BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 99 DB 2017
v.	:	Attorney Registration No. 90803
VENUS FOSTER Respondent	:	(Philadelphia)

CORRECTED ORDER

AND NOW, this 14th day of August, 2017, in accordance with Rule 215(f), Pa.R.D.E., the three-member Panel of the Disciplinary Board having reviewed and approved the Joint Petition in Support of Discipline on Consent filed in the above captioned matter; it is

ORDERED that the said VENUS FOSTER be subjected to a **PUBLIC REPRIMAND WITH CONDITION** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a) and Rule 205(c)(9) of the Pennsylvania Rules of Disciplinary Enforcement.

Within six months from the date of this Order, Respondent shall submit to the Secretary of the Board and Disciplinary Counsel proof that she has completed a minimum of one credit hour of Continuing Legal Education Courses on fee agreements and a minimum of two credit hours of Continuing Legal Education Courses on financial recordkeeping (including RPC 1.15).

Costs shall be paid by the Respondent.

BY THE BOARD:

Board Chair

TRUE COPY FROM RECORD
Attest:

Marcee D. Sloan
Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

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VENUS FOSTER Respondent	:	Attorney Registration No. 90803 (Philadelphia)

PUBLIC REPRIMAND

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

Ms. Foster, you are being reprimanded today in connection with your misconduct in one client matter. By Joint Petition in Support of Discipline on Consent under Pa.R.D.E. 215(d), you stipulated to the following facts and rule violations.

In 2013, you entered into a fee agreement/power of attorney with Bridgette Hairston relating to your representation of Ms. Hairston in her claim against Amtrak. Although the fee agreement provided that case expenses would first be "reimbursed" to you, thereby implying that expenses would be deducted from the gross recovery prior to applying any attorney's fee percentage, the fee agreement failed to state clearly whether, in fact, such expenses were to be deducted before the contingent fee was calculated. The fee agreement as written failed to comply with Rule of Professional Conduct 1.5(c). Because of the lack of clarity, the provision of the fee agreement concerning calculation

of the contingent fee is inconsistent with the fee agreement's provision concerning the reimbursement of expenses.

You failed to explain the matter to Ms. Hairston to the extent reasonably necessary to permit her to make an informed decision regarding the representation.

On June 2, 2015, you commenced a civil action on behalf of your client in the Philadelphia Court of Common Pleas. On November 9, 2015, the action was removed to the U.S. District Court for the Eastern District of Pennsylvania. Subsequently, the action was scheduled for an arbitration hearing on July 12, 2016.

Prior to any arbitration hearing, you settled your client's claim against Amtrak for the sum of $12,000, and Ms. Hairston's civil action was dismissed without prejudice on July 7, 2016.

Under the terms of the fee agreement, since the matter settled prior to trial, you were entitled to reimbursement of expenses plus a contingent fee of 33.3% of the settlement amount after deduction of case expenses. On or about July 26, 2016, Amtrak issued a check in the amount of $12,000, payable to the order of "Venus Foster and Client Bridgette Hairston." After obtaining your client's endorsement on the check, you endorsed it and deposited it into your IOLTA account on August 9, 2016. On October 6, 2016, you cashed a check in the amount of $5,000 drawn on your IOLTA account and gave Ms. Hairston $3,800 of the cash while retaining $1,200. You had previously given Ms. Hairston a cash advance of $1,200 for living expenses, in violation of RPC 1.8(e).

By letter to Ms. Hairston dated November 16, 2016, you advised Ms. Hairston that you had settled outstanding liens, and you set forth the distribution of the proceeds of the settlement. The distribution sheet revealed that you calculated your attorney's fee at 40% of the gross settlement amount, even though you were entitled to a

fee of only 33.3% after deduction of case expense, because the proceeds resulted from a pretrial settlement and not from a trial award or verdict. Your November 16, 2016 distribution letter stated incorrectly that you were entitled to an attorney's fee of 40% and that Ms. Hairston owed you a balance due/overpayment of $314.

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

1. RPC 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.
2. RPC 1.5(a) – A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
3. RPC 1.5(c) – A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.
4. RPC 1.8(e) – A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation.
5. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.
6. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Ms. Foster, you have a prior record of discipline in Pennsylvania. In 2011, you received a private reprimand. Also in 2011, you received an informal admonition.

In mitigation, you cooperated with Office of Disciplinary Counsel, made restitution to your client in the amount of $647.36, which is the amount that you owed to Ms. Hairston from the settlement, acknowledged your wrongdoing and expressed remorse.

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

In addition to this Reprimand, you agreed that within six months of the date of the Board Order of August 14, 2017, you would complete a minimum of one credit hour of Continuing Legal Education on fee agreements and a minimum of two credit hours of Continuing Legal Education on financial recordkeeping. You further agreed to furnish proof to the Office of Disciplinary Counsel that you complied with the condition. Please be aware that you must fulfill the condition by February 14, 2018; your failure to do so will result in reconsideration of the matter and prosecution of formal charges against you.

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

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

Designated Member
The Disciplinary Board of the

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on October 4, 2017.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in her presence and in the presence of the designated panel of The Disciplinary Board at 1601 Market Street, Suite 3320, Philadelphia, Pennsylvania, on October 4, 2017.

Venus Foster