

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1904 Disciplinary Docket No. 3  
Petitioner :  
v. : No. 128 DB 2012  
BENNETT ELLIOT LANGMAN, : Attorney Registration No. 205185  
Respondent : (Formerly Philadelphia)

ORDER

**PER CURIAM:**

AND NOW, this 14<sup>th</sup> day of February, 2013, there having been filed with this Court by Bennett Elliot Langman his verified Statement of Resignation dated December 3, 2012, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of Bennett Elliot Langman is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 2/14/2013

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

**BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 128 DB 2012
Petitioner	:	
	:	
v.	:	Attorney Registration No. 205185
	:	
BENNETT ELLIOT LANGMAN	:	
Respondent	:	(Formerly Philadelphia)

**RESIGNATION BY RESPONDENT**

Pursuant to Rule 215  
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF  
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 128 DB 2012  
v. :  
: Atty. Registration No. 205185  
:   
BENNETT ELLIOT LANGMAN :  
Respondent : (Formerly Philadelphia)

RESIGNATION  
UNDER Pa.R.D.E. 215

Bennett Elliot Langman, Esquire, hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215 ("Enforcement Rules") and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on June 1, 2007. His attorney registration number is 205185.

2. He desires to submit his resignation as a member of said bar.

3. His resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress; and he is fully aware of the implications of submitting this resignation.

4. He is aware that there is presently pending a formal disciplinary proceeding, the nature of which charges have been made known to him by service of a Petition for Discipline docketed at No. 128 DB 2012, a true and correct copy of which is attached hereto, made a part hereof, and marked "Exhibit A."

**FILED**

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Office of the Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

5. He acknowledges that the material facts upon which the allegations of complaint contained in "Exhibit A" are based are true.

6. He submits the within resignation because he knows that if charges were predicated upon the misconduct under investigation, he could not successfully defend himself against them.

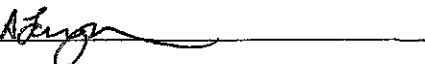
7. He is fully aware that the submission of this Resignation Statement is irrevocable and that he can only apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b) and (c).

8. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has ~~has not~~ <sup>cannot afford</sup> retained, consulted with, and acted upon the advice of counsel in connection with his decision to execute the within resignation.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S., Section 4904 (relating to unsworn falsification to authorities).

Signed this 3<sup>rd</sup> day of 12, 2012.

  
Bennett Elliot Langman, Esquire  
Attorney Registration No. 205185

WITNESS: 

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 128 DB 2012  
v. :  
: Atty. Reg. No. 205185  
BENNETT ELLIOT LANGMAN, :  
Respondent : (Formerly Philadelphia)

PETITION FOR DISCIPLINE

**NOTICE TO PLEAD**

To: Bennett Elliot Langman, Esquire

Rule 208(b)(3) of the Pennsylvania Rules of Disciplinary Enforcement provides: Within twenty (20) days of the service of a petition for discipline, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Disciplinary Board. Any factual allegation that is not timely answered shall be deemed admitted.

Rule 208(b)(4) provides: Following the service of the answer, if there are any issues raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee or a special master. No evidence with respect to factual allegations of the complaint that have been deemed or expressly admitted may be presented at any hearing on the matter, absent good cause shown.

\* \* \* \* \*

A copy of your answer should be served upon Disciplinary Counsel at the District I Office of Disciplinary Counsel, Seven Penn Center, 16<sup>th</sup> Floor, 1635 Market Street, Philadelphia, PA 19103, and the original and three (3) conformed copies filed with the Office of the Secretary, the Disciplinary Board of the Supreme Court of Pennsylvania, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 5600, P.O. Box 62625, Harrisburg, PA 17106-2625. [Disciplinary Board Rule §89.3(a)(1)]

Further, pursuant to Disciplinary Board Rule §85.13, your answer, if it contains an averment of fact not appearing of record or a denial of fact, shall contain or be accompanied by a verified-statement signed by you that the averment or denial is true based upon your personal knowledge or information and belief.

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

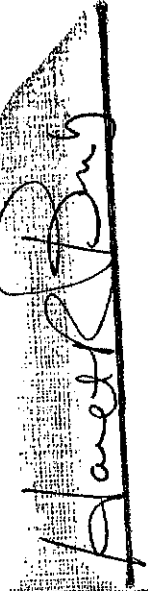
OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 128 DB 2012  
v. :  
: Atty. Reg. No. 205185  
BENNETT ELLIOT LANGMAN, :  
Respondent : (Formerly Philadelphia)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Esquire, Chief Disciplinary Counsel, and by Harriet R. Brumberg, Esquire, Disciplinary Counsel, files the within Petition for Discipline and charges Respondent, Bennett Elliott Langman, with professional misconduct in violation of the Rules of Professional Conduct ("RPC") and Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, 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

We hereby certify the within  
to be a true and correct copy.



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The Disciplinary Board of the  
Supreme Court of Pennsylvania

Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Bennett Elliot Langman, was admitted to the practice of law on June 1, 2007.

3. At all relevant times, Respondent engaged in the practice of law from an office maintained by Mayfield, Turner, O'Mara, Donnelly & McBride, P.C., 1617 JFK Boulevard, Suite 932, Philadelphia, PA 19103.

4. Respondent's current registered public access address is 309 Fellowship Road, Suite 209, Mount Laurel, NJ 08054.

5. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

**CHARGE I: PRACTICE OF LAW**

6. Respondent was employed by the law firm of Mayfield, Turner, O'Mara, Donnelly & McBride (the law Firm) from October 22, 2007 through May 16, 2011.

7. Respondent was assigned to the law Firm's Philadelphia office, located at 1617 JFK Boulevard, Suite 932, Philadelphia, PA 19103.

8. While Respondent was employed at the law Firm, Respondent reported to law partner W. Thomas McBride, Esquire.

9. After Respondent left his employment at the law Firm, Respondent failed to change his public access address with the Office of Attorney Registrar, as mandated by Pa.R.D.E. 219(d)(3).

10. By his conduct as alleged in paragraphs 6 through 9 above, Respondent violated the following Rules of Disciplinary Enforcement:

- a. Pa.R.D.E. 203(b)(3), which states that wilful violation of any other provision of the Enforcement Rules, shall be grounds for discipline, via former Pa.R.D.E. 219(d)(3); and
- b. Former Pa.R.D.E. 219(d)(3) [superseded effective July 4, 2012], which states that on or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Attorney Registration Office a signed form prescribed by the Attorney Registration Office in accordance



with the following procedures: Every person who has filed such a form shall notify the Attorney Registration Office in writing of any change in the information previously submitted within 30 days after such change.

**CHARGE II: THYSSENKRUPP ELEVATOR CORPORATION**

A. BULLOCK MATTER

11. In or around February 2009, Respondent was assigned to represent ThyssenKrupp Elevator Corporation (ThyssenKrupp) in a personal injury matter brought by Melissa Bullock in the Court of Common Pleas of Philadelphia County; the case was captioned and docketed at *Melissa Bullock v. ThyssenKrupp Elevator Corp.*, No. 03248, February Term, 2009 (Philadelphia County). (Bullock matter)

12. On May 14, 2010, Respondent agreed with Marc Vogin, Esquire, counsel to Ms. Bullock, to resolve the Bullock matter by binding arbitration.

13. Prior to agreeing to submit the Bullock matter to binding arbitration, Respondent failed to obtain permission from ThyssenKrupp and Gloria Schultz, Litigation Manager/Corporate Compliance Officer, ThyssenKrupp Legal Department.

14. By letter dated May 14, 2010, from Mr. Vogin to the Honorable Howland W. Abramson, with a "cc" to Respondent, Mr. Vogin advised Judge Abramson that the parties had agreed to refer the Bullock matter to binding hi/low arbitration.

15. On May 17, 2010, Judge Abramson entered an order removing the Bullock matter from the trial list and transferring the matter to binding arbitration.

16. Respondent failed to inform Ms. Schultz that the court has transferred the Bullock matter to binding hi/low arbitration.

17. On June 23, 2010, Respondent agreed to submit the Bullock matter to Peter A. Dunn, Esquire, as the sole arbiter.

18. On November 30, 2010, Respondent agreed to settle the Bullock matter for \$80,000.

19. Prior to agreeing to settle the Bullock matter for \$80,000, Respondent failed to obtain the permission of Ms. Schultz or anyone at ThyssenKrupp.

20. Respondent failed to inform Ms. Schultz that Respondent had settled the Bullock matter for \$80,000.

21. Pursuant to Pa.R.Civ.P. 229.1, Respondent had until December 20, 2010, to deliver the settlement funds to Ms. Bullock.

22. Respondent failed to ensure that ThyssenKrupp delivered the settlement funds to Ms. Bullock by December 2010.

23. By emails from Mr. Vogin to Respondent, dated January 19, January 28, and February 8, 2011, Mr. Vogin requested prompt payment of the \$80,000 settlement funds.

24. By emails from Respondent to Mr. Vogin, dated January 20, 30, and February 10, 2011, Respondent informed Mr. Vogin that:

- a. Respondent will "light a fire under my client and get it ASAP";
- b. "TKE is slow, but you were great to work with in this case so I will try my best to get this ASAP"; and
- c. Respondent was "[t]remendously sorry and embarrassed by my client. I'm told it will be soon."

25. Respondent failed to inform ThyssenKrupp that payment of the settlement funds in the Bullock matter was overdue.

26. Respondent's statements to Mr. Vogin regarding ThyssenKrupp's delay in paying Ms. Bullock's settlement funds were false and Respondent knew his statements were false when Respondent made them.

27. On February 17, 2011, Mr. Vogin filed with the Court of Common Pleas a Motion to Deliver Settlement Funds.

28. Respondent failed to inform ThyssenKrupp that a motion to deliver settlement funds had been filed in the Bullock matter.

29. Respondent did not file a response to the motion.

30. On March 15, 2011, Judge Abramson:

- a. found that ThyssenKrupp had failed to make payment of \$80,000 to Ms. Bullock within twenty days of the arbitrator's Report and Award;
- b. ordered that ThyssenKrupp pay simple interest of 4.25% on the \$80,000 from December 21, 2010 to the date of delivery of the settlement funds; and
- c. ordered that ThyssenKrupp pay \$500 in attorneys' fees pursuant to Pa.R.C.P. and Phila.Civ.R. 229.1.

31. On March 16, 2011, Mr. Vogin filed a Praecipe for Entry of Judgment in favor of Ms. Bullock and against ThyssenKrupp in the amount of \$81,292.20.

32. Respondent failed to inform Ms. Schultz about his November 30, 2010 settlement agreement in the Bullock matter until May 16, 2011.

#### B. MURRAY MATTER

33. In or around November 2008, Respondent was assigned to represent ThyssenKrupp in a personal injury matter brought by Nancy and James Murray in the Court of Common Pleas of Philadelphia County; the case was captioned and docketed at **Murray et al. v. ThyssenKrupp Elevator Corp.**, No. 02847, November Term, 2008 (Philadelphia County). (Murray matter)

34. On or before July 1, 2010, Respondent agreed with Richard C. Senker, counsel for Mr. and Mrs. Murray, to resolve the Murray matter by binding arbitration.

35. Prior to agreeing to submit the Murray matter to binding arbitration, Respondent failed to obtain permission from ThyssenKrupp and Ms. Schultz.

36. By letter dated July 1, 2010, from Mr. Senker to Judge Abramson, with a "cc" to Respondent, Mr. Senker advised Judge Abramson that the parties had agreed to refer

the Murray matter to binding hi/low arbitration and the parties had chosen Peter A. Dunn, Esquire, as the sole arbiter.

37. On July 12, 2010, Judge Abramson entered an order removing the Murray matter from the trial list and transferring it to binding arbitration.

38. Respondent failed to inform Ms. Schultz that the court has transferred the Murray matter to binding hi/low arbitration.

- a. Respondent falsely advised Ms. Schultz that Respondent had agreed to participate in a non-binding mediation.

39. Without ThyssenKrupp's consent, on December 2, 2010, Respondent participated in a binding arbitration in the Murray matter, during which time the arbitrator heard testimony and accepted evidence introduced by the parties.

40. On December 29, 2010, the arbitrator entered a joint award in favor of Nancy and James Murray and against ThyssenKrupp in the amount of \$220,000.

41. After the binding arbitration award was entered, Respondent informed Ms. Schultz that it was a non-binding settlement amount recommended by a mediator.

a. Respondent's statement to Ms. Schultz was false and Respondent knew it was false when Respondent made it.

42. Respondent subsequently informed Ms. Schultz that Respondent had hired a doctor to review the Murrays' records and the doctor's report was unfavorable.

a. Respondent's statement that Respondent had hired a doctor to review the Murrays' records was false and Respondent knew it was false when Respondent made it.

43. Respondent repeatedly pressed Ms. Schultz for settlement authority in the Murray matter.

44. Respondent failed to inform ThyssenKrupp that the arbitrator's Report and Award mandated that ThyssenKrupp make payment within twenty days from ThyssenKrupp's receipt of the Report and Award.

45. By emails from Mr. Senker to Respondent, dated January 4, 18, 24, 31, and February 10, 2011, Mr. Senker requested ThyssenKrupp's prompt payment of the \$220,000 arbitration award.

46. By emails from Respondent to Mr. Senker, dated January 18, February 2, 10, and 14, Respondent wrote:

- a. "I will light a fire under my client to get it processed (if it hasn't been already) so we can both close the file";
- b. "I'm working the client hard for you. You were a gentleman throughout the case so I'm trying to get this ASAP";
- c. "No excuse, truly understand your aggravation. I'm told it will be soon and I will have it hand delivered the instant it arrives"; and
- d. "Have several calls in, will advise check date immediately upon hearing."

47. Respondent had failed to inform ThyssenKrupp that payment of the arbitration award in the Murray matter was overdue.

48. Respondent's statements to Mr. Senker regarding ThyssenKrupp's delay in paying the arbitration award were false and Respondent knew they were false when Respondent made them.

49. On February 16, 2011, Mr. Senker filed with the Court of Common Pleas a Motion to Deliver Settlement Funds.

50. Respondent did not file a response to the motion.



51. On March 14, 2011, Judge Abramson:

- a. found that ThyssenKrupp had failed to make payment of \$220,000 to Nancy and James Murray within twenty days of the arbitrator's Report and Award;
- b. ordered that ThyssenKrupp pay simple interest of 4.25% on the \$220,000 from January 24, 2011 to the date of delivery of the settlement funds; and
- c. ordered that ThyssenKrupp pay \$500 in attorneys' fees pursuant to Phila.Civ.R. 229.1.

52. On March 16, 2011, Mr. Senker filed a Praecipe for Entry of Judgment in favor of Nancy and James Murray and against ThyssenKrupp in the amount of \$221,806.43.

53. Respondent failed to inform ThyssenKrupp that a \$221,806.43 judgment had been entered against it.

54. On May 3, 2011, the Murrays initiated execution proceedings against ThyssenKrupp's bank account to satisfy its judgment.

55. Ms. Schultz contacted Mr. McBride about the Murrays' execution on ThyssenKrupp's bank accounts, after

which time Mr. McBride asked Respondent about the execution proceedings against ThyssenKrupp.

56. In response to Mr. McBride's inquiry, Respondent:

- a. denied that the Murrays had a valid judgment;
- b. denied that Respondent had agreed to participate in a binding arbitration; and
- c. drafted a weak motion to vacate the Murray judgment.

57. Respondent's statements to Mr. McBride denying the existence of the binding arbitration and the validity of the judgment were false and Respondent knew they were false when Respondent made them.

58. During a conference call with Mr. McBride and Ms. Schultz on May 16, 2011, Respondent admitted to engaging in a pattern of deceptive and fraudulent behavior in his handling of the ThyssenKrupp matters.

59. As a result of Respondent's wrongdoing in the ThyssenKrupp matters the law Firm entered into a Settlement Agreement with ThyssenKrupp wherein the Firm would make total payments of \$250,000 to settle the disputes arising from Respondent's mishandling of the Bullock and Murray matters.

C. FALSE BILLINGS

60. The Firm assigned Respondent to handle the following matters, for ThyssenKrupp:

- a. Altavese;
- b. Boyle;
- c. Castaldo;
- d. County of Lehigh;
- e. Devlin;
- f. Dillon;
- g. Ferro;
- h. Howard;
- i. Limeberry;
- j. Matzel;
- k. Moore;
- l. Stiffler;
- m. Robinson;
- n. Rodriguez;
- o. Roseman; and
- p. Ulmer.

61. During the course of Respondent's handling of the above 16 matters, Respondent submitted false time sheets to the Firm, in that Respondent's time sheets stated that Respondent:

- a. drafted motions, responses, replies, praecipes, summonses, releases, emails, letters, and summaries of depositions, when in fact, Respondent did not draft these documents;
- b. appeared in court, when in fact, Respondent did not have any scheduled court appearance;
- c. attended depositions, when in fact, Respondent did not attend the depositions;
- d. had telephone calls with witnesses, when in fact, Respondent did not have the telephone calls;
- e. performed research, when in fact, Respondent did not perform the research;
- f. prepared witnesses for depositions, when in fact, Respondent did not prepare the witnesses; and
- g. incurred travel expenses, when in fact, Respondent did not travel.

62. Based on the false time sheets Respondent submitted, the Firm printed draft bills and gave them to Mr. McBride for review.

63. After the draft bills were reviewed, the Firm's Accounting Department printed the bills in final form and sent the bills to ThyssenKrupp.

64. Based on the bills that ThyssenKrupp received from the Firm for Respondent's purported handling of ThyssenKrupp's legal matters, ThyssenKrupp paid \$80,715.20 for legal work Respondent misrepresented that Respondent had performed; ThyssenKrupp overpaid in the following matters:

- a. Altavese, \$2,480;
- b. Boyle, \$7,241;
- c. Castaldo, \$3,156.50;
- d. County of Lehigh, \$3,627;
- e. Devlin, \$7,254;
- f. Dillon, \$1,054;
- g. Ferro, \$387.50;
- h. Howard, \$10,152.50;
- i. Limeberry, \$1,116;
- j. Matzel, \$945.00;
- k. Moore, \$2,906.15;
- l. Stiffler, \$12,896;
- m. Robinson, \$790.50;
- n. Rodriguez, \$1,023;
- o. Roseman, \$8,943.50; and

p. Ulmer, \$7,207.50.

65. In the course of representing ThyssenKrupp, Respondent knowingly made false statements of material fact to third parties.

66. Respondent engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation.

67. As a result of Respondent's misconduct in handling ThyssenKrupp's matters, the law Firm has undertaken the expense of an audit of Respondent's ThyssenKrupp billing records and, thus far, is obligated to reimburse ThyssenKrupp a total of \$330,719.20.

68. By his conduct as alleged in paragraphs 11 through 67 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.2(a), which states that subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision

whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify;

- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(1), which states that a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- d. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- e. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

- f. RPC 3.3(a)(1), which states that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- g. RPC 4.1(a), which states that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person;
- h. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- i. 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.

**CHARGE III: OTIS ELEVATOR COMPANY**

**A. THE COLBURN MATTER**

69. On or about March 2009, Respondent was assigned to represent Otis Elevator Company (Otis), in the matter captioned and docketed at *Colburn, Kauffman, and Camacho v.*



*Otis Elevator Co.*, No. 4725, March Term, 2009 (Philadelphia Court of Common Pleas). (the Colburn matter)

70. On or about May 21, 2010, Respondent settled the Colburn matter for \$21,500 for Colburn, \$21,500 for Kauffman, and \$21,500 for Camacho.

71. Respondent failed to obtain authority from Otis or Patrick Corcoran, Esquire, Legal Department, Otis Elevator Company, to settle the Colburn matter.

72. Respondent failed to inform Otis that Respondent had settled the Colburn matter for \$21,500 for each plaintiff.

73. By letter dated June 4, 2010, Respondent forwarded to John C. Capek, Esquire, attorney for Ms. Colburn, Ms. Kauffman, and Ms. Camacho, executed Releases, W-9 forms, and an Order to Settle, Discontinue and End that Respondent had signed without Otis's authority.

74. From time to time thereafter, Mr. Capek contacted Respondent by telephone, letters, and email urging Respondent to forward the settlement monies.

75. Respondent did not respond to Mr. Capek's communications.

76. Respondent failed to advise Otis that Mr. Capek was requesting payment of settlement monies in the Colburn matter.

77. On July 23, 2010, Mr. Capek filed a Motion to Deliver Settlement Funds in the Colburn matter.

78. Respondent did not contest Mr. Capek's motion.

79. By Order dated September 7, 2010, the Honorable Sandra Mazer Moss:

- a. found that Otis had failed to make payment of \$21,500 within twenty days of receipt of the executed release;
- b. ordered that Otis pay simple interest of 3.25% on each settlement of \$21,500 from June 24, 2010 to the date of delivery of the settlement funds; and
- c. ordered that Otis pay \$500 in attorney's fees pursuant to Phila.Civ.R. 229.1.

80. Respondent failed to advise Otis of Judge Moss's September 7, 2010 Order.

81. On November 22, 2010, Mr. Capek filed a Motion for Sanctions and Contempt:

- a. stating that on September 7, 2010, the Court entered an order requiring Otis to pay each plaintiff \$21,500 plus 3.25% interest from June 24, 2010;

- b. alleging that Respondent had refused to acknowledge plaintiff's telephone calls and letters requesting the settlement funds;
- c. requesting that further sanctions be issued against Otis; and
- d. requesting that each \$21,500 settlement be reduced to judgment.

82. Respondent received a copy of the Motion for Sanctions and Contempt.

83. Respondent failed to advise Otis about the plaintiffs' Motion for Sanctions and Contempt for non-payment of funds in the Colburn matter.

84. On December 13, 2010, Respondent filed with the Court of Common Pleas a Response to plaintiffs' Motion for Sanctions; Respondent wrote:

- a. "answering defendant encountered unforeseen financial difficulties that made paying any such settlements impossible";
- b. "moving defendant has worked tirelessly to extricate themselves from financial problems" and has not availed itself of the "bankruptcy protections contained in 11 USC §362";

c. "[h]ad moving defendant been forced to enter bankruptcy plaintiff's [sic] settlement would have been held until such times that the bankruptcy would have been resolved"; and

d. "[b]y the end of the fiscal year moving defendant expects to be solvent enough to issue settlement drafts in a number of matters including this one."

85. Respondent's motion requested that Otis be granted sixty days to issue settlement checks.

86. In fact, Otis was not suffering from any financial difficulties that prevented Otis from promptly paying plaintiffs' settlement.

87. Respondent filed a patently false pleading with the Court.

88. Prior to December 21, 2010, Respondent advised Mr. Corcoran that Respondent had settled the Colburn matter for \$23,000.

89. Respondent's statement to Mr. Corcoran was false in that Respondent had settled the Colburn matter for \$21,500 and sanctions of \$1,500 were imposed because Respondent had failed to make prompt payment of the settlement.

90. On or about December 21, 2010, Respondent received settlement checks of \$23,000 per plaintiff from Otis and distributed the settlement funds to plaintiffs.

91. As a result of Respondent's deceitful conduct, on January 7, 2011, Judge Moss:

- a. denied plaintiffs' motion for sanctions;
- b. ordered Otis to pay the settlement funds within 60 days; and
- c. stated that plaintiffs may request that the Court impose sanctions at a later time.

#### B. FALSE BILLINGS

92. The law Firm assigned Respondent to handle the following hourly rate cases for Otis:

- a. Hampton Inn;
- b. Schoedel;
- c. Mumper;
- d. Bloch;
- e. Dorsett;
- f. Manzi;
- g. Deckman;
- h. Tatko;
- i. Albanese;
- j. Mitchell;
- k. Nativity BMW; and

1. Jones.

93. The law Firm assigned Respondent to handle the following flat rate cases for Otis:

- a. Meadows;
- b. Jordan;
- c. Nash;
- d. Darden;
- e. Nestorick;
- f. Leiter;
- g. Colburn; and
- h. Kephart.

94. During the course of Respondent's handling of the matters in ¶¶ 92-93, *supra*, Respondent submitted false time sheets to the law Firm, in that Respondent's time sheets stated that Respondent:

- a. attended a mediation session, had a settlement conference, and drafted correspondence regarding a settlement offer on a case after the case had already settled;
- b. drafted protective orders, answers, motions, replies, letters, and summaries, when in fact, Respondent failed to draft these documents;

- c. prepared for depositions, prepared witnesses for depositions, and attended depositions, when in fact, the depositions were never scheduled;
- d. attended conferences, court hearings, oral arguments, and site inspections, when in fact, Respondent did not attend;
- e. had telephone conferences with Otis, expert witnesses, and opposing counsel, when in fact, Respondent never had these telephone calls; and
- f. incurred travel and litigation expenses that Respondent did not incur.

95. Based on the false time sheets Respondent submitted, the law Firm printed draft bills and gave them to Mr. McBride for review.

96. After the draft bills were reviewed, the Firm's Accounting Department printed the bills in final form and sent the bills to Otis.

97. As a result of inaccurate bills that Otis received from the law Firm for Respondent's purported handling of Otis's legal matters, Otis erroneously paid \$30,419.24, as follows:

- a. \$29,159 in hourly fees;

- b. \$801 in hourly expense reimbursement; and
- c. \$459.24 in flat fee expense reimbursement.

98. On October 12, 2011, the law Firm reimbursed Otis \$34,919.24 for the overpayments Otis made as a result of Respondent's false statements in the Colburn matter and false time sheets.

99. By his conduct as alleged in paragraphs 69 through 98 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.2(a), which states that subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether



to waive jury trial and whether the client will testify;

- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(1), which states that a lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- d. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- e. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- f. RPC 3.3(a)(1), which states that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or

law previously made to the tribunal by the lawyer;

g. RPC 4.1(a), which states that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person;

h. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

i. 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.

**CHARGE IV: DB-7 ANSWER**

100. On November 21, 2011, ODC served Respondent, via certified mail, with a DB-7 Request for Statement of Respondent's Position.

101. On November 22, 2011, ODC sent Respondent, via email, a copy of ODC's DB-7 Request for Statement of Respondent's Position.

102. Respondent failed to claim the certified mail DB-7 Request and the Post Office returned it to ODC on December 12, 2011.

103. On December 12, 2011, ODC hand-delivered a DB-7 Request to Respondent at his residence, 417 Bruce Road, Cherry Hill, NJ 08034.

104. Respondent's agent accepted delivery of the DB-7 Request.

105. Respondent failed to submit an answer to the DB-7 Request within 30 days, as mandated by Pa.R.D.E. 203(b)(7).

106. By his conduct as alleged in paragraphs 100 through 105 above, Respondent violated the following Rule of Disciplinary Enforcement:

- a. 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 the respondent-attorney's position, shall be grounds for discipline.

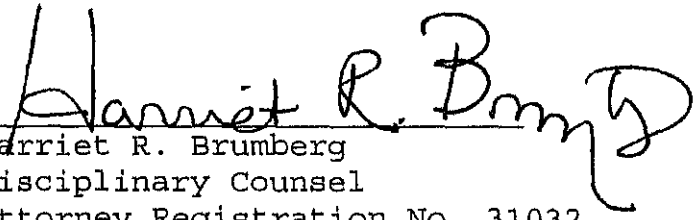
WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the foregoing charges and upon completion of said hearing to make such findings of fact, conclusions of law,

and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

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Chief Disciplinary Counsel

By   
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