident. Mr. Feaster, however, would testify that he only authorized Respondent to accept \$15,000 as compensation for the loss of his truck.

16. At the time of the settlement, Respondent agreed to waive her fee for the case, and to prepare a will for Mr. Feaster.

17. On December 10, 2019, Mr. Feaster executed a Release of All Claims, pursuant to which he agreed to release Mr.

Gillespie and his insurance carrier of all claims related to the Motor Vehicle Accident in consideration of a payment of \$15,000.

18. By letter dated December 11, 2019, Respondent sent Mr. Feaster a will she had drafted for him.

19. By letter dated December 26, 2019, John R. Nealon, Esquire, counsel for Mr. Gillespie:

- a. sent Respondent checks for \$1,246.15 and \$13,753.85 (a total of \$15,000), as "full and final settlement" of Mr. Feaster's case;
- b. requested that Respondent hold the proceeds of the settlement in escrow pending "the execution of a Discontinuance";
- c. enclosed a proposed Discontinuance; and
- d. requested that Respondent sign the Discontinuance and return it to him.

20. Respondent did not sign the Discontinuance and return it to Mr. Nealon.

21. In an exchange of emails on December 30, 2019, Respondent, inter alia:

- a. told Mr. Feaster that she had received the settlement checks;

- b. asked Mr. Feaster to come to her office to sign the checks; and
- c. told Mr. Feaster that opposing counsel had requested that she hold the funds in escrow until the discontinuance of the case had been filed.

22. On December 31, 2019, Mr. Feaster came to Respondent's office and endorsed the checks.

23. The \$15,000 was Mr. Feaster's property, and Respondent was required to safeguard it and keep it separate from funds held for herself or Kilgus Law.

24. As of December 31, 2019, Respondent maintained, on behalf of Kilgus Law, an attorney trust account at FNB Bank, NA ("Trust Account").

25. The Trust Account was the sole account Respondent used to hold "Rule 1.15 Funds," as defined in RPC 1.15.

26. Respondent had sole control over the Trust Account.

27. As of December 31, 2019, Respondent also maintained, on behalf of Kilgus Law, another account at FNB Bank, NA ("Business/Operating Account").

28. The Business/Operating Account held business and operating funds for Kilgus Law.

29. Respondent had sole control over the Business/Operating Account, and used funds in the account for business and personal expenses.

30. As of December 31, 2019:

- a. the Trust Account had a balance of \$.80; and
- b. the Business/Operating Account had a balance of \$1,037.18.

31. On December 31, 2019, Respondent:

- a. deposited the check for \$13,753.85 into the Trust Account; and
- b. improperly deposited the \$1,246.15 check into the Business/Operating Account.

32. Between January 2, 2020 and January 8, 2020, Respondent improperly transferred \$11,653.40 of Mr. Feaster's settlement funds from her Trust Account into her Business/Operating account, as follows:

- a. transfers of \$240.00, \$500.00, and \$1,346.40 on January 2, 2020;
- b. a transfer of \$5,000.00 on January 3, 2020;
- c. a transfer of \$2,567.00 on January 7, 2020; and
- d. a transfer of \$2,000.00 on January 8, 2020.

33. After placing Mr. Feaster's funds in her Business/Operating Account, Respondent improperly spent them.

34. As of January 13, 2020, Respondent's Business/Operating Account had a balance of only \$3,340.52.

35. Prior to February 10, 2020, Respondent told Mr. Feaster that she could not give him his settlement funds until the trial court had "released" paperwork for his case.

36. By emails dated February 10, 2020:

- a. Mr. Feaster asked Respondent whether "the courts ha[d] released the paperwork for the case yet?"; and
- b. Respondent told Mr. Feaster, "No, nothing yet."

37. Respondent's February 10, 2020 email to Mr. Feaster was knowingly false, or at least materially misleading, as she knew, but failed to disclose, that:

- a. she had not yet filed a Praecipe for Discontinuance; and
- b. she had spent most or all of the proceeds from his settlement.

38. By letter dated February 18, 2020, Mr. Nealon:

- a. told Respondent that his "file reflect[ed] that [she had] yet to execute a Discontinuance" for Mr. Feaster's case;
- b. enclosed an additional copy of the proposed Discontinuance he had prepared;
- c. requested that Respondent sign the Discontinuance and return it to him in a pre-stamped, pre-addressed envelope he had provided; and
- d. offered to file the Discontinuance with the Court.

39. Respondent failed to reply to Mr. Nealon's February 18, 2020 letter.

40. As of February 19, 2020:

- a. the balance in Respondent's Trust Account was \$.25; and
- b. the balance in the Business/Operating Account was -\$900.14.

41. As the balances in Respondent's accounts reflect, by February 19, 2020, she had misappropriated and spent the entirety of Mr. Feaster's settlement proceeds.

42. By letter dated March 3, 2020, and sent to Respondent by email, Mr. Nealon:

- a. informed Respondent that he was "still awaiting receipt of an executed Discontinuance"; and
- b. enclosed another copy of the Discontinuance he had provided.

43. On March 4, 2020, Respondent filed a Praecipe for Discontinuance in Mr. Feaster's case.

44. Following the discontinuance of the case, Mr. Feaster repeatedly attempted to contact Respondent by:

- a. calling her office and leaving messages for her;
- b. sending her emails; and
- c. attempting to communicate with her by Facebook.

45. Respondent failed to respond to Mr. Feaster.

46. For more than two years after receiving Mr. Feaster's \$15,000 settlement, Respondent failed to pay any portion of the settlement to him.

47. Respondent intended to deprive Mr. Feaster of his \$15,000 settlement.

48. On May 19, 2022, ODC served Respondent with a Form DB-7 Request for Statement of Respondent's Position related to Mr. Feaster's case ("Feaster DB-7 Letter").

49. In the Feaster DB-7 Letter, ODC requested that Respondent:

- a. identify the bank account(s) into which she had deposited the settlement checks for Mr. Feaster's case;
- b. produce the statements for the bank account for the period December 1, 2019 through the present;
- c. produce the individual ledger for Mr. Feaster with respect to funds received and/or paid out on his behalf;
- d. produce all written communications between she and Mr. Feaster;
- e. produce all written communications between she and anyone else regarding Mr. Feaster's case, including communications with opposing counsel or Safeco Insurance; and
- f. produce a copy of her file for Mr. Feaster's case.

50. As of May 19, 2022, Respondent had only \$.25 in her Trust Account.

51. On June 2, 2022, Respondent obtained a bank check in the amount of \$15,000 payable to Mr. Feaster.

52. Respondent forwarded the \$15,000 bank check to Mr. Feaster.

53. On June 7, 2022, Respondent sent ODC a response to the Feaster DB-7 Letter which included a copy of the \$15,000 bank check to Mr. Feaster, but failed to identify the bank accounts into which she had deposited Mr. Feaster's settlement checks or provide any of the documents ODC had requested.

54. In the response to the Feaster DB-7 Letter, Respondent claimed to have sent Mr. Feaster "[t]wo checks"—at unspecified times—in "an attempt to pay the settlement," but that they were returned to her; Respondent offered no support for this assertion.

55. By letter dated June 7, 2022, ODC again asked that Respondent:

- a. identify the bank account into which she had deposited the settlement checks from Mr. Feaster's case;
- b. produce the statements for that bank account for the period December 1, 2019 through the present;
- c. produce the individual ledger for Mr. Feaster with respect to funds received and/or paid out on his behalf; and

d. produce copies of the checks she claimed to have previously sent to Mr. Feaster, along with any accompanying cover letters.

56. Respondent did not have copies of the bank statements from her Trust Account in her possession.

57. By email dated June 15, 2022, Respondent requested more time to produce the bank statements, claiming that the bank needed to mail them to her.

58. By email dated June 27, 2022, Respondent again requested more time to produce the bank statements, claiming that "[t]he bank gave me the wrong bank records."

59. By emails dated July 7, 2022, Respondent provided ODC with copies of bank statements from her Trust Account.

60. Despite Respondent having deposited a portion of Mr. Feaster's settlement funds directly into her Business/Operating Account, and having transferred most of the remainder of the funds into the Business/Operating Account within just eight days, she failed to provide copies of statements from that account.

61. By email dated July 20, 2022, Respondent provided ODC with copies of two envelopes addressed to Mr. Feaster on which someone had stamped "undeliverable" and "return to

sender"; the envelopes did not include any postage or postmarks.

62. By email dated July 20, 2022, ODC requested that Respondent provide copies of the envelopes showing "the stamps/postage, and the postmarks."

63. By email dated August 6, 2022, Respondent informed ODC that she could not "locate the envelopes you need."

64. By email dated August 15, 2022, Respondent forwarded to ODC a screen shot of a document she identified as a "record of expenditures"; the document was not a proper individual ledger for Mr. Feaster's case, as it did not reflect the receipt of his settlement checks or any distributions to him.

65. On August 23, 2022, ODC sent to Respondent a DB-7A Supplemental Request for Respondent's Position related to Mr. Feaster's case ("Feaster DB-7A Letter"); the Feaster DB-7A Letter set forth thirty paragraphs of allegations, including an allegation that Respondent had misappropriated her client's funds.

66. In the Feaster DB-7A Letter, ODC requested that Respondent:

- a. identify the bank account into which she had deposited the \$1,246.13 check received as a portion of Mr. Feaster's settlement and

provide a bank statement reflecting the deposit;

- b. provide copies of all written communications with Mr. Feaster; and
- c. provide a copy of her file for Mr. Feaster's case.

67. Also on August 23, 2022, ODC served Respondent with a Form DB-7A Supplemental Request for Respondent's Position related to a complaint filed by Wendy Bathgate ("Bathgate DB-7A Letter"), discussed, infra.

68. By a three-sentence email to Disciplinary Counsel, dated September 1, 2022, Respondent stated:

Hello, as I told you before, I closed my office about a year ago to join the public sector. I cannot write checks from my IOLTA account, so I put monies from each of the above cases in cashier checks, which I sent to former clients at the relevant times.

As you know, I am unable to provide you with proof that I received Feaster's ... mailings back, so that is not possible for me.

69. By email dated September 2, 2022, ODC:

- a. asked Respondent to inform ODC if the September 1, 2022 email was intended as her

complete response to the DB-7A Supplemental Requests for Respondent's Position; and

- b. requested that Respondent provide monthly bank statements from her Business/Operating Account.

70. Respondent provided ODC with the monthly bank statements from her Business/Operating Account, but failed to reply to ODC's inquiry as to whether the three-sentence email was intended as her response to the two Form DB-7A Supplemental Requests for Respondent's Position.

71. Respondent failed to respond to the Feaster DB-7A Letter, or provide the additional records ODC had requested.

72. By her conduct as alleged in Paragraphs 8 through 71, above, Respondent violated the following Rules of Professional Conduct and Rule of Disciplinary Enforcement:

- a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;
- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- d. RPC 1.15(b), which states that a lawyer shall hold all Rule 1.15 Funds and property separate

from the lawyer's own property. Such property shall be identified and appropriately safeguarded;

- e. RPC 1.15(c), which states that complete records of the receipt, maintenance, and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter). A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(1):

- (1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks in whatever form, deposited items, and records of electronic transactions; and
- (2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an

individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.

- (3) The records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up on a separate electronic storage device at least at the end of any day on which entries have been entered into the records. These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or demand by either agency made pursuant to the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board Rules, the Pennsylvania Lawyers Fund for Client

Security Board Rules and Regulations, agency practice, or subpoena.

(4) A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement.

f. RPC 1.15(e), which states that, except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment;

- g. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- h. Pa.R.D.E. 203(b)(7), which states that 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 shall be grounds for discipline.

CHARGE II: THE JOHN BATHGATE MATTER

73. On January 23, 2020, John Bathgate and his mother, Wendy Bathgate, met with Respondent to discuss representation related to:

- a. an active matter in the Court of Common Pleas of Tioga County concerning Mr. Bathgate's son ("C&Y Custody Case"); and
- b. a potential case to be filed in federal court against the Tioga County Children and Youth Services ("Federal Court Case").

74. Pursuant to a Retainer Agreement, dated January 23, 2020:

- a. Mr. Bathgate agreed to pay Respondent a \$2,500 retainer for representation in the C&Y Custody Case;

- b. Respondent would bill Mr. Bathgate at an hourly rate of \$225.00; and
- c. Respondent's fees for the C&Y Custody Case would be charged against the retainer.

75. Respondent also orally agreed to represent Mr. Bathgate in connection with the potential Federal Court Case.

76. Respondent failed to communicate to Mr. Bathgate, in writing, the basis or rate of her fee for her representation in the Federal Court Case.

77. On January 23, 2020, Wendy Bathgate paid Respondent \$5,000 as a retainer, which included:

- a. a \$2,500 retainer for representation in the C&Y Custody Case; and
- b. a \$2,500 retainer for representation in the Federal Court Case.

78. The \$5,000 retainer—or, at a minimum, the \$2,500 related to the Federal Court Case—was not earned on receipt.

79. Respondent improperly deposited the entire \$5,000 retainer into her Business/Operating Account.

80. On or about April 27, 2020, Ms. Bathgate paid Respondent an additional \$2,500 retainer for the C&Y Custody Case.

81. The \$2,500 payment was not earned on receipt.

82. Respondent improperly deposited the \$2,500 check into her Business/Operating Account.

83. On September 8, 2020, Respondent requested that Mr. Bathgate pay an additional \$1,500 to replenish the retainer for the C&Y Custody Case.

84. Mr. Bathgate requested that Respondent provide copies of the bills for his case.

85. By letter dated September 23, 2020, Respondent sent Mr. Bathgate copies of invoices and a "Billing History Report."

86. In Respondent's September 23, 2020, letter, she told Mr. Bathgate that:

- a. her accounting software "does not allow [a] credit memo";
- b. she had "handwritten the credits due to [Mr. Bathgate's] account" on the invoices; and
- c. his account "st[ood] at \$334.00."

87. In or around December 2020, Mr. Bathgate terminated Respondent's representation.

88. On December 22, 2020:

- a. Respondent filed a petition to withdraw from representation in the C&Y Custody Case; and

b. the trial court granted Respondent's petition to withdraw.

89. Respondent never filed any action in federal court on behalf of Mr. Bathgate.

90. Respondent did little work, if any, with respect to the Federal Court Case.

91. The Billing History Report Respondent provided to Mr. Bathgate noted a \$450.00 charge for unspecified work on a "Federal Suit"; this was the only entry Respondent provided indicating that she had done any work on the Federal Court Case.

92. After terminating Respondent as his counsel, Mr. Bathgate repeatedly attempted to contact her to request a refund of the retainer his mother had paid for the Federal Court Case.

93. Respondent failed to reply to Mr. Bathgate's attempts to contact her.

94. By letter dated April 5, 2021, Mr. Bathgate requested that Respondent return the \$2,500 retainer that his mother had paid for the Federal Court Case.

95. Respondent failed to respond to Mr. Bathgate's April 5, 2021 letter.

96. By letter dated May 13, 2021, Wendy Bathgate:

- a. requested that Respondent refund the \$2,500 she had paid as a retainer for the Federal Court Case; and
- b. informed Respondent that if Ms. Bathgate did not receive the \$2,500 within 14 days, she "intend[ed] to file a complaint with the Lycoming County Bar Association."

97. Respondent failed to respond to Ms. Bathgate's letter.

98. In or about the beginning of July 2021, Ms. Bathgate filed a request for fee mediation with the Lycoming Law Association.

99. By letter dated July 9, 2021, the Chairman of the Lycoming Law Association's Fee Dispute Committee, Michael Collins, Esquire, communicated with Respondent regarding Ms. Bathgate's complaint.

100. By letter dated August 10, 2021, Respondent informed Mr. Collins that she would "be refunding the disputed amount to Ms. Bathgate within the next two weeks."

101. Respondent did not, in fact, intend to repay the disputed amount within two weeks.

102. Respondent failed to refund any money to Ms. Bathgate within two weeks.

103. On May 19, 2022, ODC served Respondent with the Feaster DB-7 Letter, and requested copies of her financial records.

104. The next month, June 2022, Respondent sent Mr. Bathgate a certified check for \$2,500; this was well over one year after Mr. Bathgate had ended her representation and began requesting a refund of the unearned fees.

105. On June 27, 2022, ODC served Respondent with a Form DB-7 Request for Statement of Respondent's Position concerning her representation of Mr. Bathgate ("Bathgate DB-7 Letter").

106. In the Bathgate DB-7 Letter, ODC requested that Respondent:

- a. identify the bank account(s) into which she had deposited the funds received with respect to representation of Mr. Bathgate;
- b. produce the statements for the bank account(s) into which she had deposited those funds for the period January 23, 2020 through the present;
- c. produce the individual ledger for Mr. Bathgate's cases;
- d. produce all written communications between she and John Bathgate and/or Wendy Bathgate;

- e. produce all written communications between she and any representative of the Lycoming County Law Association and/or members of the Fee Dispute Committee regarding Wendy Bathgate's complaint;
- f. produce all invoices for work done on John Bathgate's cases; and
- g. produce a copy of her file(s) for Mr. Bathgate's cases.

107. On July 7, 2022, Respondent sent to ODC a response to the Bathgate DB-7 Letter, but did not provide the documents ODC had requested.

108. On August 23, 2022, ODC sent to Respondent the Bathgate DB-7A, which set forth nineteen paragraphs of allegations, including allegations that she had misappropriated unearned fees, and requested that Respondent provide:

- a. the individual ledger for Mr. Bathgate's cases;
- b. all written communications between Respondent and John Bathgate and/or Wendy Bathgate;
- c. copies of any fee agreements for Mr. Bathgate's two cases;

- d. all invoices for work done on Mr. Bathgate's cases; and
- e. a copy of Respondent's file(s) for Mr. Bathgate's cases.

109. On September 1, 2022, Respondent sent to Disciplinary Counsel the three-sentence email, discussed at paragraph 68, supra, in which she noted that she had sent "cashier checks" to her "former clients," but no made no other mention of Mr. Bathgate.

110. By email dated September 2, 2022, ODC requested that Respondent produce monthly bank statements from her Business/Operating Account.

111. On or about September 27, 2022, Respondent produced the requested bank statements.

112. Respondent failed to respond to the Bathgate DB-7A Letter or provide any of the other records ODC had requested.

113. By her conduct as alleged in Paragraphs 73 through 112, above, Respondent violated the following Rules of Professional Conduct and Rule of Disciplinary Enforcement:

- a. RPC 1.5(b), which states that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation;

- b. RPC 1.15(b), which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded;
- c. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment;
- d. RPC 1.16(d), which states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law;
- e. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- f. Pa.R.D.E. 203(b)(7), which states that 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 shall be grounds for discipline.

CHARGE NO. III: THE M.G. AND K.G. MATTER
(Complaint File C3-22-547)

114. On June 4, 2020, M.G. and his wife, K.G., retained Respondent to represent them for an immigration matter ("Immigration Matter"); Respondent agreed to handle the case for a flat fee of \$3,500.

115. Respondent had not regularly represented either M.G. or K.G.

116. Respondent failed to communicate the basis or rate of her fee for the Immigration Matter to M.G. and K.G., in writing, before or within a reasonable time after commencing the representation.

117. On or about June 4, 2020, M.G. and K.G. paid Respondent \$225 for their initial consultation.

118. Between June 4 and February 7, 2021, M.G. and K.G. made the following additional payments to Respondent, which were each advances against her legal fees and expenses (including filing fees):

- a. \$600 on June 4, 2020;
- b. \$500 on July 22, 2020;
- c. \$500 on August 26, 2020;
- d. \$500 on September 23, 2020;

- e. \$500 on October 9, 2020;
- f. \$250 on December 1, 2020; and
- g. \$500 on February 7, 2021.

119. As the payments were advances against legal fees and expenses, Respondent was required to place them in her Trust Account until the fees were earned or the expenses incurred.

120. With respect to each of the above payments, Respondent:

- a. received the payment in her Trust Account within a few days after it was made; and
- b. improperly transferred the funds into her Business/Operating Account either the day they were received or, with respect to the October 9, 2022 payment, the next day.

121. By email dated February 16, 2021, Respondent informed K.G., inter alia, that:

- a. there was "\$375 left in the retainer flat fee";
- b. the "filing fee [was] \$585"; and
- c. the total due was therefore \$960.

122. Respondent's assertion that M.G. and K.G. had "\$375 left in the retainer flat fee" was inaccurate, as they had already paid her \$3,350 of the \$3,500 flat fee.

123. By a "Trust Request," dated February 17, 2021, Respondent requested that M.G and K.G. pay her an additional \$906 for representation.

124. M.G. and K.G. paid the \$906 in two installments, a \$500 payment deposited into Respondent's Trust Account on February 19, 2021, and a \$406 payment deposited into her Trust Account on March 8, 2021.

125. The payments were advances against Respondent's legal fees and expenses (including for "filing fees"), and she was required to place them in her Trust Account until the fees were earned or the expenses were incurred.

126. Respondent, however, improperly transferred the unearned funds into her Business/Operating Account the day she received them.

127. By email dated April 18, 2021, K.G. asked Respondent what progress had been made with respect to the "paperwork" for her case.

128. By email dated April 19, 2021, Respondent told K.G. that, "[o]nce [you] file, it may take weeks to hear anything," and that "[t]ypically they [the Department of Homeland Security ("DHS")] will contact you in a couple of months, once they get to your case."

129. By email dated April 20, 2021, K.G. asked Respondent:

- a. if there was "a hold up in filing";
- b. when Respondent planned on filing; and
- c. whether "anything [had been] filed so far."

130. By email dated April 20, 2021, Respondent told K.G., "I sent it last month. They have not cashed the check. This is normal, though."

131. Respondent's April 20, 2021 email was knowingly false, as she had not filed anything on behalf of M.G. and K.G.

132. In an exchange of emails on July 13, 2021:

- a. K.G. asked Respondent if there had been any progress on her case;
- b. Respondent told K.G. that she had not "heard anything yet," that she had "at least 12 other clients who also ha[d] not heard anything," and that there was "a tremendous backlog."

133. Respondent's July 13, 2021 email was knowingly false, or at least materially misleading, as she failed to disclose that she had not filed anything on behalf of M.G. and K.G.

134. In or about September 2021, Respondent took a position with the Bradford County District Attorney's Office, but told M.G. and K.G. she would continue to represent them.

135. By email dated September 26, 2021, K.G. asked Respondent about the status of her case.

136. Respondent failed to respond to K.G.'s email.

137. By emails dated October 24, 2021, K.G.:

- a. noted that she and her husband "ha[d] been asking [Respondent] for copies of what has been submitted ... for a few months," but had yet to receive anything; and
- b. asked [Respondent] to provide her with the "docket number of the immigration papers [Respondent] filed [for her] case."

138. By emails dated October 24, 2021, Respondent told K.G. that "[i]mmigration docs do not have docket numbers," but that she would "send [K.G.] the petition when [she got] to the office [the next day]."

139. Respondent did not send any petition to K.G.

140. By email dated November 1, 2021, K.G., inter alia:

- a. noted that Respondent still had not provided copies of anything she had filed on K.G.'s behalf; and

b. requested that Respondent provide copies of the documents that she had filed with the U.S. Citizenship and Immigration Services ("USCIS"), and the "receipt number [Respondent] received after the documents were filed."

141. By email dated November 2, 2021, Respondent:

- a. told K.G. that she had been in court "practically every day";
- b. told K.G. that "pleadings in immigration court are filled out online"; and
- c. asked that she let Respondent "get to it."

142. Respondent's November 2, 2021 email was knowingly false, or at least materially misleading, as she failed to disclose that she had not filed anything on behalf of M.G. and K.G.

143. Respondent did not provide K.G. with copies of any documents she had allegedly filed or the receipt number K.G. had requested.

144. By email dated November 3, 2021, Respondent sent K.G. a copy of a Form I-129F ("Petition for Alien Fiancé(e)"), and asked that she fill it out and return it to Respondent.

145. By email dated November 4, 2021, at 1:30 p.m., M.G. and K.G.:

- a. set forth their unsuccessful efforts to obtain from Respondent copies of the documents that Respondent said she had filed and receipt numbers for any filings;
- b. noted that Respondent had not sat down with them to fill out any documents;
- c. complained that Respondent had belatedly sent a document to them and asked them to complete it, without any explanation; and
- d. requested that Respondent provide a "full refund of payments made to [her]."

146. By email dated November 4, 2021, at 2:41 p.m., Respondent told K.G. that "[t]hey asked me to send this [the Form I-129F] to you"—without explaining who "they" were—and asked if K.G. needed Respondent to help her fill it out.

147. By email dated November 4, 2021, at 3:05 p.m., Respondent, inter alia:

- a. purported to "explain immigration law" to K.G.;

- b. told K.G. that, "[i]n [her] case, we first filed an I-130 form [Petition for Alien Relative] with a \$535 filing fee";
- c. told K.G. that Respondent now needed to file an "I-435 firm (sic) because [K.G. was] present in the US and the spouse of a US Citizen"; and
- d. asked K.G. to fill out the form [Respondent] had provided and return it to her, so that Respondent could file it and "get [her] a green card."

148. Respondent's November 4, 2021 emails were knowingly false, as:

- a. she had not filed a Form I-130 (or anything else) for M.G. and K.G.; and
- b. no one had asked Respondent to send a new form to K.G.

149. By email dated November 4, 2021, at 3:37 p.m., K.G. noted that the form Respondent had sent to her was a Form I-129, not an "I-435," and told Respondent that, in any event, she and her husband would require assistance to fill out either form.

150. Respondent replied to K.G.'s email by providing her with a copy of a Form I-485 (Application to Register Permanent Resident or Adjust Status), which Respondent again erroneously called an "I-435."

151. Following an additional exchange of emails, Respondent sent K.G. an email, dated November 10, 2021, in which she told K.G. that:

- a. the forms she needed were the "I-130 and I-485";
- b. the fee for the Form I-130 was \$535, which was "already paid";
- c. the fee for the Form I-485 was \$1,140;
- d. the fee for "fingerprints and photo" was \$85; and
- e. Respondent should also file a Form I-765 for a work permit, and a Form I-131 to "travel to Canada and get back in."

152. Respondent's November 10, 2021 email was knowingly false, as she had not filed a Form I-130, and had not paid a \$535 filing fee.

153. By email dated December 6, 2021, Respondent forwarded to K.G. information from an unspecified source stating, inter alia, that processing times for Forms I-130 for

immediate relatives of a U.S. citizen "currently average 15 to 20 months as of June 7, 2021."

154. By emails dated December 7, 2021:

a. K.G. asked when Respondent filed the Form I-130; and

b. Respondent replied "July 2020."

155. Respondent's December 7, 2021 email was knowingly false, as she had not filed a Form I-130 in July 2020 (or at any other time).

156. By emails dated December 7 and 8, 2021, K.G. requested an appointment to meet with Respondent to complete the Form I-485.

157. Following an exchange of emails, Respondent scheduled a Zoom call with M.G. and K.G. to assist them in preparing the Form I-485; Respondent scheduled the call for December 18, 2021 at 9:00 a.m.

158. Respondent failed to send M.G. and K.G. a link for the Zoom call.

159. By email dated February 7, 2022, K.G. again requested a meeting with Respondent to assist her in filling out her "immigration application."

160. By emails dated February 14, 2022, Respondent scheduled another Zoom call with M.G. and K.G.; the call was scheduled for February 18, 2022, at noon.

161. Respondent sent M.G. and K.G. a link for the Zoom call, but failed to appear for the call.

162. By emails dated February 19, 2022, Respondent again scheduled a Zoom call with M.G. and K.G.; the call was scheduled for February 22, 2022, at 4:00 p.m.

163. Respondent sent M.G. and K.G. a link for the Zoom call, but failed to appear for the call.

164. By emails dated February 22, 2022, Respondent scheduled a meeting with M.G. and K.G. for February 26, 2022, at 8:00 a.m., at a Starbucks in Williamsport, PA.

165. The Starbucks did not have seating, so Respondent met with K.G. in her car, for approximately fifteen minutes, and discussed the Form I-485 with her.

166. Following this brief meeting, M.G. and K.G. attempted to complete the Form I-485.

167. By email dated February 26, 2022, K.G. set forth questions she had regarding the Form I-485.

168. By email dated February 28, 2022, Respondent told K.G. to leave "blank" anything about which she had a question, and that Respondent would "fill it in."

169. By email dated March 12, 2022, K.G.:

- a. forwarded to Respondent two drafts of the Form I-485; and
- b. identified responses she was not able to complete.

170. By emails dated March 23, 2022, Respondent asked K.G. to fill out a Form I-130A (Supplemental Information for Spouse Beneficiary) claiming that it "was requested."

171. Respondent's March 23, 2022 email was knowingly false, as:

- a. she had not filed a Form I-130; and
- b. the USCIS had not requested that she file a Form I-130A.

172. By email dated March 23, 2022, K.G. provided Respondent with the Form I-130A she had filled out.

173. By email dated March 25, 2022, K.G. again requested that Respondent provide a "USCIS receipt number" so that she could track the progress of her case.

174. Respondent failed to respond to K.G.'s March 25, 2022 email.

175. At no time did Respondent file a Form I-130, Form I-130A, Form I-485, or any other document with the USCIS on behalf of M.G. and K.G..

176. By email dated March 28, 2022, at 10:29 a.m., K.G.,
inter alia:

- a. informed Respondent that she had retained new counsel, Kristen A. Schneck, Esquire;
- b. directed Respondent not to file anything new on her behalf;
- c. inquired as to how Respondent purportedly filed a Form I-130, since neither she nor M.G. had signed anything;
- d. requested that Respondent send all documents for her case to Ms. Schneck;
- e. requested that Respondent return the "personal documentation" that K.G. had given to her;
- f. noted that Respondent had stated that her "status was 'lawful entry, overstayed welcome'"; and
- g. asked if Respondent had "documentation to support [her] current status title."

177. By email dated March 28, 2022, at 11:51 a.m., Respondent replied to K.G. by requesting that she provide her new attorney's address and telephone number.

178. Respondent failed to explain how she was purportedly able to file a Form I-130 without any signatures or how she determined K.G.'s status.

179. By email dated March 28, 2022, at 12:05 p.m., K.G.:

- a. provided Ms. Schneck's address and telephone number;
- b. again asked if Respondent had any documentation regarding her current immigration status;
- c. noted that Respondent did not answer her question as to how she was purportedly able to file a Form I-130; and
- d. asked that Respondent "[p]lease address our concerns."

180. By email dated March 28, 2022, at 12:06 p.m., Respondent replied to K.G. by stating, "ok will send over[.]"

181. Respondent again failed to explain how she purportedly was able to file a Form I-130 or to provide the basis for her assertion that K.G.'s status was "lawful entry, overstayed welcome."

182. Respondent failed to "send over" anything to Ms. Schneck.

183. On April 6, 2022, K.G. received from Respondent documents that K.G. had previously given to Respondent; Respondent did not provide anything she had allegedly prepared or filed on behalf of M.G. and K.G.

184. By email dated April 6, 2022, M.G. stated his belief that "nothing has been done for the past 22 months," and requested a "full refund" of all the money M.G. and K.G. had paid to Respondent.

185. Respondent failed to respond to M.G.'s April 6, 2022 email.

186. By email dated April 7, 2022, Atul Bhandari of Abdullah and Schneck Immigration Law Group, LLC:

- a. forwarded to Respondent a "File Transfer Request," dated April 6, 2022, and signed by K.G.;
- b. informed Respondent that K.G. had retained Ms. Schneck to represent her; and
- c. informed Respondent that it was "important for [the] law firm to understand what application was filed by [Respondent's] law firm on [K.G.'s] behalf with the Government agencies."

187. In the File Transfer Request, K.G.:

- a. informed Respondent that she wished to terminate her representation in her immigration case, effective immediately; and
- b. authorized Respondent to "transfer and release" to Ms. Schneck "an electronic and hard copy of all filings, documentation, and originals concerning [her] immigration case within the standard 14 business day timeframe (no later than April 20, 2022)."

188. Respondent failed to:

- a. inform Ms. Schneck or Mr. Bhandari of any applications she allegedly had filed on K.G.'s behalf; or
- b. transfer and release any files to Ms. Schneck.

189. By email dated April 15, 2022, M.G. asked Respondent for a response to his April 6, 2022 email, in which he had requested a refund.

190. Respondent failed to respond to M.G.'s April 15, 2022 email.

191. By email dated April 20, 2022, M.G. stated that he still had not heard from Respondent about the refund he had requested.

192. Respondent failed to respond to M.G.'s April 20, 2022 email.

193. On April 30, 2022, Ms. Schneck submitted to the USCIS a Freedom of Information Act/Privacy Act request ("FOIA/PA Request") for K.G., requesting information about Forms I-130 and I-485 filed on K.G.'s behalf.

194. In May 2022, Ms. Schneck called Respondent and asked if she had:

- a. received the File Transfer Request; and
- b. filed I-130 and I-485 petitions on behalf of M.G. and K.G.

195. Respondent refused to answer Ms. Schneck's questions.

196. By letter dated May 12, 2022, the USCIS responded to the FOIA/PA Request, informing Ms. Schneck that, "No records responsive to [her] request were located."

197. During the entire time Respondent represented K.G., she failed to file anything on K.G.'s behalf with the USCIS.

198. As Respondent failed to perform the work for which M.G. and K.G. had retained her, the fees she paid were excessive and, at least in part, unearned.

199. As Respondent failed to file anything on behalf of M.G. and K.G., they were entitled to a full refund of money paid for filing fees.

200. By her conduct as alleged in Paragraphs 114 through 199, above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;
- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- d. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- e. RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:
 - (1) whether the fee is fixed or contingent;
 - (2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (3) the likelihood, if apparent to the client, that the acceptance of the

particular employment will preclude other employment by the lawyer;

- (4) the fee customarily charged in the locality for similar legal services;
 - (5) the amount involved and the results obtained;
 - (6) the time limitations imposed by the client or by the circumstances;
 - (7) the nature and length of the professional relationship with the client; and
 - (8) the experience, reputation, and ability of the lawyer or lawyers performing the services.
- f. RPC 1.5(b), which states that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation;
- g. RPC 1.15(b), which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded;
- h. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment;

- i. RPC 1.16(d), which states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law;
- j. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

201. ODC and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for four years.

202. Respondent hereby consents to that discipline being imposed upon her by the Supreme Court of Pennsylvania. Attached to this Joint Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that she consents to the recommended discipline, including the mandatory acknowledgments contained in Pa.R.D.E. 215(d)(1) through (4).

203. ODC and Respondent respectfully submit that the following are mitigating factors in this case:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of

Professional Conduct and Rules of Disciplinary Enforcement;

- b. Respondent is remorseful and understands that her actions warrant the imposition of discipline, as is evidenced by her agreement to enter into this Joint Petition; and
- c. Respondent has no record of discipline since being admitted to practice law in Pennsylvania in October 2005.

204. Respondent has paid restitution to her clients, including the \$15,000 settlement amount to Mr. Feaster, the \$2,500 unearned fees to Ms. Bathgate, and the \$4,481 advanced fees and expenses to M.G. and K.G. The payment of restitution is a mitigating fact, although its weight is lessened due to the payments being made only after ODC had commenced its investigation. See Office of Disciplinary Counsel v. John William Eddy, 143 DB 2019 (D.Bd. Rpt. 3/24/21, 22) (S.Ct. Order 6/4/21).

205. In September 2021, Respondent took a job as an Assistant District Attorney in the Office of the District Attorney for Bradford County, PA. Respondent has since resigned that position. That Respondent served as a prosecutor is a significant aggravating factor, particularly since her conduct includes misappropriation of funds from clients. See Office of Disciplinary Counsel v. Cappuccio, 48 A.3d 1231, 1240 (Pa. 2012) (employment in a public position is

a "strong" aggravating factor where the attorney serves as a prosecutor and the misconduct involves criminal action); Office of Disciplinary Counsel v. John T. Olshock, 28 DB 2002 (D.Bd. Rpt. 7/30/03, 11) (S.Ct. 10/24/03) (that Olshock was a First Assistant District Attorney was aggravating even though his misappropriation of client funds did not occur during the exercise of his public duties).

206. The most significant aspect of Respondent's misconduct was her misappropriation of funds from her clients. Misappropriation of funds is a "serious offense" and warrants imposition of substantial discipline. Office of Disciplinary Counsel v. Quigley, 161 A.3d 800, 807 (Pa. 2017). As the Supreme Court has observed, "'a client must ... rest assured that any financial transactions carried out on the client's behalf will be scrupulously honest, will be accounted for at the client's request, and will involve ... immediate payment of funds that are due and owing to [the] client.'" Id. (citation omitted) Indeed, "[t]he proper handling of client money goes to the heart of a lawyer's obligations to a client and to mishandle such funds abuses the trust between the lawyer and the client." Office of Disciplinary Counsel v. John T. Olshock, supra, D.Bd. Rpt., 10.

207. There is no per se discipline mandated for all cases

involving misappropriation of funds. As such, a suspension of one year and one day has been imposed in a matter where the misappropriation was limited in scope and substantial mitigation was presented. Office of Disciplinary Counsel v. James Lawrence Paz, 97 DB 2010 (S.Ct. Order 8/20/10) (suspension of one year and one day on consent for misappropriation of \$3,953.06; Paz made restitution, had no prior record, acknowledged wrongdoing, was remorseful, and cooperated with ODC). On the other hand, where multiple acts of misappropriation are involved and the misconduct takes place over a period of several years, greater discipline, up to and including disbarment, may be warranted. See, e.g., Quigley, 161 A.3d at 807 (disbarment for mishandling funds of five clients over a period of three years).

208. The proposed four-year suspension is within the range of discipline imposed in other recent cases involving misappropriation of client funds. See, e.g., Office of Disciplinary Counsel v. Wendell K. Grimes, No. 145 DB 2022 (S.Ct. Order 12/7/22) (four-year suspension on consent where Grimes misappropriated \$35,945.84 from an estate over a period of sixteen months; mitigation included acknowledgment of wrongdoing, cooperation with ODC, remorse, no record of discipline, and partial restitution); Office of Disciplinary

Counsel v. John William Eddy, supra (three-year suspension where Eddy misappropriated \$73,948.89 from eight clients, and failed to maintain proper records for his trust account; "compelling" mitigation was offered, including restitution and evidence satisfying Braun); Office of Disciplinary Counsel v. Michael Bruce Greenstein, 93 DB 2018 (S.Ct. Order 8/17/20) (five-year suspension on consent where Greenstein misappropriated \$61,363.66 from multiple clients; mitigation included acknowledgment of wrongdoing, cooperation with ODC, remorse, no record of discipline, restitution of most of the misappropriated funds, agreement to repay the remaining funds, and participation in ongoing psychotherapy). See also Office of Disciplinary Counsel v. John T. Olshock, supra (three-year suspension for misappropriating \$22,093 from an estate; Olshock was a First Assistant District Attorney, which was an aggravating factor, and offered mitigation including no record of discipline, making full restitution prior to investigation by ODC, expressing remorse, taking remedial steps, and presenting favorable character evidence).

209. In addition to misappropriating funds, Respondent committed additional misconduct including, among other things, making false statements to her clients, failing to set forth the basis or rate of her fee in writing in two matters,

failing to respond to inquiries from her clients, failing to maintain proper records regarding her Trust Account, and failing to answer DB-7A letters. The recommendation of a four-year suspension is consistent with the sanctions imposed in other cases involving misappropriation and additional serious misconduct.

210. For example, the Supreme Court recently approved a four-year suspension on consent in Office of Disciplinary Counsel v. Elissa Griffith Waldron, 195 DB 2020 & 145 DB 2021 (S.Ct. Order 12/15/21). In Waldron, the respondent misappropriated \$24,010.57 from a client, failed to maintain proper records related to her trust account, failed to properly preserve funds of clients, and was largely out of trust for a period of two and one-half years. Id., Joint Petition, 4-20, 47-49. In addition to mishandling client funds, Waldron also made false statements to a client (id., 5-8), attempted to coerce a different client's opposing party to withdraw a complaint to ODC in violation of RPC 8.4(d) (id., 31-32, 50), and threatened to continue a court conference in a third client's case, without the client's consent, and to withdraw from the representation in violation of RPC 1.16(c) and (d). Id., 33-35, 50.

211. Waldron did not initially produce documents in response to ODC's request in two DB-7 letters. Id., 3, 15. Waldron also offered similar mitigation to that at issue here. Like Respondent, Waldron accepted responsibility for her misconduct, expressed remorse, and had no record of discipline. Id., 2, 43-44. After complaints were filed with ODC, Waldron reimbursed some clients and the Lawyers Fund for Client Security ("Fund"), although she was unable to repay all of her clients and could only express her intent to do so in the future. Id., 11, 30, 43-44, 49.¹

212. The recommended discipline is also supported by the recent decision in Office of Disciplinary Counsel v. David Charles Agresti, No. 68 DB 2020 (D.Bd. Rpt. 5/21/21) (S.Ct. Order 7/21/21). In Agresti, the Supreme Court imposed a three-year suspension where the respondent failed to properly safeguard the property of three clients, resulting in the misappropriation of approximately \$46,722. Id., D.Bd. Rpt., pp. 21-22. Agresti failed to maintain a trust account,

¹ As additional mitigation, Waldron took steps to remedy the problems in her practice, and presented character letters from witnesses who were "generally aware" of her misconduct. Id., 35-36, 43. While there are differences in the mitigation presented in the two cases, as is often the case in disciplinary matters, Waldron involved analogous circumstances to the instant matter and supports the imposition of a four-year suspension.

deposited retainers in his personal account, and spent unearned fees. Id., 22-24, 26. After one client attempted to terminate the representation, Agresti not only refused to refund the unearned retainer, but engaged in further misconduct by making misrepresentations to the client, and then threatened to sue him and his family. Id., 7-8, 22-23.

213. Agresti presented character evidence at his disciplinary hearing and, like Respondent, had no record of discipline. Id., 3, 13-14. His mitigation, however, was less substantial than in this case, as he failed to show sincere and credible remorse for his conduct. To the contrary, even at his disciplinary hearing, Agresti "continued to advocate his wrongful position that there was an oral agreement that entitled him to ... funds" he had misappropriated from a client. Id., 24-25, 26. Agresti also refused to repay that client's unearned fees, forcing him to file a claim with the Lawyers Fund for Client Security, which awarded compensation; Agresti later reimbursed the Fund. Id., pp. 10, 23, 26.

214. Finally, the recommended discipline is supported by Office of Disciplinary Counsel v. Heather Harbaugh, No. 192 DB 2005 (S.Ct. Order 1/30/07), which imposed a four-year suspension on consent for misconduct in two cases. Harbaugh misappropriated \$33,951.82 from a client, falsely told another

client that she had filed a petition on her behalf, and failed to respond to inquiries from both clients. As with Respondent, Harbaugh had no record of discipline, entered into consent discipline, and made restitution to her client, but only after being contacted by ODC. It was an aggravating factor that Harbaugh's conversion of funds occurred notwithstanding knowledge that her client was suffering from depression and was financially destitute. Mitigation also included that Harbaugh was more consistently participating in counseling for depression, anxiety, and co-dependency.

215. After examining the above precedent and giving consideration to Respondent's misconduct and the aggravating and mitigating factors, ODC and Respondent submit that a suspension of four years is appropriate discipline.

WHEREFORE, ODC and Respondent respectfully request that:

- a. Pursuant to Rule 215(e) and 215(g)(2), Pa.R.D.E., a three-member panel of the Disciplinary Board review and approve this Joint Petition In Support Of Discipline On Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is

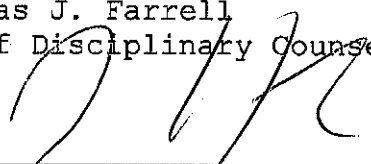
recommended that the Supreme Court enter an Order:

- i. suspending Respondent from the practice of law for four years; and
 - ii. directing Respondent to comply with all of the provisions of Rule 217, Pa.R.D.E.
- b. Pursuant to Pa.R.D.E. 215(i), the Three-Member Panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter, and that under Pa.R.D.E. 208(g)(1) all expenses be paid by Respondent within 30 days after the notice of the taxed expenses is sent to Respondent.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel


By 
Jeffrey M. Krulik, Esquire
Disciplinary Counsel

2/21/2023

Date

2/21/2023

Date

By 
Josh J.T. Byrne, Esquire
Counsel for Respondent

2/21/23
Date

By Mary C. Kilgus
Mary C. Kilgus, Esquire
Respondent

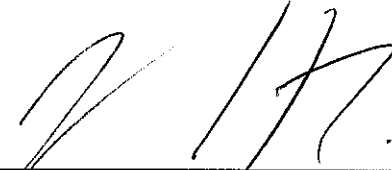
BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner : No. 6 DB 2023
: and C3-22-547
v. :
: Atty. Reg. No. 201250
MARY C. KILGUS, :
Respondent : (Bradford)

VERIFICATION


The statements contained in the foregoing Joint Petition
In Support Of Discipline On Consent under Pa.R.D.E. 215(d)
are true and correct to the best of our knowledge or
information and belief and are made subject to the penalties
of 18 Pa.C.S. § 4904, relating to unsworn falsification to
authorities.

2/21/2023
Date



Jeffrey M. Kruklik, Esquire
Disciplinary Counsel

2/21/2023
Date



Josh J.T. Byrne, Esquire
Counsel for Respondent

Date

Mary C. Kilgus, Esquire
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner : No. 6 DB 2023
: and C3-22-547
v. :
: Atty. Reg. No. 201250
MARY C. KILGUS, :
Respondent : (Bradford)

VERIFICATION

The statements contained in the foregoing Joint Petition
In Support Of Discipline On Consent under Pa.R.D.E. 215(d)
are true and correct to the best of our knowledge or
information and belief and are made subject to the penalties
of 18 Pa.C.S. § 4904, relating to unsworn falsification to
authorities.

Date

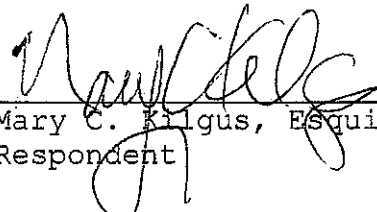
Jeffrey M. Krulik, Esquire
Disciplinary Counsel

Date

Josh J.T. Byrne, Esquire
Counsel for Respondent

2/21/23

Date



Mary C. Kilgus, Esquire
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner : No. 6 DB 2023
: and C3-22-547
v. :
: Atty. Reg. No. 201250
MARY C. KILGUS, :
Respondent : (Bradford)

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

Respondent, Mary C. Kilgus, Esquire, hereby states that she consents to the imposition of a suspension of four years, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline on Consent Under Pa.R.D.E. 215(d) ("Joint Petition"), and further states that:

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

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

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

4. She consents because she knows that if the charges continued to be prosecuted in the pending proceeding, she could not successfully defend against them.




Mary C. Kilous, Esquire
Respondent

Sworn to and subscribed

before me this 21

day of February, 2022¹⁹
2023



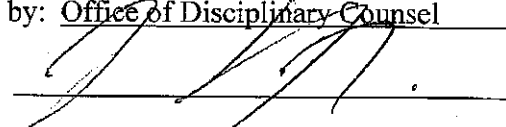
Notary Public

Commonwealth of Pennsylvania - Notary Seal
Heidi L. Gitschlag, Notary Public
Lycoming County
My commission expires September 1, 2023
Commission number 1264427
Member, Pennsylvania Association of Notaries

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature:  _____

Name: Jeffrey M. Krulik, Disciplinary Counsel

Attorney No. (if applicable): 57110