

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2855 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 113 DB 2021
	:	
	:	Attorney Registration No. 73163
v.	:	
	:	(York County)
	:	
THOMAS MARK SHULTZ,	:	
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 4th day of March, 2022, 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 Thomas Mark Shultz is suspended on consent from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with all 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 03/04/2022

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

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

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner,	:	No. 113 DB 2021
	:	
v.	:	Attorney Reg. No. 73163
	:	
THOMAS MARK SHULTZ,	:	
Respondent	:	(York County)
	:	

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

Petitioner, Office of Disciplinary Counsel (“ODC”), by Thomas J. Farrell, Chief Disciplinary Counsel, and Nicholas K. Weiss, Disciplinary Counsel, and Respondent, Thomas Mark Shultz, respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement (“Pa. R.D.E.”) 215(d), and respectfully state and aver the following:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106, is invested, pursuant to Pa.R.D.E. 207, with the power and the 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 the aforesaid Rules.

2. Respondent, Thomas Mark Shultz, was born on September 13, 1954, and was admitted to practice law in Pennsylvania on November 28, 1994. Respondent is on active status and maintains a registered mailing address of 211 Kennedy Court, Suite 5, Hanover, Pennsylvania 17331-5205.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of

FILED 01/20/2022 The Disciplinary Board of the Supreme Court of Pennsylvania
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the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ADMISSIONS

4. On or around October 15, 2019, Karla M. Miller retained Respondent as her counsel for a divorce and custody matter.

5. At that time, Respondent provided Ms. Miller with a written fee agreement.

6. Respondent's fee agreement specified that he required an initial retainer of \$2,500.00 ("Retainer Fee") and that he would bill against the Retainer Fee at an hourly rate of \$250.00.

7. During her initial meeting with Respondent, Ms. Miller paid the retainer fee *via* cashier's check.

8. On October 22, 2019, Respondent filed a divorce complaint with the Adams County Court of Common Pleas ("Court") on Ms. Miller's behalf.

9. From October 22, 2019, to January 7, 2020, Respondent failed to expeditiously advance Ms. Miller's divorce.

10. During that period, Respondent frequently told Ms. Miller that he was trying to get in touch with opposing counsel, Andrew S. Ziegler, Esq., whenever she requested an update about the status of her divorce.

11. Respondent failed to consult with Ms. Miller about his attempts to contact Attorney Ziegler, or otherwise explain to her why such contact was necessary.

12. By email dated January 7, 2020, Respondent provided Ms. Miller with a draft copy of a Custody Agreement.

13. In his correspondence, Respondent explained that he would send the Custody Agreement to Attorney Ziegler after Ms. Miller verified that the assertions therein were accurate and free from grammatical and typographical errors.

14. Ms. Miller approved the draft Custody Agreement. Respondent, however, thereafter failed to send the Custody Agreement to Attorney Ziegler, or otherwise take any other action to advance Ms. Miller's divorce.

15. On August 28, 2020, Respondent sent Ms. Miller an email, in which he relayed information concerning the value of the marital residence.

16. On September 3, 2020, Respondent provided Ms. Miller with a copy of a draft Custody Complaint *via* email.

17. On September 24, 2020, Ms. Miller sent Respondent an email inquiring about the funds remaining, if any, from the Retainer Fee.

18. Respondent failed to respond to Ms. Miller's email, or otherwise advise her about the extent to which the Retainer Fee had been exhausted.

19. On September 27, 2020, Ms. Miller dropped off the signed Custody Complaint at Respondent's law office.

20. Respondent thereafter failed to file the Custody Complaint with the Court.

21. At no point did Respondent consult with Ms. Miller about his decision not to file the Custody Complaint.

22. Eventually, Ms. Miller retained Katherine McDonald, Esquire as her divorce counsel.

23. By email dated October 16, 2020, Attorney McDonald informed Respondent that she had been retained by Ms. Miller, and asked him to promptly provide Ms. Miller's full and complete file.

24. Later that same day, Ms. Miller sent Respondent an email, wherein she also asked Respondent to provide her file to Attorney McDonald.

25. Ms. Miller also requested that Respondent provide her with an itemized accounting of his services and a refund of any unearned portion of the Retainer Fee.

26. Respondent did not respond to Attorney McDonald or Ms. Miller in any fashion.

27. On October 30, 2020, Attorney McDonald sent Respondent another email, in which she asked Respondent to respond to her October 16, 2020, email.

28. Respondent failed to respond to Attorney McDonald's October 2020 correspondence, or otherwise communicate with her in any fashion.

29. On November 13, 2020, Attorney McDonald sent another email asking Respondent to confirm his receipt of, and respond to, her prior messages.

30. Attorney McDonald's November 13, 2020, email included her previous correspondence from October 16 and 30, 2020.

31. Respondent failed to reply to Attorney McDonald's November 2020 correspondence or otherwise communicate with her.

32. On March 10, 2021, the Court entered a Divorce Decree concerning Ms. Miller's divorce matter.

33. While Attorney McDonald was able to advise Ms. Miller and conclude the divorce, she never received Ms. Miller's file from Respondent.

34. To date, Respondent has not given Ms. Miller an itemized accounting of his representation, nor has he given her file to her.

35. On May 13, 2021, ODC sent Respondent a DB-7 Request for Statement of Respondent's Position letter ("DB-7 letter") concerning the foregoing matters.

36. ODC sent the DB-7 letter, *via* certified mail, return receipt requested, to the mailing address indicated on Respondent's most recent attorney registration form.

37. Respondent received the DB-7 letter.

38. Pursuant to Disciplinary Board Rule § 87.7(b)(2), Respondent's answer to the DB-7 letter was due within 30 days, on or before June 14, 2021.

39. After receiving the DB-7 letter, Respondent did not request, or receive, an extension of time to submit his answer to the DB-7 letter.

40. Respondent failed to respond to the DB-7 letter on or before June 14, 2021.

41. By letter dated June 21, 2021, ODC:

- a. reminded Respondent about the DB-7 letter;
- b. advised that it had not received an answer from Respondent; and
- c. provided Respondent with an additional fifteen days within which to file a response.

42. Respondent received the June 21, 2021, letter but thereafter failed to submit an answer to the DB-7 letter.

43. On July 19, 2021, Disciplinary Counsel called Respondent's law office using the contact information listed on his most recent attorney registration form.

44. At that time, Disciplinary Counsel spoke with Respondent's receptionist, and left a message asking Respondent for a return phone call.

45. Respondent thereafter failed to contact Disciplinary Counsel in any fashion.
46. To date, Respondent has failed to submit an answer to the DB-7 letter.
47. On September 17, 2021, ODC filed a Petition for Discipline in this matter.
48. On September 19, 2021, Respondent was personally served with the Petition for Discipline at his personal residence.
49. Respondent failed to submit an answer to the Petition for Discipline; as a result, the factual allegations therein were deemed admitted.

RULES OF PROFESSIONAL CONDUCT AND

DISCIPLINARY ENFORCEMENT RULES VIOLATED

50. Respondent admits to violating the following Rules of Professional Conduct and Rule of Disciplinary Enforcement in this matter:

- a. RPC 1.1 – “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 – “A lawyer shall act with reasonable diligence and promptness in representing a client;”
- c. RPC 1.4(a)(2) – “A lawyer shall ... reasonably consult with the client about he means by which the client’s objectives are to be accomplished;”
- d. RPC 1.4(a)(3) – “A lawyer shall ... keep the client reasonably informed about the status of the matter;”
- e. RPC 1.4(a)(4) – “A lawyer shall ... promptly comply with reasonable requests for information;”
- f. 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;”
- g. RPC 1.15(e) – “[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;”

- h. RPC 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;”
- i. RPC 3.2 – “A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client;”
- j. RPC 8.4(d) – “It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice;” and
- k. Pa. R.D.E. 203(b)(7) – “The following shall also be grounds for discipline ... [f]ailure 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.”

JOINT RECOMMENDATION FOR DISCIPLINE

51. ODC and Respondent jointly recommend that the appropriate discipline for Respondent’s admitted misconduct is a suspension of one-year and one-day.

52. Respondent hereby consents to a suspension of one-year and one-day being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent’s executed affidavit required by Pa. R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

53. In support of the Joint Recommendation, it is respectfully submitted that the following mitigating circumstances are present:

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

Enforcement;

- b. Respondent has cooperated with ODC in connection with this Petition, as evidenced by Respondent's admissions herein and his consent to receive a suspension of one-year and one-day; and
- c. Respondent is remorseful for his misconduct and consents to receive a suspension of one-year and one-day.

54. In support of the Joint Recommendation, it is respectfully submitted that the following aggravating circumstance is present:

- a. Respondent has a history of discipline. On August 29, 2019, Respondent received an Informal Admonition for violations of RPC 1.4(a)(4), RPC 1.16(d), and Pa. R.D.E. 203(b)(7). Respondent failed to adequately communicate with his client and promptly provide the client with an accounting and finalized bill. Respondent also failed to submit a statement of his position in response to ODC's DB-7 Letter Request for Statement of Respondent's Position.

There is no *per se* discipline for certain misconduct, *see Office of Disciplinary Counsel v. Robert S. Lucarini*, 472 A.2d 186, 190 (Pa. 1983), rather, each case is considered based on the facts and circumstances presented. When addressing with matters involving client neglect and disregard for the disciplinary system, the Pennsylvania Supreme Court has frequently imposed a suspension of one-year and one-day. *See, e.g. Office of Disciplinary Counsel v. Brittany Maire Yurchyk*, No. 107 DB 2020 (D. Bd. Rpt. 10/22/2021) (S. Ct. Order 12/27/2021) (one-year and one-day suspension for, *inter alia*, failing to diligently pursue three client matters, submit a response

to ODC's DB-7 letter, and file a timely answer to the Petition for Discipline); Office of Disciplinary Counsel v. Valerie Andrine Hibbert, No. 215 DB 2019 (D. Bd. Rpt. 2/17/2021) (S. Ct. Order 4/27/2021) (one-year and one-day suspension for, *inter alia*, neglecting three client matters and failing to answer ODC's DB-7 letter and Petition for Discipline); and Office of Disciplinary Counsel v. Michael J. Halprin, No. 145 DB 2016 (S. Ct. Order 3/30/2017) (suspension of one-year and one-day on consent for neglecting two client matters and failing to respond to ODC's DB-7 letters).

The outcome in Office of Disciplinary Counsel v. Peter Jude Caroff, No. 42 DB 2019 (D. Bd. Rpt. 2/25/2020) (S. Ct. Order 6/5/2020) is particularly instructive to this matter. Caroff received a suspension of one-year and one-day after he failed to diligently pursue his client's legal matter and did not adequately communicate with her. Like Respondent, Caroff failed to return property to which his client was entitled after the client terminated Caroff's representation. In further similarity to Respondent, Caroff failed to respond to ODC's request for a statement of his position and failed to submit an answer to the Petition for Discipline. Caroff's suspension also reflected the fact that he had previously received an Informal Admonition for similar misconduct. In this case, Respondent received an Informal Admonition on August 29, 2019, for failing to adequately communicate with his client, failing to promptly provide the client with an accounting and finalized bill, and failing to respond to ODC's DB-7 letter. Respondent's past misconduct is very similar to that set forth above in this Joint Petition. Given the significant factual similarities between *Caroff* and the present case, a suspension of one-year and one-day is an appropriate disposition of this matter

WHEREFORE, ODC and Respondent respectfully request that your Honorable Board:

- (a) Approve this Petition and recommend that the Supreme Court of Pennsylvania enter an Order imposing a suspension of one-year and one-day; and
- (b) Pursuant to Pa.R.D.E. 215(i), enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted,

Date: 1-19-2022

By: Nick Weiss
Nicholas K. Weiss
Disciplinary Counsel
Attorney Registration No. 324774
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: 1/13/2022

By: Thomas Mark Shultz
Thomas Mark Shultz
Respondent
Attorney Registration No. 73163
211 Kennedy Court, Suite 5
Hanover, PA 17331-5205
Telephone (717) 637-5118

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner,	:	No. 113 DB 2021
	:	
v.	:	Attorney Reg. No. 73163
	:	
THOMAS MARK SHULTZ,	:	
Respondent	:	(York County)
	:	

VERIFICATION

The statements made in the foregoing Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d) are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

Date: 1-19-2022

By: Nick Weiss
Nicholas K. Weiss
Disciplinary Counsel
Attorney Registration No. 324774
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
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OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner, : No. 113 DB 2021
 :
v. : Attorney Reg. No. 73163
 :
THOMAS MARK SHULTZ, :
Respondent : (York County)
 :

RESPONDENT'S AFFIDAVIT UNDER RULE 215(d) OF THE
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

I, Thomas Mark Shultz, Respondent in the above-captioned matter, hereby consent to the imposition of a one-year and one-day suspension, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and myself, in a Joint Petition in Support of Discipline on Consent and further state:

1. My consent is freely and voluntarily rendered; I am not being subjected to coercion or duress; I am fully aware of the implications of submitting the consent;
2. I acknowledge that I am entitled to consult with counsel in connection with this matter and have chosen not to do so;
3. I am aware there is presently pending a proceeding involving allegations that I have been guilty of misconduct as set forth in the Joint Petition;
4. I acknowledge that the material facts set forth in the Joint Petition are true; and
5. I consent because I know that if the charges continued to be prosecuted in the pending proceeding, I could not successfully defend against them.

Subscribed and sworn to this 18th day of
January, 2022, before _____
Christina M. Real, Notary Public

By: *Thomas Mark Shultz*
Thomas Mark Shultz
Respondent

Commonwealth of Pennsylvania – Notary Seal
Christina M. Real, Notary Public
Adams County
My commission expires June 16, 2023
Commission number 1201316

BEFORE THE DISCIPLINARY BOARD OF THE
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	:	
v.	:	Attorney Reg. No. 73163
	:	
THOMAS MARK SHULTZ,	:	
Respondent	:	(York County)
	:	

CERTIFICATE OF SERVICE

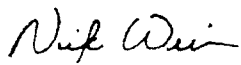
I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Pa.R.A.P. 121.

First Class Mail and electronic mail as follows:

Thomas Mark Shultz
Shultz Law Firm LLC
211 Kennedy Court, Suite 5
Hanover, PA 17331-5205

tmshultz@shultzlawfirm.com

Date: 1/19/2022

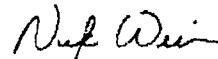
By: 

Nicholas K. Weiss
Disciplinary Counsel
Attorney Registration No. 324774
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

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: Nicholas K. Weiss, Esq.

Attorney No. (if applicable): 324774