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BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY  
COUNSEL,

PETITIONER,

v.

KELTON MERRILL BURGESS,

RESPONDENT.

) DISCIPLINARY DOCKET  
)  
) No. 155 DB 2022  
)  
) Attorney Registration No. 94551  
) (Allegheny County)  
)  
)  
)  
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)

ANSWER TO PETITION FOR DISCIPLINE

AND NOW, comes the Respondent, KELTON MERRILL  
BURGESS, by and through his counsel, John E. Quinn, Esquire, and  
hereby submits this following Answer and in support thereof, states as  
follows:

1. Admitted.
2. Admitted
3. Admitted.
4. Admitted.
5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted insofar as the "Trust" refers to the 2017 Scott Family Living Trust, previously identified in paragraph 4 as the "Scott Trust".

9. Admitted in part and denied in part. It is admitted that Ms. Herrle met me through our mutual employer, Mr. Kyrk Pyros, President and CEO of Allegheny Crane Rental, Inc. Respondent and Ms. Herrle worked for Mr. Kyrk Pyros from 2016 until January 2023.

It is denied that in late December 2018 and early January 2019, Ms. Herrle consulted with me. I regularly represented Ms. Herrle, individually, and in her capacity as Agent pursuant to Durable Financial Power of Attorney for her late parents. I also regularly represented Ms. Herrle in her capacity as Successor Trustee of the 2017 Scott Family Living Trust; in her capacity as Successor Trustee for the 2011 Scott Family Protector Trust and the 2000 Scott Living Trust. I regularly represented Ms. Herrle in her duties as fiduciary of said trusts, including banking, investment activities and health care concerns for her parents. My representation of Ms. Herrle was regular and systematic, concerning

the 2017 Scott Family Living Trust, which I drafted and continued to serve as counsel until August 2020.

10. Denied. I regularly represented Ms. Herrle since 2016, individually, in her capacity as a Corporate Officer for Allegheny Crane Rental, Inc.; in her capacity as Agent under a Power of Attorney; and in her capacity as Successor Trustee for the multiple trusts listed above. My regular, systematic and continuous representation of Ms. Herrle includes but are not limited to the following matters:

- September 2016 – Allegheny Crane Rental, Inc. (Herrle as Corporate Officer);
- October 2016 – Allegheny Crane Rental, Inc. (Herrle as Corporate Officer);
- March 2016 – Scott Living Trust (2000) – (Herrle as Successor Trustee and POA Agent);
- April 2016 – Scott Family Protector Trust (2011) - (Herrle as Successor Trustee and POA Agent);
- May 2016 - Scott Family Protector Trust (2011) - (Herrle as Successor Trustee and POA Agent);

- June 2016 - Scott Family Protector Trust (2011) - (Herrle as Successor Trustee and POA Agent);
- June 2017 - Scott Family Protector Trust (2011) - (Herrle as Successor Trustee and POA Agent);
- July 2017 - Scott Family Protector Trust (2011) - (Herrle as Successor Trustee and POA Agent);
- September 2017 – Scott Family Living Trust (2017) - (Herrle as Successor Trustee and POA Agent);
- October 2017 – Scott Family Living Trust (2017) - (Herrle as Successor Trustee and POA Agent);
- November 2017 – Scott Family Living Trust (2017) - (Herrle as Successor Trustee and POA Agent);
- January 2018 – Scott Family Living Trust (2017) - (Herrle as POA Agent for finances);
- March 2018 – Herrle Family Living Trust (2018) – (Herrle as Settlor and Trustee);
- April 2018 – Herrle Family Living Trust (2018) – (Herrle as Settlor and Trustee);

- July 2018 - Herrle Family Living Trust (2018) – (Herrle as Settlor and Trustee);
- September 2018 - Scott Family Living Trust (2017) - (Herrle as POA Agent for finances);
- November 2018 - Scott Family Living Trust (2017) - (Herrle as POA Agent for Health);
- December 2018 – Scott Family Living Trust (2017) – (Herrle as Executrix and Successor Trustee)
- January 2019 through August 2020 – (Herrle as Successor Trustee and Executrix)

Commencing in September 2016, through December 2018, I regularly represented Ms. Herrle for the 2017 Scott Family Living Trust in her capacity as Successor Trustee; and in her capacity as Successor Trustee for the 2011 Scott Family Protector Trust; and in her capacity as Successor Trustee for the 2000 Scott Living Trust, and also, in her capacity as a corporate officer for the company where we were both employed. I regularly represented Ms. Herrle in her duties as fiduciary of said trusts, including banking, investment activities and working with physicians regarding health care concerns for her parents.

My representation of Ms. Herrle was regular and systematic. Lastly, the Scott decedents were my clients and Ms. Herrle was their Agent and Successor Trustee. I am the scrivener of the 2017 Scott Family Trust. I am the attorney for the Successor Trustee of 2017 Scott Family Trust. My representation was continuous until my termination in August 2020.

11. Admitted in part and denied in part. It is admitted that Ms. Herrle asked about my fee, which I reaffirmed was at the same regular rate, specifically, \$200 per hour. It is denied the discussion of my fees were related to “estate administration.” Francis Scott died in December 2018. The purpose of the January 2019 meeting was to begin marshalling assets in anticipation of Pennsylvania Inheritance Tax being owed and to discuss the anticipated course of action by her brother, Mr. Glenn Scott and the litigation threatened by his counsel. Ms. Herrle and I discussed my services related to the anticipated litigation threatened by James Herb, Esquire on December 27, 2018 in a telephone call to me.

12. Denied. As indicated in response to Paragraph 10 above, Ms. Herrle, as POA Agent, knew she owed me fees for services performed from January 2018 through December 2018. As a courtesy

to a co-worker, I reduced my hours to 8 and she paid me for earned fees. The meeting in early January was to discuss strategy for litigation and Pennsylvania Inheritance taxes that would be due. At that meeting, I explained to Ms. Herrle that any accumulated legal fees would be deducted from the gross taxable estate for inheritance tax purposes.

13. Denied. At no time from the commencement of my representation of Ms. Herrle, for any of the above-enumerated times, or events have I, nor any person in my employ ever requested or received a “retainer” from Ms. Herrle, or any other such pre-payment for services. Furthermore, Ms. Herrle tendered to me the money she owed for earned fees. Ms. Herrle did not recommend or suggest a “retainer” at all. The custom of our regular and continuous relationship was to be paid after services were performed at the same rate. I informed Ms. Herrle that I would track my time, but would require \$200 per hour.

14. Denied. Ms. Herrle was not sworn in as the Executrix of the Decedent’s Estate until June 2020. Ms. Herrle had no legal authority or capacity as Executrix until the Register of Wills granted Letters Testamentary. During the January 2019, meeting there was not even a discussion about her role as Executrix, because the instrument I drafted,



specifically, the 2017 Scott Family Living Trust is a “Probate-Avoidance” trust, obviating the necessity of probating a will. It was not until months later Ms. Herrle learned there was one account, Met Life, which would require an estate to be opened. All other accounts were coordinated with beneficiaries payable on death to avoid probate. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

15. Denied. Objection, the allegation contained in Paragraph 15 calls for a legal conclusion to which no response is required. Without waiving said objection and to the extent a response is required, the February 4, 2019 Caveat contains no such language. The Petition for Citation (also titled as Petition for Grant of Letters) contains averments wherein the Petitioner, Glenn Scott, makes such an averment falsely. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

16. Denied. The 2017 Scott Family Living Trust and the standard trustee powers therein permitted Ms. Herrle, as Successor

Trustee to continue to utilize my services, as was regular and customary. As Successor Trustee, Ms. Herrle had the authority to “defend, at the expense of the trust, any contest, or attack of any nature of this Trust or any of its provisions”. I continued to serve in my capacity as attorney for Ms. Herrle as Successor Trustee. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

17. Denied. At no time from meeting Ms. Herrle in 2016, either in her corporate capacity, individual capacity, as agent nor Successor Trustee, for any of the above-enumerated times, or events and have I, nor any person in my employ ever requested or received a “retainer” from Ms. Herrle, or any other such pre-payment for services. Furthermore, on February 13, 2019, Ms. Herrle tendered to me the money she owed for services rendered in January 2019 (25 hours at the rate of \$200 per hour). At the February 13, 2019 meeting, I proposed a “flat-rate” to be capped at \$5,000 per month to which she and Ron Scott readily agreed. Lastly, Glenn Scott, had not yet “challenged” any purported Will. His February 4, 2019 Petition avers the decedent had

died intestate, ie: without a will. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

18. Denied. At no time from the commencement of my representation of Ms. Herrle, for any of the above-enumerated times, or events have I, or any person in my employ ever requested or received a “retainer” from Ms. Herrle, or any other such pre-payment for services. On February 13, 2019, Ms. Herrle tendered to me the money she owed for services rendered in January 2019. Despite the annotation which reads “Retainer”, the money was paid for fees already earned. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

19. Admitted in part and denied in part. It is admitted Check No. 3640 was not deposited into my IOLTA. It is denied the \$5000 was a retainer. Check No. 3640, like all other payments received from Ms. Herrle at all times, was for fees earned; consequently, my earned fees were placed into my operating account. To the extent further response

is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

20. Admitted

21. Denied. Ms. Herrle did not request a bill for services rendered. Rather, Ms. Herrle instructed me to submit any costs, or invoices for costs in connection with the litigation to her for reimbursement. When Ms. Herrle accepted my flat-rate \$5000 per month offer, I informed her I would continue to track my time, and that the entirety of legal fees would try to be used for a deduction of inheritance tax. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

22. Admitted.

23. Admitted.

24. Admitted in part and denied in part. It is admitted that on or about March 5, 2019, I met with Ms. Herrle.

(a) Denied. I informed Ms. Herrle that the PA Department of Revenue would accept an early tax payment, and that if done in the first three months following the death

of a decedent, the Department affords a 5% discount.

As such I recommended a payment be made to preserve the discount. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(b) Denied. The check was to the "Register of Wills, Agent". To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(c) Denied. There was no "Estate" filed or opened in the Register of Wills. There could be no filings accepted, following the Caveat, which directed the Register of Wills to accept "no filings". A Renunciation could not be filed. A Renunciation is not necessary to make inheritance tax payments. To the extent further response is deemed necessary, said allegations are

generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

On March 5, 2019 Ms. Herrle and I believed the Caveat and Citation would be resolved at the upcoming Register of Wills hearing.

(d) Admitted, but not for the reasons alleged in Paragraph 24 (c). While working with Ms. Herrle in January and February 2019, together we contacted numerous insurance companies and financial institutions to marshal the trust assets. During the course of marshaling the assets, we learned that one particular account; namely, Brighthouse (a.k.a. MetLife), was not properly transferred into the 2017 Trust. In order to secure the money, Ms. Herrle was required to raise an Estate. I advised her of the procedures of Estate Administration and offered to serve in her stead. She did sign a Renunciation in favor of me so that I could perform the duties required in order to secure the account; however, we both were aware that nothing could be done until the resolution of the Caveat. To the extent further response is deemed necessary,

said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

25. Admitted.

26. Admitted.

27. Admitted.

28. Admitted.

29. Denied. At no time from the commencement of my representation of Ms. Herrle, for any of the above-enumerated times, or events have I, or any person in my employ ever requested or received a “fee advance” from Ms. Herrle, or any other such pre-payment for any legal or professional services. On March 28, 2019, Ms. Herrle tendered to me the \$10,000 she owed (\$5,000 per month) for fees earned in February and March 2019. The \$10,000 represented earned fees not “advance payment” as alleged. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

30. Admitted in part and denied in part. It is admitted Check No. 102 was for \$10,000. It is further admitted that it was drawn on the Scott Trust’s account. It is denied that the \$10,000 was “entrusted” to

me. It is denied that any of the \$10,000 represented “additional fee advance”. Check No. 102, like all other payments received from Ms. Herrle, at all times since 2016, was for fees already earned. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

31. Admitted in part and denied in part. It is admitted Check No. 102 was not deposited into my IOLTA. It is denied the \$10,000 payment was an “advance”. It is further denied that the payment had been “entrusted “ to me or was to be held in a separate and “appropriately safeguarded” account. Check No. 102, like all other payments received from Ms. Herrle at all times since 2016, was for fees earned; consequently, my earned fees were placed into my operating account. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

32. Admitted.

33. Denied. Glenn M. Scott’s deposition was not discussed, nor contemplated to occur in April or May. In April and May 2019, pursuant



to the Register of Wills Pre-Trial Order, the litigation was in the first phase of discovery. In April 2019, I received Interrogatories, Set One and Requests for Production of Documents, Set One, served upon Deborah F. Herrle and Ronald Scott by Caveator, Glenn Scott. Two additional sets of interrogatories and document demands would follow, coupled with numerous third-party subpoenas and motions, necessitating Court Orders to Compel.

On April 8, 2019, DRAFTS of Answers to Interrogatories, Set One and Responses to Request for Production of Documents, Set One, were sent to Deborah F. Herrle and Ronald E. Scott for review and Verification. Multiple conferences and calls with Ron Scott and Ms. Herrle occurred to work on responses.

The litigation also involved the decedent's real properties (one in Cameron County and one in Allegheny County) which had been transferred into the 2017 Scott Family Trust. On April 9, 2019, Attorney James Herb filed a Praecipe for Issuance of a Writ of Summons and indexed the Writ as a Lis Pendens Against Real Property, 153 Gass Road, Pittsburgh, PA 15229.

On or about April 26, 2019, I received a Certificate Prerequisite for Service of a Subpoena to UPMC Alzheimer's Clinic from attorney James Herb. I consulted with Deborah F. Herrle and Ronald Scott about the possibility of objecting to the subpoena. Despite my counsel, both Deborah F. Herrle and Ronald E. Scott decided to object to the subpoena.

In addition to the Subpoenas, at the end of April 2019, Caveator, Glenn Scott, served Interrogatories, Set Two and Requests for Production of Documents, Set Two by and through his counsel, James Herb, Esquire.

On May 15, 2019, On May 15, 2019, I received written correspondence from Attorney James Herb concerning subpoenas issued to third party document custodians.

The subpoenas were being served upon the following:

- UPMC Passavant Department of Neurology;
- Three Rivers Urology;
- Vein Center, Magee Women's Hospital;
- Comprehensive Care Associates/UPMC Primary Care; and
- Rodgers Brothers, Inc.

On May 15, 2019, Attorney Herb requested **“Can we look at the month of June for depositions?”**

Answers and Responses to Interrogatories, Set Two and Requests for Production of Documents, Set Two were prepared and sent to Deborah F. Herrle and Ronald Scott on May 22, 2019 for Verification.

On May 31, 2019 Attorney James Herb sent me a true and correct copy of a Motion to Enforce Subpoena upon Comprehensive Care Associates. The motion was scheduled for June 11, 2019.

At no time between the months of April and May 2019 was the deposition of Glenn Scott scheduled, delayed, continued, or contemplated to occur.

Due to the amount of discovery propounded by Attorney James Herb, the July 15, 2019 Discovery deadline, as set forth in the Register of Wills Pre-Trial Order was not possible to meet. Consequently, Attorney James Herb filed a Motion to Extend Discovery Deadline which was presented to the Orphan's Court on June 26, 2019. To the extent further response is deemed necessary, said allegations are generally

denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

34. Denied. At no time during the eighteen months of litigation did Deborah F. Herrle ever request a bill for services. In fact, my compensation was discussed with Deborah F. Herrle and Ronald Scott multiple times during the months of February, March, April and May 2019. I repeatedly explained to Ronald E. Scott and Deborah F. Herrle that I was expending hours of legal work well in excess of the 25 hours I was being compensated for, but that I would honor the “capped” rate of \$5,000.00 per month agreement. I was not asked for a bill for services and to date had incurred no expenses. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

35. Admitted.

36. Denied. On Friday, May 24 2019 (Memorial Day Weekend), Ms. Herrle tendered \$10,000 to me to compensate me for work performed in April 2019 and May 2019. At no time in the several years I worked for Ms. Herrle did I, nor any person in my employ, ever request

a “fee advance”. Ms. Herrle’s May 24, 2019 payment of \$10,000 was the same as it had been two months earlier, and was systematically tendered to me after earning my fee for the performance of my work. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

37. Admitted in part and denied in part. It is admitted Check No. 209 was for \$10,000. It is further admitted that it was drawn on the Scott Trust’s account. It is denied that the \$10,000 was “entrusted” to me. It is denied that any of the \$10,000 represented “additional fee advance”. Check No. 209, like Check 102, and like all other payments received from Ms. Herrle, at all times since 2016, was for fees already earned. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

38. Admitted in part and denied in part. It is admitted Check No. 209 was not deposited into my IOLTA. It is denied the \$10,000 payment was an “advance”. It is further denied that had been “entrusted “ to me or was to be held in a separate account and “appropriately

safeguarded". It was not a retainer. Check No. 209, like all other payments received from Ms. Herrle at all times since 2016, was for fees earned; consequently, my earned fees were placed into my operating account. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

39. Admitted.

40. Admitted. By way of further explanation, a Lis Pendens had been filed by Attorney James Herb in the Department of Real Estate, relating to the 153 Gass Road (the "Property") which prevented the transaction. The Property had been listed for sale and a bona fide buyer had made an offer to purchase it. The title company refused to clear title due to the Lis Pendens filed by Attorney James Herb on April 9, 2019.

In June 2019 I negotiated with Attorney Herb to withdraw the Lis Pendens. Attorney Herb agreed conditionally, requiring the proceeds be placed in my IOLTA account. A condition of the agreement to withdraw the Lis Pendens was to refrain from any distributions until the resolution of the will contest matter. The same was communicated to

Ms. Herrle and Ron Scott. Ms. Herrle and Ron Scott agreed. Attorney Herb withdrew the Lis Pendens and the sale proceeded. As such, the closing on the Property occurred on July 1, 2019.

41. Denied. The “net sale proceeds” were \$154,143.10. My firm received two (2) separate checks from Colonial Title, LLC; specifically Check No. 17736 (\$153,843.10), and Check No. 17756 (\$300.00). Total received \$154,143.10 and the funds were placed into IOLTA. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

42. Admitted.

43. Denied. Ms. Herrle had no authority or capacity to receive any such proceeds personally. The real property was an asset of the 2017 Scott Family Trust. The house would not be included in the decedent’s estate, as it was owned by the Trust. No Estate had been raised, and no executor was appointed.

Furthermore, pursuant to the conditions established in the lifting of the Lis Pendens by Attorney Herb, the monies were held in my IOLTA account pending settlement and/or dismissal of the Caveat and Citation.

Ms. Herrle and Ron Scott were aware of the condition and authorized Colonial Title, LLC to distribute the money to my IOLTA. Only Ms. Herrle, as Successor Trustee of the 2017 Scott Trust had authority to do so. Furthermore, Ms. Herrle had no authority or capacity, as "Executrix" to receive any such proceeds. The real property was an asset of the 2017 Scott Family Trust. The house would not be included in the decedent's estate, as it was owned by the Trust. No Estate had been raised, and no executor was appointed. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

44. Admitted in part and denied in part. It is admitted that I held the sale proceeds in my IOTA Account. It is denied the amount was \$153,843.10. Instead, the correct amount was \$154,143.10. It is admitted that pursuant to Attorney Herb's conditions to lift the Lis Pendens, the sale proceeds of the house would be held in my IOLTA until the litigation of the Caveat and Petition was concluded. Ms. Herrle directed the title company to deliver the sale proceeds to me to hold in my IOLTA. I had no authority to do so. To the extent further response



is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

45. Admitted in part and denied in part. It is admitted I was entrusted to hold the sale proceeds of the house in my IOLTA. It is denied the amount was \$153,843.10, but rather it was \$154,143.10. It is expressly denied that Ms. Herrle had “advanced” any “fee payments” at any time from 2016. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

46. Admitted. The deposition of Glenn Scott was taken on August 30, 2019, but only after the Depositions of both Ms. Herrle and Ron Scott had been taken on August 29, 2019. Notably, on August 30, 2019, after the deposition of Glenn Scott had concluded, Ron Scott and Ms. Herrle stated “[W]e want you to have our brother’s (Glenn Scott) share of the estate as your fee”, or similar words to that effect. I stated that a change to our prior agreement would require a writing as all contingency fee agreements have to be signed. They reiterated their offer. On Saturday August 31, Ms. Herrle again repeated her offer on

the telephone with me. I told her I would prepare a 33.333% Contingency Fee Agreement.

47. Admitted in part and denied in part. It is admitted that I was owed my fee for the work I performed in June, July and August and requested to be paid per our \$5,000 per month agreement. I had not received any payment since May 24<sup>th</sup>, and I asked to be paid following the conclusion of the Glenn Scott deposition. It is denied that the fee was limited to "Respondent's preparation for Glenn Scott's deposition", but rather the fee was for preparation, attendance, defense of two depositions and conducting the deposition of Glenn Scott, as well as the Lis Pendens negotiations, and the real estate transfer from the Trust among others. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

48. Admitted.

49. Admitted in part and denied in part. It is admitted Check No. 221 was not deposited into my IOLTA or other trust account. It is denied the \$10,000 payment to me was to be held "separate" and "appropriately safeguarded". The payment was not a retainer, but rather the payment

reflected the fees I earned in June 2019, July 2019 and August 2019 (fee for July was waived). Check No. 221, like all other payments received from Ms. Herrle at all times since 2016, was for fees earned; consequently, my earned fees were placed into my operating account. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

50. Admitted.

51. Admitted in part and denied in part. It is admitted that I informed Deborah F. Herrle that the \$10,000.00 paid to me was the last payment pursuant to our hourly "capped" fee agreement. I informed her that the contingency fee agreement she and Ron Scott proposed on August 30, 2019 would thereafter supplement and change the terms of our prior arrangement which had been the same for years. I told Ms. Herrle that I would not be paid again until the conclusion of the litigation, which would be months of work and would depend on the successful defense of the Formal Caveat action filed by Glenn Scott. It is denied that I failed to communicate a written statement of my fee. The fee had

been the same since I drafted the 2017 Scott Family Living Trust. I regularly and continuously served as counsel and advisor to Ms. Herrle.

The September 9, 2019, the \$10,000.00 payment reflected fees earned for work I performed in June, July and August 2019. On that day I informed Deborah F. Herrle that I would neither request nor require any additional payment until the end of the litigation, whether at the Register's action, or Glenn Scott's anticipated appeal to the Orphans Court if he lost at the Register of Wills Caveat and Citation hearing.

I informed her that I would be incurring costs for the Court Reporter, deposition transcripts and copies, but that I would advance the costs and be reimbursed from any future recovery. She instructed me to submit bills to her for reimbursement instead. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

52. Admitted in part and denied in part. It is denied that I requested Check No. 222 in the amount of \$1,983.67; rather, Ms. Herrle gave me that check as reimbursement for costs. Check No. 222 included some costs associated with Glenn Scott's deposition, but more

than half of the \$1,983.67 was for costs associated with the depositions of Ms. Herrle and Ron Scott, as well as copying. On September 20, 2019, my office received an invoice from the deposition reporting service. The cost for the Glenn Scott deposition and transcript was \$902.00. Pursuant to Ms. Herrle's instruction, any costs advanced by my firm were to be submitted to her with a receipt.

In addition to the cost of the 08/30/2019 deposition transcript, was the reproduction costs for the Exhibit Files for the August 29, 2019 deposition of Ronald E. Scott and Deborah Herrle. During their depositions, Attorney James Herb produced exhibit files of over 2000 pages of documents, medical and financial records pertaining to the decedent, Francis E. Scott. Ms. Herrle and Ron Scott requested complete copies.

Copies of the entire exhibit folder were made at FedEx/Kinkos and were produced to each of them at a meeting at Eat-n-Park in Cranberry Twp. on September 18, 2019. The cost of the reproduction was \$546.32 at FedEx Kinkos. The receipt was provided to Deborah Herrle. My 33.33% contingency fee agreement was again discussed at

the lunch meeting, but due to oversight or inadvertence it was not executed.

On September 27, 2019, my office advanced costs for the deposition transcripts for the August 29, 2019 depositions of Ronald E. Scott and Deborah Herrle. My firm advanced payment to Cavalier Court Reporting in the amount of \$552.52. The invoice was provided to Deborah F. Herrle and Ronald E. Scott via electronic mail on September 27, 2019.

The costs advanced were:

- \$902.00 for Depo Reporting (Glenn Scott Deposition);
- \$552.52 for Cavaliere Reporting (Deborah F. Herrle and Ronald E. Scott deposition transcripts);
- \$529.17 for FedEx/Kinkos Exhibit Copies.

TOTAL = \$1,983.69

To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

53. Admitted.

54. Admitted.

55. Admitted.

56. Admitted in part and denied in part. It is denied that Ms. Herrle and Ron Scott were informed their respective depositions would not be taken until 2020. The depositions of Ronald E. Scott and Deborah F. Herrle were taken on August 29, 2019 at the Law Offices of James Herb. Present at said depositions were me, Debora Herrle, Ron Scott, Glenn Scott, Attorney James Herb, a forensic psychologist named Shannon Edwards, Psy.D., and a social worker named Samantha Etzim, LSW, as well as the staff for Attorney Herb.

It is admitted that Ron Scott, Ms. Herrle and I had in-person meeting on Monday November 11, 2019 at 110 Ashford Court, Pittsburgh, PA 15237. That property is the personal residence of Scott Herrle, MD (Deborah Herrle's son). Dr. Herrle had been provided a copy of the report prepared by Glenn Scott's expert, Shannon Edwards, Psy.D. and the voluminous deposition exhibits produced during the depositions of Deborah F. Herrle and Ron Scott. Dr. Herrle hosted a meeting wherein we evaluated the medical records produced regarding Francis E. Scott, deceased. We sought Dr. Herrle's assistance in rebutting the allegations of undue influence and lack of capacity

asserted in the Formal Caveat and his expert advice regarding the medical records.

Due to inadvertence, oversight or excusable neglect, I did not have the 33.33% Contingency Fee Agreement with me for them to review and sign. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

57. Admitted. On January 13, 2020 I received correspondence from Attorney James Herb regarding the Caveat and Citation hearing scheduled for January 27, 2020. Attorney Herb requested the hearing be continued and the date used as a Status Conference. Ron Scott informed me that he was going to be “medically unable” to attend the proposed January 27, 2020 hearing. As a result, my office sent correspondence to Hearing Officer, Timothy Finnerty on January 13, 2020 requesting a continuance of the hearing for 45 to 60 days. On January 17, 2020 I received a telephone call from Hearing Officer Finnerty’s staff informing us the hearing had been continued and that the January 27, 2020 date would be a Status Conference.



On January 27, 2020 I attended the Status Conference, wherein Attorney James Herb informed Hearing Officer Finnerty that he estimated the hearing to take no less than five to seven full days.

58. Denied. I did not meet with Ms. Herrle or Ronald Scott. There were teleconferences, in lieu of a face-to-face meeting, with both Deborah F. Herrle and Ronald E Scott; specifically, thirteen (13) minutes with Deborah F. Herrle and nineteen (19) minutes with Ronald E. Scott. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(a) Admitted in part. I recommended from the inception of the litigation that Ms. Herrle and Ron Scott settle. Based upon the totality of costs involved in protracted litigation I renewed my advice. Thereafter they agreed to authorize me to engage in settlement talks.

(b) Admitted in part and denied in part. I had not been given authority to make a specific offer of settlement. Instead I was authorized to engage in preliminary negotiations. To the extent further response is deemed necessary, said allegations are

generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(c) Denied. I did not tell Ms. Herrle she would need to execute a signed Engagement Letter before sending the settlement offer. I did inform them they needed to sign the contingency fee agreement they had proposed, because they had not done so for weeks and months, despite their repeated and assurances they would do so. I had not received any payment from them for five months, because I relied on their promise to sign the contingency fee agreement they proposed on August 30, 2019. I never at any time refused to perform legal services in lieu of receiving the signed engagement letter. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(d) Denied. I informed them that under the Pennsylvania Rules of Professional Conduct, all contingency fee agreements had to be in writing, and I was not willing to risk being non-compliant with the Rules. Furthermore, due to alleged medical

issues with both Ron Scott and Ms. Herrle, they had delayed the execution of the fee agreement despite repeated assurances. I did explain on numerous occasions that the contingency fee agreement had to be executed. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

59. Admitted.

60. Admitted. On January 30, 2020, the 33.33% contingency fee agreement was emailed to Deborah F. Herrle and Ronald E. Scott, because coordinating in-person meetings was becoming difficult. After communicating with both Deborah F. Herrle on the telephone on January 29, 2020 to confirm the terms of the 33.33% Contingency Fee Agreement, my office sent the fee agreement that was proposed by Ronald E. Scott and Deborah F. Herrle. The scope of work contained in the 33.33% fee agreement was "...to represent (sic) Ronald E. Scott and Deborah Herrle, in connection with the Caveat and Petition for Citation filed by your brother Glenn Scott, challenging the testamentary capacity of your late father, Francis Scott, and allegations that you

unduly influenced him to change his estate planning documents. This representation includes any and all hearings before the Register of Wills as well as any appeal to the Orphan's Court".

The contingency fee agreement was dated February 14, 2019, initially inadvertently, due to an auto-populated date in Microsoft WORD. The date also happened to coincide with the filing date of the Proof of Service of the Informal Caveat. I recommended maintaining the date, in order for those fees to potentially be claimed as expenses and deductions on the REV-1500 Pennsylvania Inheritance Tax Return.

61. Admitted.

(a) Admitted.

(b) Admitted.

62. Denied. On February 3, 2020, at 9:09 p.m. I received an email from Ronald E. Scott stating "Did you send him our offer? If you did not, then DO NOT!! I will not negotiate with him any further after reading this (expletive deleted)." On Tuesday, February 4, 2020, I received a telephone call from Ron Scott to renegotiate the August 30, 2019 offer of 33.33% as my contingency fee. Ron Scott said "Counselor, Dad wouldn't want an attorney to get that much", or similar

words to that effect. I asked what he proposed. Ron Scott proposed a 25% contingency and I agreed, and further promised, to perform any and all services associated with estate administration once the Will was able to be probated. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(a) Admitted in part and denied in part. I informed Ronald E. Scott that as of the end of February 2020. I had performed thirteen months of work, which at the “capped” rate of \$5,000.00 per month which would have equaled to \$65,000.00; however, I had only received \$35,000 through September 2019, and due to the contingency fee agreement of August 30, 2019, I would not receive any money, until the resolution of the ongoing litigation.

(b) Denied. I informed Ronald E. Scott that as of the end of February 2020. I had performed thirteen months of work, which at the “capped” rate of \$5,000.00 per month which would have equated to \$65,000.00; however, I had only received \$35,000 through September 2019, and due to the contingency fee agreement of August 30, 2019, I would not receive any money, until the resolution of the ongoing

litigation. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(c) Admitted in part and denied in part. Ron Scott requested I reduce my fee from 33.33% to 25%, but also perform the Probate Administration work to account for the \$35,000 I had already been paid. I informed him the rate I charge for such services would be charged per the *Johnson Estate*, 4 Fid. Rep.2d, which is based on the gross taxable value of an estate. I informed Ronald E. Scott that the value of the Estate of Francis E. Scott was approximately \$950,000.00 and that my firm typically charges 3% of the gross taxable estate. Further, the “reasonable fees” under the *Johnson* schedule, and ancillary costs of publication, filing, etc. could be approximately \$35,000.00. Ronald E. Scott renegotiated the contingency fee he proposed on August 30, 2019, to include the probate administration work. I agreed. Following our telephone conference, I sent a second contingency fee agreement to Ron Scott. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

63. Admitted.

64. Admitted.

65. Admitted in part and denied in part. It is admitted that Ron Scott and Ms. Herrle signed a contingency fee agreement for 25%, including litigation, appeal work and estate administration work. It is denied that the signing of the 25% contingency fee agreement was the date on which an agreement was entered. I had been performing work at the same rate for the 2017 Scott Family Living Trust since I drafted it, systematically and continuously. The 2017 Scott Family trust is the entity I was being paid by at the rate of \$200 per hour. A novation to that agreement was entered into. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

66. Denied. The allegation contained in Paragraph 66 is a conclusion of law to which no response is necessary. Pennsylvania Rule of Professional Conduct 1.5 (a)(4) is one of the factors for the determination of "excessiveness". The Rule states "the fee customarily charged in the locality for similar legal services" which under Pennsylvania Law is set forth in the Johnson Estate, 4 Fid, Rep.2d. A

3% fee is well under the fee “customarily charged.” Estate administration fees are typically 5% of the gross taxable estate. Furthermore, \$200 per hour for litigation is less than half of my normal hourly rate for litigation. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

67. Denied. The allegation contained in Paragraph 67 is a conclusion of law to which no response is required. Neither Ms. Herrle nor Ron Scott “received” any money due to the Caveat and Petition for Citation. February 3, 2020, Attorney James Herb sent an informal settlement demand. Based on the evaluation of the various financial records which had been subpoenaed and produced in discovery, the Estate of Francis E. Scott was valued at \$917,762.45.

Glenn Scott had been disinherited, and consequently Ron Scott and Ms. Herrle, if successful at defending the lawsuit, would receive over \$450,000 each. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.



68. Denied. I had been authorized in January 2020 to commence settlement talks. During November and December, Ron Scott and I looked into an expert. On January 21, 2020, Dr. Tod Marion was retained on behalf of Deborah F. Herrle and Ron Scott.

On January 26, 2020, I received correspondence from Dr. Marion requesting “written documentation authored by Francis Scott that gave any direct evidence of what he thought about in regard to his relationship with his son Glenn; and any written documentation by Francis regarding his decision and reasoning for changing his will and making amendments to the Trusts”. Ultimately, Dr. Marion (our own expert) produced a report wherein he suggested that Deborah F. Herrle had been in a position of power and that her position ultimately could be construed as undue influence over her parents, Laverne Scott and Francis Scott. That report was extremely prejudicial and I explained it to Ron Scott.

Following the February 3, 2020 email from Ron Scott stating “Did you send him our offer? If you did not, then DO NOT!! I will not negotiate with him any further after reading this (expletive deleted).” I had no authority to negotiate with Attorney Herb. In the week that followed, I

continued to discuss the pros and cons of ongoing litigation. As a result I again asked for authority to commence settlement negotiations. My efforts proved to be successful and I began working on a Mutual Release, and thereafter a Revised Mutual Release. The Revised Mutual Release was emailed to Ron Scott and was executed on February 27, 2020. The Revised Release was executed by Ms. Herrle on March 12, 2020. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

69. Admitted.

70. Admitted in part and denied in part. Judge Kimberly Clark declared a Judicial Emergency on March 16, 2020. It is admitted that at the fledging months of the Global Pandemic, I recall we discussed COVID-19 generally; however, there were no hearings or other such matters which to attend at the Register of Wills.

With respect to probating the Will, there were procedural aspects that had to be completed before any Petition for Grant of Letters would be accepted by the Register of Wills; specifically, dismissal of the Petition and Withdrawal of Caveat. Additionally, the conditions

contained in the Revised Release were not yet complete; specifically, the payment of settlement monies and the transfer of mineral rights by Hydrocarbon Deed to Glenn Scott. It is denied that I told them the Register of Wills was closed. In response to the COVID-19 crisis, the Pennsylvania Supreme Court declared a general, statewide judicial emergency and ordered the closure of Pennsylvania courts to the public, except for specific emergency matters. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

71. Denied. In May 2020 I contacted Deborah F. Herrle to inform her the Petition for Grant of Letters was ready to be filed and to find time to go to the Register of Wills to be sworn in. I asked her if she wanted me to use the Renunciation she executed the year prior. She stated her health was well enough to perform the duties and she wanted to serve. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

72. Admitted. Ms. Herrle was having difficulty coordinating her availability, making it difficult to marshal the assets held by third-party custodians, including Brighthouse/ Met Lift, Western Surety, etc. In March 2019 I recommended she renounce in favor of me as Executor in order for me to communicate with the third-party custodians and to effectively marshal the assets. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

73. Admitted.

74. Admitted.

75. Admitted.

76. Admitted.

77. Admitted.

78. Admitted.

79. Admitted in part and denied in part. On March 12, 2020, Deborah F. Herrle and Ronald E. Scott came to my office and executed the Revised Release before a Notary Public.

During the March 12, 2020 meeting, Deborah Herrle, Ronald E. Scott and I performed a tallying of the “monies received” by the Estate

of Francis E. Scott, the July 18, 2000 Scott Living Trust, the October 25, 2011 Scott Family Protector Trust, 2017 Scott Family Living Trust, and all other monies yet to be received. During that meeting, Ronald E. Scott and Deborah F. Herrle requested an accounting of the money held in my IOLTA; specifically, the \$154,143.10 proceeds from the sale of 153 Gass Road. I produced the American Land Title Association Settlement Statement, signed by Deborah F. Herrle on June 28, 2019, and confirmed possession of said money in my IOLTA account. We noted the money I held in my IOLTA was approximately 25% of the “monies received” and that it would be used as the source to pay my fees and they would distribute other monies to themselves.

Both Ronald E. Scott and Deborah F. Herrle were provided a tablet and recorded the various accounts in their own handwriting to be used as a basis for settlement distribution. By Deborah F. Herrle’s own writing, the value of the “monies received”, after paying Glenn Scott settlement, was \$635,901. Ms. Herrle and Ron Scott informed me they were prepared to distribute the monies received to themselves and I cautioned them to not deplete all reserves in the event additional taxes were owed. I also recommended they execute a Family Settlement

Agreement, because they had begun to become litigious with each other concerning Ms. Herrle receiving money from her parents prior to their deaths. At the execution of the Revised Mutual Release, my 25% contingency fee was earned. I took no fee until the execution of the Consent Motion to Dismiss had been signed. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

80. Admitted.

81. Denied. The allegation contained in Paragraph 81 contains conclusions of law to which no response is required. My earned fees in my IOLTA were partially withdrawn. At no time did Ms. Herrle or Ron Scott ever request me discount my fees further, nor requested me to transfer my earned fees in IOLTA to them. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

82. Denied. The allegation contained in Paragraph 82 is an excerpt from a text message, taken out of context. The message

requested a statement so “Ron’s accountant is going to handle taxes and needs it.” I immediately called Ms. Herrle, she responded that she was having “mouth surgery” via text. I thereafter called Ron Scott and asked what taxes his accountant was going to “handle.” The decedent’s Federal Income tax return had been filed a year earlier by the McQuillan Group, C.P.A. I further explained that the PA Rev-1500 Inheritance Tax Return was within the scope of duties they had included in the contingency fee agreement. Ron Scott stated he understood. I asked if he wanted another copy of the closing check. He said no and that he would communicate with his sister. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

83. Denied. Ms. Herrle was shown multiple times the statement of account, i.e. commencing at the deposit of the money into my IOLTA, as well as at the March 12, 2020 meeting and any other time she requested. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

84. Denied. At no time did Ms. Herrle ever “advance” me any fee. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

85. Admitted.

86. Denied. The nature of my relationship with Ms. Herrle was commenced by us being co-workers. Mr. Pyros and Ms. Herrle often discussed the litigation. I did not discuss it with him. In August 2020, I received a phone call from Mr. Pyros threatening to fire me for “overcharging Debbie.” As indicated, Mr. Pyros insisted, starting in 2016, that I must offer Ms. Herrle my services at the rate I was contracted for to perform services at his companies. Ms. Herrle, throughout the entirety of the litigation, had been sharing details of the action.

87. Denied. To the extent a response is permissible the message is a private communication between me and my client pertaining to his company matters and his personal business, and at least arguably privileged.



88. Admitted in part and denied in part. The Stranahan/Metrick letter was dated August 24, 2020, but was not received until the afternoon of August 26, 2020.

(a) Admitted.

(b) Admitted.

(c) Admitted.

(d) Admitted.

(e) Admitted.

89. Admitted. Ms. Herrle and Ron Scott refused to accept or respond to any communications. I contacted the ACBA ethics hotline to discuss. Pursuant to my consultation with ethics counsel and his advice, Rule 1.5(f) required the entire amount of my fee to be placed back into escrow because the entire amount was subject to a fee dispute.

90. Denied. I received the Stranahan/Metrick letter on August 26, 2020 in the afternoon. My correspondence to my clients was drafted and sent prior to receiving the Stranahan/Metrick letter. In further support, when I received the letter, I contacted Attorney Stranahan on the telephone to discuss his correspondence. I also informed him that I had sent correspondence to my clients earlier that day. Attorney

Stranahan informed me that Ms. Herrle and Ron Scott had sought his counsel to discuss the litigation fees. My conversation with Messrs. Stranahan and Metrick was followed up with a letter to open a settlement dialogue.

My letter to Ron Scott and Ms. Herrle, dated August 26, 2020 has absolutely nothing to do with the Stranahan/Metric letter, but rather was sent upon the advice I received during my consultation with the ethics hotline counsel. Lastly, Ms. Herrle and Ron Scott were still my clients on August 26, 2020. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

- (a) Admitted.
- (b) Admitted.
- (c) Admitted.
- (d) Admitted.
- (e) Admitted.

91. Denied. My earned fee was moved from IOLTA, after the litigation with Ms. Herrle and Ron Scott had concluded. At that time, it represented earned fees and both Ms. Herrle and Ron Scott knew I

would take my fees from the monies held in my IOLTA, with final distribution to occur after completion of the Estate administration. The money I held in my IOLTA account was 25% of the monies received. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

92. Denied. I was not present at the September 1, 2020 meeting. I can neither confirm nor deny the substance of any communication that occurred as I have no firsthand knowledge of any of the facts or circumstances averred in Paragraph 92; therefore, the same are denied. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(a) Denied. I can neither confirm nor deny the substance of any communication that occurred as I have no first hand knowledge of any of the facts or circumstances averred in Paragraph 92; therefore, the same are denied. To the extent further response is deemed necessary, said allegations are

generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(b) Denied. I can neither confirm nor deny the substance of any communication that occurred as I have no first hand knowledge of any of the facts or circumstances averred in Paragraph 92; therefore, the same are denied. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(c) Denied. I can neither confirm nor deny the substance of any communication that occurred as I have no first hand knowledge of any of the facts or circumstances averred in Paragraph 92; therefore, the same are denied. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(d) Denied. I can neither confirm nor deny the substance of any communication that occurred as I have no first hand knowledge of any of the facts or circumstances averred in

Paragraph 92; therefore, the same are denied. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(e) Denied. I can neither confirm nor deny the substance of any communication that occurred as I have no first hand knowledge of any of the facts or circumstances averred in Paragraph 92; therefore, the same are denied. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(f) Denied. I can neither confirm nor deny the substance of any communication that occurred as I have no first hand knowledge of any of the facts or circumstances averred in Paragraph 92; therefore, the same are denied. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(g) Denied. I can neither confirm nor deny the substance of any communication that occurred as I have no first hand knowledge of any of the facts or circumstances averred in Paragraph 92; therefore, the same are denied. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

93. Denied. The allegations contained in Paragraph 93 constitute conclusions of law to which no response is required. Notwithstanding and while preserving said objection, my offer to settle for \$100,000 represented a \$50,000 discount from the fee I was entitled to receive. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

94. Admitted.

(a) Admitted.

(b) Admitted.

(c) Admitted.

(d) Admitted.

95. This allegation is unable to be answered. This message, purports to be a protected communication between me and my client. To the extent a response is permissible, the message is a private communication between me and my client pertaining to his company matters and his personal business and is at least arguably privileged. I have no record of such a communication to my client as purported in Paragraph 95 (b) and therefore the same is denied. Specific proof is demanded at trial.

96. Admitted in part and denied in part. It is admitted I neither sought nor obtained the informed consent of Ms. Herrle and Mr. Scott. It is denied I ever did reveal confidential information to Mr. Pyros relating to my representation of Ms. Herrle and Ronald Scott in the matter of the Caveat and Petition, and the statements in paragraph 95 do not constitute confidential communications. To my knowledge, Ms. Herrle disclosed information to Mr. Pyros, but I refused to discuss the matter with him. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

97. Admitted. The September 9, 2020 letter is a Confidential Settlement Communication.

(a) Admitted.

(b) Admitted.

(c) Admitted.

(d) Admitted.

(e) Admitted.

(f) Admitted.

(g) Admitted.

(h) Admitted.

(i) Admitted.

(j) Admitted.

98. Admitted.

(a) Denied. This allegation contains an incomplete excerpt from a sworn pleading. Paragraph 2 of my Petition states: "2. On or about January 24, 2019 Petitioner met with Deborah Herrle, Executrix, to discuss the terms of representing the Estate of Francis E. Scott and an oral agreement concerning said



representation was reached and a retainer was tendered.” It is Admitted the Petition contains the “retainer” language; however, I never received a prepayment for legal services from Ms. Herrle at any time and in any capacity. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

- (b) Denied. This allegation contains an incomplete excerpt from a sworn pleading. Paragraph 10 of my Petition states: “10. On August 30, 2019, the deposition of Caveator, Glenn Scott was taken by Petitioner and following the Deposition of Glenn Scott, Deborah Herrle and Ronald Scott presented a novation to the terms of representation and proposed a contingency fee of 33.33% of the value of the gross estate, an amount equal to the inheritance of Glenn Scott. The novation to the fee agreement was proposed due to the complexities of the case and the

excessive amount of hours attributed to litigation.” To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

- (c) Admitted.
- (d) Denied. This allegation contains an incomplete excerpt from a sworn pleading. Paragraph 12 of my Petition states: “On September 18, 2019, Petitioner met with Deborah Herrle and Ronald Scott to commence review of Glenn Scott's 2,000-page document production and to execute the new Engagement Letter. Petitioner was unable to secure a signature to said Engagement Letter and was informed Deborah Herrle would be unavailable the following weeks for personal reasons and Petitioner was instructed that due to medical reasons, Ronald Scott would be unavailable and was instructed to request the trial date to be continued.” To the extent

further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

- (e) Denied. This allegation contains an incomplete excerpt from a sworn pleading. Paragraph 14 of my Petition states: "14. Upon review of the voluminous medical records, Petitioner sought the retention of medical experts and continued to litigate the matter on behalf of Deborah Herrle and Ronald Scott repeatedly requesting they sign the fee agreement and on November 11, 2019, Petitioner met with Deborah Herrle and Ronald Scott with Dr. Scott Herrle to conduct a review of medical records pertaining to the decedent and Petitioner again confirmed the terms of the 33.33% contingency fee agreement." To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa.

R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

- (f) Denied. This allegation contains an incomplete excerpt from a sworn pleading. Paragraph 17 of my Petition states: "On January 27, 2020, the Register held a Status Conference where counsel for Caveator, Glenn Scott, indicated the trial would be multiple days, and most likely longer than a week and following the Status Conference, Ronald Scott informed Petitioner he was prepared to litigate the matter all the way through trial at which point Petitioner insisted the Fee Agreement be executed. On January 30, 2020, a contingency fee agreement for 33.33% was sent to Ronald Scott." To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.
- (g) Denie. This allegation contains an incomplete excerpt from a sworn pleading. Paragraph 19 of my Petition

states: "19. On February 4, 2020, Petitioner received a telephone call from Ronald Scott wherein Ronald Scott insisted Petitioner reduce his contingency fee to 25%, which Petitioner agreed to. A revised Fee Agreement was sent to Ronald Scott and Deborah Herrle and both of them signed said agreement." To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

99. Denied. I have never knowingly made false statements of material fact or law to a tribunal, nor would I ever. To the extent a response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

100. Admitted.

101. Admitted in part and denied in part. It is admitted that I disbursed fees to myself and \$100,000 to Ms. Herrle, but only after execution of a mutual release. It is denied that I retained \$35,000 that

was “advanced” to me. At no time since the commencement of my representation of Ms. Herrle have I ever requested, nor has any person in my employ, ever requested nor received “advanced” fees. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

102. Denied. The fee I received in total was approximately \$85,000 for twenty months (approximately 400 hours) of litigation, as well as Estate Administration work. I received the same \$200 per hour I had always been paid. My usual and customary hourly rate for litigation is \$395 per hour. To the extent a response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

103. Admitted.

104. Admitted. Due to oversight, I listed my IOLTA account, but failed to list my operating account. Upon being made aware of the fact in the Petitioner’s DB7, my office immediately rectified the oversight.

105. Admitted.

106. Denied. Respondent's usual and customary hourly rate for litigation is \$395 per hour. Respondent provided a 50% discount and provided litigation services for \$200 per hour. Respondent "capped" his hours at 25 hours per month, while working more than 25 hours as a courtesy to his co-worker, Ms. Herrle. Respondent's usual and customary contingency fee rate is 40%. Ms. Herrle and Ronald Scott offered 33%, and ultimately signed a 25% contingency fee agreement. Respondent performed approximately 400 hours of work and received approximately \$85,000, or approximately \$212.50 per hour. To the extent further response is deemed necessary, said allegations are generally denied pursuant to Pa. R.C.P. 1029 and strict proof thereof is demanded at the time of trial.

(a) This paragraph contains legal conclusions to which no response is required.

(b) This paragraph contains legal conclusions to which no response is required.

(c) This paragraph contains legal conclusions to which no response is required.

(d) This paragraph contains legal conclusions to which no response is required.

(E) This paragraph contains legal conclusions to which no response is required.

(f) This paragraph contains legal conclusions to which no response is required.

(g) This paragraph contains legal conclusions to which no response is required.

(h) This paragraph contains legal conclusions to which no response is required.

(i) This paragraph contains legal conclusions to which no response is required.

(j) This paragraph contains legal conclusions to which no response is required.

Respectfully submitted,

QUINN LOGUE LLC

By:

  
John E. Quinn, Esquire  
*Counsel for Respondent*

Date: 2/23/23



BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY	)	DISCIPLINARY DOCKET
COUNSEL,	)	
	)	No. 155 DB 2022
PETITIONER,	)	
	)	Attorney Registration No.
v.	)	94551 (Allegheny County)
	)	
KELTON MERRILL BURGESS,	)	
	)	
RESPONDENT.	)	

**VERIFICATION**

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

2/22/2023  
Date

  
Kelton Merrill Burgess

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY	)	DISCIPLINARY DOCKET
COUNSEL,	)	
	)	No. 155 DB 2022
PETITIONER,	)	
	)	Attorney Registration No.
	)	94551 (Allegheny County)
v.	)	
	)	
KELTON MERRILL BURGESS,	)	
	)	
RESPONDENT.	)	

**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:



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John E. Quinn, Esquire  
Pa. ID No. 23268

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY	)	DISCIPLINARY DOCKET
COUNSEL,	)	
	)	No. 155 DB 2022
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v.	)	94551 (Allegheny County)
	)	
KELTON MERRILL BURGESS,	)	
	)	
RESPONDENT.	)	

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing Answer to Petition was served upon the following parties and counsel of record on the below date via electronic mail:

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2/23/22  
Date

  
John E. Quinn, Esquire  
Counsel for Respondent