

Selected Pennsylvania Rules of Professional Conduct¹

1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

...

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) A lawyer may counsel or assist a client regarding conduct expressly permitted by Pennsylvania law, provided that the lawyer counsels the client about the legal consequences, under other applicable law, of the client's proposed course of conduct.

1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

¹ For an electronic version of the full Rules of Professional Conduct, go to <https://www.padisciplinaryboard.org/for-attorneys/rules/rule/3/the-rules-of-professional-conduct>.

COMMENT:

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

1.4 Communication

(a) A lawyer shall:

...

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

1.5 Fees

...

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) A lawyer shall reveal such information if necessary to comply with the duties stated in Rule 3.3.

(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interests or property of another;
- (3) to prevent, mitigate or rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used;
- (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (5) to secure legal advice about the lawyer's compliance with these Rules;
- (6) to effectuate the sale of a law practice consistent with Rule 1.17;
- (7) to detect and resolve conflicts of interest from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client; or,

(8) to comply with other law or court order.

(d) 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.

(e) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

COMMENT:

[24] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

1.7 Conflict of Interest: Current Clients

COMMENT:

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For the definition of "informed consent," see Rule 1.0(e).

1.9 Duties to Former Clients

...

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or,
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or,
- (7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(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. The lawyer may retain papers relating to the client to the extent permitted by other law.

1.18 Duties to Prospective Clients

...

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal information which may be significantly harmful to that person, except as Rule 1.9 would permit with respect to information of a former client.

COMMENT:

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

COMMENT:

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the

testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

...

(c) when appearing before a tribunal, assert the lawyer's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the lawyer may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein;

4.4 Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

5.5 Unauthorized Practice of Law; Multijurisdictional Practice Of Law

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

7.4 Communication of Fields of Practice and Specialization

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law. A lawyer shall not state that the lawyer is a specialist except as follows:

. . .

- (4) a lawyer may communicate that the lawyer is certified in a field of practice only when that communication is not false or misleading and that certification is granted by the Supreme Court of Pennsylvania.

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

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 18 DB 2020
Petitioner	:	
	:	File No. C1-16-167
v.	:	
	:	Attorney Registration No. 78182
SIGANG LI	:	
Respondent	:	(Philadelphia)

O R D E R

AND NOW, this 21st day of February, 2020, in accordance with Rule 208(a)(5), Pa.R.D.E., the determination by a Review Panel of the Disciplinary Board of the above captioned matter is accepted; and it is

ORDERED that the said Sigang Li of Philadelphia be subjected to a **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a) and Rule 205(c)(8) of the Pennsylvania Rules of Disciplinary Enforcement.

Costs shall be paid by the Respondent.

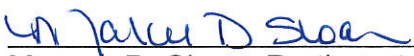
BY THE BOARD:



Chair

TRUE COPY FROM RECORD

Attest:



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

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

OFFICE OF DISCIPLINARY COUNSEL	:	No. 18 DB 2020
Petitioner	:	
	:	
	:	File No. C1-16-167
v.	:	
	:	Attorney Registration No. 78182
SIGANG LI	:	
	:	(Philadelphia)
Respondent	:	

PUBLIC REPRIMAND

Sigang Li, you appear before the Disciplinary Board 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 the Commonwealth. Yet as repugnant as this task may be, it has been determined necessary that you receive this public discipline.

By Order dated February 21, 2020, the Board directed that you receive a public reprimand.

Mr. Li, your conduct concerns your representation of an undocumented immigrant. In 2014, you met with Ms. R.L. and agreed to pursue legal permanent residency on her behalf in exchange for a legal fee of \$4,000.00. Although you had not previously represented Ms. R.L., you failed to explain the basis or rate of your fee to her in writing. You led Ms. R.L. to believe that you would pursue a cancellation proceeding on her behalf, but failed to explain that cancellation is only available to those individuals in removal proceedings. At the time, Ms. R.L. was not in removal proceedings. Thereafter, you filed a frivolous Form I-589, Application for Asylum and for Withholding of Removal, on Ms. R.L.'s behalf without her knowledge or consent, knowing that such application would be referred to the Executive Office for Immigration Review for removal

proceedings. The frivolous I-589 misrepresented Ms. R.L.'s factual circumstances. It stated that Ms. R.L. was seeking withholding of removal under the Convention Against Torture ("CAT"), and further stated Ms. R.L. was afraid to return to Mexico because she would likely be "kidnapped by drug dealers or mafias for money or other ransoms." Ms. R.L. never told you she was afraid to return to Mexico because she would be tortured. In fact, Ms. R.L. was unaware that you were applying for withholding of removal under CAT. Your actions exposed Ms. R.L. to an unnecessary and unacceptable risk of removal from the United States. In September 2015, Ms. R.L. hired another attorney to represent her.

By your conduct, you violated the following Rules of Professional Conduct ("RPC"):

1. 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;
2. RPC 1.2(a) – A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued;
3. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;
4. 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;

5. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation;
6. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law or fact for doing so that is not frivolous;
7. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
8. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
9. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

By your conduct, you violated the following regulations:

1. 8 CFR § 1002.103(c) – An immigration practitioner shall be subject to disciplinary sanctions if he knowingly or with reckless disregard makes a false statement of material fact or law, or willfully misleads, misinforms, threatens, or deceives any person, concerning any material and relevant matter relating to a case;
2. 8 CFR § 1002.103(n) - An immigration practitioner shall be subject to disciplinary sanctions if he engages in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process;

3. 8 CFR § 1002.103(o) – An immigration practitioner shall be subject to disciplinary sanctions if he fails to provide competent representation to a client;
4. 8 CFR § 1002.103(p) – An immigration practitioner shall be subject to disciplinary sanctions if he fails to abide by a client's decisions concerning the objectives of representation and fails to consult with the client as to the means by which they are to be pursued;
5. 8 CFR § 1002.103(r)(1) – An immigration practitioner shall be subject to disciplinary sanctions if he fails to maintain communication with the client throughout the duration of the client-practitioner relationship...in order to properly maintain communication, the practitioner should promptly inform and consult with the client concerning any decision or circumstance with respect to which the client's informed consent is reasonably required; and
6. 8 CFR § 1002.103(r)(2) – An immigration practitioner shall be subject to disciplinary sanctions if he fails to maintain communication with the client throughout the duration of the client-practitioner relationship...in order to properly maintain communication, the practitioner should reasonably consult with the client about the means by which the client's objectives are to be accomplished.

We note that you have no history of discipline in over twenty-two years of practice as an attorney.

Mr. Li, your conduct in this matter is public. This Public Reprimand is a matter of public record and shall be posted on the Disciplinary Board's website at

www.padisciplinaryboard.org

It is the Board's duty to reprimand you for your misconduct. Any subsequent violations on your part can only result in further discipline and perhaps more severe sanctions. We sincerely hope that you will conduct yourself in such a manner that future disciplinary action will be unnecessary.

Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania on July 22, 2020.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board by videoconference on July 22, 2020.

Sigang Li

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 68 DB 2020
Petitioner	:	
	:	
v.	:	Attorney Registration No. 79582
	:	
DAVID CHARLES AGRESTI,	:	
Respondent	:	(Erie County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on May 8, 2020, Petitioner, Office of Disciplinary Counsel, charged Respondent, David Charles Agresti, with violation of the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement in connection with his representation of three separate clients. On June 22, 2020, Respondent filed a counseled Answer to Petition for Discipline. On July 20, 2020, Respondent filed a Supplemental Answer to Petition.

Following a prehearing conference on July 30, 2020, a District IV Hearing Committee ("Committee") conducted a disciplinary hearing on September 10, 2020. Petitioner presented Administrative Exhibits I, II and III and Petitioner's Exhibits 1 through 39, which were admitted into evidence. Petitioner presented the testimony of four witnesses. Respondent introduced Respondent's Exhibit A, which was admitted into evidence. Respondent testified on his own behalf and presented the testimony of five witnesses.

On October 28, 2020, Petitioner filed a Brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for no less than one year and one day. Respondent filed a Brief to the Committee on December 10, 2020, and requested that the Committee recommend to the Board that a public reprimand be imposed.

By Report filed on February 9, 2021, the Committee concluded that Respondent violated the rules as charged in the Petition for Discipline and recommended that he be suspended for a period of three years. The Committee further recommended that upon conclusion of Respondent's suspension and assuming successful reinstatement to the practice of law, Respondent be placed on probation for one year with a practice monitor to review the maintenance of his financial accounts.

On March 11, 2021, Respondent filed a Brief on Exceptions and requested oral argument before the Board. Respondent contended that a public reprimand is the appropriate sanction in this matter. On March 23, 2021, Petitioner filed a Brief Opposing Exceptions and requested that the Board dismiss Respondent's exceptions and recommend a three year suspension to the Court.

On April 12, 2021, a three-member panel of the Board held oral argument.

The Board adjudicated this matter at the meeting on April 14, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement 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 is David Charles Agresti, born in 1969 and admitted to practice law in the Commonwealth in 1997. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of attorney discipline.

4. Following his admission to the practice of law, Respondent worked in his family's law firm. He then worked as an assistant district attorney in Erie County from 2000 to 2005 and later as a part-time public defender in Erie County and as an assistant solicitor for the Erie International Airport. N.T. 209, 210.

5. Since 2010, Respondent has engaged in the private practice of law. N.T. 210.

6. At all material times, Respondent did not maintain a trust account in which he could deposit Rule 1.15 Funds and hold them separately from his own property. Administrative Exhibit ("AE") I; AE III; Petitioner's Exhibit ("PE") 8; N.T. 137-139.

7. Respondent did not report a trust account on his 2018-2019 and 2019-2020 attorney registration forms and indicated that he did not have any accounts that required mandatory reporting pursuant to Rule 219(d)(1)(iii)-(v). PE 8; N.T. 138-139.

The Parth S. Bhatia Matter

8. On May 14, 2019, Parth S. Bhatia ("Parth") and his girlfriend, Cheyanne Davis, were arrested and charged in Erie County for various felony and misdemeanor drug related offenses. AE I; AE II; N.T. 13.

9. Respondent received a phone call from Nathaniel Pellegrino, the brother of Ms. Davis, requesting that Respondent assist in getting Ms. Davis released, which he did. AE I; AE II; N.T. 13-18.

10. On that same day, Respondent spoke with Parth, still in custody, regarding the charges against him. Parth declined to hire Respondent at that time but eventually requested that Respondent contact Parth's parents to advise them of the arrest. N.T. 218-221.

11. The next day, May 15, 2020, Respondent called Parth's father, Sanjay Bhatia ("Mr. Bhatia"), to inform him of Parth's arrest and pending charges. Respondent advised Mr. and Mrs. Bhatia that they should travel to Erie to visit Parth in custody. AE 1, AE 11; N.T. 43.

12. Upon Respondent's advice, the Bhatias traveled to Erie. When they arrived, they met with Respondent, who discussed with them the seriousness of the charges against Parth. AE 1; AE 11; N.T. 45.

13. Respondent informed the Bhatias that he typically charged \$125,000 for cases similar to Parth's, but he was willing to represent Parth for \$100,000.

Respondent represented to the Bhatias that Parth assured him that they could pay up to \$100,000 for Parth's representation. AE 1; AE 11.

14. Respondent and the Bhatias eventually agreed that Mr. Bhatia would pay Respondent \$50,000 to commence representation. PE 1; N.T. 43-46.

15. Respondent presented a "Fee Agreement for Legal Representation Regarding a Criminal Matter" ("Fee Agreement") to the Bhatias. The Fee Agreement stated that "this agreement will be deemed a retainer agreement" for the representation of Parth and that the retainer was \$50,000. N.T. PE 1; 16-19, 34, 44-45.

16. The Fee Agreement noted that Respondent's hourly rate was \$250.00, and that Respondent would keep, maintain, and prepare written statements for the services rendered. PE 1.

17. Respondent's Fee Agreement did not include any language that would put a client on notice that his fee was nonrefundable. PE 1; N.T. 91.

18. Respondent requested immediate payment of the \$50,000 retainer so that he could prepare a motion for bond reduction on behalf of Parth. N.T. 77-83.

19. Respondent then accompanied Mr. Bhatia to a local branch of Citizens Bank so that Mr. Bhatia could issue Respondent \$50,000 via check. AE 1; AE 11; N.T. 45-46, 78-80.

20. While at Citizen's Bank, Respondent instructed Mr. Bhatia to purchase two cashier's checks each in the amount of \$5,000 made payable to the Erie County Clerk of Courts. Respondent told Mr. Bhatia to bring them to the bond hearing. AE I; AE II; N.T. 46, 80-81.

21. On May 16, 2019, \$50,000 was drawn from the Bhatias' joint checking account and paid to Respondent. PE 9; PE 28; N.T. 45-46, 139-140.

22. As recently as May 14, 2019, just two days prior to Respondent's receipt of the Bhatias' funds, the balance of Respondent's personal checking account was negative \$61.27. AE I; AE II; AE III; PE 28; N.T. 141.

23. Respondent deposited the Bhatias' \$50,000 check in his Marquette Savings Bank personal checking account. AE I; AE II; AE III; PE 9; PE 28; N.T. 139-140, 238.

24. Respondent did not deposit the check from the Bhatias in a trust account that was to be drawn upon as earned. AE I; AE II; AE III; PE 1; PE 9; PE 28.

25. In addition to the Bhatias' check, Respondent also deposited other clients' funds in his personal checking account, which increased his balance to \$50,688.73. AE I; AE II; AE III; PE 9; PE 28.

26. On May 16, 2019, prior to the scheduled bond reduction hearing, the Bhatias spoke with Parth, who informed them that he was reaching out to additional lawyers to review his case. Parth requested that his parents assist him in finding additional counsel. AE 1; AE II; N.T. 20, 34, 47.

27. Respondent argued Parth's motion for bond reduction, which was denied. AE I; AE II; AE III, N.T. 46-47.

28. On or about May 16, 2019, Mr. Bhatia realized that the copy of the Fee Agreement that Respondent provide to him was missing some pages. Mr. Bhatia sent a text message to Respondent requesting the missing pages. Respondent gave the Bhatias a copy of the Fee Agreement on May 19, 2020. PE 2; N.T. 22-23.

29. That same day, Respondent asked a jail guard to request that Parth call him from the Erie County Prison. Respondent wanted Parth to tell his parents to "back

off” because Parth instructed them to seek out second opinions from other attorneys. N.T. 18-19.

30. During this conversation, Respondent inquired about the names of the attorneys that Parth and his parents had contacted and stated that the other lawyers would want the retainer that the Bhatias paid Respondent. N.T. 23-24.

31. The Bhatias paid the straight bond of \$100,000 for Parth’s release on or about May 17, 2019. AE I; AE II; AE III; N.T. 19-20, 46-47.

32. After Parth’s release, Respondent met with him on May 20, 2019. During this meeting, Parth told Respondent that Parth had retained other counsel to represent him and therefore, was terminating Respondent’s representation. AE I; AE III; PE 2; N.T. 23.

33. On May 20, 2019, Parth sent an email to Respondent confirming his termination. *Id.*

34. In response to Parth’s email, Respondent misrepresented to Parth that “[he] just received notice from [his] bank that the [payment of the] retainer that [Parth is] contractually bound by had been stopped.” Respondent also threatened that “I will be filing a lawsuit against you and your family members, based on the contract, prior to your next court appearance.” *Id.*

35. Neither Mr. and Mrs. Bhatia, nor Parth, requested a stop-payment on the \$50,000 check. AE I; AE II; AE III; PE 28; N.T. 25, 47.

36. Eight days after receiving notice that Parth had terminated Respondent’s representation, on May 28, 2019, Respondent wrote a check for \$4,000 made payable to Cathedral Preparatory School, bringing his checking account balance to \$43,317.54. AE III; PE 2; PE 9; PE 10; PE 28; N.T. 141-142.

37. On May 30, 2019, Mr. Bhatia emailed Respondent requesting an itemized invoice for the services that Respondent provided to date, that Respondent return the remainder of the unearned balance of the retainer to Mr. Bhatia immediately, and that Respondent return Parth's passport. AE I; AE III; PE 3.

38. Respondent replied to Mr. Bhatia's email on May 31, 2019, alerting him that he would be out of town for the weekend but upon his return he would address the remaining retainer and the lawsuit that he was preparing to file against the Bhatias. AE I; AE III; PE 4.

39. On June 3, 2019, Respondent followed up on his May 31, 2019 email to Mr. Bhatia stating: "It is well established, in Pennsylvania, that retainers for criminal matters are deemed to be earned at the time of their execution." The email also noted that "[Respondent] contacted the Pennsylvania Bar Association regarding the Rules of Professional Conduct and Ethics and spoke with fellow criminal defense attorneys since [his] representation of Parth. [He was] confident in [his] position, legally, that the retainer should not be returned." He went on to state that "[nevertheless], [he was] willing to discuss settling this matter with [Mr. Bhatia] or [his] attorney." AE I; AE III; PE 5.

40. Between May 28, 2019 and June 10, 2019, Respondent made several personal disbursements from his personal checking account totaling \$1,474.26. AE III; PE 28.

41. On or about June 10, 2019, Respondent's personal checking account balance was only \$41,843.28, which was \$2,344.22 below the remaining \$44,187.50 of the Bhatias' retainer. *Id.*

42. As of June 10, 2019, Respondent had returned Parth's passport but had still not provided the Bhatias' an itemized statement or the remainder of the retainer. AE I; AE II; PE 6; PE 14; PE 29; PE 30; PE 31; N.T. 59, 61-62, 67.

43. On June 14, 2019, Respondent withdrew \$23,500 to purchase a boat. This transaction brought his personal checking account balance to \$20,478.28, which was \$23,709.22 below the remaining \$44,187.50 of the Bhatias' retainer. AE I; AE II; AE III; PE 11; PE 28; N.T. 142-144.

44. Between June 11 and June 19, 2019, Respondent made several additional withdrawals from his personal checking account for personal expenses, bringing the balance of his account to \$16,193.13, which was \$27,994.37 below the Bhatias' retainer amount of \$44,187.50. AE III; PE 1; PE 7; PE 28.

45. On July 9, 2019, Respondent withdrew an additional \$3,005 from his personal checking account for personal expenses and brought his personal checking account balance to \$7,470.61, which was \$36,716.89 below the Bhatias' remaining \$44,187.50 retainer amount. *Id.*

46. Respondent made an additional withdrawal on July 23, 2019 for his personal benefit and brought his personal checking account balance down to \$4,130.93, which was \$40,056.56 below the Bhatia's remaining retainer amount of \$44,187.50. *Id.*

47. As of August 23, 2019, Respondent's checking account was negative \$40.40. AE I; AE II; AE III; PE 28; N.T. 146-147.

48. In a letter dated September 6, 2019, Respondent proposed to reimburse Mr. Bhatia the unearned portion of the retainer in the amount of \$4,187.50 by October 31, 2019. AE I; AE II; PE 7; PE 14; PE 31; N.T. 62-63.

49. On September 17, 2019, Respondent provided Mr. Bhatia an invoice entitled "Statement of Services Rendered," which was dated August 10, 2019, where Respondent calculated that he had earned a total fee of \$5,812.50 based on his \$250 hourly rate for his initial consultations with Parth and the Bhatias, inquiries made to the police regarding the charges against Parth, his preparation of a motion for bond reduction, and his appearance at the bond reduction hearing. AE I; AE II; PE 1; PE 7; PE 31.

50. Respondent sold his boat for \$18,000 and deposited the proceeds of the sale to his personal checking account. AE III; PE 11; PE 16; PE 28; N.T. 146-149, 151-152.

51. By September 23, 2019, Respondent's personal checking account balance was negative \$400.40. AE I; AE II; AE III; PE 28; N.T. 146-147.

52. Respondent wrote a check dated November 1, 2019 to Mr. Bhatia for \$5,000 to return a portion of the remaining retainer using the proceeds from the boat sale. AE I; AE II; PE 15; PE 28; N.T. 67.

53. Respondent did not use any of the remaining proceeds from the sale of the boat to return any of the outstanding \$39,187.50 of the Bhatias' retainer. PE 11; PE 16; PE 28; N.T. 146-149.

54. Respondent did not provide the Bhatias any additional reimbursements for the outstanding balance of their retainer. This caused the Bhatias to file a claim with the Pennsylvania Lawyers Fund for Client Security, which awarded them \$39,188.50 in August 2020. AE I; AE II; AE III; PE 36; N.T. 67-69.

55. On August 28, 2020, Respondent made full restitution to the Pennsylvania Lawyers Fund for Client Security. Respondent's Exhibit A; N.T. 243-244.

56. On March 25, 2019, Respondent's personal checking account was negative \$1,045.53. AE I; AE II; AE III; PE 28.

57. J. David Eubank engaged Respondent to represent him in connection with his employment dispute with the Erie County School District.

58. On April 9, 2019, Respondent and Mr. Eubank entered into a fee agreement entitled "Fee Agreement for Legal Representation Regarding Employment at Erie School District," which stated Respondent would charge Mr. Eubank \$275 per hour. AE I; AE II; AE III; PE 17; N.T. 150-151.

59. On April 9, 2019, Respondent deposited into his personal checking account at PNC Bank a retainer check from Mr. Eubank for \$10,000 for legal fees associated with Mr. Eubank's matter. AE I; AE III; PE 18; PE 28; N.T. 150-152.

60. Respondent did not deposit the check from Mr. Eubank in a trust account that was to be drawn upon as earned. AE I; AE II; AE III; PE 17; PE 18; PE 19; PE 28; N.T. 152-155.

61. Between April 9, 2019 and May 7, 2019, Respondent's personal PNC checking account balance constantly ran a deficiency and was below the amount of entrusted funds for Mr. Eubank. *Id.*

62. By May 9, 2019, Respondent concluded his representation of Mr. Eubank, at which point Respondent had billed 32.75 hours and had earned \$9,006.25 of the \$10,000 retainer provided by Mr. Eubank. Respondent retained the remaining \$993.75 in his checking account. AE I; AE II; AE III; PE 17; PE 19; PE 28.

63. Respondent did not refund Mr. Eubank the remaining portion of the \$10,000 retainer paid by Mr. Eubank until October 2, 2019. AE I; AE II; AE III; PE 17; PE 19; PE 28; N.T. 153-155.

64. Respondent was able to refund Mr. Eubank \$1,000 with the proceeds he received from the sale of the boat that he purchased with the Bhatias' retainer funds. AE I; AE II; PE 16; PE 20; PE 28; N.T. 153-155.

The Brittany Mentley Abbey Matter

65. On March 28, 2019, Brittany Mentley Abbey engaged Respondent to represent her in a divorce, custody, and support matter. AE I; AE II; AE III; PE 21; N.T. 104, 106.

66. Respondent and Ms. Abbey agreed that Respondent would represent Ms. Abbey for \$3,500, that Ms. Abbey would immediately provide Respondent \$1,750 and the remaining balance within forty-five days of March 28, 2019, which was to be billed at an hourly rate of \$250. AE I; AE II; AE III; PE 21; N.T. 107.

67. On March 28, 2019, Respondent cashed a check from Matthew Billingsley, Ms. Abbey's then boyfriend, in the amount of \$1,750. AE I; AE II; PE 21; PE 22; N.T. 107-109.

68. Respondent did not deposit the check from Mr. Billingsley in a trust account that was to be drawn upon as earned. AE I; AE II; AE III; PE 22; PE 28.

69. Prior to being represented by Respondent, Ms. Abbey was represented in the same matter by Thomas Brasco, Esquire, who was holding \$785.45 in retainer funds for Ms. Abbey. AE I; AE II; PE 23; N.T. 105, 109-110; 156-158.

70. On April 2, 2019, Respondent emailed Mr. Brasco to inform him that Ms. Abbey had retained Respondent and to request that Mr. Brasco forward the balance of the retainer that Mr. Brasco was holding on behalf of Ms. Abbey to Respondent. AE I; AE II; PE 23; N.T. 156-157.

71. Mr. Brasco shortly thereafter issued Respondent a check for the remaining retainer amount. AE I; AE II; PE 24; N.T. 157-158.

72. On April 3, 2019, Respondent cashed the check he received from Mr. Brasco on behalf of Ms. Abbey. AE I; AE II; AE III; PE 24; PE 28; N.T. 157-158.

73. Respondent failed to deposit the check from Mr. Brasco into a trust account to be drawn upon as earned. *Id.*

74. Ms. Abbey's mother, Shannon Mentley, wrote two additional checks to Respondent on May 16, 2019 and June 11, 2019, each in the amount of \$500 for retainer funds on behalf of Ms. Abbey. AE I; AE II; AE III; PE 25; N.T. 157-158.

75. In total, Respondent was given \$3,534.25 in advanced fees for Ms. Abbey's representation. AE I; AE II; AE III; PE 23; PE 24; PE 25; PE 27; N.T. 157-158.

76. As of June 13, 2019, based on the statement of services prepared by Respondent, he spent eight hours on Ms. Abbey's representation, which totaled \$2,000. Respondent was still entrusted with at least \$1,534.25 in retainer funds provided to him. AE I; AE II; AE III; PE 21; PE 22; PE 23; PE 24; PE 25; PE 26; PE 27; PE 28.

77. By August 25, 2019, Respondent's personal checking account at Marquette Savings Bank was negative \$40.40. AE I; AE II; AE III; PE 28.

Additional Findings

78. Respondent presented three character witnesses.

79. Dexter Au is a roofing contractor in Ohio. Respondent represented Mr. Au in various matters and Mr. Au found Respondent to be a very responsive lawyer. N.T. 163 – 173.

80. Father John Detisch is the pastor of Saint Jude the Apostle Church in Erie and is a chaplain to the Erie Police Department. He has been a priest since 1988 and has known Respondent for more than 30 years. N.T. 181.

81. Father Detisch testified that Respondent is a very good person and close with his family, and is a lawyer who worked well with his clients. N.T. 182-183.

82. Joey Evans, Jr. is the teen center program director at the Erie Downtown YMCA and met Respondent when Respondent volunteered at the YMCA. N.T. 203.

83. Mr. Evans testified that Respondent is a caring, compassionate individual who volunteered in order to have an impact, not to make himself look good. N.T. 204.

84. Respondent testified on his own behalf.

85. In addition to his private practice of law, Respondent is an adjunct professor of history and law at Gannon University in Erie. N.T. 208, 257.

86. Respondent works with a nonprofit that has developed a curriculum for active duty state troopers to enter classrooms and teach. At this time, Respondent does not receive a salary for his work. N.T. 257-258.

87. Respondent's career intention is to leave the practice of law and go full-time as a professor, while moving forward with the nonprofit and volunteer work. N.T. 258-259.

88. As to the Bhatia matter, Respondent admitted that the fee agreement did not contain language indicating that the retainer was nonrefundable. N.T. 234.

89. Respondent further admitted that he was bound by the terms of a written fee agreement, including the Bhatia fee agreement. *Id.*

90. Even though Respondent agreed that the fee agreement did not state that the monies were nonrefundable, Respondent testified that he believed the fee was nonrefundable and the funds could be used at his "discretion." N.T. 239.

91. Respondent claimed he discussed the fee with Parth and that it was a one-time fee. *Id.*

92. Respondent admitted that at the time he represented Parth Bhatia, he did not maintain an IOLTA account. *Id.*

93. Respondent testified that he was aware of what an IOLTA was but he did not appreciate the necessity to maintain one. N.T. 235.

94. Respondent utilized one bank account for both personal matters and professional business. *Id.*

95. Reflecting on his actions, Respondent testified that he should have "probably placed the amount [Bhatia funds] in not even an IOLTA account, but an actual separate account and not touched any of it." N.T. 240.

96. During the time Respondent practiced in his family's law firm, he had no responsibility for practice management, such as bookkeeping, but was aware that an IOLTA account was in place and was maintained by the firm's office manager. N.T. 210-211, 274-275.

97. Respondent reported an IOLTA account on his 2020-2021 attorney registration form, but failed to list a business/operating account as required by the rules. PE-8.

98. Respondent did not apologize to this clients and did not express remorse for his misconduct.

99. Respondent continued to claim that he had an oral agreement with the Bhatias that overrode his written fee agreement. N.T. 240-242.

100. Respondent explained that he has had credit problems in the past and was able to reimburse \$39,188.50 to the Pennsylvania Lawyers Fund for Client Security after he was able to get a loan. N.T. 244-245.

101. On or about August 12, 2019, a lien for \$3,172.37 was recorded against Respondent in the Court of Common Pleas of Erie County, Pennsylvania for Personal Income Tax assessed on February 10, 2015 and December 4, 2018, and for interest computed as of October 19, 2019. Respondent has not satisfied the lien. *Id.* at ¶ 89.

102. On December 1, 2014, Northwest Savings Bank filed a complaint and confession of judgment in the amount of \$70,073.45 against Respondent in the Erie County Court of Common Pleas, docket No. 2014-31874. This judgment was subsequently revived after a writ of revival was issued on January 11, 2019 in the Erie County Court of Common Pleas, docket No. 2019-10075. *Id.* at ¶¶ 90-91.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement "Pa.R.D.E.":

In the Parth Bhatia Matter:

1. RPC 1.5(a) - A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;
2. 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;
3. RPC 1.15(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property;
4. RPC 1.15(f) - When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved;
5. RPC 1.15(i) - A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn

by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner;

6. 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 ... refunding any advance payment of fee or expense that has not been earned or incurred;

7. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

8. Pa.R.D.E. 219(d)(1)(iii), (iv), (v) - On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures: (1) The form shall set forth: ... (iii) The name of each Financial Institution ... in which the attorney ... held funds of a client or a third person The form shall include the name and account number for each account in which the attorney held such funds. . . . For purposes of this subparagraph, the phrase 'funds of a client or a third person ... ' means funds that belong to a client or third person and that an attorney receives: (A) in connection with a client-lawyer relationship ... (iv) Every account not reported under subparagraph (iii), that held funds of a client or a third person, and over which the attorney had sole or shared signature

authority or authorization to transfer funds to or from the account, during the same time period specified in subparagraph (iii) ... [and] (v) Every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.

In the J. David Eubank Matter:

1. 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;
2. RPC 1.15(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property;
3. RPC 1.15(i) - A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner;

4. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

5. Pa.R.D.E. 219(d)(1)(iii), (iv), (v) - On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures: (1) The form shall set forth: ... (iii) The name of each Financial Institution ... in which the attorney ... held funds of a client or a third person The form shall include the name and account number for each account in which the attorney held such funds. . . . For purposes of this subparagraph, the phrase 'funds of a client or a third person ... ' means funds that belong to a client or third person and that an attorney receives: (A) in connection with a client-lawyer relationship ... (iv) Every account not reported under subparagraph (iii), that held funds of a client or a third person, and over which the attorney had sole or shared signature authority or authorization to transfer funds to or from the account, during the same time period specified in subparagraph (iii) ... [and] (v) Every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.

In the Brittany Mentley Abbey Matter:

1. 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;
2. RPC 1.15(i) - A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner; and
3. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

Here, the Board considers the allegations against Respondent that he committed professional misconduct in three client matters. Our review follows the filing of the Committee's Report, wherein it concluded that Respondent engaged in professional misconduct and recommended a three year period of suspension followed by a one year period of probation with a practice monitor after reinstatement; the parties' exceptions to the Committee's Report; and oral argument before a Board panel. Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John Grisgby***, 425 A.2d 730, 732 (Pa. 1981). Upon our review, we conclude that Petitioner met its burden of proving that

Respondent violated the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement charged in the Petition for Discipline.

The record established that during the time frame in question, Respondent engaged in the private practice of law and failed to properly safeguard the property of three separate clients, which resulted in the misappropriation of approximately \$46,722.

The most serious of the three matters is that of Parth Bhatia. In May 2019, Respondent entered into a written fee agreement with his client that required the advance payment of a \$50,000 retainer with an hourly rate of \$250. Significantly, the written agreement did not state that the fee was nonrefundable. The Bhatias paid Respondent \$50,000 as a retainer. Respondent failed to place any portion of the \$50,000 retainer in an IOLTA or other trust account to be drawn upon as earned. Instead, Respondent deposited the check into his personal account and immediately began to disburse the funds for personal expenditures, despite the fact that he had not earned those funds.

After approximately five days, Parth Bhatia terminated Respondent's representation and sought an accounting of services rendered and a refund of the unearned portion of the advance fee. Unfortunately, Respondent did not accept the Bhatias' decision to terminate his representation in a professional manner. He attempted to refute that he owed any monies to the Bhatias and on various occasions misrepresented to the Bhatias that: the \$50,000 advance was "nonrefundable" despite the absence of such a provision in the written terms of his fee agreement; retainers for criminal matters "are deemed to be earned at the time of their execution"; and his bank notified him the Bhatias had stopped payment of the \$50,000 check. Troublingly, Respondent used his license as an attorney to threaten the Bhatias with a lawsuit if and when they terminated his representation. Respondent continued to use the Bhatias'

funds, even after the Bhatias terminated his services and he was aware there was a dispute concerning the funds.

Despite several requests from the Bhatias, Respondent initially refused to refund any portion of the \$50,000, but eventually accounted for his services on September 17, 2019 and made a partial refund of \$5,000 on November 1, 2019, nearly six months after the Bhatias' initial request. The timing is significant, as the partial refund occurred after Petitioner had become involved in the matter. Finally, having been frustrated in their attempts to obtain a refund of the large balance of their retainer fee, the Bhatias were forced to seek the assistance of the Pennsylvania Lawyers Fund for Client Security, which paid a claim to the Bhatias in August 2020. Respondent reimbursed \$39,188.50 to the Fund on August 28, 2020.

Similar to the Bhatia matter, Respondent failed to protect Mr. Eubank's and Ms. Abbey's funds. Although Respondent successfully represented Mr. Eubank and earned most of the \$10,000 advance in the Eubank matter, his commingling and misuse of entrusted funds also contributed to his months-long delay in refunding the \$1,000 unearned portion to his client. In Respondent's representation of Ms. Abbey, he immediately cashed the checks for advance fees that he received on his client's behalf, failing to deposit the proceeds in a trust account to be drawn upon as earned. All told, Respondent was entrusted with fee advances totaling \$3,534.25 on behalf of Ms. Abbey and as of June 13, 2019, Respondent had spent eight hours on Ms. Abbey's matter for a total of \$2,000, was still entrusted with at least \$1,534.25, but by August 25, 2019, the balance in his personal account was in the negative.

There is no dispute that during the time frame in question, Respondent failed to maintain an IOLTA Account and used a single account for both personal and

professional purposes, commingling his own funds with client funds and otherwise misusing funds that did not belong to him. Respondent failed to properly report accounts on his attorney registration forms. As to Respondent's failure to maintain an IOLTA account, we note that he practiced law with his family firm for a period of time and was aware that trust and operating accounts were utilized by the firm, even though he was not personally tasked with the bookkeeping responsibilities. Inexplicably, Respondent did not utilize proper accounts when he practiced on his own. Respondent's testimony on this issue was sparse and did not shed much light on his actions; he simply stated that he did not appreciate the necessity of maintaining an account to safeguard client funds. For an attorney who has practiced law for more than two decades, this explanation rings hollow. Moreover, Respondent failed to demonstrate that he has remediated his practice problems by establishing proper accounts and showing he understands how to safeguard client funds in compliance with the rules. According to the record, Respondent has opened an IOLTA account, but it does not appear that he has opened a business/operating account as is required.

The record before us reveals numerous weighty aggravating factors, which serve to increase the severity of the recommended sanction. In aggravation, we find that Respondent did not agree to refund the initial \$5,000 portion of the unearned fee to the Bhatias until after Petitioner commenced its investigation, and Respondent failed to make full restitution until after the Fund paid the Bhatias' claim. The fact that Respondent delayed payment weighs against his claims that he has accepted responsibility and shown remorse. Similarly, although Respondent acknowledged rules violations in his Answer to Petition for Discipline, he maintained his self-serving claims throughout the disciplinary hearing that he was entitled to keep the entire fee advance of \$50,000

because the Bhatias somehow knew his fee was “nonrefundable.” Respondent’s position offsets any mitigation for acknowledging wrongdoing. We find that Respondent failed to demonstrate sincere and credible remorse.

In mitigation, we consider that Respondent has practiced law since 1997 and has no prior record. Respondent provided testimony from a client who spoke about Respondent’s compassion for his clients. Respondent presented testimony of two other witnesses as to his good reputation in the community. However, we conclude, as did the Committee, that the mitigating evidence put forth by Respondent is not sufficiently weighty or convincing to balance the weighty aggravating factors and to impact our ultimate decision on discipline.

Having concluded that Respondent violated the rules charged in the Petition for Discipline, we turn to the appropriate discipline to address his serious misconduct. The Committee recommended that Respondent be suspended for three years, and that upon reinstatement, if such were to occur, Respondent be placed on probation for one year with a practice monitor. Respondent filed exceptions to the Committee’s recommendation, contending that his misconduct at most warrants a public reprimand. Petitioner opposed Respondent’s exceptions, contending that the Committee’s recommended discipline is supported by the facts and the decisional law. Having considered the parties’ arguments, we conclude that Respondent’s exceptions are without substance. We further conclude that the Committee’s reasoning is sound and we concur that a three year period of suspension is warranted.

In looking at the general considerations governing the imposition of final discipline, it is well-established that each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***,

472 A.2d 186 (Pa. 1983). In order to “strive for consistency so that similar misconduct is not punished in radically different ways,” **Office of Disciplinary Counsel v Anthony Cappuccio**, 48 A.3d 1231, 1238 (Pa. 2012) (quoting **Lucarini**, 472 A.2d at 190), the Board is guided by precedent for the purpose of measuring “the respondent’s conduct against other similar transgressions.” **In re Anonymous No. 56 DB 94**, 28 Pa. D. & C. 4th 398 (1995). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct. **Office of Disciplinary Counsel v. Akim Czmus**, 889 A.2d 117 (Pa. 2005).

Turning to the ultimate question to be resolved - the determination of discipline - we are guided by decisional law and find that a suspension of three years is appropriate. As is often the case with attorney disciplinary matters, there is no case precedent that is precisely on all fours, but a suspension of three years is within the range of discipline imposed in prior cases.

Respondent failed to maintain an IOLTA or trust account to safeguard client funds, misappropriated funds and used them to pay for personal items such as a boat and school tuition, insisted that he had an oral agreement with his client that superseded the clear terms of the written agreement as to the handling of the \$50,000 retainer, threatened his client with a lawsuit and made misrepresentations, persisted in his claim to the funds for as long as he could until forced to reimburse the payout made by the Pennsylvania Lawyers Fund for Client Security, continued to advocate his wrongful position at the disciplinary hearing that there was an oral agreement that entitled him to the funds, never apologized to any of his clients, has not fully remediated his practice problems and has not shown genuine contrition.

In the matter of ***Office of Disciplinary Counsel v. Darren Keith Parr***, No. 193 DB 2019 (S. Ct. Order 8/10/2020), the Court approved consent discipline for a suspension of one year and one day to address Parr's misconduct where he misappropriated entrusted funds through IOLTA account misuse. In mitigation, Parr demonstrated that he had remediated the problems with his IOLTA and exhibited remorse. In the instant matter, Respondent never bothered to use an IOLTA and ran his practice and his personal life through the same checking account. Further, he has not shown that he took measures to remedy his deficient account practices and he did not express remorse.

In the matter of ***Office of Disciplinary Counsel v. William R. Balaban***, No. 23 DB 2019 (S. Ct. Order 4/15/2019), Balaban was suspended on consent for one year and one day following his misappropriation of \$75,000 of escrowed funds. Balaban was a forty year practitioner with no prior history who had an extensive record of charitable affiliations, cooperated with Office of Disciplinary Counsel and expressed remorse. Here, Respondent's misconduct is more serious as it involved three client matters and dishonest conduct, and no compelling mitigation.

In ***Office of Disciplinary Counsel v. Perry Lynn Flaugh***, No. 112 DB 2015 (D. Bd. Rpt. 6/15/2016) (S. Ct. Order 8/12/2016), Flaugh failed to protect his client's interests upon termination of representation, misrepresented the status of the client's matter, and misappropriated \$1,000 of the client's funds, which he failed to reimburse. Flaugh, who had no prior record of attorney discipline, failed to demonstrate credible remorse. The Court suspended Flaugh for one year and one day, with Justice Mundy dissenting for a two year period of suspension. By comparison, the instant Respondent's conduct is more egregious than Flaugh's as it involved three client matters, not one, and

substantially more misappropriated funds. As well, Respondent threatened one of his clients with a lawsuit and lied to the client in an attempt to keep monies that did not belong to Respondent.

An attorney was suspended for a period of three years after she improperly deposited settlement funds in her operating account instead of a trust account, failed to promptly disburse the funds, and converted a portion of the funds to her own use because she falsely claimed she had a charging lien on the settlement funds. The clients were forced to file a claim for \$18,800 with the Pennsylvania Lawyers Fund for Client Security, which paid the clients in full. The attorney expressed no remorse and continued to assert she did nothing wrong. ***Office of Disciplinary Counsel v. Terry Elizabeth Silva***, No. 164 DB 2014 (D. Bd. Order 5/24/2016) (S. Ct. Order 7/14/2016).

In ***Office of Disciplinary Counsel v. David Allen Gniewek***, No. 171 DB 2008 (S. Ct. Order 4/21/2009), the Court approved a Joint Petition in Support of Discipline on Consent and suspended Gniewek for three years for his misuse of \$60,000.00 of entrusted client funds, failure to communicate, failure to account for entrusted funds, and failure to timely disburse entrusted funds. After investigation by Office of Disciplinary Counsel, Gniewek reimbursed the client. A similar result occurred in ***Office of Disciplinary Counsel v. Robert Louis Frey, Jr.***, No. 211 DB 2010 (S. Ct. Order 5/23/2011), where the Court imposed a three year suspension on consent following Frey's misappropriation of \$15,000.00 of entrusted funds, inappropriate use of his IOLTA account, failure to return the unearned portion of a fee, lack of communication and diligence, and dishonest conduct. Respondent's conduct is similar to that in ***Frey*** and ***Gniewek***, in that he used approximately \$46,722 of client funds for personal use, ignored

his client's requests for a refund to avoid paying them, and belatedly reimbursed the funds after Petitioner's intercession.

A more serious matter resulted in an attorney's five year suspension from the practice of law. In ***Office of Disciplinary Counsel v. James Barnett Gefsky***, No. 162 DB 2009 (D. Bd. Rpt.1/26/2011) (S. Ct. Order 5/16/2011), Gefsky failed to hold client funds separate from his own, failed to promptly provide clients their property, and engaged in dishonest and deceitful conduct by converting \$75,000 of client funds to his personal use. Additionally, Gefsky misrepresented the status of a client's matter and settled it without the client's consent. Here, Respondent's conduct is not as serious as Gefsky's because it did not include misrepresenting the status of a matter and wrongfully settling a case without a client's consent.

The Committee recommended that if Respondent is reinstated from his suspension, he be placed on probation for one year with a practice monitor to review his financial accounts. We decline to adopt this portion of the Committee's recommendation. A reinstatement proceeding is a "searching inquiry into a lawyer's present professional and moral fitness" and requires the lawyer to establish by clear and convincing evidence that he or she is morally qualified, competent and learned in the law and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest. ***Philadelphia News, Inc. v. The Disciplinary Board of the Supreme Court of Pennsylvania***, 363 A. 2d 779 (Pa. 1976); Pa.R.D.E. 218(c)(3). If a petitioner-attorney meets that heavy burden and proves fitness to resume practice, there is no reason to subject the lawyer to probation.

The totality of the facts and circumstances of this matter warrant a suspension for three years, which discipline is consistent and appropriate to address Respondent's serious misconduct and protect the public.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, David Charles Agresti, be Suspended for three years from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: David S. Senoff
David S. Senoff, Member

Date: 5/21/2021

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2863 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 124 DB 2021
	:	
v.	:	Attorney Registration No. 321471
	:	
	:	(Montgomery County)
STEPHEN PAUL HILDEBRAND,	:	
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 23rd day of March, 2022, upon consideration of the Verified Statement of Resignation, Stephen Paul Hildebrand is disbarred on consent from the Bar of this Commonwealth. See Pa.R.D.E. 215. Respondent shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 03/23/2022

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,
Petitioner

v.

STEPHEN PAUL HILDEBRAND,
Respondent

No. 124 DB 2021

Attorney Reg. No. 321471

(Montgomery County)

RESIGNATION
UNDER Pa.R.D.E. 215

Stephen Paul Hildebrand 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 December 29, 2015. His attorney registration number is 321471.

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 acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has ~~has not~~

FILED

03/02/2022

The Disciplinary Board of the
Supreme Court of Pennsylvania

retained, consulted with and acted upon the advice of counsel in connection with his decision to execute the within resignation.

5. He is aware that there is presently pending a prosecution of allegations that he has been guilty of misconduct, the nature of which is set forth in the Petition for Discipline filed by Petitioner, the Office of Disciplinary Counsel, on or about September 9, 2021. A true and correct copy of this Petition for Discipline is attached hereto as Exhibit "A."

6. He acknowledges that the material facts which form the basis of this Petition for Discipline 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.

8. 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) and (c).

9. He is aware that, pursuant to Enforcement Rule 215(c), the fact that he has tendered his resignation shall become a matter of public record immediately upon delivery of the resignation statement to Disciplinary Counsel or the Board Prothonotary.

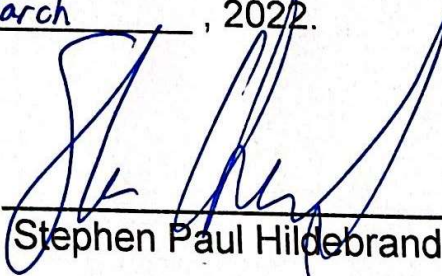
11. Upon entry of the order disbaring him on consent, he will promptly comply with the notice, withdrawal, resignation, trust account, and cease-and-desist provisions of Enforcement Rule 217 (a), (b), (c) and (d).

12. After entry of the order disbaring him on consent, he will file a verified statement of compliance as required by Enforcement Rule 217(e)(1).

13. He is aware that the waiting period for eligibility to apply for reinstatement to the practice of law under Enforcement Rule 218(b) shall not begin until he files the verified statement of compliance required by Enforcement Rule 217(e)(1), and if the order of disbarment contains a provision that makes the disbarment retroactive to an earlier date, then the waiting period will be deemed to have begun on that earlier date.

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 1 day of March, 2022.



Stephen Paul Hildebrand

WITNESS: _____

EXHIBIT A

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. DB 2021
Petitioner	:	
	:	
v.	:	Attorney Reg. No. 321471
	:	
STEPHEN PAUL HILDEBRAND,	:	
Respondent	:	(Montgomery County)

PETITION FOR DISCIPLINE

Petitioner, the Office of Disciplinary Counsel, by Thomas J. Farrell, Chief Disciplinary Counsel, and Daniel S. White, Disciplinary Counsel, files the within Petition for Discipline and charges Respondent, Stephen Paul Hildebrand, with professional misconduct in violation of the Rules of Professional Conduct, the Code of Federal Regulations and the Pennsylvania Rules of Disciplinary Enforcement as follows:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106 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 any attorney admitted to practice law in the Commonwealth of Pennsylvania

FILED
09/09/2021
The Disciplinary Board of the
Supreme Court of Pennsylvania

and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent, Stephen Paul Hildebrand, was born in 1987, was admitted to practice law in the Commonwealth of Pennsylvania on December 29, 2015, and has a registered office and preferred mailing address of 10 E. Athens Avenue, Suite 210B, Ardmore, Pennsylvania 19003.

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

CHARGE

Cresencio Chinchilla-Roque Matter

4. By Order dated November 13, 2019, Cresencio Chinchilla-Roque (hereinafter "Mr. Chinchilla-Roque") was ordered removed from the United States.

5. In or after November of 2019, Daniel Chinchilla-Roque, Mr. Chinchilla-Roque's brother, paid Respondent one thousand and five hundred dollars (\$1,500.00) to meet with Mr. Chinchilla-Roque at York County Prison.

6. In or after November of 2019, Respondent met with Mr. Chinchilla-Roque at which time Mr. Chinchilla-Roque engaged Respondent to appeal his removal order to the Board of Immigration Appeals.

7. Respondent had not previously represented Mr. Chinchilla-Roque.

8. Respondent failed to explain to Mr. Chinchilla-Roque in writing the basis or rate of his fee.

9. On or about December 12, 2019, Respondent filed, on Mr. Chinchilla-Roque's behalf, a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge with the Board of Immigration Appeals (hereinafter the "Chinchilla-Roque Appeal").

10. On or about December 12, 2019, Respondent filed a Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals in the Chinchilla-Roque Appeal.

11. A brief in support of the Chinchilla-Roque Appeal was due on or before February 24, 2020.

12. Respondent failed to file a brief in support of the Chinchilla-Roque Appeal.

13. By email to Respondent dated April 14, 2020, Daniel Chinchilla-Roque said, "I need you to send me the documents and the \$1500 that I paid you for my brother's case contact me."

14. Respondent failed to respond to Daniel Chinchilla-Roque's April 14, 2020 email.

15. By email to Respondent dated April 23, 2020, Attorney Rosina Stambaugh said, "Do you currently represent [Mr. Chinchilla-Roque]? The family indicates that they retained you for his appeal but they have not heard anything. Can you please confirm?"

16. By email to Ms. Stambaugh dated April 24, 2020, at 10:10 a.m., Respondent said:

I was retained for a motion to reopen after the IJ hearing where he was pro se. They never got me anything we discussed. I put in an appeal to buy more time and explained I could not do anything without evidence based on the record. I did not hear from them for a while but they did recently contact me, I think they are trying to do something again. I spoke to his brother yesterday. If they want you to get involved ill [sic] get you what I have and the full rundown.

17. By email to Respondent dated April 24, 2020, at 10:41 a.m., Ms. Stambaugh said, "Can you send me over everything that you have. He has no IJ decision or transcripts so they must have been sent to you. Did you file a brief?"

18. By email to Ms. Stambaugh dated April 24, 2020, at 10:56 a.m., Respondent said, "For sure, I'll scan decision and transcripts when I'm in the office."

19. By email to Respondent dated May 12, 2020, Ms. Stambaugh:

a. forwarded the email exchange set forth in paragraphs 15-18

supra; and

- b. asked "Did you get a chance to get this?"

20. Respondent failed to respond to Ms. Stambaugh's May 12, 2020 email.

21. By email to Respondent dated May 19, 2020, Ms. Stambaugh:

- a. forwarded the email exchange set forth in paragraphs 15-18

supra; and

- b. said, "Can you please send this stuff over. It will almost be a month and I cannot proceed with the case without it."

22. Respondent failed to respond to Ms. Stambaugh's May 19, 2020 email.

23. On May 22, 2020, Ms. Stambaugh called Respondent and left a voicemail.

24. Respondent failed to return Ms. Stambaugh's May 22, 2020 call.

25. On June 22, 2020, Ms. Stambaugh called Respondent and left a voicemail.

26. Respondent failed to return Ms. Stambaugh's June 22, 2020 call.

27. On June 24, 2020, Ms. Stambaugh called Respondent and left a voicemail.

28. Respondent failed to return Ms. Stambaugh's June 24, 2020 call.

29. On June 29, 2020, Ms. Stambaugh called Respondent and left a voicemail.

30. Respondent failed to return Ms. Stambaugh's June 29, 2020 call.

31. By email to Respondent dated June 29, 2020, Ms. Stambaugh, *inter alia*:

a. recounted her unsuccessful attempts to contact Respondent; and

b. said "[i]f I don't receive a response by tomorrow at 5:00, I will be filing a disciplinary action against you in Pennsylvania" (emphasis in original).

32. By email to Ms. Stambaugh dated June 30, 2020, Respondent said:

Sorry I have been out a lot due to some health issues.

I was hired to do a consultation after he was denied at a IH. I met with his brother and I visited him at York. He told me that his brother had a lawyer for him but that person never came he did not know who it was and that he was forced to continue although he asked for time. Both he and his brother indicated that he was afraid to go home. I discussed the option of filing a Motion to Reopen with supporting documents. I did not receive those documents and as 30 days was approaching I filed a Notice of Appeal to the BIA to preserve his appellate rights. I will go to the office to get documents to send to you.

33. By text message to Respondent dated July 3, 2020, Daniel Chinchilla-Roque said:

Good afternoon please call me I need to know if you are working on my brother's case or not. I don't have any information from him and I haven't received anything that you were supposed to send me. If you can't work on the case, let me know so I can find another attorney.

34. Respondent failed to respond to the July 3, 2020 text message.

35. By email to Respondent dated July 29, 2020, Ms. Stambaugh said, "I am getting ready to file this complaint. This is your last chance to get me the file that I requested back in April."

36. Respondent failed to respond to Ms. Stambaugh's July 29, 2020 email.

37. On September 3, 2020, Ms. Stambaugh filed an Emergency Motion for Substitute *[sic]* of Counsel in the Chinchilla-Roque Appeal, asserting, *inter alia*, that Respondent "failed to file a brief in support of [Mr. Chinchilla-Roque]'s Appeal application and has not been communicating with [Mr. Chinchilla-Roque] in over six months."

38. On September 3, 2020, Ms. Stambaugh filed an Emergency Motion to Reset Briefing Schedule in the Chinchilla-Roque Appeal, asserting, *inter alia*, that:

- a. Mr. Chinchilla-Roque “is currently represented by Attorney Hildebrand of Gallo, Hildebrand, LLP. Attorney Hildebrand has failed to file a brief in support of [Mr. Chinchilla-Roque]’s Appeal application and has not communicated with [Mr. Chinchilla-Roque] in over six months”;
- b. “Attorney Hildebrand’s action amount *[sic]* to ineffective assistance of counsel and have severely prejudiced [Mr. Chinchilla-Roque]”; and
- c. Ms. Stambaugh “has attempted to get a complete copy of the file from Attorney Hildebrand, but he has not provided it.”

39. On November 17, 2020, the Board of Immigration Appeals denied this Motion.

40. On January 25, 2021, Ms. Stambaugh filed Applicant’s Motion to Accept Late Filed Brief in the Chinchilla-Roque Appeal, asserting, *inter alia*, that:

- a. “[t]he deadline to file [Mr. Chinchilla-Roque]’s brief was February 24, 2020. However, Mr. Hildebrand failed to file a brief in support of [Mr. Chinchilla-Roque]’s Appeal and has not communicated with [Mr. Chinchilla-Roque] in over six

months”;

- b. Ms. Stambaugh “has attempted on multiple occasions to get a copy of [Mr. Chinchilla-Roque]’s file, but she has not been successful”;
- c. “Attorney Hildebrand’s action amount *[sic]* to ineffective assistance of counsel and have severely prejudiced [Mr. Chinchilla-Roque]”;
- d. “[o]n November 20, 2020, [Ms. Stambaugh] received the Board’s denial of a Motion for Extension. At the time of the denial, [Ms. Stambaugh] did not obtain any transcripts or written decision from prior counsel or from the Board. Without this, [she] was not able to file an appellate Brief on behalf of [Mr. Chinchilla-Roque]”; and
- e. “[t]he ineffective assistance of prior counsel and his failure to file a brief have significantly prejudiced [Mr. Chinchilla-Roque]’s appellate process.”

41. By Opinion and Order dated February 10, 2021, the Board of Immigration Appeals denied the Chinchilla-Roque Appeal because, *inter alia*, Mr. Chinchilla-Roque “has not made sufficient specific arguments regarding

the Immigration Judge's decision and has not meaningfully challenged any of the findings of fact or conclusions of law underlying the denial of his applications for relief and protection."

42. By DB-7, Request for Statement of Respondent's Position dated March 5, 2021 (hereinafter the "March 5, 2021 DB-7"), Petitioner requested Respondent's Statement of Position regarding the allegations set forth in paragraphs 4-41 *supra*.

43. The March 5, 2021 DB-7 advised that "failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement."

44. The March 5, 2021 DB-7 was sent via email to the email address that Respondent provided in his 2020-2021 PA Attorney's Annual Fee Form.

45. Respondent received the March 5, 2021 DB-7.

46. Respondent failed to respond to the March 5, 2021 DB-7.

47. Respondent has provided no cause for his failure to respond to the March 5, 2021 DB-7.

48. By DB-7, Request for Statement of Respondent's Position dated July 13, 2021 (hereinafter the "First July 13, 2021 DB-7"), Petitioner again

requested Respondent's Statement of Position regarding the allegations set forth in paragraphs 4-41 *supra*.

49. The First July 13, 2021 DB-7 advised that "failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement."

50. The First July 13, 2021 DB-7 was sent via:

- a. certified mail, return receipt requested, to the office and preferred mailing address that Respondent provided in his 2020-2021 PA Attorney's Annual Fee Form; and
- b. email to the email address that Respondent provided in his 2020-2021 PA Attorney's Annual Fee Form.

51. The First July 13, 2021 DB-7 sent via certified mail, return receipt requested was returned to Petitioner as "unclaimed."

52. Respondent failed to respond to the First July 13, 2021 DB-7.

53. Respondent has provided no cause for his failure to respond to the First July 13, 2021 DB-7.

Ryan Bailey Matter

54. On or about November 16, 2019, Respondent agreed to represent Ryan Bailey at a November 20, 2019 Individual Calendar Hearing in exchange for a legal fee in the amount of two thousand dollars (\$2,000.00).

55. On or about November 16, 2019, Mr. Bailey paid Respondent one thousand dollars (\$1,000.00).

56. Upon information and belief, Respondent failed to deposit this advance payment into a Trust Account or IOLTA.

57. Respondent failed to obtain Mr. Bailey's informed consent, confirmed in writing, to not maintain this advance payment in a Trust Account or IOLTA.

58. Respondent had not previously represented Mr. Bailey.

59. Respondent failed to explain to Mr. Bailey in writing the basis or rate of his legal fee.

60. At Respondent's request attorney Michael Lambert accompanied Mr. Bailey to his November 20, 2019 Individual Calendar Hearing, at which time Mr. Lambert and Mr. Bailey discovered that Mr. Bailey had been ordered removed *in absentia* earlier that day.

61. On November 27, 2019, Mr. Lambert filed, on Mr. Bailey's behalf, a Motion to Reopen In Absentia Removal Order Based on Lack of Notice and Request for Automatic Stay of Removal Pending the Immigration Court's Consideration of this Motion Pursuant to INA § 240(B)(5)(C); INA § 242B(C)(3); and 8 C.F.R. § 1003.23(B)(1)(V).

62. By Decision and Order of the Immigration Judge dated January 29, 2020, this Motion was denied.

63. In or about February of 2020, Respondent filed, on Mr. Bailey's behalf, a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge with the Board of Immigration Appeals (hereinafter the "Bailey Appeal").

64. Respondent failed to file a brief in support of the Bailey Appeal.

65. In or about June of 2020, Mr. Bailey called Respondent at which time, *inter alia*:

- a. Respondent asked Mr. Bailey to pay the outstanding balance of his legal fee; and
- b. Mr. Bailey advised that he could pay Respondent three hundred dollars (\$300.00).

66. In or about June of 2020, Mr. Bailey paid Respondent three hundred dollars (\$300.00).

67. Upon information and belief, Respondent failed to deposit this advance payment into a Trust Account or IOLTA.

68. Respondent failed to obtain Mr. Bailey's informed consent, confirmed in writing, to not maintain this advance payment in a Trust Account or IOLTA.

69. In or about June of 2020, Respondent met with Mr. Bailey at which time, *inter alia*:

- a. Mr. Bailey paid Respondent two hundred dollars (\$200.00);
and
- b. Respondent advised Mr. Bailey that he would file a brief in support of the Bailey Appeal.

70. Upon information and belief, Respondent failed to deposit this advance payment into a Trust Account or IOLTA.

71. Respondent failed to obtain Mr. Bailey's informed consent, confirmed in writing, to not maintain this advance payment in a Trust Account or IOLTA.

72. Between July of 2020 and October of 2020, Mr. Bailey called Respondent multiple times to request the status of the Bailey Appeal.

73. Respondent failed to answer or return Mr. Bailey's calls.

74. By text message to Respondent dated July 13, 2020, Mr. Bailey said "Steve don't forget to send me the stuff."

75. Respondent failed to respond to Mr. Bailey's July 13, 2020 text message.

76. By text message to Respondent dated July 16, 2020, Mr. Bailey said "Steve can you plz *[sic]* text me the info again please."

77. Respondent failed to respond to Mr. Bailey's July 16, 2020 text message.

78. By text message to Mr. Bailey dated August 19, 2020, Respondent said, "Hey I've been sick your *[sic]* on my list to give you a call on other line I'm going to call you today."

79. Respondent failed to call Mr. Bailey on August 19, 2020, or any time thereafter.

80. By text message to Respondent dated August 26, 2020, Mr. Bailey said "Steve can you plz *[sic]* send my paper works *[sic]* over to Micheal *[sic]*."

81. Respondent failed to respond to Mr. Bailey's August 26, 2020 text message.

82. By Opinion and Order dated September 17, 2020, the Board of Immigration Appeals:

- a. “note[d] that the respondent has not filed a brief in support of his appeal, despite indicating in the Notice of Appeal (Form EOIR-26) that he intended to file a brief”; and
- b. dismissed the Bailey Appeal.

83. By text message to Respondent dated September 25, 2020, at 1:28 p.m., Mr. Bailey said:

Hi Steve
I paid you \$1000 deposit of the \$2000 to do my appeal, but you did nothing. You was *[sic]* supposed to write and file a brief for my appeal in 30 days after Michael filed the appeal and you did nothing. Now the Court dismiss *[sic]* my appeal and it's all your fault. What should I do? Can you give me my file now. The file needs to go to another lawyer yesterday. I have to save me. I don't know what happened to you but my life must go on. Give me my file or send it to Michal *[sic]* Lambert. I am hiring new lawyer today and he is waiting for your file

(emphasis in original).

84. On September 25, 2020, Respondent replied to this text message and said:

I never got a briefing schedule in this case. I don't know what happened. I'm happy to get everything to whomever. I'm also happy to file a motion to reopen for you that I did not receive the briefing schedule to reopen.

85. By text messages to Respondent dated September 25, 2020, Mr. Bailey said "So can you send my file now plz [sic]. Or I can come and pick it up."

86. Respondent failed to respond to Mr. Bailey's September 25, 2020 text messages.

87. By text message to Respondent dated October 6, 2020, Mr. Bailey said "Steve I need my paper works [sic] I have a deadline for Friday I need [sic]."

88. Respondent failed to respond to Mr. Bailey's October 6, 2020 text message.

89. By text message to Respondent dated October 12, 2020, Mr. Bailey said "Steve can you plz [sic] call me."

90. Respondent failed to respond to Mr. Bailey's October 12, 2020 text message.

91. Respondent failed to provide Mr. Bailey with a copy of his case file.

92. Respondent provided no meaningful services in exchange for Mr. Bailey's payments, set forth in paragraphs 55, 66 and 69(a) *supra*, in the aggregate amount of one thousand and five hundred dollars (\$1,500.00).

93. Respondent failed to refund any portion of Mr. Bailey's payments, set forth in paragraphs 55, 66 and 69(a) *supra*, in the aggregate amount of one thousand and five hundred dollars (\$1,500.00).

94. By DB-7, Request for Statement of Respondent's Position dated March 30, 2021 (hereinafter the "March 30, 2021 DB-7"), Petitioner requested Respondent's Statement of Position regarding the allegations set forth in paragraphs 54-93 *supra*.

95. The March 30, 2021 DB-7 advised that "failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement."

96. The March 30, 2021 DB-7 was sent via email to the email address that Respondent provided in his 2020-2021 PA Attorney's Annual Fee Form.

97. Respondent received the March 30, 2021 DB-7.

98. Respondent failed to respond to the March 30, 2021 DB-7.

99. Respondent has provided no cause for his failure to respond to Petitioner's March 30, 2021 letter.

100. By DB-7, Request for Statement of Respondent's Position dated July 13, 2021 (hereinafter the "Second July 13, 2021 DB-7"), Petitioner again

requested Respondent's Statement of Position regarding the allegations set forth in paragraphs 54-93 *supra*.

101. The Second July 13, 2021 DB-7 advised that "failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement."

102. The Second July 13, 2021 DB-7 was sent via:

- a. certified mail, return receipt requested, to the office and preferred mailing address that Respondent provided in his 2020-2021 PA Attorney's Annual Fee Form; and
- b. email to the email address that Respondent provided in his 2020-2021 PA Attorney's Annual Fee Form.

103. The Second July 13, 2021 DB-7 sent via certified mail, return receipt requested was returned to Petitioner as "unclaimed."

104. Respondent failed to respond to the Second July 13, 2021 DB-7.

105. Respondent has provided no cause for his failure to respond to Petitioner's July 13, 2021 letter.

Timothy Nathaniel III Matter

106. On October 12, 2017, Timothy Nathaniel III was charged in Northampton County, Pennsylvania, with Theft by Unlawful Taking and Unauthorized Use of Motor Vehicle, docketed at MJ-03104-CR-0000217-2017.

107. By letter to the Honorable Magisterial District Justice Vivian I. Zumas dated August 8, 2019, Respondent, *inter alia*, entered an appearance on Mr. Nathaniel's behalf in these proceedings.

108. On September 27, 2019, Respondent represented Mr. Nathaniel at a preliminary hearing at which time, *inter alia*, the charges against Mr. Nathaniel were held for court.

109. On or about October 2, 2019, Respondent entered an appearance on Mr. Nathaniel's behalf in the Court of Common Pleas of Northampton County, docket number CP-48-CR-0003292-2019 (hereinafter the "Criminal Proceedings").

110. On November 6, 2019, a Criminal Information was filed in the Criminal Proceedings, charging Mr. Nathaniel with Theft by Unlawful Taking and Unauthorized Use of Motor Vehicle.

111. On February 12, 2020, a Pre-Trial Conference was conducted in the Criminal Proceedings.

112. Respondent appeared for this Pre-Trial Conference.

113. On February 12, 2020, Respondent filed an Application for Continuance in the Criminal Proceedings.

114. By Order dated February 12, 2020, this Application was granted.

115. On June 15, 2020, a Pre-Trial Conference was conducted in the Criminal Proceedings.

116. Respondent participated in this Pre-Trial Conference telephonically.

117. On June 15, 2020, Respondent filed an Application for Continuance in the Criminal Proceedings.

118. By Order dated June 19, 2020, this Application was granted.

119. By Order in the Criminal Proceedings dated September 11, 2020 (hereinafter the "September 11, 2020 Order"), *inter alia*:

- a. a Pre-Trial Conference was scheduled in the Criminal Proceedings for September 30, 2020, at 9:00 a.m.;
- b. a Trial was scheduled to begin in the Criminal Proceedings on November 2, 2020, at 9:00 a.m.; and

- c. Respondent was “attached for all required court appearances set forth in this Order, including the pretrial conference and for trial.”

120. Respondent received a copy of the September 11, 2020 Order.

121. By Order in the Criminal Proceedings dated September 14, 2020 (hereinafter the “September 14, 2020 Order”), *inter alia*:

- a. a Pre-Trial Conference was scheduled in the Criminal Proceedings for September 30, 2020, at 9:00 a.m.;
- b. a Trial was scheduled to begin in the Criminal Proceedings on November 2, 2020, at 9:00 a.m.; and
- c. Respondent was “attached for all required court appearances set forth in this Order, including the pretrial conference and for trial.”

122. Respondent received a copy of the September 14, 2020 Order.

123. On September 30, 2020, a Pre-Trial Conference was conducted in the Criminal Proceedings.

124. Respondent failed to appear for this Pre-Trial Conference.

125. By Order in the Criminal Proceedings dated October 16, 2020, Respondent was directed to appear on October 28, 2020, and show cause

why he should not be held in contempt as a result of his failure to appear for the September 30, 2020 Pre-Trial Conference.

126. Respondent failed to appear on October 28, 2020, to show cause why he should not be held in contempt as a result of his failure to appear for the September 30, 2020 Pre-Trial Conference.

127. Mr. Nathaniel appeared *pro se* on October 28, 2020, and requested a continuance of the November 2, 2020 Trial.

128. This request was granted.

129. By Order in the Criminal Proceedings dated November 6, 2020 (hereinafter the "November 6, 2020 Order"), a Pre-Trial Conference was scheduled in the Criminal Proceedings for January 13, 2021.

130. Respondent received a copy of the November 6, 2020 Order.

131. Between September 2020 and January 2021, the chambers of the Honorable Abraham P. Kassis, who was presiding over the Criminal Proceedings, called Respondent three times regarding the Criminal Proceedings.

132. Respondent failed to answer or return any of these calls.

133. On January 13, 2021, a Pre-Trial Conference was conducted in the Criminal Proceedings.

134. Respondent failed to appear for this Pre-Trial Conference.

135. On January 13, 2021, Mr. Nathaniel filed a *pro se* Application for Continuance.

136. By Order dated January 13, 2021, this Application was granted.

137. By Order in the Criminal Proceedings dated January 14, 2021 (hereinafter the "January 14, 2021 Order"), *inter alia*:

- a. a Trial was scheduled to begin in the Criminal Proceedings on May 3, 2021, at 9:00 a.m.; and
- b. Respondent was "attached for all required court appearances set forth in this Order, including the pretrial conference and for trial."

138. Respondent received a copy of the January 14, 2021 Order.

139. Respondent failed to appear for Trial in the Criminal Proceedings on May 3, 2021.

140. By Order in the Criminal Proceedings dated May 4, 2021 (hereinafter the "May 4, 2021 Order"), Respondent was directed to appear on May 19, 2021, and show cause why he should not be held in contempt for his failure to appear for Trial in the Criminal Proceedings on May 3, 2021.

141. Respondent received a copy of the May 4, 2021 Order.

142. Respondent failed to appear on May 19, 2021, to show cause why he should not be held in contempt as a result of his failure to appear for Trial in the Criminal Proceedings on May 3, 2021.

143. By Order in the Criminal Proceedings dated May 28, 2021 (hereinafter the "May 28, 2021 Order"), Respondent was directed to appear on June 23, 2021, and show cause why he should not be held in contempt for his failure to appear on May 19, 2021.

144. Respondent received a copy of the May 28, 2021 Order.

145. Respondent failed to appear on May 28, 2021, to show cause why he should not be held in contempt as a result of his failure to appear on May 19, 2021.

146. On or about June 16, 2021, at Mr. Nathaniel's request, the Court removed Respondent as Mr. Nathaniel's counsel in the Criminal Proceedings.

147. By Order in the Criminal Proceedings dated June 16, 2021 (hereinafter the "June 16, 2021 Order"), Respondent was directed to appear on June 24, 2021, and show cause why he should not be held in contempt as a result of his failure to appear on May 28, 2021.

148. Respondent received a copy of the June 16, 2021 Order.

149. Respondent failed to appear on June 24, 2021, to show cause why he should not be held in contempt as a result of his failure to appear on May 28, 2021.

150. By Order in the Criminal Proceedings dated June 29, 2021 (hereinafter the "June 29, 2021 Order"), Respondent was:

- a. "held in willful Contempt for failing to comply with this Court's Rule to Show Cause for failing to appear on May 19, 2021 as directed by the May 4, 2021 Rule to Show Cause, and for failing to appear on June 24, 2021, as directed by the June 16, 2021 Rule to Show Cause"; and
- b. directed to "pay a fine of \$5,000.00 payable to Northampton County Court Administration."

151. Respondent received a copy of the June 29, 2021 Order.

152. Respondent failed to satisfy the five thousand dollar (\$5,000.00) fine set forth in paragraph 150(b) *supra*.

153. Since in or before June of 2020, Respondent has had no contact with Mr. Nathaniel regarding the Criminal Proceedings.

154. Since in or before June of 2020, Respondent has had no contact with the Northampton County District Attorney's Office regarding the Criminal Proceedings.

155. By DB-7, Request for Statement of Respondent's Position dated July 13, 2021 (hereinafter the "Third July 13, 2021 DB-7"), Petitioner requested Respondent's Statement of Position regarding the allegations set forth in paragraphs 106-154 *supra*.

156. The Third July 13, 2021 DB-7 advised that "failure to respond to this request for your statement of position without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement."

157. The Third July 13, 2021 DB-7 was sent via:

- a. certified mail, return receipt requested, to the office and preferred mailing address that Respondent provided in his 2020-2021 PA Attorney's Annual Fee Form; and
- b. email to the email address that Respondent provided in his 2020-2021 PA Attorney's Annual Fee Form.

158. The Third July 13, 2021 DB-7 sent via certified mail, return receipt requested was returned to Petitioner as "unclaimed."

159. Respondent failed to respond to the Third July 13, 2021 DB-7.

160. Respondent has provided no cause for his failure to respond to the Third July 13, 2021 DB-7.

* * *

161. On July 16, 2021, Respondent submitted a 2021-2022 Pennsylvania Attorney Annual Fee Form, in which he requested to remain on active status and provided the address referenced in paragraphs 50(a), 102(a) and 157(a) *supra* as his office and preferred mailing address.

162. Respondent listed the email address referenced in paragraphs 44, 50(b), 96, 102(b) and 157(b) *supra* as a "secondary email" in this 2021-2022 Pennsylvania Attorney Annual Fee Form.

163. By letter to Respondent dated August 11, 2021 (hereinafter the "August 11, 2021 Letter"), Petitioner, *inter alia*, provided copies of the letters set forth in paragraphs 48-53, 100-105 and 155-160 *supra*.

164. The August 11, 2021 Letter was sent via:

- a. certified mail, return receipt requested, to the address referenced in paragraph 161 *supra*; and
- b. email to both of the email addresses that Respondent provided in his 2021-2022 Pennsylvania Attorney Annual Fee Form.

165. Respondent failed to respond to the August 11, 2021 Letter.

166. The August 11, 2021 Letter sent via certified mail, return receipt requested is being returned to Petitioner as “unclaimed.”

167. By his conduct as alleged in Paragraphs 4 through 166 above, Respondent violated the following Rules of Professional Conduct, provisions of the Code of Federal Regulations and Pennsylvania Rules of Disciplinary Enforcement:

- A. RPC 1.1, which provides that “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation”;
- B. RPC 1.2(a), which provides, in pertinent part, that “a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued”;

- C. RPC 1.3, which provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client”;
- D. RPC 1.4(a)(2), which provides that “[a] lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished”;
- E. RPC 1.4(a)(3), which provides that “[a] lawyer shall keep the client reasonably informed about the status of the matter”;
- F. RPC 1.4(a)(4), which provides that “[a] lawyer shall promptly comply with reasonable requests for information”;
- G. RPC 1.5(a), which provides, in pertinent part, that “[a] lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee”;
- H. RPC 1.5(b), which provides that “[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation”;

- I. RPC 1.15(b), which provides that “[a] lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer’s own property. Such property shall be identified and appropriately safeguarded”;
- J. 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”;
- K. RPC 1.15(i), which provides that “[a] lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner”;
- L. RPC 1.16(c), which provides, in pertinent part, that “[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation”;

- M. RPC 1.16(d), which provides, in pertinent part, that “[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as...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”;
- N. RPC 3.2, which provides that “[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client”;
- O. RPC 8.4(d), which provides that “[i]t is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice”;
- P. 8 CFR § 1003.102(a)(1), which provides, in pertinent part, that an immigration practitioner shall be subject to disciplinary sanctions if he “charges or receives, either directly or indirectly...any fee or compensation for specific services rendered for any person that shall be deemed to be grossly excessive”;

- Q. 8 CFR § 1003.102(o), which provides, in pertinent part, that an immigration practitioner shall be subject to disciplinary sanctions if he “[f]ails to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners”;
- R. 8 CFR § 1003.102(p), which provides, in pertinent part, that an immigration practitioner shall be subject to disciplinary sanctions if he “[f]ails to abide by a client’s decisions concerning the objectives of representation and fails to consult with the client as to the means by which they are to be pursued, in accordance with paragraph (r) of this section”;
- S. 8 CFR § 1003.102(q), which provides, in pertinent part, that an immigration practitioner shall be subject to

disciplinary sanctions if he “[f]ails to act with reasonable diligence and promptness in representing a client”;

T. 8 CFR § 1003.102(r)(2), which provides, in pertinent part, that an immigration practitioner shall be subject to disciplinary sanctions if he “[f]ails to maintain communication with the client throughout the duration of the client-practitioner relationship...In order to properly maintain communication, the practitioner should [r]easonably consult with the client about the means by which the client's objectives are to be accomplished”;

U. 8 CFR § 1003.102(r)(3), which provides, in pertinent part, that an immigration practitioner shall be subject to disciplinary sanctions if he “[f]ails to maintain communication with the client throughout the duration of the client-practitioner relationship...In order to properly maintain communication, the practitioner should [k]eep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation”;

- V. 8 CFR § 1003.102(r)(4), which provides, in pertinent part, that an immigration practitioner shall be subject to disciplinary sanctions if he “[f]ails to maintain communication with the client throughout the duration of the client-practitioner relationship...In order to properly maintain communication, the practitioner should [p]romptly comply with reasonable requests for information”;
- W. Pa.R.D.E. 203(b)(1), which provides that “[c]onviction of a crime” is a ground for discipline; and
- X. Pa.R.D.E. 203(b)(7), which provides that “[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” is a ground for discipline.

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

THOMAS J. FARRELL
Chief Disciplinary Counsel



BY:

Daniel S. White
Attorney Registration No. 322574
Disciplinary Counsel
Suite 170
820 Adams Avenue
Trooper, PA 19403

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: Daniel S. White

Attorney No. (if applicable): 322574