

IN THE SUPREME COURT OF PENNSYLVANIA

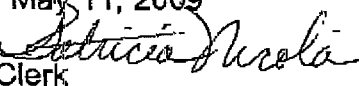
OFFICE OF DISCIPLINARY COUNSEL, : No. 1476 Disciplinary Docket No. 3
Petitioner :
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 :
 :
 v. : No. 192 DB 2008
 :
 :
 :
 KENNETH ANDREW RUBIN, : Attorney Registration No. 71949
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 11th day of May, 2009, there having been filed with this Court by Kenneth Andrew Rubin his verified Statement of Resignation dated March 27, 2009, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

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

A True Copy Patricia Nicola
As of ~~of~~ May 11, 2009
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 192 DB 2008
Petitioner	:	
	:	
v.	:	Attorney Registration No. 71949
	:	
KENNETH ANDREW RUBIN	:	
Respondent	:	(Philadelphia)

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 192 DB 2008;
: ODC File Nos. C1-08-1109,
v. : C1-08-1111, C1-09-99,
: C1-09-124, and C1-09-145
:
:
:
KENNETH ANDREW RUBIN, : Atty. Reg. No. 71949
Respondent : (Philadelphia)

RESIGNATION
UNDER Pa.R.D.E. 215

Kenneth Andrew Rubin, Esquire, hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215 ("Enforcement Rules") and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about May 25, 1994. His attorney registration number is 71949.

2. He desires to submit his resignation as a member of said bar.

3. His resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress and he is fully aware of the implications of submitting this resignation.

4. He is aware that there are presently pending investigations into allegations that he has been guilty of misconduct, the nature of which allegations have been made known to him by service of a Petition for Discipline filed December 15, 2008, a true and correct copy of which is attached hereto, made a part hereof and marked Exhibit "A".

5. He is aware that there are presently pending investigations into allegations that he has been guilty of misconduct, in that since on or about the filing of the Petition for Discipline in December 2008, ODC has received five additional complaints from present or former clients of Respondent, which are as follows:

- a. File No. C1-08-1109, wherein Kimberly C. Wicker alleges that Respondent failed to communicate with her as to the status of a matter for which she had engaged him;
- b. File No. C1-08-1111, wherein Mabel Haynes alleges that Respondent failed to communicate with her during the representation and failed to turn over her file to successor counsel;
- c. File No. C1-09-99, wherein Autura D. Taylor alleges that Respondent failed to communicate with her about the resolution of a Medicare lien following settlement of her case and

receipt by Respondent of the settlement proceeds;

d. File No. C1-09-124, wherein Jeffery Wilkins alleges that Respondent failed to communicate with him and account to Mr. Wilkins following settlement of his case and compromise of a Medicare lien; and

e. File No. C1-09-145, wherein Shawn Harper alleges that Respondent failed to communicate with her as to the status of a matter for which she engaged him.

6. He acknowledges that the material facts upon which the allegations of complaint contained in Exhibit "A" and the above-mentioned complaints are based are true.

7. He submits the within resignation because he knows that he could not successfully defend himself against the charges of professional misconduct set forth in the attached exhibit A.

8. He submits the within resignation because he knows he could not successfully defend himself against the allegations of professional misconduct set forth in paragraph 5, *supra*.

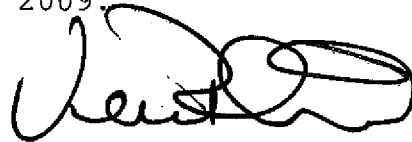
9. He is fully aware that the submission of this Resignation Statement is irrevocable and that he can only

apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b).

10. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted with and acted upon the advice of counsel in connection with his decision to execute the within resignation.

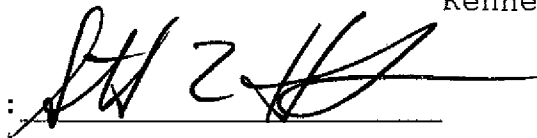
It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S., Section 4904 (relating to unsworn falsification to authorities).

Signed this 27th day of March, 2009.



Kenneth Andrew Rubin

WITNESS:



BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 102 DB 2008
v. :
: :
KENNETH ANDREW RUBIN, : Atty. Reg. No. 71949
Respondent : (Philadelphia)

PETITION FOR DISCIPLINE

NOTICE TO PLEAD

To Kenneth Andrew Rubin:

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

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

* * * * *

A copy of your answer should be served upon Disciplinary Counsel at the District I Office of Disciplinary Counsel, Seven Penn Center, 16th Floor, 1635 Market Street, Philadelphia, PA 19103, and the original and three (3) conformed copies filed with the Office of the Secretary, the Disciplinary Board of the Supreme Court of Pennsylvania, Two Lemoyne Drive, First Floor, Lemoyne, PA 17043-1226. [Disciplinary Board Rule §89.3(a)(1)]

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

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. *PA* DB 2008
v. :
: Atty. Reg. No. 71949
KENNETH ANDREW RUBIN, :
Respondent : (Philadelphia)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Esquire, Chief Disciplinary Counsel, and by Amelia C. Kittredge, Esquire, Disciplinary Counsel, files the within Petition for Discipline and charges Respondent, Kenneth Andrew Rubin, with professional misconduct in violation of the Rules of Professional Conduct as follows:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, 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.

Amelia C. Kittredge

My attorney certify and correct copy.

FILED

DEC 15 2008

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

2. Respondent, Kenneth Andrew Rubin, was born in 1959, was admitted to practice law in the Commonwealth on May 25, 1994, maintains his office at 1515 Market Street, Suite 1510, Philadelphia, Pennsylvania 19102, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

CHARGE I: THE SAYLES MATTER

3. At all times relevant, Respondent was a sole practitioner with a law firm at 1515 Market Street in the City of Philadelphia.

4. At all times relevant, Leonard P. Sayles was the principal of a business known as Claims Funding Company LLC (CFC), located at 2300 Computer Avenue, Building G, Willow Grove, Pennsylvania 19090-1752.

5. CFC was in the business of providing cash advances to individuals with pending claims for damages or lawsuits, in return for a financial interest in the settlement of those matters.

6. At all times relevant, Mr. Sayles conducted the business of CFC by entering into contracts ("Purchase Agreement/s"), whereby claimants or litigants would receive cash advances from CFC; the Purchase Agreement further provided that the claimant's or litigant's lawyer was to pay

back the advance, plus a premium, directly to CFC upon receipt of the settlement monies or proceeds of the lawsuit.

7. At all times relevant, the lawyers for claimants or litigants who had contracted with CFC executed an "Acknowledgment," contractually binding the lawyer, *inter alia*, to notify CFC at the time settlement monies were received, and deliver to CFC the proceeds of the settlement in the amount agreed upon by the client and CFC pursuant to the Purchase Agreement.

A. Arthur Johnson

8. In or about May 2001, Arthur Johnson of 1931 North Newkirk Street, Philadelphia, PA 19121-1802, engaged Respondent in connection with Mr. Johnson's claim for personal injury.

9. On or about May 15, 2002, Mr. Johnson entered into a Purchase Agreement with CFC, whereby CFC agreed to advance him \$500, in exchange for the promise to pay \$825 from the proceeds of the monies received in settlement or by judgment in respect of Mr. Johnson's personal injury claim.

10. On or about May 15, 2002, Respondent executed an Acknowledgment, wherein he agreed, *inter alia*:

- a. that he had received authorization from Mr. Johnson to withhold the amounts due to CFC;

- b. to notify CFC at the time the proceeds from Mr. Johnson's claim were received; and
- c. to deliver to CFC the proceeds of Mr. Johnson's claim in the amount due to CFC when they were received.

11. On or about February 1, 2003, Respondent settled the Johnson personal injury claim which was the subject of the Purchase Agreement with CFC, for the sum of \$16,500.

12. On or about February 24, 2003, Respondent received the settlement check in the amount of \$16,500 from Liberty Mutual Insurance Company.

13. Respondent failed to notify CFC of the recovery.

14. Respondent failed to remit to CFC the funds due and owing to CFC under the terms of Mr. Johnson's Purchase Agreement and the Respondent's Acknowledgment.

15. By letters to Respondent dated February 26, March 31, September 17, November 2, December 4, and December 31, 2007, Mr. Sayles requested that Respondent notify him of the status of Mr. Johnson's claim for damages pursuant to the Acknowledgment.

16. Respondent received the above-mentioned letters.

17. Respondent failed to answer the letters and failed to provide the status of the Johnson claim.

18. In failing to inform Mr. Sayles that the Johnson claim had settled, to render a full accounting of the settlement proceeds, and to forward the amount owed under the Purchase Agreement and Acknowledgment, Respondent engaged in dishonesty and fraud.

B. Arlene Dykes

19. On or about January 26, 2004, Arlene Dykes of 6327 North Lambert Street, Philadelphia, PA 19138-3107, engaged Respondent in connection with Ms. Dykes' claim for personal injury.

20. On or about April 8, 2004, Ms. Dykes entered into a Purchase Agreement with CFC, whereby CFC agreed to advance her \$500, in exchange for the promise to pay \$750 (increased to \$850 if paid after April 1, 2005), from the proceeds of the monies received in settlement or by judgment in respect of Ms. Dykes' personal injury claim.

21. On or about April 12, 2004, Respondent executed an Acknowledgment, wherein he agreed, *inter alia*:

- a. that he had received authorization from Ms. Dykes to withhold the amounts due to CFC;
- b. to notify CFC at the time the proceeds from Ms. Dykes' claim were received; and

c. to deliver to CFC the proceeds of Ms. Dykes' claim in the amount due to CFC when they were received.

22. On or about September 27, 2004, Respondent settled the Dykes personal injury claim which was the subject of the Purchase Agreement with CFC, for the sum of \$15,000.

23. On or about October 8, 2004, Respondent received the settlement check in the amount of \$15,000 from the Pennsylvania Financial Responsibility Assigned Claims Plan (PFRACP) Claims Office.

24. Respondent failed to notify CFC of the recovery.

25. Respondent failed to remit to CFC the funds due and owing to CFC under the terms of Mr. Dykes' Purchase Agreement and the Respondent's Acknowledgement.

26. By letters to Respondent dated February 26, March 31, September 17, November 2, December 4, and December 31, 2007, Mr. Sayles requested that Respondent notify him of the status of Ms. Dykes' claim for damages pursuant to the Acknowledgment.

27. Respondent received the above-mentioned letters.

28. Respondent failed to answer the letters and failed to provide the status of the Dykes claim.

29. In failing to inform Mr. Sayles that the Dykes claim had settled, to render a full accounting of the settlement

proceeds, and to forward the amount owed under the Purchase Agreement and Acknowledgment, Respondent engaged in dishonesty and fraud.

C. Gilbert Calhoun

30. In or about August 2003, Gilbert Calhoun of 6923 North Broad Street, Philadelphia, PA 19141-1801, engaged Respondent in connection with Mr. Calhoun's claim for personal injury.

31. On or about January 31, 2004, Mr. Calhoun entered into a Purchase Agreement with CFC, whereby CFC agreed to advance him \$500, in exchange for the promise to pay \$775 (increased to \$825 if paid after January 15, 2005), from the proceeds of the monies received in settlement or by judgment in respect of Mr. Calhoun's personal injury claim.

32. On or about February 3, 2004, Respondent executed an Acknowledgment, wherein he agreed, *inter alia*:

- a. that he had received authorization from Mr. Calhoun to withhold the amounts due to CFC;
- b. to notify CFC at the time the proceeds from Mr. Calhoun's claim were received; and
- c. to deliver to CFC the proceeds of Mr. Calhoun's claim in the amount due to CFC when they were received.

33. On or about October 21, 2004, Respondent settled the Calhoun personal injury claim which was the subject of the Purchase Agreement with CFC, for the sum of \$10,000.

34. On or about November 3, 2004, Respondent received the settlement check in the amount of \$10,000 from the PFRACP Claims Office.

35. Respondent failed to notify CFC of the recovery.

36. Respondent failed to remit to CFC the funds due and owing to CFC under the terms of Mr. Calhoun's Purchase Agreement and the Respondent's Acknowledgment.

37. By letters to Respondent dated February 26, March 31, September 17, November 2, December 4, and December 31, 2007, Mr. Sayles requested that Respondent notify him of the status of Ms. Calhoun's claim for damages pursuant to the Acknowledgment.

38. Respondent received the letters.

39. Respondent failed to answer the letters and failed to provide the status of the Calhoun claim.

40. In failing to inform Mr. Sayles that the Calhoun claim had settled, to render a full accounting of the settlement proceeds, and to forward the amount owed under the Purchase Agreement and Acknowledgment, Respondent engaged in dishonesty and fraud.

D. Damon Cornish

41. On or about May 21, 2003, Damon Cornish of 1743 North 33rd Street, Philadelphia, PA 19121-2462, engaged Respondent in connection with Mr. Cornish's claim for personal injury.

42. On or about May 21, 2003, Mr. Cornish entered into a Purchase Agreement with CFC, whereby CFC agreed to advance him \$1200, in exchange for the promise to pay \$1800 (increased to \$1920 if paid after June 1, 2004), from the proceeds of the monies received by settlement or judgment in respect of Mr. Cornish's personal injury claim.

43. On or about May 27, 2003, Respondent executed an Acknowledgment, wherein he agreed, *inter alia*:

- a. that he had received authorization from Mr. Cornish to withhold the amounts due to CFC;
- b. to notify CFC at the time the proceeds from Mr. Cornish's claim were received; and
- c. to deliver to CFC the proceeds of Mr. Cornish's claim in the amount due to CFC when they were received.

44. On or about December 3, 2003, Mr. Cornish and CFC agreed to an "Amendment" of the Purchase Agreement, which provided that Mr. Cornish would receive an additional \$500 and

that CFC's interest in the proceeds of Mr. Cornish's claim would increase to \$2550 (\$2720 if paid after June 1, 2004).

45. On or about December 3, 2003, Respondent executed a further Acknowledgment, wherein he agreed, based on the Amendment to the Purchase Agreement, *inter alia*:

- a. that he had received authorization from Mr. Cornish to withhold the amounts due to CFC;
- b. to notify CFC at the time the proceeds from Mr. Cornish's claim were received; and
- c. to deliver to CFC the proceeds of Mr. Cornish's claim in the amount due to CFC when they were received.

46. On March 14, 2005, Respondent filed an action on behalf of Mr. Cornish in the Court of Common Pleas of Philadelphia County, said action captioned *Cornish, et al. v. Mollica*, No. 1221, March Term 2005 (C.P. Phila.) (Cornish lawsuit).

47. In or about September 2006, Respondent settled the Cornish lawsuit for \$17,700.

48. On or about September 29, 2006, Respondent received the settlement check in the amount of \$17,700 from Ohio Casualty Group.

49. Respondent failed to notify CFC of the recovery.

50. Respondent failed to remit to CFC the funds due and owing to CFC under the terms of Mr. Cornish's Purchase Agreements and the Respondent's Acknowledgments.

51. By letters to Respondent dated February 26, March 31, September 17, November 2, December 4, and December 31, 2007, Mr. Sayles requested that Respondent notify him of the status of Mr. Cornish's claim for damages pursuant to the Acknowledgments.

52. Respondent received the above-mentioned letters.

53. Respondent failed to answer the letters and failed to provide the status of the Cornish lawsuit.

54. In failing to inform Mr. Sayles that the Cornish lawsuit had settled, to render a full accounting of the settlement proceeds, and to forward the amount owed under the Purchase Agreements and Acknowledgments, Respondent engaged in dishonesty and fraud.

55. By his conduct as alleged in Paragraphs 3 through 54 above, Respondent violated the following Rules of Professional Conduct:

- a. (Former) RPC 1.15(b), which provides that upon receiving property of a third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the third person, and shall promptly deliver to the

third person any property that the third person is entitled to receive and, upon request by the third person, shall promptly render a full accounting regarding such property;

- b. RPC 1.15(d), which provides, in pertinent part, that "[u]pon receiving Rule 1.15 Funds..., a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law";
- c. RPC 1.15(e), which provides, in pertinent part, that "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"; and
- d. RPC 8.4(c), which provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty and fraud.

CHARGE II: HOLZHERR v. YANG

56. On March 27, 2004, Katherine Holzherr of 600 Honey Run Road, Ambler, PA 19002-4626, was involved in an automobile

accident with Yong Xin Yang, in which Ms. Holzherr sustained personal injury.

57. In June 2004, Mr. Yang's insurer, State Farm Insurance Company (State Farm), wrote to Ms. Holzherr and offered to settle her claim for personal injury for \$800.

58. On July 12, 2004, Ms. Holzherr spoke with a State Farm claims representative, who offered to settle the claim for \$1200, but required that the offer be accepted by September 12, 2004.

59. On July 14, 2004, Ms. Holzherr engaged Respondent to represent her in connection with her claim for damages arising from the accident.

60. From in or about July 2004 to in or about December 2004, Ms. Holzherr requested that Respondent contact State Farm to settle the claim before the end of 2004.

61. By letter to Ms. Holzherr dated December 21, 2004, a State Farm claims representative informed Ms. Holzherr that the Company had still not received a letter of representation from her attorney.

62. On December 24, 2004, Ms. Holzherr sent Respondent the letter from State Farm and:

- a. stated that she believed Respondent had "already sent" a letter to State Farm

informing State Farm of his representation;
and

- b. noted that she had left "many" phone messages at Respondent's office stating that she would like to settle her claim before the end of 2004.

63. Respondent failed to follow his client's instructions in that he did not inform State Farm of his representation of Ms. Holzherr until on or about March 2, 2005, and did not attempt to settle the claim before the end of 2004.

64. On March 27, 2006, Respondent commenced an action on behalf of Ms. Holzherr in the Montgomery County Court of Common Pleas, said action captioned *Holzherr v. Yang, et al.*, No. 7305 (C.P. Mont. 2006) (Yang lawsuit).

65. By letter dated November 3, 2006, the defendants in the Yang lawsuit served Interrogatories and a Request for Production (collectively, discovery) on Respondent, which Respondent received.

66. Upon receipt of the discovery, Respondent failed to:
 - a. inform his client that the discovery had been served;
 - b. forward the discovery to his client for her input in answering the discovery; and

c. prepare answers or objections to the discovery for timely service upon defense counsel.

67. On February 7, 2007, defendants filed a "Motion to Compel Plaintiffs' [sic] Responses to Defendants' Discovery Requests."

68. On February 13, 2007, the Court of Common Pleas issued a Rule to Show Cause directing the plaintiff to show cause why the Motion to Compel should not be granted.

69. Respondent received the Motion to Compel and Rule to Show Cause on or about February 15, 2007.

70. Respondent failed to file an answer to the Rule to Show Cause.

71. By Order dated March 26, 2007, the Honorable Calvin S. Drayer, Jr. granted the defendants' Motion to Compel plaintiff to file answers to the discovery within twenty days.

72. Respondent received the Order of March 26, 2007 on or about March 27, 2007.

73. Respondent failed to inform his client that a Motion to Compel had been granted, and that she was directed to file answers to discovery within twenty days.

74. Respondent failed to respond to the discovery as directed by the Court.

75. On May 21, 2007, the defendants filed a Motion for Sanctions for failure to comply with the Court's Order to respond to defendants' discovery.

76. Respondent received the Motion for Sanctions on or about May 21, 2007.

77. Respondent failed to inform his client that a Motion for Sanctions had been filed.

78. By Order dated July 27, 2007, upon agreement of the parties and consideration of the Court, the Honorable Thomas M. DelRicci directed the plaintiff to deliver discovery responses to defendants within twenty days.

79. Respondent failed to inform his client that the Court had ordered her to respond to discovery within twenty days.

80. Respondent failed to comply with the Court's Order that answers to discovery be filed within twenty days.

81. On August 23, 2007, defendants filed a Motion for Sanctions for failure to respond to discovery, seeking an order precluding plaintiff from offering testimony or presenting evidence at trial.

82. Respondent received the Motion on or about August 23, 2007.

83. Respondent failed to inform his client that the defendants had filed a Motion for Sanctions.

84. Respondent failed to answer the Motion for Sanctions.

85. By Order dated October 19, 2007, the hearing on defendants' Motion for Sanctions was scheduled for November 14, 2007.

86. Respondent received the Order of October 19, 2007.

87. Respondent failed to inform his client that the hearing had been scheduled.

88. By letter dated November 7, 2007, Ms. Holzherr terminated the representation.

89. Respondent failed to appear at the hearing on the Motion for Sanctions on November 14, 2007.

90. By Order dated November 14, 2007, Judge DelRicci granted defendants' Motion for Sanctions based on "no responses" to the discovery having been filed, and "the failure of the plaintiff and/or counsel to appear at the scheduled hearing," directing that plaintiff:

- a. be precluded from offering testimony or presenting evidence at trial;
- b. pay defense counsel \$300 "for the cost of filing multiple motions to compel, motions for sanctions, and counsel's attendance at hearings on the several motions."

91. Throughout the representation, Ms. Holzherr attempted to contact Respondent on numerous occasions, but he failed to return her calls.

92. Throughout the representation, on the occasions that Ms. Holzherr spoke with Respondent about the status of the Yang lawsuit, Respondent stated that he was working on the case but gave her no information about the true status of the case, including the filing of the Motions for Sanctions.

93. By letter to Respondent dated November 20, 2007, Ms. Holzherr's successor counsel, Martin Weiss, Esquire, requested that Respondent "immediately forward" Respondent's complete file in the Yang lawsuit, and sign and return a Withdrawal of Appearance.

94. Respondent received the letter of November 20, 2007.

95. Respondent failed to turn over the file to successor counsel and failed to file a Withdrawal of Appearance until January 17, 2008.

96. By his conduct as alleged in Paragraphs 56 through 95 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;

- b. RPC 1.3, which provides that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(2), (3), (4), which provide that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information;
- d. RPC 1.4(b), which provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- e. RPC 1.16(d), which provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests; and
- f. RPC 8.4(c), which provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

CHARGE III: THE JULY 12, 2004 ACCIDENT

97. On July 12, 2004, Ms. Holzherr had an automobile accident with individuals in two other cars, during which Ms. Holzherr was injured.

98. On July 14, 2004, Ms. Holzherr engaged Respondent to recover damages for her injuries.

99. Between July 14, 2004, and July 12, 2007, Ms. Holzherr contacted Respondent on numerous occasions about the status of the claim, including to inquire when Respondent would be filing suit, but Respondent failed to return many of Ms. Holzherr's calls.

100. On the occasions when Respondent spoke with Ms. Holzherr about the matter, Respondent told Ms. Holzherr that the matter was being attended to, and that she should not worry about filing dates.

101. Between July 14, 2004, and July 12, 2007, Respondent failed to take appropriate action to preserve Ms. Holzherr's right to bring suit within the statute of limitations.

102. On July 12, 2007, Respondent met with Ms. Holzherr, at which time he:

- a. told her that he failed to bring suit in a timely manner; and
- b. informed her that her cause of action was barred by the statute of limitations.

103. By his conduct as alleged in paragraphs 97 through 102 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;
- b. RPC 1.3, which provides that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(2), (3), (4), which provide that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information;
- d. RPC 1.4(b), which provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and
- e. RPC 8.4(c), which provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

CHARGE IV: THE TOCKET MATTER

104. On March 10, 2006, Respondent commenced a personal injury action in the Court of Common Pleas of Philadelphia County on behalf of Bonnie Gae Tocket and Dean M. Tocket against Dante's Restaurant, Inc., among others, said action captioned *Tocket v. Dante's Restaurant, Inc., et al.*, No. 917, March Term 2006 (C.P. Phila.) (Tocket lawsuit).

105. In or about January 2007, the Tocket lawsuit was transferred to the Court of Common Pleas of Cumberland County.

106. By letter dated July 5, 2007, defense counsel sent Respondent Interrogatories and Requests for Production (collectively, discovery), directed to Respondent's clients.

107. Upon receiving the discovery, Respondent failed to:

- a. inform his clients that the above-mentioned discovery had been served;
- b. forward the discovery to his clients for their review; and
- c. prepare any response to the discovery.

108. By letter dated May 21, 2008, defense counsel, Anthony T. Lucido, Esquire, noticed the deposition of Ms. Tocket for June 30, 2008.

109. Respondent received the letter and enclosed Notice of Deposition.

110. Respondent failed to inform his client that her deposition had been noticed and that she was required to appear.

111. Respondent failed to confirm or reschedule the deposition, and the deposition was cancelled.

112. By letter dated July 16, 2008, Mr. Lucido sent Respondent a Notice of Deposition for Ms. Tocket, to be held on August 4, 2008.

113. Respondent received the Notice of Deposition for August 4, 2008.

114. Respondent failed to inform his client that her deposition had been noticed and that she was required to appear.

115. Respondent failed to confirm or reschedule the deposition.

116. On August 4, 2008, defense counsel appeared at the location for which the deposition was scheduled, but neither Respondent nor his client appeared.

117. On or about August 18, 2008, defendants filed a Motion to Compel answers to the discovery previously served, and the deposition of Ms. Tocket.

118. Respondent received the Motion to Compel.

119. Respondent failed to inform his clients that a Motion to Compel had been filed.

120. On September 9, 2008, the Honorable J. Wesley Oler, Jr., issued an Order in the nature of a rule to show cause upon the plaintiff, returnable in twenty days, why the relief sought in the Motion to Compel should not be granted.

121. Respondent received the Court's Order to show cause on or about September 11, 2008.

122. Respondent failed to file a response to the Court's Order.

123. From and after March 2008, Ms. Tocket attempted on numerous occasions to contact Respondent to obtain information about the status of the lawsuit, but he failed to respond in any manner.

124. On October 6, 2008, Ms. Tocket and Mr. Tocket informed Respondent that they were terminating the representation.

125. The Tockets engaged successor counsel on October 6, 2008.

126. Successor counsel, Larry A. Weisberg, and Derrek W. Cummings, Esquire, of the firm of McCarthy Weisberg Cummings, P.C., located in Harrisburg, Pennsylvania, repeatedly attempted to contact Respondent on and after October 6, 2008, in order to obtain the Respondent's office file for the Tocket lawsuit.

127. Messrs. Weisberg and Cummings received no communication from Respondent in response to their requests for the file.

128. On October 10, 2008, Mr. Weisberg traveled to Philadelphia from Harrisburg, and made inquiries at Respondent's office suite concerning obtaining the file.

129. On or about October 30, 2008, Mr. Weisberg filed a "Motion to Order the Involuntary Seizure of Plaintiffs' Litigation File From the Law Office of Kenneth A. Rubin, Esquire," in the Cumberland County Court of Common Pleas, seeking an order directing that Respondent's landlord be permitted to enter Respondent's office so that the file could be retrieved.

130. Respondent received the Motion.

131. Respondent forwarded the file to Mr. Weisberg, who received it on November 25, 2008.

132. By his conduct as alleged in paragraphs 104 through 131 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.3, which provides that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(2), (3), (4), which provide that a lawyer shall reasonably consult with the

client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of the matter, and promptly comply with reasonable requests for information;

c. RPC 1.4(b), which provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

d. RPC 1.16(d), which provides that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests; and

e. RPC 3.2, which provides that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

CHARGE V: THE ZIEGLER MATTER

133. On October 12, 2001, Respondent filed a personal injury action in the Court of Common Pleas of Philadelphia County on behalf of Jayphine Ziegler and against the Protestant Advisory Board at Temple University, among others, said action captioned *Zeigler* [sic] *v. Protestant Advisory*

Board at Temple University, et al., No. 1973, October Term 2001 (C.P. Phila.) ("Ziegler lawsuit").

134. On or about June 13, 2002, a panel of arbitrators ruled against the remaining defendant, the Protestant Advisory Board at Temple University, and awarded Ms. Ziegler \$28,000.

135. No appeal was taken from the arbitration award, and the award became final on or about July 19, 2002.

136. On numerous occasions up to and including September 22, 2008, Ms. Ziegler placed telephone calls to Respondent and visited his office to learn the status of efforts, if any, to obtain the arbitration award.

137. In response to the above-described attempts to contact him, Respondent failed entirely to communicate with Ms. Ziegler about her case, including about the status of efforts, if any, to obtain the arbitration award.

138. By his conduct as alleged in paragraphs 133 through 137 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.4(a)(2), (3), (4), which provide that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished, keep the client reasonably informed about the status of

the matter, and promptly comply with reasonable requests for information; and

- b. RPC 1.4(b), which provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

CHARGE VI: FAILURE TO MAINTAIN IOLTA RECORDS AND CONVERSION

139. From at least January 1, 2003 to date, Respondent held IOLTA Account Number 6031342004 at Conestoga Bank (formerly First Penn Bank).

140. From January 1, 2003, to the present, Respondent failed to maintain complete records, including ledgers and checkbook registers, of the receipt, maintenance and disposition of the property of clients or third parties in his possession in connection with client-lawyer matters entrusted to him.

141. On December 20, 2004, Respondent deposited funds totaling \$19,675 in his IOLTA Account on behalf of Florence Gamble and Mathilda and Joseph Schickman.

142. Respondent issued Check #8660 from his IOLTA Account, dated January 5, 2005, payable to the Schickmans, in the amount of \$7000, which was negotiated on February 2, 2005.

143. Respondent issued Check #8740 from his IOLTA Account dated January 7, 2005, payable to Mrs. Gamble in the amount of \$3,478.81, which was negotiated on February 3, 2005.

144. The total of the two checks Respondent issued to the Schickmans and Mrs. Gamble was \$10,478.81.

145. The balance in the IOLTA account during the period December 20, 2004 through January 31, 2005, was for the most part below \$10,478.81, including a balance of \$6,081.54 on January 25, 2005.

146. The IOLTA account fell "out of trust" and continued to fall "out of trust" as a result of Respondent's cash withdrawals and wire transfers to Conestoga Bank Account #6031341204, which is a non-fiduciary account.

147. During the time period December 20, 2004 through January 31, 2005, Respondent converted to his own use a portion of the monies deposited on behalf of the Schickmans and Mrs. Gamble.

148. On February 1, 2005, \$50,000 was deposited in Respondent's IOLTA Account on behalf of Arlene Baran, which deposit allowed the above two checks (#8660 to the Schickmans and #8740 to Mrs. Gamble) to clear the account.

149. The only disbursement from Respondent's IOLTA Account during the period February 1, 2005, through May 31, 2008, to or on behalf of Arlene Baran, occurred on November

20, 2006, by check #9023, which was negotiated on November 29, 2006. This disbursement of \$41,312.95 was payable to the U.S. Department of the Treasury for a federal debt case.

150. During the period February 1, 2005, to November 29, 2006, the IOLTA account for the most part was well below \$41,312.95, including a low balance of \$25.01 on July 31, 2006.

151. The IOLTA account fell "out of trust" and continued to fall "out of trust" as a result of Respondent's cash withdrawals and wire transfers to Conestoga Bank Account #6031341204, which is a non-fiduciary account.

152. On October 31, 2006, Respondent deposited into the IOLTA account a check for \$60,000 from the City of Philadelphia, payable to "Kenneth A. Rubin, Esq. and Jeffrey Wilkins."

153. But for the \$60,000 deposit on October 31, 2006, on behalf of Mr. Wilkins, the \$41,312 disbursement for the benefit of Ms. Baran would not have cleared the account.

154. From February 1, 2005 to November 29, 2006, Respondent converted the monies deposited on behalf of Arlene Baran and Jeffery Wilkins to his own use.

155. By his conduct as alleged in paragraphs 139 through 154 above, Respondent violated the following Rules of Professional Conduct:

- a. (Former) RPC 1.15(a), which provides, in pertinent part, that "[c]omplete records of the receipt, maintenance and disposition" of "property of clients or third persons that is in a lawyer's possession in connection with a lawyer-client relationship" shall be "preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later";
- b. (Former) RPC 1.15(b), which provides, in pertinent part, that "[u]pon receiving property of a client or third person in connection with a lawyer-client relationship, a lawyer shall promptly notify the client or third person," and "a lawyer shall promptly deliver to the client or third person any property 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 such property";
and
- c. RPC 8.4(c), which provides that it is professional misconduct for a lawyer to engage

in conduct involving dishonesty, fraud, deceit
or misrepresentation.

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

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion
Chief Disciplinary Counsel

By 
Amelia C. Kittredge
Disciplinary Counsel
Attorney Registration No. 28760

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VERIFICATION

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

Dec. 9, 2008
Date

Amelia C. Kittredge
Amelia C. Kittredge
Disciplinary Counsel