

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

:

Petitioner :

: No. 155 DB 2022 - Disciplinary

: Board

:

v.

KELTON MERRILL BURGESS,

: Attorney Registration No. 94551

:

Respondent

: (Allegheny County)

PETITION FOR DISCIPLINE AND ANSWER

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.

Admitted

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.

Admitted

CHARGE

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

Admitted

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).

Admitted

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.

Admitted

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

Admitted

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

Admitted

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

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

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.

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. 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.

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: in her capacity as Corporate Officer of the Pyros companies' matters from May 2016 on; in her capacity as Successor Trustee and POA Agent for the Scott Living Trust (2000) in March 2017; in her capacity as Successor Trustee and POA Agent of the Scott Family Protector Trust (2011) from March 2017 through June/July 2017 until the assets were transferred into a new Trust; in her capacity as the Successor Trustee and POA Agent for the Scott Family Living Trust (2017) from June 2017 on into the litigation, where their brother Glenn asserted that his parents lacked testamentary capacity to establish the new trust, and that his parents were of weakened intellect, **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. Ms. Herrle asked Respondent about his fee for his legal services in the matter of Decedent's estate administration.

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. 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.

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. 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.

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. 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.

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. By way of further response, when Ms. Herrle, in late 2016 or January 2017 inquired into having me to represent her and/or her parents, prior to her taking a temporary retirement, I provided her with my new client packet, which provided her with my standard fees for document drafting or additional work at the hourly rate of \$350/hr and included a draft engagement agreement. This document confirmed the basis or rate of my fee at the outset of the representation separate from her capacity as COO of the Pyros entities. At Mr. Pyros' requests, I agreed to reduce the hourly rate to \$200/hr as charged for my work for the Pyros' entities. 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. 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.

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. 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.

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. See response to paragraph 14. 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. 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.

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. 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.

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. 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.

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

Admitted.

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

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. By way of further response, I prepared and showed to Ms. Herrle an invoice dated 3/01/2019 which documented the 25+ hours tracked in January 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.

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

Denied. I did not mail a bill for services rendered, but I did prepare and show to Ms. Herrle an invoice dated 3/1/2019 documenting the time spent, capped at 25 hours, for January 2019.

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

Admitted

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.

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

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.

(a) 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.

- (b) 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.

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

Admitted.

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

Admitted.

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.

Admitted.

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.

Admitted.

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.

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. 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.

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. 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.

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. Respondent, instead, deposited that check in his

Business/Operating Account.

Admitted.

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.

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

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.

By way of further response, on March 1, 2019, on April 1, 2019, and on May 1, 2019, I generated statements reflecting the 25 hours expended in January, February and March respectively. These statements were shown to Ms. Herrle to document that the cap had been met. 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. Respondent did not provide Ms. Herrle with a bill for services rendered.

Denied. See response to paragraph 34.

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

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. 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.

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. 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.

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

Admitted.

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.

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. 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.

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

Admitted

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

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 the Trust owned it. 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. 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.

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. 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.

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

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. 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.

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 24th 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. 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.

Admitted.

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.

Admitted in part and denied in part. It is admitted Check No.221 was not

deposited into my IOLTA. 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. Respondent, instead, deposited that check in his Business/Operating Account.

Admitted.

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.

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

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 Depa 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. 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.

Admitted.

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.

Admitted.

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

Admitted.

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.

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

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. 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.

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 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. 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."

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.

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."

Denied. To the contrary, I communicated to Ms. Herrle in writing the basis or rate of my fees when I provided her with a new client package when she first consulted with me outside of the Pyros entities position. I further communicated the basis or rate of my fees to her at \$200/hour in engagements with her in her capacity as COO of the Pyros' entities. Finally, I communicated the basis or rate of fee pursuant to the capped agreement in writing with a statement dated 3/1 and confirming the time for December/January 2019 which I believe occurred at the 3/5/2019 meeting. Mr. Scott' interests in his capacity as a beneficiary of the trust and for the purpose of defending the conduct were paid for by Ms. Herrle in her capacity as Trustee and did not require additional or separate payment by Mr. Scott. By way of further response, 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 Ronald E. Scott and Deborah F. Herrle proposed. 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. 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.

Admitted.

(a) **Admitted.**

(b) **Admitted.**

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%.

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. 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.

Admitted.

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

Admitted.

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

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

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. 4Fid, 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. 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.

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, instead the fee was based on the monies distributed to Ms. Herrle and Ron Scott after the resolution of the Caveat and Petition for Citation. On 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. This distribution was explained to Ms. Herrle and Mr. Scott and handwritten by each of them in a settlement sheet in a meeting 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.

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

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

Admitted.

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.

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

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. 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.

Admitted. Ms. Herrle was having difficulty coordinating her availability, making it difficult to marshal the assets held by third-party custodians, including Brighthouse/ Met Life, 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. Ms. Herrle refused to give up her position as Executrix of Decedent's estate.

Admitted.

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.

Admitted.

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.

Admitted.

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.

Admitted.

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.

Admitted.

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

Admitted.

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."

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. 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."

Admitted.

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.

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 IOL TA 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. 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."

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. 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.

Denied. Ms. Herrle was shown multiple times the statement of account, i.e. commencing at the deposit of the money into my IOL TA, 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. Respondent failed to promptly provide a full accounting to Ms. Herrle for the funds she had advanced to him for legal services.

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

Admitted.

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?"

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, Mr. Pyros threatening to fire me for "overcharging Debbie" after he had an alleged 1.5 hour conversation with Ron Scott. 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 with Mr. Pyros.

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."

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. 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.

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. 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.

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. 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.

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. 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.

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. 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.

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. 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.

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. 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.

Admitted.

(a) Admitted.

(b) Admitted.

(c) Admitted.

(d) Admitted.

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[?]”

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. 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.

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. 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.”

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. 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."

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 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. Respondent thereby knowingly made false statements of

material fact or law to a tribunal.

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

Admitted.

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.

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

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. 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.

Admitted

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.

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

Admitted.

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.

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.**

response is required.

WHEREFORE, Attorney Burgess respectfully requests that the Honorable Board dismiss the charges and find that Attorney Burgess did not mishandle funds in his IOLTA account, make misrepresentations nor charge a clearly excessive fee.

Respectfully submitted,

DiBella Weinheimer



By _____

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By: _____

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VERIFICATION

I, Kelton M. Burgess, Esquire verify that I have read the Answer to the Petition For Discipline as Amended. The statements contained therein are true and correct to the best of my personal knowledge, information and belief.

This Statement and Verification is made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

DATE:

July 3, 2023


Kelton M. Burgess