

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 137 DB 2020
Petitioner :
v. : Attorney Registration No. 90476
KRISTEN DOLEVA-LECHER :
Respondent : (Berks County)

ORDER

AND NOW, this 8th day of October, 2020, in accordance with Rule 215(g), Pa.R.D.E., the three-member Panel of the Disciplinary Board having reviewed and approved the Joint Petition in Support of Discipline on Consent filed in the above captioned matter; and it is

ORDERED that the said KRISTEN DOLEVA-LECHER, of Berks County be subjected to a PUBLIC REPRIMAND by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a) and Rule 205(c)(9) of the Pennsylvania Rules of Disciplinary Enforcement.

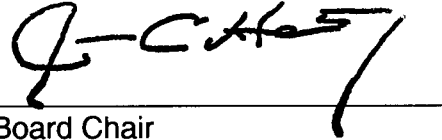
IT IS FURTHER ORDERED that Respondent shall be placed on PROBATION for a period of one year subject to the following conditions:

Conditions of Probation:

1. Respondent shall maintain the records required by Pa.R.P.C. 1.15(c) for her IOLTA account;
2. Respondent shall provide verification to ODC that she has retained a CPA or other qualified professional who will conduct a quarterly review of her financial records related to her entrusted funds to ensure compliance with Pa.R.P.C. 1.15; and
3. Respondent shall send those records, after being reviewed by the professional and certified for accuracy, to ODC on a quarterly basis.

Failure to comply with the above Conditions shall be grounds for reconsideration of the matter under the specific provision of Enforcement Rule 203(b)(2) and Disciplinary Board Rule 87.53(b). Costs shall be paid by the Respondent.

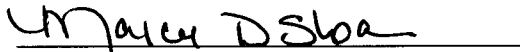
BY THE BOARD:

A handwritten signature in black ink, appearing to read "J. C. Hest", written over a horizontal line.

Board Chair

TRUE COPY FROM RECORD

Attest:

A handwritten signature in black ink, appearing to read "Marcee D. Sloan", written over a horizontal line.

Marcee D. Sloan
Board Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

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

OFFICE OF DISCIPLINARY COUNSEL, :	No. DB 2020
Petitioner :	
	:
	:
v. :	
	:
	Attorney Registration No. 90476
KRISTEN DOLEVA-LECHER :	
Respondent :	(Berks 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 Thomas J. Farrell, Chief Disciplinary Counsel, and Harold E. Ciampoli, Jr., Disciplinary Counsel and Kristen Doleva-Lecher (hereinafter "Respondent"), through her attorney, James C. Schwartzman, Esquire, 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. ODC, whose principal office is situated at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania 17106,

<p>FILED 09/04/2020 The Disciplinary Board of the Supreme Court of Pennsylvania</p>
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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.

2. Respondent was born on August 17, 1975, and was admitted to practice law in the Commonwealth on April 17, 2003.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

3. Respondent maintains an IOLTA at Wells Fargo Bank, Account No. XXX4978, (hereinafter "IOLTA").

4. On February 25, 2019, the Pennsylvania Lawyers Fund for Client Security ("The Fund") received a report from Wells Fargo that a shortfall had been created in Respondent's IOLTA.

5. By letter dated March 8, 2019, The Fund referred the matter to ODC.

6. By letter dated March 20, 2019, ODC requested Respondent to provide copies in connection with her IOLTA of all required records from July 1, 2018 through the present as mandated by RPC 1.15(c).

7. On or about March 27, 2019, Respondent retained James C. Schwartzman, Esquire in connection with the above captioned matter.

8. On April 19, 2019, Mr. Schwartzman responded to the March 20, 2019 Records Request and provided ODC copies of various "fee agreements, invoices that itemized money received from clients and Respondent's fees drawn against those funds, cancelled checks representing reimbursement funds sent to clients and bank statements..."

9. By letter to Mr. Schwartzman dated June 28, 2019, ODC Auditor Stephen Schmitt requested additional documentation and clarification.

10. By letter to ODC dated August 1, 2019, Mr. Schwartzman responded to Mr. Schmitt's June 28, 2019 correspondence and *inter alia*:

- a) attached copies of partial responsive documents;
- b) advised that Respondent was "unable to provide the balance of the requested information";
- c) explained that "Respondent had since implemented an appropriate methodology such that going forward, Respondent is positioned to supply the type of information that Office of Disciplinary Counsel seeks;

- d) specified that now "Respondent maintains, *inter alia*, a check register/separately maintained ledger, individual client ledgers and a trial balance";
- e) acknowledged that Respondent "recognizes and appreciates that, in order to comply with her ethical obligations, she is required to maintain this type of documentation"; and
- f) represented that "[o]n a go forward basis, Respondent assures Office of Disciplinary Counsel that she will continue to perform this accounting function and maintain appropriate records/documentation."

11. By letter dated August 28, 2019, Mr. Schwartzman provided copies of additional documents responsive to the Records Request.

12. Auditor Schmitt conducted a preliminary audit of the records Respondent provided from July 1, 2018 through February 28, 2019 and concluded, *inter alia*, Respondent:

- a) did not deposit all client retainers into her IOLTA;
- b) removed fees from her IOLTA prior to them being earned;
- c) prepared Client Invoices but removed her fee and costs prior to actually performing the work listed on the invoice;

- d) prepared Trust Ledger Reports for each of her clients, some of which show transfers of funds that did not match with actual withdrawals in her IOLTA;
- e) was out of trust the entire period of an average of \$40,000.00;
- f) used new client funds to refund former client retainers; and
- g) had not harmed specific clients since Respondent eventually earned the fees and incurred the costs for which she had invoiced and had promptly refunded any unearned retainers.

13. Respondent does not dispute Auditor Schmitt's audit findings.

14. Based on her own Trust Ledger Reports which Mr. Schwartzman provided with his letter dated August 28, 2019, Respondent should have been holding an aggregate of at least \$46,229.66 on behalf of 14 separate clients in her IOLTA as part of her starting balance on July 1, 2018:

15. On July 1, 2018, the balance in Respondent's IOLTA was \$3,303.03.

SPECIFIC CLIENT EXAMPLES

16. CLIENT A:

- a) On or about August 1, 2018, Respondent met with Client A and agreed to represent her regarding a divorce, custody and support matter;
- b) On August 1, 2018, Client A paid Respondent \$5,000.00 in cash as a retainer;
- c) Respondent did not deposit the \$5,000.00 retainer into her IOLTA;
- d) Respondent billed Client A for legal services periodically from August 2, 2018 through December 31, 2018, reducing the balance of Client A's retainer periodically from \$5,000.00 on August 1, 2018 to \$1,671.96 on February 15, 2019;
- e) Respondent's Trust Ledger Report for Client A reflected that Respondent transferred \$3,382.04 on February 6, 2019 from her IOLTA to her operating account# 4960 to pay her fees and costs for invoice# 758;
- f) No transfer of \$3,382.04 in Respondent's IOLTA occurred on February 6, 2019 because Respondent had already

removed her fees and costs for Client A;

- g) On February 6, 2019, Respondent drew IOLTA check 1092 for \$1,671.96 payable to Client A to reimburse the unearned portion of Client A's \$5,000.00 retainer;
- h) Because Respondent did not deposit Client A's funds into her IOLTA, Respondent converted funds belonging to other clients in order to repay the unearned portion of Client A's fee; and
- i) Because Respondent did not deposit Client A's funds into her IOLTA, Respondent did not maintain the required entrusted funds in her IOLTA for Client A from August 1, 2018 through February 15, 2019.

17. CLIENT B:

- a) On or about August 27, 2018, Respondent met with Client B and agreed to represent him regarding a custody matter;
- b) On or about August 28, 2018, Client B paid Respondent \$2,000.00 in cash as the first payment of the retainer;
- c) Respondent did not deposit the \$2,000.00 retainer into her IOLTA;

- d) On or about September 17, 2018, Client B paid Respondent \$1,000.00 in cash as the second portion of the retainer;
- e) Respondent did **not** deposit the \$1,000.00 retainer into her IOLTA;
- f) On or about October 26, 2018, Client B paid Respondent \$2,000.00 in cash as the final portion of the retainer;
- g) Respondent did **not** deposit the \$2,000.00 retainer into her IOLTA;
- h) Based on invoice# 765, Respondent billed Client B for legal services periodically from September 1, 2018 through February 28, 2019, reducing the balance of Client B's retainer periodically;
- i) Respondent's Trust Ledger Report for Client B reflected that Respondent transferred \$5,000.00 on March 19, 2019 from her IOLTA to her operating account # 4960 to pay her fees and costs for Client B's invoice# 765;
- j) No transfer of \$5,000.00 from Respondent's IOLTA took place on March 19, 2019 because Respondent had already removed her fees and costs for Client B;

- k) There were no Client B transactions (either deposits or withdrawals) in Respondent's IOLTA from August 28, 2018 through February 28, 2019; and
- l) Because Respondent did not deposit Client B's funds into her IOLTA, she did not maintain the required entrusted funds in her IOLTA for Client B from August 28, 2018 through February 28, 2019.

18. **CLIENT C:**

- a) On November 7, 2018, Respondent met with Client C and agreed to represent him regarding a custody/support matter;
- b) On or about November 14, 2018, Client C paid Respondent \$3,000.00 in cash as a retainer;
- c) Respondent did not deposit the \$3,000.00 retainer into her IOLTA;
- d) Based on invoice# 780, Respondent billed Client C for legal services periodically from November 13, 2018 through February 27, 2019, reducing the balance of Client C's retainer periodically;

- e) Because Respondent did not deposit Client C's funds into her IOLTA, Respondent did not maintain the required entrusted funds in her IOLTA for Client C from November 13, 2018 through February 27, 2019.

19. CLIENT D:

- a) According to Respondent's Trust Ledger Report, Client D used his Visa Card on July 12, 2018 to make a \$5,000.00 retainer payment to Respondent;
- b) Respondent did not deposit into her IOLTA the \$5,000.00 provided by Client D;
- c) Respondent's Trust Ledger Report reflected that Respondent made the following transfers from her IOLTA to Respondent's operating account from Client D's funds:
 - i. \$ 722.75 on 8/15/18 in payment of invoice # 720
 - ii. \$ 2,738.60 on 4/6/19 in payment of invoice# 774
- d) None of the above transactions appear in Respondent's IOLTA.

20. CLIENT E:

- a) According to Respondent's invoice# 776 for Client E, Respondent received a \$5,000.00 retainer payment on July 27, 2018 on behalf of Client E;
- b) Respondent did not deposit the \$5,000.00 retainer payment into her IOLTA; and
- c) Despite many entries listed on the invoice for work done on Client E's behalf, there are no deposits or withdrawals recorded in Respondent's IOLTA for Client E.

21. Respondent by her conduct as set forth in paragraphs 3 through 20, *supra*, commingled, misapplied and/or misused funds to be held in Respondent's IOLTA, in violate.

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED

22. By her conduct as alleged in paragraphs 3 through 21 above, Respondent violated the following Rules of Professional Conduct:

- A. RPC 1.15(b), which states that 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;

B. RPC 1.15(c), which states that complete 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 following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l): (1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks, deposited items and records of electronic transactions; (2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements. (3) the records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that

printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up on a separate electronic storage device at least at the end of any day on which entries have been entered into the records. These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or demand by either agency made pursuant to the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena; and (4) a regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement.

C. 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.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

23. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a public reprimand followed by a term of probation for one year with the following conditions:

- a) Respondent shall maintain the records required by Pa.R.P.C. 1.15(c) for her IOLTA account;
- b) Respondent shall provide verification to ODC that she has retained a CPA or other qualified professional who will conduct a quarterly review of her financial records related to entrusted funds to ensure compliance with Pa.R.P.C. 1.15; and
- c) Respondent shall send those records, after being reviewed by the professional and certified for accuracy, to ODC on a quarterly basis.

24. Respondent hereby consents to that discipline being imposed upon her. Attached to this petition is Respondent's executed affidavit required by Pa.R.D.E. 215(d), stating that she consents to the recommended discipline and including the mandatory acknowledgments contained in Pa.R.D.E. 215(d)(a)1 through (4).

25. In support of Petitioner's and Respondent's joint recommendation, it is respectfully submitted that there are mitigating circumstances:

- a) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b) Respondent has completely and fully cooperated with Petitioner throughout its investigation, and her further cooperation is evidenced by Respondent's admissions herein and her consent to receiving a public reprimand followed by a term of probation for one year;
- c) Respondent is remorseful for her misconduct and understands she should be disciplined as is evidenced by her consent to receiving a public reprimand followed by a term of probation for one year;
- d) After an extensive investigation and audit of Respondent's IOLTA, ODC has concluded Respondent did not purposely

convert funds from any client or third parties. Although ODC's entrusted funds analysis determined that Respondent's practice of taking fees and costs early placed her out of trust, ODC uncovered no purposeful misappropriations resulting in losses to clients. In every case reviewed, Respondent eventually earned her fee or incurred the costs for which she had invoiced her clients and promptly refunded any unearned retainer. Respondent offers, as way of explanation and not excuse, that her lack of business acumen, coupled with her poor understanding of RPC 1.15, culminated in the improper IOLTA account management and the mishandling of client funds; and

- e) Respondent has no history of discipline in over seventeen years of practice.

26. The parties agree that in totality, Respondent's misconduct warrants a public reprimand followed by a term of probation for one year. Respondent's practice of removing her fees and costs at will, rather than when earned or incurred was a clear violation of the Rules of Professional Conduct. Respondent put her clients at risk because she was routinely out of trust with their retainers. However, there was no evidence of dishonest

conduct or specific client harm because Respondent eventually earned the fees and incurred the costs for which she invoiced and also promptly refunded any unearned retainers.

27. Precedent supports the imposition of a public reprimand for an attorney's mismanagement of an IOLTA account resulting from poor record-keeping, as opposed to dishonest or deceitful conduct. See, **Office of Disciplinary Counsel v. Richard Patrick Gainey**, 160 DB 2018 (D.Bd. Opinion and Order 4/15/20); (Disciplinary Board imposed a public reprimand for Gainey's failure to keep required records and mismanagement of his IOLTA, where evidence supported conclusion that all funds were disbursed to clients in timely fashion, there was no client money lost due to mismanagement and there was insufficient evidence to establish dishonest intent or purpose); **Office of Disciplinary Counsel v. Jack M. Bernard**, No. 52 DB 2015 (D.Bd. Order 4/27/2015) (consent discipline) (Disciplinary Board imposed a consent public reprimand where respondent's IOLTA accounts were out-of-trust in amounts ranging from \$518.55 to \$22,858.55 due to his lack of attention and bookkeeping errors); and **Office of Disciplinary Counsel v. Michael Paul Petro**, No. 195 DB 2014 (D.Bd. Opinion and Order 2/2/2016) (Disciplinary Board imposed a public reprimand where evidence established that Petro's mishandling of his firm's IOLTA account resulting in

his being out of trust on behalf of four clients in amounts as high as \$22,296.98 over five months was caused by his lack of proper record handling but not dishonest behavior).

The added sanction of a term of probation for one year with conditions will provide assurance that Respondent has properly addressed her poor record-keeping and inadequate IOLTA management and that future misconduct will not occur.

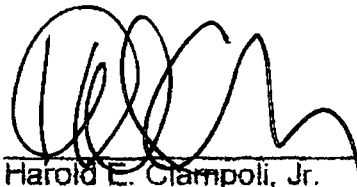
WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e), 215(g) and 215(i), a three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL,
Attorney Registration No. 20955,
Chief Disciplinary Counsel

9/4/20
DATE



Harold E. Clampoli, Jr.
Disciplinary Counsel
Attorney Registration Number 51159
Office of Disciplinary Counsel

820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

2/17/2020
DATE

[Signature]
Kristen Doleva-Lecher, Esquire
Attorney Registration Number 90476
Respondent

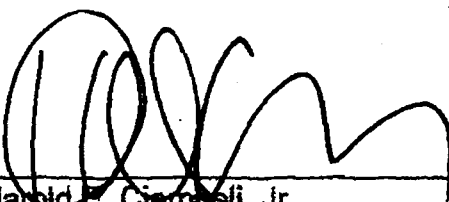
9/5/2020
DATE

[Signature]
James C. Schwartzman, Esquire
Attorney Registration Number 16199
Attorney for Respondent

VERIFICATION

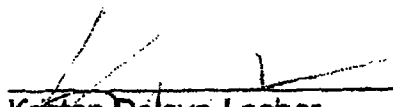
The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

9/4/20
DATE



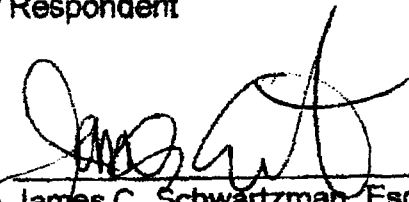
Harold E. Ciampeli, Jr.,
Disciplinary Counsel

8/17/2020
DATE



Kristen Doleva-Lecher
Attorney Registration Number 90476
Respondent

9/5/2020
DATE



James C. Schwartzman, Esquire
Attorney Registration Number 16199
Attorney for Respondent

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

OFFICE OF DISCIPLINARY COUNSEL, No. DB 2020
Petitioner

v.

KRISTEN DOLEVA-LECHER
Respondent

:
:
: Attorney Registration No. 90476
:
: (Berks County)

CERTIFICATE OF SERVICE


I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class and Overnight Mail, as follows:

Kristen Doleva-Lecher, Esquire
c/o James C. Schwartzman, Esquire
Stevens & Lee
1818 Market Street
Philadelphia, PA 19103

Dated:

9/4/20



Harold E. Ciampoli Jr.,
Disciplinary Counsel
Attorney Registration No. 51159
Office of Disciplinary Counsel
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,;	No.	DB 2020
Petitioner	:	
	:	
v.	:	
	:	Attorney Registration No. 90476
KRISTEN DOLEVA-LECHER	:	
Respondent	:	(Berks County)

AFFIDAVIT
UNDER RULE 215(d), Pa.R.D.E.

COMMONWEALTH OF PENNSYLVANIA;
COUNTY OF BERKS:

Kristen Doleva Lecher, Esquire being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of a public reprimand with probation for one year in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. She is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about November 24, 1997.
2. She desires to submit a Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d).

3. Her consent is freely and voluntarily rendered; she is not being subjected to coercion or duress, and she is fully aware of the implications of submitting this affidavit.

4. She is aware that there is presently pending a proceeding into allegations that she has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d) to which this affidavit is attached.

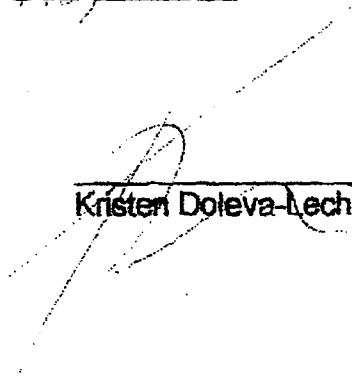
5. She acknowledges that the material facts set forth in the Joint Petition are true.

6. She submits the within affidavit because she knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, she could not successfully defend against them.

7. She acknowledges that she is fully aware of her right to consult and employ counsel to represent her in the instant proceeding. She has retained, consulted and acted upon the advice of counsel, in connection with her decision to execute the within Joint Petition.

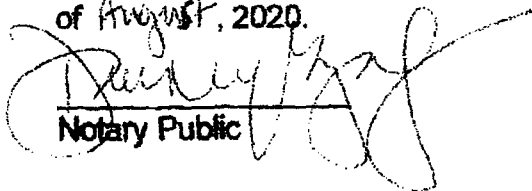
It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 7th day of August, 2020.



Kristen Doleva-Lecher, Esquire

Sworn to and subscribed
before me this 7th day of
of August, 2020.



Notary Public

