

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,:

:

Petitioner :

: No. 155 DB 2022 - Disciplinary

v.

: Board

:

KELTON MERRILL BURGESS,

: Attorney Registration No. 94551

:

Respondent

: (Allegheny County)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Thomas J. Farrell, Chief Disciplinary Counsel, and Cory John Cirelli, Disciplinary Counsel, files the within Petition for Discipline, and charges Respondent Kelton Merrill Burgess, Esquire, with professional misconduct in violation of the Rules of Professional Conduct and the Pennsylvania Rules of Disciplinary Enforcement as follows:

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 (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of a lawyer admitted to the practice of law by the Supreme Court of Pennsylvania or a lawyer who provides or offers to provide any legal services in this Commonwealth, and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Kelton Merrill Burgess, Esquire, was born in 1972. He was admitted to the practice of law by the Supreme Court of Pennsylvania on April 11, 2005. Respondent's attorney registration mailing address is Law Offices of Kelton M. Burgess, LLC, 1300 Fifth Avenue, Pittsburgh, PA 15219. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

CHARGE

3. On December 13, 2018, Francis E. Scott (Decedent) died testate in Allegheny County, Pennsylvania.

4. Decedent's Last Will and Testament (Will) provided that, among other things, distribution of Decedent's estate assets was to be effectuated pursuant to the 2017 Scott Family Living Trust (Scott Trust).

5. The Scott Trust nominated Deborah F. Herrle as the successor Trustee, upon the death of Decedent. The Will nominated the then-acting Trustee, Ms. Herrle, as the Executrix of Decedent's estate.

6. Ms. Herrle and her brother, Ronald Scott, were the only named beneficiaries of the Scott Trust.

7. The Trust document "specifically and intentionally" made no gift, devise, or allowance to Glenn Scott, the brother of Ms. Herrle and Ronald Scott.

8. The Trust document directed the Trustee to distribute "no portion of this Trust or Residue" to Glenn Scott.

9. In late December 2018 and early January 2019, Ms. Herrle consulted with Respondent, whom she had met through his representation of her employer, Kirk Pyros, President and CEO of Allegheny Crane Rental.

10. Although Respondent had represented Ms. Herrle and her husband in 2018 for the drafting of their own family trust document, Respondent did not regularly represent Ms. Herrle.

11. Ms. Herrle asked Respondent about his fee for his legal services in the matter of Decedent's estate administration.

12. Respondent told Ms. Herrle it was too soon after her parents' deaths to discuss fee matters and "not to worry about" his fee, or words to that effect.

13. Ms. Herrle retained Respondent to represent her as the Executrix of Decedent's estate and directed him to "get his bill together" and she would pay him for work he would perform.

14. Respondent failed to communicate in writing the basis or rate of his fee, either before or within a reasonable time after Respondent commenced his representation of Ms. Herrle in her capacity as Executrix of Decedent's estate.

15. On February 4, 2019, James Herb filed a probate Caveat and

Petition for Citation on behalf of his client, Glenn Scott, in the Wills/Orphans' Court Division of Allegheny County at docket number 2019-00750, alleging that Decedent had died without a will.

16. Respondent failed to communicate in writing the basis or rate of his fee either before or within a reasonable time after Respondent commenced his representation of Ms. Herrle and Ronald Scott, in their respective capacities as putative heirs of Decedent's estate, to defend against the Caveat and Petition filed by Glenn Scott.

17. On or about February 13, 2019, Respondent requested a \$5,000 retainer to represent Ms. Herrle and Ronald Scott in their respective capacities as putative heirs to Decedent's estate, to defend against Glenn Scott's challenge to the Will.

18. By check number 3640, dated February 13, 2019, drawn on the Scott Trust account in the amount of \$5,000, made payable to Respondent and annotated "Retainer," Ms. Herrle paid Respondent's requested retainer.

19. Respondent failed to deposit the \$5,000 advance in an IOLTA or other trust account in order to hold it separate from his own property, appropriately safeguard it, and draw upon it only as earned by him.

20. Respondent, instead, deposited the \$5,000 check in his Dollar Bank Business/Operating Account (account number ending 6858).

21. Ms. Herrle again requested that Respondent provide her with bills for any work he had performed and would perform.

22. Respondent did not provide Ms. Herrle with a bill for services rendered.

23. On February 25, 2019, Respondent filed on behalf of Ms. Herrle and Ronald Scott an Answer to the Caveat and Petition.

24. On March 5, 2019, Ms. Herrle met with Respondent about Decedent's estate.

(a) Respondent informed Ms. Herrle that he needed a check drawn in the amount of \$25,000 to make a pre-payment of the inheritance tax due.

(b) Ms. Herrle drew a \$25,000 check on the Scott Trust's account, made payable to the Register of Wills.

(c) Respondent told Ms. Herrle he needed her to sign a renunciation form in favor of Respondent for the Register of Wills "that would allow Respondent to pay the inheritance tax," or words to that effect.

(d) Ms. Herrle executed the renunciation form as Respondent had requested.

25. Respondent did not file the signed Renunciation form that he had requested and obtained from Ms. Herrle.

26. On March 6, 2019, Respondent forwarded the \$25,000 check to the Allegheny County Inheritance Tax Division.

27. On March 12, 2019, the Register of Wills held a hearing on the Caveat and Petition but no resolution was reached, so the Register of Wills decreed a pre-trial schedule.

28. On March 13, 2019, Mr. Herb filed a Formal Caveat on behalf of Glenn Scott alleging, among other things, fraud and undue influence, and requesting that the Allegheny County Department of Court Records – Wills Division, refuse any document purporting to be the testamentary disposition of Decedent's assets.

29. In March 2019 Respondent requested from Ms. Herrle a \$10,000 advance payment toward Respondent's fee for representing her and Ronald Scott defending against the Caveat and Petition.

30. By check number 102, dated March 28, 2019, drawn on the Scott Trust account in the amount of \$10,000 and made payable to Respondent, Ms. Herrle entrusted to Respondent the additional fee advance he had requested.

31. Respondent failed to deposit that \$10,000 advance in an IOLTA or other trust account, despite Ms. Herrle having entrusted that sum to him to be held separate from Respondent's own property, appropriately safeguarded, and drawn upon only as earned by him.

32. Respondent, instead, deposited that check in his Business/Operating Account.

33. In April and May of 2019, Ms. Herrle spoke with Respondent about an upcoming deposition of Glenn Scott which had been delayed multiple times.

34. Ms. Herrle again requested from Respondent a bill for services rendered.

35. Respondent did not provide Ms. Herrle with a bill for services rendered.

36. In May 2019 Respondent called Ms. Herrle and requested yet another fee advance of \$10,000.

37. By check number 209, dated May 24, 2019, drawn on the Scott Trust account in the amount of \$10,000, and made payable to Respondent, Ms. Herrle entrusted to Respondent that additional fee advance that he had requested.

38. Respondent failed to deposit that \$10,000 advance in an IOLTA or other trust account, despite Ms. Herrle having entrusted that sum to him to be held separate from Respondent's own property, appropriately safeguarded, and drawn upon only as earned by him.

39. Respondent, instead, deposited that check in his Business/Operating Account.

40. On July 1, 2019, a closing was held for the sale of the Decedent's estate realty consisting of property located at 153 Gass Road, Pittsburgh, Pennsylvania 15229. The sale price was \$170,000 and the amount due the seller at closing was \$170,105.49.

41. The net sale proceeds check numbered 17736, dated June 28, 2019, drawn in the amount of \$153,843.10, was made payable to Respondent and annotated "Description: Proceeds in Escrow," Colonial Title, LLC.

42. On July 11, 2019, Respondent negotiated the \$153,843.10 check by deposit into his Dollar Bank IOLTA (account number ending 1371).

43. Respondent failed to promptly deliver to Ms. Herrle, in her capacity as Executrix, the proceeds of the sale of Decedent's estate realty.

44. Respondent, instead, told Ms. Herrle that he would hold the \$153,843.10 in escrow until the litigation of the Caveat and Petition was concluded.

45. Respondent thereby became entrusted with \$153,843.10 on behalf of Ms. Herrle in her capacity as Executrix, in addition to the fee payments she had already advanced to him for his representation of her and Ronald Scott in their defense of the Caveat and Petition.

46. On August 30, 2019, Respondent deposed Glenn Scott on behalf of Ms. Herrle and Ronald Scott in the matter of the Caveat and Petition.

47. At the beginning of September 2019 Respondent requested an additional \$10,000 fee from Ms. Herrle for his representation of her and Ronald Scott, specifically for Respondent's preparation for Glenn Scott's deposition.

48. By check number 221, dated September 9, 2019, drawn on the Scott Trust account in the amount of \$10,000, and made payable to Respondent, Ms. Herrle paid Respondent that additional fee that he had requested.

49. Respondent failed to deposit in an IOLTA or other trust account the \$10,000 advance that Ms. Herrle entrusted to him by check dated September 9, 2019, which was to be held separate from Respondent's own property, appropriately safeguarded and to be drawn upon only as earned by Respondent.

50. Respondent, instead, deposited that check in his Business/Operating Account.

51. Although Respondent informed Ms. Herrle that the September 9, 2019, check drawn in the amount of \$10,000 would pay for Respondent's services to be rendered through the conclusion of the Caveat proceedings -- or words to that effect -- Respondent had yet to communicate to Ms. Herrle a written statement of the basis or rate of his fee.

52. In September 2019 Respondent also requested \$1,983.67 from Ms. Herrle to pay for costs associated with Glenn Scott's deposition.

53. By check number 222, dated September 29, 2019, drawn on the Scott Trust account in the amount of \$1,983.67, made payable to Respondent, and annotated "DePo [Reporting] Cavaliere [Court Reporting] and [Kinko's/FedEx] Printing," Ms. Herrle paid Respondent for those costs.

54. With the exception of his invoices for costs totaling \$1,983.67 that Respondent attached to an email dated September 27, 2019, he did not provide Ms. Herrle with any invoices for services rendered or other costs of the representation.

55. On or about September 30, 2019, Respondent filed a Pre-Trial Statement.

56. In October and November 2019, Ms. Herrle and Ronald Scott met with Respondent to prepare for their depositions, at which time Respondent told them their depositions would not be taken until 2020.

57. On January 27, 2020, Respondent attended a status conference with Mr. Herb and the Register of Wills to discuss the anticipated litigation.

58. On January 30, 2020, Ms. Herrle and Ronald Scott met with Respondent to discuss a settlement of Glenn Scott's claim against Decedent's estate. At that time:

(a) Ms. Herrle and Ronald Scott agreed to have Respondent make a settlement offer to Glenn Scott's counsel.

(b) Respondent informed Ms. Herrle and Ronald Scott that he would draft a settlement offer and contact Mr. Herb.

(c) Respondent told Ms. Herrle that he needed a signed engagement letter before he would be able to send the settlement offer to Mr. Herb.

(d) Respondent told Ms. Herrle and Ronald Scott he should have had them sign the engagement letter more than a year ago and he could "get in trouble" without a signed fee agreement.

59. By an email to Ms. Herrle dated January 30, 2020, Respondent

stated: “Attached hereto is the Engagement Letter which I have been late to get to you.”

60. Respondent, for the first time since being retained by Ms. Herrle in January 2019, communicated the basis or rate of his fee in writing to Ms. Herrle and Ronald Scott, by an “Engagement of Legal Services” letter, three pages in length, back-dated to “February 14, 2019.”

61. Respondent’s “Engagement of Legal Services” letter provided, among other things:

- (a) 1. Scope – You have asked [Respondent] to represent you in connection with the Caveat and Petition for Citation.... This representation includes any and all hearings before the Register of Wills as well as any appeal to the Orphans’ Court.

- (b) 4. Contingency Agreement – KMB, LLC shall retain as fees from monies received thirty-three and one-third percent (33.3%) and...shall also be reimbursed any expenses that may be advanced in preparation of my/our case. . .from my/our portion of the settlement/verdict proceeds.

62. Soon thereafter, Ronald Scott called Respondent to discuss his engagement letter.

(a) Mr. Scott asked how much Respondent was owed for the representation.

(b) Respondent claimed that he was owed \$75,000 in addition to the \$35,000 Ms. Herrle had already advanced to him.

(c) Mr. Scott requested that Respondent reduce his contingent fee percentage to 25%.

63. In or about the beginning of February 2020, Respondent forwarded to Ms. Herrle a second engagement letter, also back-dated "February 14, 2019," two pages in length, which provided, among other things:

Ron Scott and Deborah Herrle...do hereby appoint [Respondent]...to represent the Estate in connection with a Petition for Citation, Caveat and petition to Set Aside the Trusts, Wills and related pleadings.... Additionally...prepare and file the appropriate Petitions for Grant of Letters in the Register of Wills Office, related filings and the Department of Revenue REV-1500 inheritance tax return.

We hereby agree that [Respondent] shall retain as fees from monies received twenty-five (25%)" and...shall also be reimbursed any expenses that may be advanced in preparation of our case. . . from our portion of the settlement/verdict proceeds.

64. Ms. Herrle and Ronald Scott signed and returned the second backdated engagement letter.

65. Respondent thereby entered an agreement for representation of Ms. Herrle and Ronald Scott in connection with the Caveat and Petition for Citation.

66. Respondent charged a contingent fee for this representation which, under the circumstances, constituted a clearly excessive fee.

67. Respondent failed to adequately state in his engagement letter the method by which the fee was to be determined, including defining which “monies received” would be subject to the contingent fee as well as what percentage or percentages would accrue to the lawyer in the event of settlement, trial, or appeal.

68. In February 2020 Respondent and Mr. Herb negotiated a settlement of the Caveat and Petition case filed on behalf of Glenn Scott.

69. They notified a representative of the Register of Wills that a settlement had been reached in the litigation.

70. At or about the end of March 2020, Respondent informed Ms. Herrle and Ronald Scott that, because of the COVID-19 pandemic, nothing further could be done regarding probating Decedent's estate until the courts had re-opened.

71. In or about May 2020 Ms. Herrle rescinded her March 5, 2019, renunciation as Executrix of Decedent's estate.

72. Respondent continued to advise Ms. Herrle that the estate administration would be easier for him to complete if he were to serve as both the personal representative and counsel for the personal representative.

73. Ms. Herrle refused to give up her position as Executrix of Decedent's estate.

74. On May 27, 2020, Respondent and Ms. Herrle appeared at the Allegheny County Department of Court Records, Wills/Orphans' Court Division, to file a petition to open the Decedent's estate.

75. On that date, the Petition for a Grant of Letters Testamentary to Ms. Herrle was accepted provisionally and the Register of Wills swore in Ms. Herrle as Executrix.

76. The Register of Wills, however, refused to open the estate until a motion to dismiss Glenn Scott's Caveat and Petition had been filed.

77. A consent motion was filed with the Register of Wills and, by Order of Court dated June 19, 2020, Glenn Scott's Caveat and Petition for Citation were dismissed.

78. On June 22, 2020, Letters Testamentary were issued to Ms. Herrle as Executrix of Decedent's estate.

79. Respondent disbursed entrusted funds to himself by check numbered 1052, dated June 18, 2020, drawn on his IOLTA in the amount of \$50,000, annotated "Herrle/Scott," and made payable to "Kelton M. Burgess."

80. Respondent disbursed entrusted funds to himself by check numbered 1053, dated June 27, 2020, drawn on his IOLTA in the amount of \$30,000, annotated "Scott Fees," and made payable to "Kelton M. Burgess."

81. Respondent was not authorized by Ms. Herrle in her capacity as Executrix of Decedent's estate -- or otherwise -- to disburse to himself the \$80,000 with which he was entrusted from the sale proceeds of the estate realty and which he had withdrawn by issuing checks numbered 1052 and 1053 on his IOLTA.

82. By text message dated July 7, 2020, Ms. Herrle requested that Respondent give her and Ronald Scott an accounting of the proceeds of the sale of Decedent's realty and informed him that they needed an accounting of "the escrow account from the [sale of the] house."

83. Respondent failed to promptly provide Ms. Herrle, in her capacity as Executrix of Decedent's estate, an accounting of the proceeds of the sale of the estate realty.

84. Respondent failed to promptly provide a full accounting to Ms. Herrle for the funds she had advanced to him for legal services.

85. On August 19, 2020, Respondent filed on behalf of Ms. Herrle a Certification of Notice Under Pennsylvania Orphans' Court Rule 10.5.

86. In or about August 2020, Respondent sent a text message to Kyrk Pyros, Ms. Herrle's employer, stating:

(a) "[Ms. Herrle] and [Ronald Scott] proposed 33.3% contingency fee for a case I have worked on for two years."

(b) "I reduced my fee to 25% which is the lowest I know of any lawyer accepting."

(c) "That is the same amount [another lawyer] charges you."

(d) "What is the problem?"

87. On August 21, 2020, Respondent sent a text message to Mr. Pyros stating, in pertinent part, "When you get back I need to talk ASAP. My clients will not answer my phone. I have to send Certified Mail."

88. By letter to Respondent dated August 24, 2020, James A. Stranahan, IV and Gregory D. Metrick, among other things:

(a) Informed Respondent that their firm had been consulted by Ronald Scott and Ms. Herrle;

(b) Stated their understanding that Respondent represented Ronald Scott and Ms. Herrle in defending the Caveat and Petition filed by their brother, Glenn Scott;

(c) Stated their understanding that Respondent was holding the proceeds of the sale of the Decedent's estate realty (located at 153 Gass Road, Pittsburgh, Pennsylvania 15229) in his IOLTA;

(d) Requested that Respondent provide an itemized statement of the time spent in setting aside the Caveat and the status of the administration of Decedent's estate; and

(e) Requested that Respondent meet with them concerning the matter.

89. By check numbered 1601, dated August 25, 2020, drawn in the amount of \$80,000 on Respondent's Business/Operating Account, made payable to "Kelton M. Burgess IOLTA," and annotated "\$80k – Scott," Respondent deposited that amount back into his IOLTA.

90. By letter dated August 26, 2020, Respondent replied to the letter from Messrs. Stranahan and Metrick by writing directly to Ronald Scott and Ms. Herrle.

(a) He provided them with a Statement of Account for the funds he was holding in his IOLTA.

(b) He assured them the monies were in his IOLTA following the sale of the 153 Gass Road property.

(c) He stated “the account has \$154,143.13.”

(d) He assured them “the money will remain untouched in said account pending your availability to execute and finalize settlement distribution documents.”

(e) He assured them his office was awaiting account statements for the completion of the PA REV-1500 Inheritance Tax Form.

91. Respondent failed to inform Ms. Herrle, in her capacity as Executrix, that Respondent had disbursed assets of Decedent's estate to himself without authorization to do so.

92. On September 1, 2020, Respondent's counsel, Jason Dibble, met with Messrs. Stranahan and Metrick regarding Decedent's estate administration, among other matters.

(a) Ronald Scott attended but Respondent did not attend.

(b) Mr. Dibble stated that Respondent had "overlooked" having Ms. Herrle sign an engagement letter, or words to that effect.

(c) Mr. Dibble communicated an offer that would leave the Decedent estate with \$53,843.10 from the sale of the estate realty and Respondent would "keep" the remaining \$100,000.

(d) That offer was rejected.

(e) Mr. Dibble was informed that a complaint to the Disciplinary Board would be filed by Ms. Herrle.

(f) Mr. Dibble stated that because Respondent did not have a record of prior discipline he would probably “only get a warning,” or words to that effect.

(g) Mr. Dibble stated that Respondent was considering filing a defamation suit against Ms. Herrle and Ronald Scott because Respondent’s representation of another client in an unrelated matter had been terminated because of what they had told that former client about Respondent’s handling of the Scott estate.

93. Respondent’s demand for \$100,000 to settle his claim for fees, based on the circumstances, constituted an attempt to charge a clearly excessive fee.

94. By letter dated September 1, 2020, Messrs. Stranahan and Metrick informed Mr. Dibble, among other things, that:

(a) Their letter would serve as notice that Ms. Herrle and Ronald Scott no longer required Respondent’s services, and the attorney-client relationships had been terminated.

(b) Respondent was to arrange for the surrender of the estate file to Ms. Herrle so that she could forward it to successor counsel of her choosing.

(c) Respondent was to provide a detailed accounting of the work that he had performed.

(d) Respondent was to relinquish to either Ms. Herrle or successor counsel the sale proceeds for the estate realty with which Respondent was still entrusted.

95. On September 3, 2020, Respondent sent a series of text messages to Mr. Pyros stating:

(a) "I've been there for you every day for years. Call me today. I've done everything for you and you know it. I am the one who saved you \$250,000 this year alone. You owe me. You know why I am calling. Her brother is about to get them both in a world of problems."

(b) "I owe him nothing nor do you."

(c) “Please call.”

(d) “Can [you] talk[?]”

96. Respondent had neither sought nor obtained the informed consent of Ms. Herrle and Ronald Scott to reveal to Mr. Pyros information relating to Respondent’s representation of Ms. Herrle and Ronald Scott in the matter of the Caveat and Petition.

97. By letter dated September 9, 2020, Mr. Dibble informed Mr. Stranahan, among other things, that:

(a) He had shared Mr. Stranahan’s correspondence with Respondent, who had acknowledged its contents.

(b) “With respect to the Estate file and litigation materials, [Respondent] is prepared to tender the same to [Ms. Herrle], however, [the] letter does not specify the time, place or manner of said delivery.”

(c) “[T]he last time [Respondent] had the file copied, he was charged approximately \$500 due to the file’s immense size.”

(d) “Please advise regarding the method of exchange, as well as [Ms. Herrle]’s willingness to pay for the copying costs in advance.”

(e) “[Ms. Herrle]’s decision to terminate [Respondent], despite his abundantly successful results in the litigation matter is duly acknowledged and the attorney-client relationship ... is now terminated.”

(f) “Regarding the monies held in trust, the entire sum is presently in dispute.”

(g) “Pursuant to [Ms. Herrle]’s breach of the fee agreement, [Respondent] is entitled to compensation for his services at his hourly rate, or the agreed-upon percentage, or the greater of the two.”

(h) “[Respondent] expended hundreds of hours of legal services.”

(i) “[Respondent]’s customary hourly rate is \$400 per hour and his fees exceed the amount in trust.”

(j) “In accordance with Rule 1.15(f) of the Rules of Professional Conduct, [Respondent] is obligated to hold the proceeds in escrow until resolution of the fee dispute.”

98. By Petition for Leave to Withdraw as Counsel dated September 25, 2020, filed with the Court of Common Pleas, Respondent averred, among other things, that:

(a) “2. On or about January 24, 2019, [Respondent] met with Deborah Herrle, Executrix, to discuss the terms of representing the Estate...and an oral agreement concerning said representation was reached and a retainer was tendered.”

(b) “10. On August 30, 2019...Deborah Herrle and Ronald Scott presented a novation to the terms of representation and proposed a contingency fee of 33.3% of the value of the gross estate.... The novation to the fee agreement was proposed due

to the complexities of the case and the excessive amount of hours attributed to litigation.”

(c) “11. On August 31, 2019, [Respondent] confirmed the terms of the novation with Deborah Herrle and Ronald Scott. It was agreed the terms of representation would be reduced to writing for execution.”

(d) “12. On September 18, 2019, [Respondent] met with Deborah Herrle and Ronald Scott...to execute the new Engagement Letter....”

(e) “14. [Respondent]...repeatedly request[ed] [Ms. Herrle and Ronald Scott] sign the fee agreement and on November 11, 2019...[Respondent] again confirmed the terms of the 33.3% contingency fee agreement.”

(f) “17. On January 27, 2020.... [Respondent] insisted the Fee Agreement be executed. On January 30, 2020, a Contingency Fee Agreement for 33.3% was sent to Ronald Scott.”

(g) “19. On February 4, 2020, [Respondent] received a telephone call...wherein Ronald Scott insisted [Respondent] reduce his contingency fee to 25%, which [Respondent] agreed to. A revised Fee Agreement was sent to Ronald Scott and Deborah Herrle and both of them signed said agreement.”

99. Respondent thereby knowingly made false statements of material fact or law to a tribunal.

100. Respondent and Ms. Herrle and Ronald Scott executed a mutual release dated May 5, 2021.

101. Respondent disbursed to himself, as a portion of his fee, \$53,843.10 from the proceeds of sale of the estate realty that he had deposited in his IOLTA, in addition to retaining the \$35,000 Ms. Herrle had advanced to him in February, March, May, and September of 2019.

102. Based on the circumstances, Respondent collected a clearly excessive fee.

103. Respondent issued a check drawn on his IOLTA in the amount of \$100,000, dated May 5, 2021, annotated “settlement,” and made payable to Ms. Herrle, which represented the balance of the proceeds of the sale of the estate realty.

104. On Respondent’s 2018-2019, 2019-2020, and 2020-2021 PA Attorney’s Annual Fee Forms, he failed to list a Business/Operating account maintained or used by him in the practice of law.

105. Respondent corrected that omission by correspondence with the Attorney Registration Office dated October 29, 2020.

106. By his conduct as alleged in Paragraphs 3 through 105 above, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

(a) Rule of Professional Conduct 1.5(a) - A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(b) Rule of Professional Conduct 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.

(c) Rule of Professional Conduct 1.5(c) - A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) Rule of Professional Conduct 1.6(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).

(e) Rule of Professional Conduct 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.

(f) Rule of Professional Conduct 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; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or

property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

(g) Rule of Professional Conduct 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.

(h) Rule of Professional Conduct 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal

(i) Rule of Professional Conduct 8.4(c) – It is professional misconduct for a lawyer engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(j) Pennsylvania Rule of Disciplinary Enforcement 219(d)(1)(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: 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.

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 charge 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

A handwritten signature in blue ink, appearing to read 'CJ Cirelli', is positioned above the typed name of the disciplinary counsel.

By _____
Cory John Cirelli
Disciplinary Counsel
Attorney Registration No. 59954
The Disciplinary Board of the
Supreme Court of Pennsylvania
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437 Grant Street
Pittsburgh, PA 15219
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BEFORE THE DISCIPLINARY BOARD OF THE
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OFFICE OF DISCIPLINARY COUNSEL,:

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KELTON MERRILL BURGESS,

: Attorney Registration No. 94551

:

Respondent

: (Allegheny County)

VERIFICATION

The statements contained in the foregoing Petition for Discipline are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

1/13/2022

Date

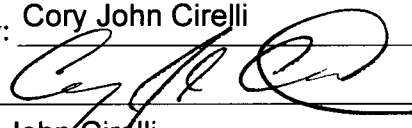


Cory John Cirelli
Disciplinary Counsel

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: Cory John Cirelli

Signature: 

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