

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2943 Disciplinary Docket No. 3
 :
 : No. 138 DB 2022
 Petitioner :
 : Attorney Registration No. 85756
 v. :
 : (Philadelphia)
 :
 PEARLETTE VIVIAN TOUSSANT, :
 :
 Respondent :

ORDER

PER CURIAM

AND NOW, this 13th day of February, 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 Pearlette Vivian Toussant is suspended on consent from the Bar of this Commonwealth for a period of one year. 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 02/13/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disciplinary Docket
Petitioner : No. Supreme Court
:
v. : No. 138 DB 2022
: Atty. Reg. No. 85756
PEARLETTE V. TOUSSANT, :
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and by Ramona Mariani, Esquire, Disciplinary Counsel-in-Charge, and Respondent, Pearlette V. Toussant, who is represented by Josh J.T. Byrne, Esquire, file this Joint Petition In Support of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement ("the Joint Petition") 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 Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 207, 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

FILED

12/28/2022

**The Disciplinary Board of the
Supreme Court of Pennsylvania**

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Pearlette V. Toussant, was born in 1974, was admitted to practice law in the Commonwealth on October 18, 2000, and lists a public access address at 1700 Market Street, Fl 10, Philadelphia, PA 19103.

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.

SPECIFIC FACTUAL ADMISSIONS
AND ETHICS RULES VIOLATED

4. On or around March 10, 2021, Respondent, on behalf of the Foxworth Law Firm, sent an email to a potential new client, LK in response to a note LK had posted on LegalMatch.com searching for an attorney to represent her in connection with a property damage case related to LK's house.

5. On March 11, 2021, Respondent followed up with a telephone call to LK.

6. Respondent and LK spoke for about 45 minutes, and LK agreed to engage Respondent and the Foxworth Law Firm to represent her.

7. By email sent on March 17, 2021, Respondent attached an engagement letter and asked LK to:

- a. sign the engagement letter and return it to Respondent with her payment;
- b. provide Respondent with all documentation regarding her property damage;
- c. prepare a written statement beginning with the day she first noticed property damage; and
- d. drop off her materials at Respondent's home address if that would be easier for her.

8. Roderick L. Foxworth, Esquire electronically signed the engagement letter on behalf of the Foxworth Law Firm, which provided, among other things, that:

- a. the law firm would represent LK regarding her interest in her property including encroachment onto the property, current damages to her property, any future damages to her property and "related issues"; and
- b. quoted a fee for the representation of \$250.00 an hour with an initial retainer due of \$2,000.00.

9. The engagement letter described Respondent as a partner in the Foxworth Law Firm; and stated "[w]e look forward together to serve you..."

10. Respondent also acknowledged in her March 17, 2021 email that she "would be doing the laboring on this matter."

11. On March 18, 2021, LK delivered a thumb drive with documents, the engagement letter and her retainer check to Respondent's home.

12. Respondent and LK did not have any personal or sexual relationship prior to LK engaging Respondent's professional services as her attorney.

13. The March 18, 2021 meeting was the first time the two women had met in person.

14. Respondent was aware that Rule of Professional Conduct 1.8(j) prohibits lawyers from engaging in sexual relationships with clients unless a consensual relationship existed between them prior to the inception of the lawyer-client relationship.

15. Nonetheless, shortly thereafter, Respondent began a sexual relationship with her client, LK.

16. On March 22, 2021, Respondent sent a text message to LK in which Respondent stated that the relationship was not prohibited by the Rules of Professional Conduct: "I read the ethical rules and I think we are okay."

17. Respondent verbally told LK that the sexual relationship was "fine" because Respondent and she did not

engage in the sexual relationship until after LK's check had cleared.

18. Respondent admits that on March 22, 2021, she:

advised [LK] that her check had cleared and that the Foxworth Law Firm could begin work on [LK's] potential litigation matter. However, in an abundance of caution, [Respondent] once again reviewed the Rules of Ethical Conduct to ensure that the actions that she had taken in seeking and receiving [LK's] consent was permissible. Satisfied that her actions were consistent with the Rules, Ms. Toussant advised [LK] accordingly. Shortly thereafter, on or about March 23, 2021, [Respondent] and [LK] began their physical relationship.

19. Rule of Professional Conduct 1.8(j) does not have any provision that enables a lawyer to obtain a client's consent, informed or otherwise, in order to waive the conflict and the express prohibition contained in the rule against "sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced."

20. Respondent acknowledges that she commenced the sexual relationship with LK on March 23, 2021.

21. On or around April 22-23, 2021, LK expressed to Respondent the need for a "break" from Respondent and some time alone.

22. Respondent reacted emotionally; for example, in an email sent to LK on April 24, 2021, Respondent, among other things, apologized and admitted that she had overreacted.

23. But three hours later, in another email Respondent sent on April 24, 2021, to LK and Mr. Foxworth, Respondent falsely stated that LK had terminated the Foxworth firm's representation and asked Mr. Foxworth to send LK an invoice.

24. The next day, April 25, 2021, Respondent sent another email to LK stating "I wish no further contact from you for the reasons explained below" which reasons included personal attacks against LK.

25. Contrary to Respondent's representation in her April 24, 2021 email, LK had not terminated the Foxworth firm's representation, and had not even sought or obtained any replacement counsel.

26. By email sent directly to Mr. Foxworth dated April 27, 2021, LK:

- a. asserted that she had not terminated the representation;
- b. asserted that LK had received "many, many text messages while at work on Saturday" from Respondent;

- c. asserted that she had received a voicemail from Respondent on Saturday telling LK she should find another attorney;
- d. asserted that she understood that Respondent had worked for 3 hours on sending out a demand letter to the General Contractor, but LK did not know whether the letter was delivered or received;
- e. asked to be informed about the status of her case;
- f. asked for him to find substitute counsel;
- g. disclosed the personal relationship with Respondent; and
- h. asserted that she did not want any further contact with Respondent but would appreciate professional representation from the Foxworth firm.

27. LK alleges that Mr. Foxworth did not respond to LK's email; although over the next few days he did have some communication with Respondent.

28. Respondent's actions with respect to LK were not consistent with LK's interests and LK's need for legal representation.

29. In subsequent text messages Respondent took the position that she was "never" LK's "attorney of record."

30. Although Respondent never entered an appearance for LK, Respondent acknowledges she represented LK and assertions to the contrary were false, as on or around April 7, 2021, Respondent sent a demand letter on LK's behalf to attorney Richard C. DeMarco, Esq., Lauletta Birnbaum LLC, which stated, among other things, that "[t]he undersigned represents [LK] ...". Respondent included her name on the signature page along with her electronic signature clearly reflecting that Respondent authored the letter.

31. On or around April 28, 2021, Respondent returned LK's "file" by going to LK's house with a friend and hanging on LK's front door an unsecured bag, which included the USB thumb drive of documents LK had provided to Respondent regarding her property damage, along with personal items.

32. By placing LK's file in an unsecure location, which included the materials LK provided to Respondent to use in connection with proposed litigation due to construction at the property next door, Respondent failed to make reasonable efforts to prevent inadvertent or unauthorized access to or disclosure of LK's file.

33. On May 1, 2021, Respondent sent a text message to LK stating "I love you, I care for you"

34. LK responded later that afternoon stating "I do to. But your threats are deeply concerning to me..."

35. Respondent answered stating, among other things, "Let's discuss. I am sorry. I know I hurt you. ... And I have some explaining to do. And ground rules for myself."

36. Thereafter, Respondent and LK briefly reconciled in May of 2021, however, on May 23, 2021, LK permanently ended the relationship.

37. Nonetheless, LK did not terminate the professional relationship at that time and remained in need of legal services due to the deteriorating situation at her home.

38. By text message sent on May 24, 2021, to LK and another person, Respondent once again denied the lawyer-client relationship between herself and LK stating, among other things, "[LK] signed with a law firm, not with me."

39. By text message sent on May 27, 2021, at 7:19 am, LK wrote to Respondent and asked for her assistance stating "I now have 4(!!!) leaks in 2 bedrooms where the rain poured in." Respondent denies having received that text.

40. Later in the day on May 27, 2021, Mr. Foxworth sent an email to LK, stating, among other things, that he had

attached an invoice for the work completed to date, provided a status update on LK's legal matter and stated that he would seek to find LK another attorney.

41. LK responded by email sent on May 27, 2021, and thanked Mr. Foxworth for the invoice and summary, explained that she was working on emergency remediation from the prior night's rain damage, and explained that if possible she would like a replacement attorney who charges by the hour, as her property damages were now extensive.

42. Three days later, on May 30th, Respondent sent a text to LK stating "OK."

43. LK responded and explained "No need, I have found another attorney. I'll email Foxworth to send me a check asap with the remaining funds."

44. By email sent on Sunday, May 30, 2021, at 10:45 am, from Respondent to Mr. Foxworth and LK, Respondent attached "files on [LK] for her control issues." Respondent's attachment included materials that had nothing to do with the professional representation of LK.

45. By email sent on Sunday, May 30, 2021, at 11:41 a.m., from Respondent to Mr. Foxworth and LK, Respondent again engaged in personal attacks against LK.

46. Respondent's personal relationship with LK impaired Respondent's ability to represent LK in a manner consistent with her obligations as set forth in the Rules of Professional Conduct, including honoring client confidence and avoiding conflicts of interest.

47. By email sent May 30, 2021, to Mr. Foxworth, LK formally terminated the professional relationship with the Foxworth firm and sought the return of her files and the remainder of her retainer.

48. By email sent on June 1, 2021, Mr. Foxworth answered LK's May 30, 2021 email and stated that "According to Attorney Pearlette Toussant, you provided everything on a flash drive, and to my understanding that flash drive was returned to you. If that is incorrect, please let me know. I will place your check in the mail today."

49. LK responded that day and clarified that "Yes, that is partially correct; my understanding is that a file with my name was made which also contains the written material she or you have created. So I do have the material I had originally submitted, but I have not received my file yet."

50. Despite the exchange of several more emails between LK and Mr. Foxworth in which she expressly sought file materials that would reflect any work performed by the law

firm, LK received nothing further reflecting work performed beyond a copy of the only letter Respondent had sent on her behalf and the invoice for services provided by Mr. Foxworth. Respondent denies knowledge or involvement in these exchanges.

51. On July 16, 2021, Respondent placed a plastic bin in front of LK's front door labelled "client files" "be kind" "learn to love and forgive."

52. Although Respondent denies that the bin contained any client files, when LK discovered the bin, she asserts it appeared to have already been tampered with and any client files it may have contained were gone.

53. By her conduct as alleged in Paragraphs 3 through 52 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.7(a) (2), which states that except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's

responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

- b. RPC 1.8(j), which states that a lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced.
- c. RPC 1.6(d), which states that a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
- d. RPC 1.16(a), which states that a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: the representation will result in violation of the Rules of Professional Conduct or other law; the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or, the lawyer is discharged.

e. 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.

f. 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

54. The primary Rule violation in this case is RPC 1.8(j) which expressly prohibits sexual relations with a client unless a preexisting relationship existed between the lawyer and client. The remaining rules charged, and Respondent's conduct resulting in those violations, all stem

from the volatile, failed personal relationship with her client. This case presents a textbook example of why the Pennsylvania Supreme Court adopted Rule 1.8(j). While Respondent may have intended no harm to her client at the inception of the relationship, the harm that occurred was and should have been foreseeable. In the years since the Pennsylvania Supreme Court amended Rule 1.8 to include 1.8(j), discipline has been imposed in a number of cases involving Rule 1.8(j) violations. The discipline has ranged from public reprimand to disbarment.

55. Public reprimand cases often involve inappropriate remarks or offensive touching. *See Office of Disciplinary Counsel v. Joshua M. Briskin*, No. 93 DB 2019 (D. Bd. Order 5/16/2019) (imposing a public reprimand where Respondent made sexually charged statements to his client via text message, email, and in person, and attempting to kiss his client on five occasions).¹ In *Office of Disciplinary Counsel v. Christian v. Badali*, No. 8 DB 2016 the Disciplinary Board imposed a summary public reprimand where Respondent engaged

¹ Similar results can be found in other jurisdictions. For example, Tennessee imposed a public reprimand on a respondent for his misdemeanor conviction in Tennessee for placing his hand on the knee of his former client, using profane and provocative language, and hugging her. *Office of Disciplinary Counsel v. Thomas Joseph Dancison*, No. 20 DB 2022 (Order 2/25/2022)

in a consensual sexual relationship with a domestic relations client and lied about it to his partners when the relationship was discovered. Because the discipline imposed in *Badali* was in the form of a summary public reprimand, the Pennsylvania Supreme Court did not have the opportunity to pass on whether a public reprimand is the appropriate discipline for this type of misconduct. Subsequently decided cases indicate that the Court views the violation, expressly prohibited under the Rules, as serious misconduct.

56. In *Office of Disciplinary Counsel v. Jonathan F. Altman*, 228 A.3d 508 (Pa. 2020) Altman engaged in consensual sex on five separate occasions with a vulnerable domestic relations client. In addition, he asserted a frivolous issue and engaged in misrepresentation and conduct prejudicial to administration of justice by seeking excessive fees from his client, and in support thereof, submitting false and misleading affidavits. The Pennsylvania Supreme Court ordered Altman disbarred. In discussing the 1.8(j) violation, the Court discounted Altman's defense that the sexual relationship was consensual. In quoting the Explanatory Comment to Rule 1.8(j), the Court added particular emphasis to the final phrase indicating that the prohibition under the rule is absolute: "[b]ecause of the

significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, *this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.*" *Id.* at 518 (Emphasis added). In determining that disbarment was the appropriate discipline, the Court declined to adopt a *per se* rule that a violation of RPC 1.8(j) must result in disbarment and instead explained that the conclusion that Altman "is unfit to practice law ... is **further** impacted by Altman's failure to ensure that [his client's] interests were properly protected in the course of their business dealings, and his abuse of the legal system to pursue her for expenses he could not properly document and for fees to which he was not entitled." *Id.* at 519 (emphasis added).

57. Two other cases have resulted in license suspensions of one year. *In Office of Disciplinary Counsel v. David Harold Knight*, No. 37 DB 2013 (S. Ct. Order 7/17/2013) (on consent) the Supreme Court imposed a one-year suspension on Knight, who on at least three occasions exchanged his legal services for oral sex with a client experiencing financial hardship. Knight's agreement to enter

into Discipline on Consent to "spare Ms. Doe the embarrassment of having to testify in a public proceeding" and keep her identity anonymous "militat[ed] strongly against a more severe sanction." (Consent Petition, p. 5). More recently, in *Office of Disciplinary Counsel v. Charles C. Shainberg*, No. 41 DB 2022 (S. Ct. Order 10/13/2022) (on consent) the Supreme Court imposed a one-year suspension on Respondent-Shainberg, who, among other things, attempted to engage in a sexual relationship with a vulnerable domestic relations client. As in the *Knight* case, the *Shainberg* consent petition recognized, among other things, that by agreeing to the proposed discipline Respondent-Shainberg spared his client the embarrassment and stress of testifying at a public hearing and permitted her to remain anonymous. In the instant matter, Respondent's agreement to forego a disciplinary hearing and enter into this Joint Consent Petition spares LK the embarrassment and emotional toll of testimony and preserves her anonymity. While LK would testify if necessary, preserving her anonymity and avoiding the embarrassment of testimony are also very important to her.

58. In March of 2021 the United States was slowly reopening after a period of protracted lockdown as vaccines

finally become available. The relationship with LK lasted for a relatively short period of time.

59. For all of these reasons, Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is for Respondent to be suspended for a period of one year.

60. Respondent hereby consents to that discipline being imposed upon her by the Supreme Court of Pennsylvania.

61. Attached to this 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 acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

62. In support of Petitioner's and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a. By virtue of Respondent's entering into the Joint Petition for Discipline on Consent, Respondent has recognized her wrongdoing;
- b. By Respondent's agreement to enter into the Discipline on Consent, Respondent has spared LK the embarrassment and stress of testifying and enables LK to remain anonymous;

c. Respondent has practiced law for 22 years and has no record of discipline.

WHEREFORE, Petitioner and Respondent respectfully request that:

1. Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., the Three-Member Panel of the Disciplinary Board review and approve the above 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 that Respondent receive a one-year license suspension.

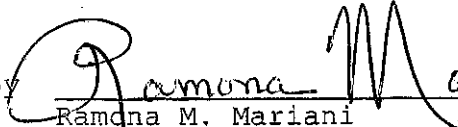
2. Pursuant to Pa.R.D.E. 215(i), the Three-Member Panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter, and that under Pa.R.D.E. 208(g)(1) all expenses be paid by Respondent within 30 days after the notice of the taxed expenses is sent to Respondent.

Respectfully and jointly submitted,

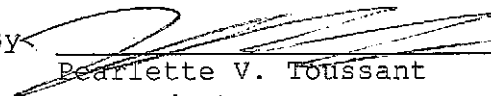
OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL

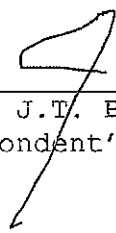
12/28/22
Date

By 
Ramona M. Mariani
Disciplinary Counsel-in-Charge

12-27-22
Date

By 
Pearllette V. Toussant
Respondent

Date

By 
Josh J.T. Byrne, Esquire
Respondent's Counsel


BEFORE THE DISCIPLINARY BOARD OF THE
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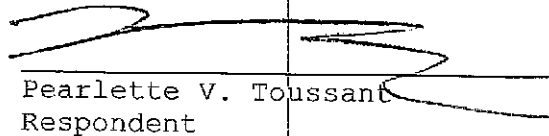
VERIFICATION

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.

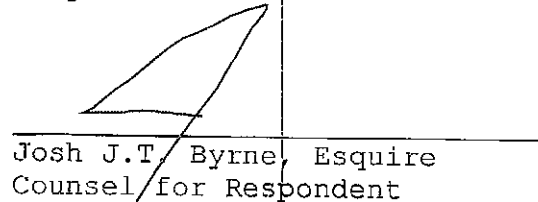
12/28/22
Date


Ramona M. Mariani
Disciplinary Counsel-in-Charge

12-27-22
Date


Pearlette V. Toussant
Respondent

Date


Josh J.T. Byrne, Esquire
Counsel for Respondent

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

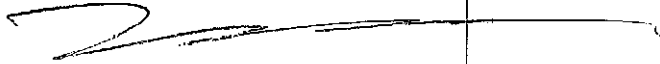
Respondent, Pearlette V. Toussant, hereby states, incorporating the attached Exhibits A-1-A-5, sworn statements of attorneys in the community with knowledge of the relationship complained of in the Joint Petition, and pursuant to the *Office of Disciplinary Counsel v. Jonathan F. Altman*, 228 A.3d 508 (Pa. 2020) (discussing reputation in the community), that she consents to the imposition of a one-year license suspension, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline on Consent 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 an investigation into allegations that she has been guilty of misconduct as set forth in the Joint Petition;

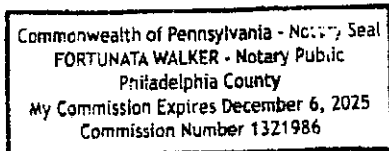
3. She acknowledges that the **material** facts set forth in the Joint Petition are true; and

4. She consents because she knows that if charges predicated upon the matter under investigation were filed, she could not successfully defend against them.



Pearlette V. Toussant
Respondent

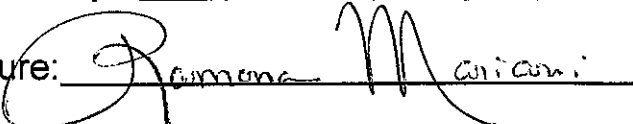
Sworn to and subscribed
before me this 27
day of December, 2022.


Notary Public

CERTIFICATE OF COMPLIANCE

I certify that this pleading 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: Ramona Mariani

Attorney No. (if applicable): 78466