

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2718 Disciplinary Docket No. 3
: :
Petitioner : No. 202 DB 2019
: :
v. : Attorney Registration No. 43599
: :
RICHARD W. KOLOSKY, : (Northampton County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 22nd day of May, 2020, 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 Richard W. Kolosky is suspended on consent from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 05/22/2020


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 202 DB 2020¹⁹
Petitioner :
v. :
: Attorney Reg. No. 43599
RICHARD W. KOLOSKY :
Respondent : (Northampton 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 Richard W. Kolosky (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. 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, 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

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The Disciplinary Board of the
Supreme Court of Pennsylvania

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 April 20, 1959, and was admitted to practice law in the Commonwealth on October 29, 1985. By Order dated September 26, 2017, the Supreme Court of Pennsylvania administratively suspended Respondent pursuant to Rule 219, Pa.R.D.E. Prior to February 2020, his last registered public address was 7 E. Church Street, Bethlehem, Pennsylvania 18017 and his last registered residence address was 3521 Lord Byron Drive, Bethlehem Pennsylvania 18017. In February 2020, Respondent changed his registration address with the Attorney Registration Office to 34 South 14th Street, Apartment B, Easton, Pennsylvania 18042. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

3. On March 27, 2014, Judith Ann Blank was admitted into the ARD program in Monroe County in connection with case CP-45-CR-70-2014.

4. On December 22, 2014, Ms. Blank provided Respondent check #430 in the amount of \$11,200.00.

5. \$3,500.00 of the \$11,200.00 was payment to Respondent

to obtain an expungement in connection with Ms. Blank's Monroe County ARD matter.

6. Subsequent to December 22, 2014, Ms. Blank requested Respondent on multiple occasions to provide her with documentation relating to the Monroe County expungement.

7. Respondent never provided Ms. Blank with any documentation relating to the Monroe County expungement.

8. On January 12, 2017, Ms. Blank emailed Respondent and expressed her concern that her expungement had not been accomplished despite the fact that it had been over 2 years since she paid Respondent \$3,500.00 for that purpose.

9. Respondent replied to Ms. Blank's January 12, 2017 email on the same date, and represented that he would call the Assistant District Attorney for an update and would then advise Ms. Blank.

10. On March 28, 2017, Ms. Blank emailed Respondent requesting an update on the Monroe County expungement matter.

11. On May 15, 2017, Ms. Blank emailed Respondent and requested a refund of her \$3,500.00 paid to Respondent to obtain the expungement.

12. Respondent did not respond to Ms. Blank's March 28, 2017 and May 15, 2017 emails.

13. By Order dated September 26, 2017, the Supreme Court

of Pennsylvania administratively suspended Respondent pursuant to Rule 219, Pa.R.D.E.

14. Respondent never filed with the Disciplinary Board a verified statement as required by Pa.R.D.E. 217(e)(1).

15. By letter to Respondent dated September 18, 2018, Ms. Blank recounted her unsuccessful efforts to obtain documentation from Respondent regarding the Monroe County expungement; advised Respondent that she no longer needed Respondent's services and requested a return of her \$3,500.00 or in the alternative "copies of all paperwork and a bill breakdown showing the work performed for any money not returned."

16. Ms. Blank sent the September 18, 2018 letter to Respondent's last registered address in Bethlehem, Pennsylvania but it was returned to her marked "undeliverable unable to forward."

17. Respondent never communicated with Ms. Blank in any manner subsequent to his January 12, 2017 email.

18. Respondent never took the appropriate steps to have Ms. Blank's Monroe County matter expunged.

19. Respondent never refunded Ms. Blank her \$3,500.00.

20. On February 7, 2019, Petitioner mailed a DB-7 Letter Request for Statement of Respondent's Position to Respondent in connection with Ms. Blank's complaint addressed to Respondent's

registered public address of 7 E. Church Street, Bethlehem, Pennsylvania 18017.

21. The February 7, 2019 correspondence addressed to the Church Street address was returned to Petitioner on February 13, 2019 marked "unable to forward".

22. Petitioner re-sent the February 7, 2019 DB-7 letter to Respondent addressed to his registered residence address of 3521 Lord Byron Drive, Bethlehem, Pennsylvania 18017.

23. The February 7, 2019 correspondence addressed to the Lord Byron Drive address was returned to Petitioner on March 29, 2019 marked "unclaimed" and "Notify sender of new address: Richard Kolosky 4006 Sherry Hill Road, Hellertown, Pennsylvania 18055-3345."

24. On May 14, 2019:

- a) Petitioner's Investigator Daniel G. Richer personally served Respondent with the February 7, 2019 DB-7 letter at the 4006 Sherry Hill Road, Hellertown, Pennsylvania 18055-3345 address; and
- b) Mr. Richer advised Respondent to change his address with the Disciplinary Board's Attorney Registration Office.

25. Prior to February 2020, Respondent never advised the Disciplinary Board's Attorney Registration Office of his change

of address.

26. By letter to Respondent dated June 25, 2019, Petitioner advised that:

- a) it had not received his statement of position regarding the DB-7 letter;
- b) if it did not hear from Respondent within the next ten days, it would be assumed that he did not desire to submit his statement of position;
- c) without Respondent's statement of position, Petitioner would proceed on the basis of information contained in the file, including his failure to respond in violation of Rule 203(b)(7), Pa.R.D.E.

27. Petitioner sent the June 25, 2019 letter by first class mail, addressed to Respondent's last known address in Hellertown, Pennsylvania.

28. The June 25, 2019 letter was received by Respondent.

29. Respondent never provided Petitioner with his statement of position.

30. By letter dated August 13, 2019, Chief Disciplinary Counsel Paul J. Killion informed Respondent that:

- a) Respondent had been previously advised of a complaint against him alleging violations of the

Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement and that the investigation into the complaint had been completed;

- b) It had been determined that he should receive an informal admonition in File No. C2-19-19, for violations of RPC 1.3, RPC 1.4(a)(2), RPC 1.4(a)(3), RPC 1.4(a)(4), RPC 1.4(b), RPC 1.16(d), Pa.R.D.E. 217(e)(1) and Pa.R.D.E. 203(b)(7);
- c) A condition was attached to the sanction that Respondent was directed to refund Ms. Blank \$3,500.00 and
- d) Respondent had the option of notifying the Board Prothonotary of the Disciplinary Board and the Office of Disciplinary Counsel, in writing, within 20 days, that Respondent did not wish to receive an informal admonition and that he would like to have the question of his conduct determined by formal proceedings pursuant to Pa.R.D.E. 208(a)(6) and Disciplinary Board Rule §87.54.

31. Petitioner sent Respondent the August 13, 2019 letter by first class mail, addressed to his last known address in Hellertown, Pennsylvania.

32. The August 13, 2019, letter was received by

Respondent.

33. Respondent did not demand that a formal proceeding be instituted against him with regard to the allegations giving rise to the imposition of the informal admonition.

34. As a result of Respondent's failure to demand the institution of formal proceedings against him, Respondent is conclusively deemed to have violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement set forth in Chief Disciplinary Counsel's August 13, 2019 letter.

35. On August 26, 2019, Respondent was evicted from 4006 Sherry Hill Road, Hellertown, Pennsylvania 18055.

36. By Notice to Appear dated September 10, 2019, Chief Disciplinary Counsel advised Respondent that his Informal Admonition had been scheduled for Thursday, September 19, 2019 at 11:30 a.m. in the District II office at 820 Adams Avenue, Suite 170, Trooper, Pennsylvania 19403.

37. Respondent was sent the September 10, 2019 Notice to Appear by first class mail, addressed to his last known address at Hellertown, Pennsylvania.

38. The September 10, 2019 first class mailing was not returned to Petitioner.

39. Respondent failed to contact either the Board Prothonotary of the Disciplinary Board or the Office of

Disciplinary Counsel to inform them that he:

- a) did not wish to receive the informal admonition;
- b) wished to institute formal proceedings before a Hearing Committee; or
- c) was unable to attend the informal admonition on September 19, 2019.

40. Respondent failed to appear for the informal admonition scheduled on Thursday, September 19, 2019 and failed to comply with the condition attached to the Informal Admonition.

41. By letter dated September 19, 2019, Chief Disciplinary Counsel:

- a) advised Respondent that pursuant to §87.52(b) of the Disciplinary Board Rules, the "neglect or refusal of the respondent-attorney to appear for the purpose of informal admonition without good cause shall (as provided by Enforcement Rule 203(b) (2)) constitute an independent act of professional misconduct...;"
- b) requested Respondent to inform Chief Disciplinary Counsel if there was any reason he wished to offer for not appearing at the time set forth for the informal admonition which might represent good cause;

c) advised Respondent that Chief Disciplinary Counsel would have no choice but to proceed with further disciplinary action in the absence of receiving any advice from Respondent that would serve as an acceptable explanation for Respondent's failure to appear and;

d) enclosed a copy of the September 10, 2019 letter previously sent to Respondent.

42. Petitioner sent Respondent the September 19, 2019 letter by first class mail addressed to Respondent's last known address at Hellertown, Pennsylvania.

43. The September 19, 2019 correspondence was not returned to Petitioner.

44. Respondent failed to respond to Chief Disciplinary Counsel's letter of September 19, 2019, or otherwise show good cause for his failure to appear at the September 19, 2019 informal admonition and his failure to comply with the condition attached to the informal admonition.

45. On November 25, 2019, Petitioner filed a Petition for Discipline against Respondent docketed to 202 DB 2019 in connection with Respondent's failure to appear for his scheduled informal admonition and failure to comply with the attached condition.

46. ODC attempted to personally serve Respondent with the Petition for Discipline at his last known address in Hellertown, Pennsylvania but was unsuccessful because Respondent had been evicted from the premises.

47. Petitioner undertook an investigation to locate Respondent but was unsuccessful in discovering a current address for Respondent.

48. Since Respondent could not be located and personally served, the Petition for Discipline was served upon Respondent by addressing it to the address last furnished by Respondent in the last registration statement filed by him in accordance with Rule 219(d), Pa.R.D.E.

49. Respondent failed to submit an answer to the Petition for Discipline and thus all factual allegations were deemed admitted.

50. A pre-hearing conference and disciplinary hearing were scheduled for February 20, 2020 and March 25, 2020, respectively.

51. On February 13, 2020, Petitioner was able to speak with Respondent telephonically at which time Respondent advised:

- a) Over the past year or so he had been experiencing serious personal problems;
- b) He had lost his practice, was in extreme financial

distress and had been homeless and living in his car;

c) He had recently secured living accommodations and was making progress in getting his life in order;

d) He intended to fully participate in his disciplinary proceeding but was interested in entering into a joint petition in support of consent discipline.

52. Respondent participated telephonically at the February 20, 2020 pre-hearing conference at which time the Hearing Chair continued the pre-hearing conference to March 4, 2020.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

53. By his conduct as alleged in Paragraphs 3 through 52 above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

- A. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- B. RPC 1.4(a)(2), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;

- C. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- D. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- 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 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 giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law;
- G. Pa.R.D.E. 203(b)(7), which states that failure of by a respondent-attorney without good cause to respond to Disciplinary Counsel's request for a

statement of the respondent-attorney's position shall be grounds for discipline; and

H. Pa.R.D.E. 217(e)(1), which provides that within ten days after the effective date of the administrative suspension, a formerly admitted attorney shall file with the Board a verified statement.

I. Pa.R.D.E. 203(b)(2), which provides that the wilful failure to appear before Disciplinary Counsel for an informal admonition shall constitute misconduct and shall be grounds for discipline; and

J. 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, via Pa.R.D.E. 204(b), which states that conditions may be attached to an informal admonition, private reprimand, or public reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

54. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a one year and one day suspension.

55. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule Pa.R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Rule 215(d)(1) through (4) Pa.R.D.E.

56. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that the following mitigating circumstances are present:

- a) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct and Rules of Disciplinary Enforcement;
- b) Respondent has cooperated with Petitioner in connection with this Petition, as evidenced by Respondent's admissions herein and his consent to receiving a one year and one day suspension;
- c) Respondent is remorseful for his misconduct and understands he should be disciplined, as

evidenced by his consent to receiving a one year and one day suspension; and

- d) Respondent has practiced law for over thirty-four years and has no record of discipline.

57. The parties agree that a suspension requiring Respondent to demonstrate his fitness to resume the practice of law is appropriate. Respondent acknowledges that at the present time he is not prepared to resume the practice of law and the proposed sanction will provide him the time and opportunity to take the steps necessary to address and solve certain personal issues.

Respondent has committed misconduct in this case in connection with his underlying representation of Ms. Blank. Although personally served with the DB-7, he failed to respond in violation of Rule 203(b)(7), Pa.R.D.E. Respondent's last registered address was no longer a viable address and Respondent ignored specific instruction from Petitioner to update his address. Thereafter Respondent failed to appear for a scheduled informal admonition and failed to comply with an attached condition. After Respondent had been evicted from his last known address, Petitioner was unaware of his whereabouts and compelled to serve Respondent with a Petition for Discipline by mailing it to his last registered addresses. On the eve of a scheduled pre-

hearing conference, Petitioner was finally successful in communicating with Respondent. Since that time, Respondent has participated in this disciplinary proceeding, updated his address with the Attorney Registration Office and fully cooperated with Petitioner, as evidenced by Respondent's admissions herein and his consent to receiving a one year and one day suspension.

A one year and one day suspension has been imposed when an attorney has failed to appear for private discipline; participated to some degree in subsequent disciplinary proceedings and there is indication of the necessity for the respondent to demonstrate his or her fitness at a future reinstatement hearing. In *Office of Disciplinary Counsel v. Mary McNeill Zell*, 154 DB 2000(2003), a petition for discipline was filed against Zell when she failed to appear for a private reprimand. At the disciplinary hearing, respondent testified she was experiencing personal difficulties which contributed to her professional difficulties. At the time of the hearing, Zell was on inactive status for failure to comply with her Continuing Legal Education requirements. In recommending a suspension for one year and one day, the Disciplinary Board noted that "[w]hile Respondent's underlying misconduct is not serious and may not have warranted a suspension, her actions clearly show she is in

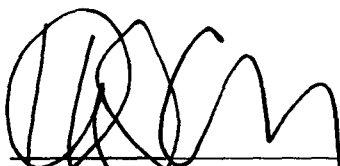
no position at the present time to handle the responsibilities associated with the practice of law." 4/4/2003 D.Bd.Rpt. at 9. By Order dated June 4, 2003, the Supreme Court of Pennsylvania suspended Zell for one year and one day. In *Office of Disciplinary Counsel v. Thomas Axel Jones*, 10 DB 2015 (2017), Jones was ordered to appear for a private reprimand. The matter was re-scheduled two times at Jones's request. After Jones failed to appear at the third re-scheduled private reprimand, a petition for discipline was filed. Jones failed to file an answer to the petition for discipline, but did appear and testify at the disciplinary hearing. At the time of the hearing, Jones was administratively suspended for failure to file his attorney registration form. The Board recommended a year and a day suspension because it found on the record before it that Jones was "unfit to practice law and must be required to demonstrate his fitness at a reinstatement hearing." 10/19/2016 D.Bd.Rpt. at 13. By Order dated January 5, 2017, the Supreme Court suspended Jones for a period of one year and one day. See also *Office of Disciplinary Counsel v. Mark Jurikson*, 128 DB 2000 (2003) (attorney who was on inactive status for failure to meet CLE requirements, failed to appear for his re-scheduled private reprimand, but appeared at the disciplinary hearing, was suspended for one year and one day).

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 and file a recommendation with the Supreme Court of Pennsylvania that Respondent receive a one year and one day suspension.

Respectfully submitted,

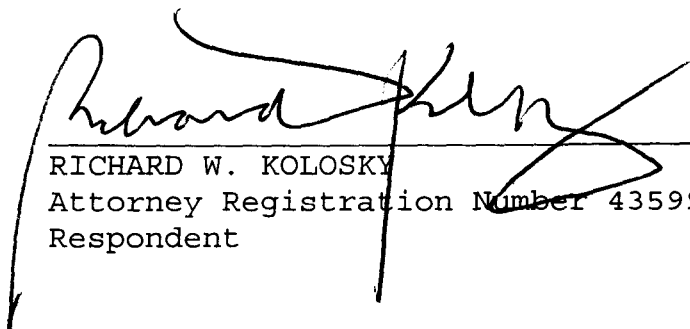
OFFICE OF DISCIPLINARY COUNSEL
THOMAS J. FARRELL,
Attorney Registration No. 20955,
Chief Disciplinary Counsel

4/13/20
DATE



HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Attorney Registration Number 51159
Office of Disciplinary Counsel
820 Adams Avenue, Suite 170,
Trooper, PA 19403
(610) 650-8210

3/10/20
DATE

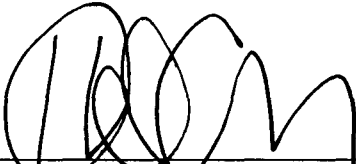


RICHARD W. KOLOSKY
Attorney Registration Number 43599
Respondent

VERIFICATION

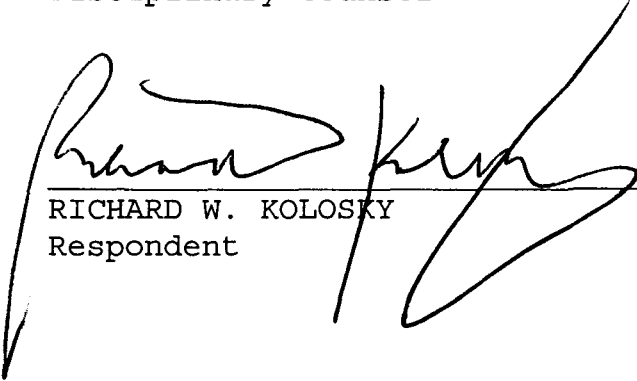
The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

4/13/20
DATE



HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel

3/12/20
DATE



RICHARD W. KOLOSKY
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 202 DB 2020
Petitioner :
v. :
: Attorney Reg. No. 43599
RICHARD W. KOLOSKY :
Respondent : (Northampton County)

CERTIFICATE OF SERVICE

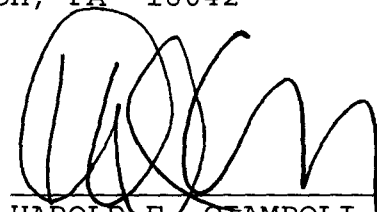
I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class and Overnight Mail, as follows:

Richard W. Kolosky
34 South 14th Street, Apartment B
Easton, PA 18042

Dated:

4/13/20



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. 202 DB 2020
Petitioner :
v. :
: Attorney Reg. No. 43599
RICHARD W. KOLOSKY, :
Respondent : (Northampton County)

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

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF MONTGOMERY:

Richard W. Kolosky, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of a year and a day suspension in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 29, 1985.

2. He desires to submit a Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d).

3. His consent 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 affidavit.

4. He is aware that there is presently pending a proceeding into allegations that he 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.

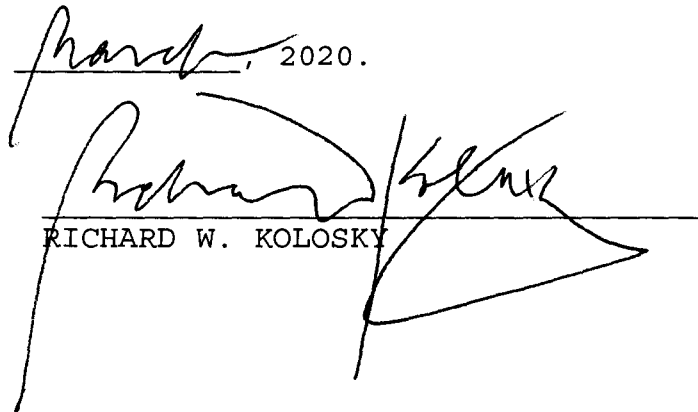
5. He acknowledges that the material facts set forth in the Joint Petition are true.

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

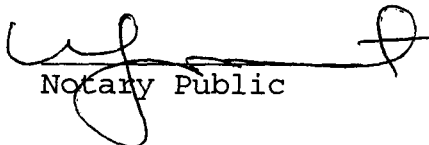
7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has/has not retained, consulted and acted upon the advice of counsel, in connection with his decision to execute the within Joint Petition.

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 12th day of March, 2020.


RICHARD W. KOLOSKY

Sworn to and subscribed before me this 12th day of March, 2020.


Notary Public

Commonwealth of Pennsylvania - Notary Seal
Wendy J. Reppert, Notary Public
Lehigh County
My commission expires June 1, 2020
Commission number 1136538
Member, Pennsylvania Association of Notaries