

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,:

Petitioner :

No. DB 2023

v.

DUSTIN WILLIAM COLE,

Attorney Registration No. 308109

Respondent : (Mercer County)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Thomas J. Farrell, Chief Disciplinary Counsel, and Susan N. Dobbins, Disciplinary Counsel, files the within Petition for Discipline, and charges Respondent Dustin William Cole with professional misconduct in violation of the Rules of Professional Conduct 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 an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Dustin William Cole, was born in 1984. He was admitted to practice law in the Commonwealth of Pennsylvania on April 13, 2010. Respondent's attorney registration mailing address is Cole Law LLC, 689 N. Hermitage Road, Suite 8, Hermitage, PA 16148.

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

CHARGE

4. On November 12, 2019, First Choice Federal Credit Union filed a mortgage foreclosure action against Robert W. Murphy (hereinafter, Mr. Murphy), Kristen Czubiak, a/k/a, Kristen J. Willetts Murphy (hereinafter, Ms. Czubiak) in the Court of Common Pleas of Mercer County at docket number 2019-03622.

5. In about November 2020, the residence owned by Mr. Murphy and Ms. Czubiak, located at 644 Old Mercer Road, Volant, Pennsylvania, (hereinafter, marital residence) was scheduled for Sheriff's Sale.

6. In December of 2020, Mr. Murphy had a phone consultation with Respondent about the scheduled Sheriff's Sale of the marital residence.

7. At that time, Mr. Murphy informed Respondent that:

(a) His ex-wife, Ms. Czubiak, was listed on the deed of the marital residence; and

(b) As part of the marriage settlement agreement that he had signed with Ms. Czubiak, he was to receive the marital residence once the mortgage had been satisfied.

8. Respondent informed Mr. Murphy that Respondent would look at the issue and get back to him.

9. Respondent had never before represented Mr. Murphy.

10. Respondent did not provide Mr. Murphy with any writing setting forth the basis or rate of Respondent's fee either before or within a reasonable period of time after Respondent's representation of him commenced.

11. On or about December 30, 2020, Respondent contacted Robert T. Barletta, Esquire (hereinafter, Attorney Barletta), Ms. Czubiak's divorce attorney, on behalf of Mr. Murphy and spoke with Attorney Barletta about having Ms. Czubiak sign a quit claim deed to the marital property once the mortgage had been satisfied.

12. On or about December 31, 2020, Respondent contacted William J. Manolis, Esquire (hereinafter, Attorney Manolis), counsel for First Choice Federal Credit Union, to determine the amount that would be needed to remove the marital residence from the impending Sheriff's Sale.

13. Shortly thereafter, Attorney Manolis informed Respondent of the approximate amount that would be needed to remove the marital residence from the Sheriff's Sale.

14. In the beginning of January 2021, Respondent contacted Mr. Murphy and informed him that:

(a) Respondent could not do anything for him legally regarding his foreclosure action;

(b) Respondent could perhaps loan him the money he needed to stay the Sheriff's Sale of the marital residence;

(c) Respondent had contacted Attorney Barletta about having Ms. Czubiak sign a quit claim deed to the marital residence once the mortgage was satisfied; and

(d) Respondent had contacted Attorney Manolis to find out what the payoff amount would be to stay the Sheriff's Sale.

15. Respondent did not advise Mr. Murphy that his filing of a bankruptcy action would stay the foreclosure proceedings and perhaps allow him to maintain ownership of his property.

16. On several occasions in February 2021, Mr. Murphy called and left messages for Respondent to call him regarding the loan that Respondent had offered to him.

17. In the end of February or beginning of March of 2021, Respondent called Mr. Murphy and informed him that Respondent was able to lend him the money that he needed to stay the Sheriff's Sale of Mr. Murphy's property that was scheduled for Monday, March 8, 2021.

18. On the morning of Friday, March 5, 2021, Respondent met with Mr. Murphy at Respondent's office to discuss finalizing the paperwork for Respondent's loan to him.

19. Respondent did not inform Mr. Murphy that he had the right to seek the advice of independent legal counsel on the transaction.

20. On March 5, 2021, Respondent contacted Attorney Manolis and requested an up-to-date payoff amount with respect to the Sheriff's Sale on the marital residence.

21. On March 5, 2021, Attorney Manolis informed Respondent that the total payoff amount for the marital residence to remove it from Sheriff's Sale was \$18,427.36.

22. The original mortgage on the marital residence was dated June 13, 2003, from Robert W. Murphy and Kristen J. Willetts Murphy to First Choice Federal Credit Union in the amount of \$115,000.00. Accordingly, in the intervening 18 years Mr. Murphy and/or his former wife had paid off approximately \$96,573 in principal on the mortgage loan.

23. In the afternoon of March 5, 2021, Respondent met Mr. Murphy in an empty parking lot at a former Aldi store in Neshannock Township, PA to have him sign the various documents that Respondent brought with him regarding Respondent's loan to Mr. Murphy.

24. Respondent again failed to inform Mr. Murphy that he had the right to seek the advice of independent counsel on the transaction.

25. Respondent drafted or caused to be drafted a Promissory Note dated March 5, 2021, between Respondent and Mr. Murphy which indicated, among other things, that the sum of \$36,854.72 was payable on demand, but not sooner than September 7, 2021, regarding the funds that Respondent was going to loan Mr. Murphy.

26. On March 5, 2021, Respondent had Mr. Murphy sign the Promissory Note.

27. The amount that Respondent loaned to Mr. Murphy was \$18,427.36.

28. Respondent did not inform Mr. Murphy until the time that Respondent presented him with the Promissory Note that Mr. Murphy would owe Respondent twice the amount that Respondent was loaning him.

29. On March 5, 2021, Respondent also had Mr. Murphy sign a Mortgage in favor of Respondent that was undated, and which indicated, among other things, that \$36,854.72 was payable on demand, but not sooner than September 7, 2021.

30. On March 5, 2021, Respondent additionally had Mr. Murphy sign an undated deed purportedly conveying the marital residence located at 644 Old Mercer Road, Volant, Mercer County, Pennsylvania from Mr. Murphy to Respondent.

31. On March 5, 2021, Respondent had Mr. Murphy also sign a document stating that Respondent was not acting as his attorney in the transaction or words to similar effect.

32. Respondent did not provide Mr. Murphy with copies of any of the documents that Respondent had Mr. Murphy sign.

33. Respondent did not at that time or thereafter have Mr. Murphy appear before a notary to witness Mr. Murphy's signature and to notarize the Mortgage and deed.

34. Respondent hand-delivered a check from Pennstar Federal Credit Union dated March 5, 2021, in the amount of \$18,427.36, made payable to First Choice Federal Credit Union and annotated "Re: Robert W. Murphy", to a representative of Attorney Manolis' office to stay the Sheriff's Sale of the marital residence.

35. Respondent purchased the Pennstar Federal Credit Union check by using funds provided to him for the transaction by Jenny L. Laslow (hereinafter, Ms. Laslow).

36. On March 15, 2021, the Satisfaction of Mortgage dated March 10, 2021, was filed with the Mercer County Recorder's Office indicating that Mr. Murphy's and Ms. Czubiak's mortgage had been satisfied.

37. By letter dated April 5, 2021, Respondent informed Attorney Barletta, among other things, that:

(a) Respondent had previously spoken with him about the Murphys' divorce matter;

(b) Respondent's understanding was that as part of the divorce settlement agreement, Ms. Czubiak was to sign her interest in the real property situated at 644 Old Mercer Road, Volant, PA 16156 over to Mr. Murphy once Mr. Murphy had satisfied the mortgage and/or refinanced the property;

(c) To that end, Respondent had enclosed a copy of the Satisfaction of Mortgage that had been filed by First Choice Federal Credit Union;

(d) Respondent had also prepared a Quit Claim Deed for Ms. Czubiak's signature transferring her interest in the above-mentioned property to Mr. Murphy; and

(e) Respondent asked that he please have his client properly execute the deed and return it to Respondent in the enclosed, self-addressed stamped envelope.

38. Thereafter, Mr. Barletta did not respond to Respondent's April 5, 2021 letter.

39. By letter dated May 14, 2021, Respondent informed Mr. Barletta, among other things, that:

(a) Enclosed he would find a letter dated May 14, 2021 to Court Administration as well as a true and correct copy of a Motion to Enforce Marital Settlement Agreement;

(b) Respondent intended to present the Motion in Motions Court on Friday, May 21, 2021 at 9:00 a.m.;

(c) When Respondent had last spoken to him on April 6, 2021, Mr. Barletta had indicated that he would have his client (and, if necessary, her new spouse), execute the required documents to convey her interest in the property at 644 Old Mercer Road, Volant, Mercer County, Pennsylvania 16156 to Mr. Murphy, in accordance with the terms of the Marital Settlement Agreement;

(d) Respondent had not heard from him since April 6, 2021, even though Respondent had sent him an email and left him a voice mail requesting a status update;

(e) Respondent would like to avoid going to Motions Court, but did not believe that Respondent had an option since Respondent had not heard from him; and

(f) Respondent requested that Mr. Barletta reach out to Respondent at the listed telephone number or email at his earliest convenience so they could bring this matter to an end.

40. By letter dated May 20, 2021, Mr. Barletta informed Respondent, among other things, that:

(a) Per his prior phone discussions and messages, and per his exchange of emails that day with Respondent, enclosed was the original Quit Claim Deed which he had revised from the document Respondent had sent to him; and

(b) The deed was dated, signed, witnessed and notarized yesterday evening, Wednesday, May 19, 2021 and was submitted to Respondent per the terms of the parties' MSA which Respondent and he had discussed on December 30, 2020.

41. By Quit Claim Deed dated May 19, 2021, Ms. Czubiak conveyed her interest in the marital residence to Mr. Murphy.

42. On May 19, 2021, Respondent had Ms. Laslow, who is a Notary Public, notarize Mr. Murphy's signature on the Mortgage that he had previously executed on March 5, 2021.

43. Mr. Murphy was not present when Ms. Laslow notarized Mr. Murphy's signature on the Mortgage, nor had Ms. Laslow been present when Mr. Murphy signed the Mortgage.

44. On May 19, 2021, Respondent also had Ms. Laslow notarize Mr. Murphy's signature on a deed dated May 19, 2021 which Mr. Murphy had previously signed on March 5, 2021 purportedly conveying the marital residence from Mr. Murphy to Respondent.

45. On June 2, 2021, the Quit Claim Deed was recorded in the Recorder's Office of Mercer County, Pennsylvania.

46. On June 2, 2021, Respondent also recorded or caused to be recorded a Mortgage dated May 19, 2021 from Mr. Murphy to Respondent.

47. On August 16, 2021, Mr. Murphy met with Respondent and informed Respondent that he was not going to be able to come up with the \$36,854.72 due by September 7, 2021.

48. Respondent informed Mr. Murphy that Respondent could give him an additional two weeks to pay the amount due of \$36,854.72.

49. By letter dated August 16, 2021, Respondent informed Mr. Murphy, among other things, that:

(a) The letter was in response to Mr. Murphy's request to extend the time within which he could pay off the mortgage;

(b) As he was aware, the mortgage was due and payable on September 7, 2021;

(c) Respondent's understanding was that Mr. Murphy was in the process of selling the residence located at 25 Edgewood Acres, New Castle, Pennsylvania 16105 and that his intent was to utilize the proceeds from that sale to satisfy the above-noted mortgage;

(d) He had informed Respondent that the closing on the 25 Edgewood Acres property was scheduled to occur on September 14, 2021; and

(e) To that end, Respondent told Mr. Murphy that the letter served as notice that Respondent had agreed to extend the payment date of the mortgage to September 21, 2021.

50. On September 21, 2021, Mr. Murphy:

(a) Met with Respondent at Respondent's office where Mr. Murphy told Respondent that he still could not come up with the \$36,854.72 to pay off the loan; and

(b) Then offered Respondent \$25,000.00 to pay off the loan.

51. At that time, Respondent declined Mr. Murphy's offer of \$25,000.00 to satisfy the mortgage that Respondent had against the property.

52. On or about October 1, 2021, Respondent called and left a message for Mr. Murphy requesting that Mr. Murphy call him about the money that Respondent had loaned to him.

53. Respondent did not respond to Mr. Murphy's call.

54. In the latter part of November 2021, Respondent sent Mr. Murphy a letter informing him, among other things, that Respondent would accept Mr. Murphy's offer to pay Respondent \$25,000.00 at that time, and Respondent would give him until August 2022 to pay off the balance of the loan.

55. On or about December 8, 2021, Mr. Murphy called Respondent's office and left Respondent a message indicating that he could not pay the

\$25,000.00 at that time and he requested that Respondent give him more time to do so.

56. On December 8, 2021 at 11:35 a.m., Respondent recorded or caused to be recorded at the Mercer County Recorder's Office the deed transferring Mr. Murphy's property located at 644 Old Mercer Road, Volant, Mercer County, Pennsylvania to Respondent.

57. Respondent did not inform Mr. Murphy that Respondent was going to record the deed on that date.

58. On December 20, 2021, Respondent filed a Complaint in Ejectment against Mr. Murphy in the Court of Common Pleas of Mercer County, Pennsylvania at case number 2021-03136.

59. On January 11, 2022, Respondent subsequently filed a Motion for Service by Publication and by Order of Court entered on January 27, 2022, that motion was granted.

60. By DB-7 Request for Statement of Respondent's Position dated February 15, 2022, Office of Disciplinary Counsel advised Respondent that,

based upon information currently available to Office of Disciplinary Counsel, it appeared that Respondent may have violated the Rules of Professional Conduct in connection with his handling of Mr. Murphy's matter.

61. By letter dated March 17, 2022, Respondent, through counsel, provided a verified Statement of Position to Office of Disciplinary Counsel.

62. On March 29, 2022, Respondent filed a Praecipe to Enter Default Judgment Against Defendant for Failure to Answer Plaintiff's Complaint in Respondent's ejectment action against Mr. Murphy and judgment was entered in Respondent's favor.

63. By his conduct as alleged in Paragraphs 4 through 62 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

(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 1.7(a)(2) – Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(d) Rule of Professional Conduct 1.8(a) – A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(e) Rule of Professional Conduct 1.16(a)(1) – Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

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

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the foregoing charge and upon completion of said hearing to make such findings of fact, conclusions of law, and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL



By _____

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DUSTIN WILLIAM COLE, :

: Attorney Registration No. 308109

Respondent : (Mercer County)

VERIFICATION

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

1/13/23

Date

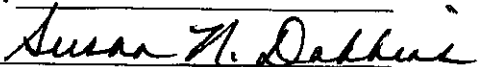


Susan N. Dobbins
Disciplinary Counsel

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Susan N. Dobbins

Signature: 

Name: Susan N. Dobbins

Attorney No. (if applicable): 52108