

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2335 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 130 DB 2016
	:	
v.	:	Attorney Registration No. 315189
	:	
KEVIN C. FOGLE,	:	(Montgomery County)
	:	
Respondent	:	

**ORDER**

**PER CURIAM**

**AND NOW**, this 24<sup>th</sup> day of February, 2017, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Kevin C. Fogle is suspended on consent from the Bar of this Commonwealth for a period of one year and one day. He shall comply with all provisions of Pa.R.D.E. 217.

Respondent shall pay the costs incurred by the Disciplinary Board in the investigation and prosecution of this matter.

A True Copy Patricia Nicola  
As Of 2/24/2017

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

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BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2335 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	No. 130 DB 2016
	:	
KEVIN C. FOGLE,	:	Attorney Registration No. 315189
Respondent	:	
	:	(Montgomery County)

**JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT  
PURSUANT TO Pa.R.D.E. 215(d)**

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Dana M. Pirone, Disciplinary Counsel and Respondent, Kevin C. Fogle (hereinafter, "Respondent"), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, 17106 is invested, pursuant to Pa.R.D.E. 207, with the power and 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 Enforcement Rules.

<p>FILED 12/13/2016 The Disciplinary Board of the Supreme Court of Pennsylvania</p>
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2. Respondent, Kevin C. Fogle, was born on December 4, 1984, and was admitted to practice law in the Commonwealth of Pennsylvania on April 24, 2013.

3. By Order dated September 21, 2015, the Supreme Court of Pennsylvania administratively suspended Respondent.

4. Respondent's current registration address is 3027 Penn View Lane, Eagleville, PA 19403.

5. On December 9, 2016, Petitioner and Respondent filed a Joint Petition to Temporarily Suspend an Attorney.

6. On August 12, 2016, Petitioner filed a Petition for Discipline for: failure to communicate; abandonment of two clients, Michael G. Hagar and Eileen Tomeo; failure to appropriately hold, account for and disburse client funds; and violation of the Supreme Court's Order dated September 21, 2015, placing him on administrative suspension and the Enforcement Rules.

7. Respondent did not file an Answer to the Petition for Discipline.

8. Due to Respondent's failure to file an Answer, all factual allegations in the Petition for Discipline are deemed admitted. Pa.R.D.E. 208(b)(3).

9. Respondent appeared and participated in the prehearing conference held on November 14, 2016.

#### **FACTUAL BACKGROUND**

10. By Order dated September 21, 2015, the Supreme Court of Pennsylvania administratively suspended Respondent for failing to comply with Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (the "Order").

11. By letter dated September 21, 2015, the Attorney Registrar, Suzanne E. Price, transmitted a certified copy of the Order to Respondent together with copies of Enforcement Rules 217 and 219 and copies of the relevant Board Rules pertaining to formerly admitted attorneys.

11. Respondent failed to comply with any of the rules identified in Ms. Price's letter.

12. Respondent failed to notify litigation clients, Michael G. Hagar and Eileen Tomeo, about Respondent's administrative suspension.

13. Respondent failed to notify the Montgomery County Court of Common Pleas about his administrative suspension.

14. Respondent failed to notify opposing counsel in the litigation matters involving Mr. Hagar and Ms. Tomeo about Respondent's administrative suspension.

15. Respondent abandoned his litigation clients, Mr. Hagar and Ms. Tomeo, while they had pending cases.

16. Respondent did not file a Statement of Compliance.

17. Respondent has been administratively suspended since October 21, 2015.

### **CHARGE ONE**

#### **COMPLAINT OF MICHAEL G. HAGAR**

18. ODC incorporates by reference the factual background averred in Paragraphs 9 through 17, *supra*.

19. On June 3, 2014, Respondent entered into a written fee agreement with Mr. Hagar to represent him against Mr. Hagar's former landlord. Respondent and Mr. Hagar agreed upon a \$1,000.00 flat fee to be held in trust until Respondent earned the advanced fee.

20. Mr. Hagar retained Respondent to represent him for claims against his former landlord arising from an alleged wrongful eviction, including the return of Mr. Hagar's \$625.00 security deposit.

21. Mr. Hagar's landlord refunded \$477.00 (after deducting the cost of repairs) from the security deposit.

22. Respondent agreed to hold Mr. Hagar's \$477.00 in trust.

23. Respondent did not hold Mr. Hagar's funds in an IOLTA.

24. On September 4, 2014, Respondent initiated an action against Mr. Hagar's landlord in the Montgomery County Court of Common Pleas captioned *Michael Hagar v. John H. Hammond et al.*, Case No. 2014-25112 (the "Action").

25. By October 2014, Respondent claimed that he had charged too little to represent Mr. Hagar. In March 2015, Respondent raised this issue with Mr. Hagar for a second time and proposed that they enter into a new fee agreement. Mr. Hagar refused.

26. There has been no activity on the court docket since March 23, 2015.

27. Until mid-April 2015, Respondent and Mr. Hagar had regular communications about the Action.

28. By June 2015, Respondent ignored all of Mr. Hagar's text messages and voice mail messages inquiring about depositions, status updates and his \$477.00.

29. Respondent did not return the \$477.00 to Mr. Hagar.

30. Respondent remains counsel of record for Mr. Hagar.

31. Respondent abandoned Mr. Hagar.

32. By DB-7 dated February 17, 2016, ODC notified Respondent about his disregard of the Order and Mr. Hagar's complaint.

33. The DB-7 was mailed to Respondent's registered address by certified mail, return receipt requested.

34. Respondent signed the return receipt card but did not date it.

35. Respondent did not respond to the DB-7 or contact ODC after receiving it.

36. By DB-7A dated June 24, 2016, ODC notified Respondent of additional rule violations and requested that he produce Required Records under RPC 1.15(c).

37. The DB-7A was sent to Respondent by certified mail, return receipt requested and first class mail.

38. Respondent received the DB-7A mailed to him via first class mail.

39. On July 20, 2016, the postal authorities returned the DB-7A sent by certified mail to ODC with a label stating "return to sender, not deliverable as addressed, unable to forward."

40. Respondent did not produce the Required Records.

41. Respondent did not answer the DB-7A.

## **CHARGE TWO**

### **COMPLAINT OF EILEEN TOMEIO**

42. On or about January 25, 2015, Respondent orally agreed to represent Eileen Tomeo in her appeal from an eviction award. Respondent never provided Ms. Tomeo with a fee agreement.

43. At that time, Ms. Tomeo paid Respondent an advance retainer of \$1,500.00, with the understanding that Respondent would bill against the retainer at the hourly rate of \$195.00

44. On or about January 25, 2015, Ms. Tomeo gave Respondent her check number 1839 in the amount of \$1,500.00.

45. Respondent deposited the advanced retainer in an unidentified account at Citizens Bank.

46. The Citizens Bank account is not a trust account.

47. On February 2, 2015, Respondent appealed the eviction award for Ms. Tomeo in the Montgomery County Court of Common Pleas. This matter is captioned *Christian Concern, Inc. and Jefferson Apartments, Inc., v. Eileen Tomeo*, Case No. 2015-01898 (the "Action").

48. David W. Conver, Esquire represents the plaintiffs in the Action.

49. By letter dated March 24, 2015, Respondent wrote to Mr. Conver about their clients entering into a new lease with new terms as a way to resolve the Action. Without Mr. Conver's consent, Respondent copied one of Mr. Conver's clients, Jefferson Apartments, Inc., on the letter to Mr. Conver.

50. Ms. Tomeo rejected the new lease terms.

51. Respondent exhausted the advance retainer, billed Ms. Tomeo for additional services rendered and received payments of \$1,000.00 from her in April 2015, and May 2015.

52. Respondent's last contact with Ms. Tomeo was in August 2015.

53. On October 19, 2015, Mr. Conver mailed a Trial Praecipe to Respondent's office.

54. Shortly thereafter, the Court mailed a Notice of Pretrial Hearing to be held on February 12, 2016, to Respondent's office.

55. Respondent failed to notify Ms. Tomeo, Mr. Conver and the Montgomery County Court of Common Pleas about his administrative suspension.

56. Respondent did not provide the Court with the required pre-conference submissions on behalf of Ms. Tomeo.

57. When the Court did not receive these submissions, court personnel unsuccessfully attempted to contact Respondent. By checking the Disciplinary Board's website, court personnel learned that Respondent had been administratively suspended. As a result, the Honorable Thomas M. Del Ricci issued an Order dated February 8, 2016, cancelling the Pre-Trial Conference due to Respondent's administrative suspension, allowing Ms. Tomeo additional time to retain a new attorney and returning the Action to the trial pool. A copy of the Order dated February 8, 2016, was mailed to Respondent, Mr. Conver, Ms. Tomeo, and court personnel.

58. Respondent remains counsel of record for Ms. Tomeo.

59. Respondent abandoned Ms. Tomeo.

60. By DB-7 dated March 11, 2016, ODC notified Respondent about Respondent's disregard of the Order and Ms. Tomeo's complaint.

61. The DB-7 was sent to Respondent by certified mail, return receipt requested.

62. Because Respondent did not claim the certified mailing, on May 3, 2016, ODC personally served him with the DB-7.

63. Respondent never answered the DB-7.

64. By DB-7A dated June 24, 2016, ODC notified Respondent of additional rule violations and requested that he produce Required Records under RPC 1.15(c).



65. The DB-7A was sent to Respondent by certified mail, return receipt requested and first class mail.

66. Respondent received the DB-7A mailed to him via first class mail.

67. On July 20, 2016, the postal authorities returned the DB-7A sent by certified mail to ODC with a label stating “return to sender, not deliverable as addressed, unable to forward.”

68. Respondent did not produce the Required Records.

69. Respondent never answered the DB-7A.

**VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT AND RULES  
OF DISCIPLINARY ENFORCEMENT**

70. By his conduct as set forth in paragraphs 9 through 69, Respondent violated the following Rules:

A. RPC 1.4(a)(3), which states that “a lawyer shall keep the client reasonably informed about the status of the matter.”

B. RPC 1.4(a)(4), which states that “that a lawyer shall promptly comply with reasonable requests for information.”

C. RPC 1.5(b), which states that “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.”

D. RPC 1.15(c), which states that an attorney is required to have “[c]omplete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer

shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter). A lawyer shall also maintain...books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l).”

E. RPC 1.15(d), which states in pertinent part that “upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law.”

F. RPC 1.15(e), which states in pertinent part that “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.”

G. RPC 1.15(i), which states that “a lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.”

H. RPC 1.15(l), which states that “all Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.”

I. RPC 1.16(a)(1), which states that “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.”

J. RPC 1.16(d), which states that “upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests such as...surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred.”

K. RPC 4.2, which states that “in representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”

L. RPC 8.4(d), which states that “it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.”

M. Pa.R.D.E 203(b)(3), which states that “willful violation of any other provision of the Enforcement Rules, shall be grounds for discipline.”

N. Pa.R.D.E. 203(b)(7), which states that “failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of respondent-attorney’s position” shall be grounds for discipline.

O. Pa.R.D.E. 217(c)(2), which states that “a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status, by registered or certified mail, return receipt

requested: all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended, administratively suspended or on inactive status.”

P. Pa.R.D.E. 217(e), which states that “within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing: (1) that the provisions of the order and these rules have been fully complied with; and (2) all other state, federal and administrative jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.”

Q. Pa.R.D.E. 217(i), which states that “a formerly admitted attorney shall keep and maintain records of the various steps taken by such person under these rules so that, upon any subsequent proceeding instituted by or against such person, proof of compliance with these rules and with the disbarment, suspension, administrative suspension or transfer to inactive status order will be available.

R. Pa.R.D.E. 217(j)(4), which states that “a formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in

any of the following activities... (x) receiving, disbursing or otherwise handling client funds.”

S. Pa.R.D.E. 219(e), which provides that “upon receipt of a form, or notice of change of information contained therein, filed by an attorney in accordance with the provisions of subdivision (d) of this rule (attorney registration requirements), and of payment of the required annual fee to practice law in this Commonwealth, receipt thereof shall be acknowledged on a certificate or license.

### **JOINT RECOMMENDATION FOR DISCIPLINE**

71. ODC and Respondent jointly recommend that the appropriate discipline for Respondent is a suspension of one year and one day.

72. Respondent has advised ODC that he has a drinking problem that he must address before he seeks to regain his license through a reinstatement proceeding.

73. Respondent hereby consents to the discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition as Exhibit A is Respondent’s executed Affidavit required by Pa.R.D.E. 215(d)(1) through (4).

74. ODC and Respondent respectfully submit that the following are aggravating circumstances:

- a. Respondent’s misconduct began two years after becoming a member of the bar;
- b. Respondent did not respond to the Petition for Discipline; and
- c. Respondent did not reimburse \$477.00 to Mr. Hagar.

75. ODC and Respondent respectfully submit that the following are mitigating circumstances:

- a. Respondent has no record of discipline; and
- b. Respondent belatedly cooperated with ODC as evidenced by the Joint

Petition for Temporary Suspension and this Joint Petition.

76. The parties believe, and therefore aver, that their recommendation is consistent with disciplinary case law involving a respondent who failed to communicate, neglected client matters, abandoned clients, failed to comply with an order placing the attorney on administrative suspension, ignored his obligations as a formerly admitted attorney, and ignored the disciplinary system. Formerly admitted attorneys who ignore their obligations under the Enforcement Rules and who ignore the disciplinary system are often suspended for one year and one day. For example, in *Office of Disciplinary Counsel v. Lek Domni*, No. 98 DB 2015 (S.Ct. Order 6/27/16) Domni failed to comply with the Enforcement Rules regarding his obligations as a formerly admitted attorney on administrative suspension, failed to participate in the disciplinary process, and abandoned his clients. Formerly admitted attorneys and attorneys with active licenses who neglect and abandon their clients and do not participate in the disciplinary process (subject to aggravating and mitigating factors) must go through a reinstatement process in order to prove their fitness to practice. Domni was suspended for one year and one day. *See, Office of Disciplinary Counsel v. Michael E. Groulx*, 206 DB 2014, S.Ct. Order 11/19/15) (formerly admitted attorney suspended for one year and one day); *Office of Disciplinary Counsel v. Anne Michelle Campbell*, 81 DB 2009 (2010) (formerly admitted attorney suspended for one year and one day); *Office of Disciplinary Counsel v. Stanley Fudor*, No. 179 DB 2007 (S.Ct. Order 8/12/09) (attorney with active license suspended for one year and one day). While the parties do not minimize the seriousness of Respondent's misconduct, Respondent did not actively engage in the unauthorized practice of law while on administrative suspension and is now participating with the disciplinary process.

*Compare, Office of Disciplinary Counsel v. Thomas Joseph Coleman, III, 98 DB 2003 (S.Ct. Order 4/19/05) (formerly admitted attorney suspended for two years for signing hundreds of pleadings in mortgage foreclosure actions.)*

77. A suspension of one year and one day requiring Respondent to prove his fitness at a reinstatement hearing sufficiently protects the public and meets the goals of the disciplinary system.

WHEREFORE, Respondent and ODC jointly respectfully request that your Honorable Board:

- a. Approve this Petition; and
- b. File a recommendation for a suspension of one year and one day and this Petition with the Supreme Court of Pennsylvania.


Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion  
Chief Disciplinary Counsel  
Attorney Reg. No. 20955

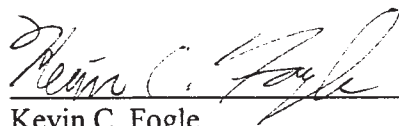
12/13/16  
Date

By:

  
Dana M. Pirone, Esquire  
Disciplinary Counsel  
Attorney Reg. No. 57221  
District II Office  
820 Adams Avenue, Suite 170  
Trooper, PA 19403  
(610) 650-8210

12/12/2016  
Date

By:



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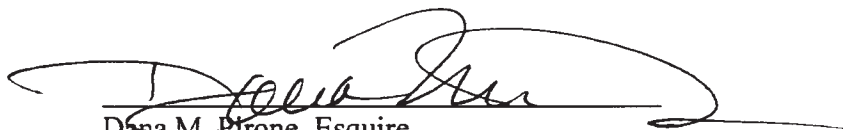
Kevin C. Fogle  
Respondent  
Attorney Reg. No. 315189



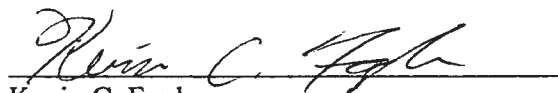
VERIFICATION

The statement contained in the foregoing Joint Petition In Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d) are true and correct to the best of my knowledge, information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

12/13/14  
Date

  
Dana M. Pirone, Esquire  
Disciplinary Counsel  
District II Office  
Attorney Reg. No. 57221

12/12/2016  
Date

  
Kevin C. Fogle  
Respondent  
Attorney Reg. No. 315189

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No.	Disciplinary Docket
Petitioner	:	No.	
	:		
v.	:	No. 130 DB 2016	
	:		
KEVIN C. FOGLE,	:	Attorney Registration No. 315189	
Respondent	:	(Montgomery County)	

**ORDER**

PER CURIAM:

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2016, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated \_\_\_\_\_, 2016, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), and it is

ORDERED that Kevin C. Fogle is suspended on consent from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217.

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2335 Disciplinary Docket  
Petitioner : No. 3  
v. :  
: No. 130 DB 2016  
KEVIN C. FOGLE, : Attorney Registration No. 315189  
Respondent :  
: (Montgomery County)


**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing documents upon the persons and in the manner indicated below which service satisfied the requirements of Pa.R.A.P. 121 as follows:

**Service by First-Class Mail**

Kevin C. Fogle  
3027 Penn View Lane  
Eagleville, PA 19403

12/13/16  
Date

  
Dana M. Pirone, Esquire  
Disciplinary Counsel  
District II Office  
Attorney Reg. No. 57221  
820 Adams Avenue, Suite 170  
Trooper, PA 19403  
(610) 650-8210

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

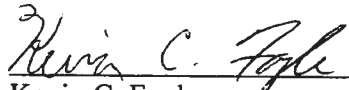
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: :  
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Respondent :  
: (Montgomery County)

**RESPONDENT'S AFFIDAVIT UNDER RULE 215(d) OF THE  
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT**

I, Kevin C. Fogle, Respondent in the above-captioned matter, hereby consent to the imposition of a Suspension of one year and one day, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and myself, in a Joint Petition in Support of Discipline on Consent and further state:

1. My consent is freely and voluntarily rendered; I am not being subjected to coercion or duress; I am fully aware of the implications of submitting the consent;
2. I am aware there is presently an investigation into allegations that I have been guilty of misconduct as set forth in the Joint Petition;
3. I acknowledge that the material facts set forth in the Joint Petition are true;
4. I consent because I know that if the charges against me were prosecuted I could not successfully defend against them; and

5. I acknowledge that I am fully aware of my right to consult and employ counsel to represent me in the instant proceeding. I have not retained, consulted and acted upon the advice of counsel in connection with this decision to execute the within Joint Petition.

  
\_\_\_\_\_  
Kevin C. Fogle  
Respondent  
Attorney Reg. No. 315189

Sworn to and Subscribed  
before me this 13<sup>th</sup> day  
of December 2016.

  
\_\_\_\_\_  
Notary Public

