

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner,	:	No. <u>129</u> DB 2024
	:	
v.	:	Attorney Reg. No. 37985
	:	
MARK M. MACK,	:	
Respondent	:	(Luzerne County)
	:	

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

Petitioner, Office of Disciplinary Counsel (“ODC”), by Thomas J. Farrell, Chief Disciplinary Counsel, and Nicholas K. Weiss, Disciplinary Counsel, and Respondent, Mark M. Mack, 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 respectfully state and aver the following:

1. ODC, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106, is invested, pursuant to Pa.R.D.E. 207, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent was admitted to practice law in Pennsylvania on April 29, 1983. Respondent is on active status, and maintains a registered mailing address of 281 Pierce Street, Kingston, Pennsylvania 18704-5129.

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

FILED 12/31/2024 The Disciplinary Board of the Supreme Court of Pennsylvania

SPECIFIC FACTUAL ADMISSIONS

4. Respondent's misconduct pertains to his failure to promptly refund unearned fees to a client.

5. On March 31, 2023, Eugene M. Pavlico, Sr. retained Respondent and his law firm ("Mack law firm") to represent his stepson, James Kasisky, Jr., in a criminal matter then docketed at MJ-11302-CR-138-2023 (Luzerne Co.).

6. On July 3, 2023, Christopher O'Donnell, **Esquire**, an associate at the Mack law firm, appeared on behalf of Mr. Kasisky at the preliminary hearing.

7. Attorney O'Donnell left the Mack law firm between July 3 and 13, 2023.

8. On July 13, 2023, Mr. Pavlico and his wife, Joyce Kasisky, appeared at Respondent's law office, intending to seek alternative counsel given Attorney O'Donnell's departure.

9. After speaking with Attorney Matthew T. Muckler at the Mack law firm, Mr. Pavlico and Ms. Kasisky decided to continue with the Mack law firm's representation.

10. On July 13, 2023, Mr. Pavlico and Ms. Kasisky executed a new fee agreement with the Mack law firm, and paid the agreed upon \$9,000.00 advance fee, *via* check.

11. Pursuant to the fee agreement, the \$9,000.00 fee secured the Mack law firm's representation of Mr. Kasisky relative to a "non-trial disposition" of his criminal matter.

12. Following execution of the July 13, 2023 fee agreement, neither Respondent nor any other attorney at the Mack law firm undertook any actions relative to Mr. Kasisky's criminal matter.

13. In early August 2023, Attorney Muckler left the Mack law firm.

14. On August 7, 2023, Mr. Pavlico appeared at Respondent's law office, intending to speak with Attorney Muckler but was informed that Attorney Muckler had left the Mack law firm.

15. Mr. Pavlico, *inter alia*, requested a refund of the \$9,000.00 advance fee he paid on July 13, 2023, and a copy of certain materials that were part of Mr. Kasisky's file.

16. On August 14, 2023, a staff member at the Mack law firm, at Respondent's direction, called Mr. Pavlico and told him the refund check and client file would be available for retrieval on August 16, 2023.

17. On August 16, 2023, Mr. Pavlico arrived at Respondent's law office.

18. At that time, Respondent's receptionist gave Mr. Pavlico a file containing the transcript from the July 3, 2023, preliminary hearing and some additional paperwork from Mr. Kasisky's file.

19. The materials provided did not include a refund check to Mr. Pavlico.

20. Mr. Pavlico again asked about his refund; Respondent's receptionist informed Mr. Pavlico that Respondent's firm would send a refund check to Mr. Pavlico *via* FedEx.

21. Mr. Pavlico requested that Respondent call him as soon as possible.

22. Respondent was aware that Mr. Pavlico urgently desired to speak with him, and was demanding a refund of the \$9,000.00 advance fee.

23. On August 17, 2023, Mr. Pavlico called Respondent, but he was unavailable to speak with Mr. Pavlico.

24. On August 18, 2023, Mr. Pavlico called Respondent a second time and was informed, *inter alia*, Respondent would be given a message to return Mr. Pavlico's call.

25. Respondent failed to return Mr. Pavlico's call.

26. Later on August 18, 2023, Mr. Pavlico called Respondent for a third time and left a message for him.

27. Respondent was aware of Mr. Pavlico's urgent desire to speak with him, and Mr. Pavlico's demand for a refund.

28. Between August 18 and September 19, 2023, Respondent failed to call Mr. Pavlico or otherwise communicate with him in any fashion regarding his request for a refund.

29. On September 19, 2023, Mr. Pavlico filed a Statement of Claim with the Pennsylvania Lawyers Fund for Client Security ("Client Security").

30. On September 29, 2023, Mr. Pavlico sent Respondent a letter *via* certified mail, wherein Mr. Pavlico, *inter alia*:

- a. reiterated his request for a refund;
- b. provided his phone number;
- c. asked Respondent to call him to discuss the matter; and
- d. stated "other actions [could] occur" if he did not hear from Respondent within ten days.

31. On October 2, 2023, the United States Postal Service delivered Mr. Pavlico's certified letter to Respondent's law office.

32. Between October 2, 2023, and March 18, 2024, Respondent did not respond to Mr. Pavlico's correspondence and demand for a refund of the unearned fee.

33. During that same period, Respondent failed to communicate with Client Security or offer any defense to Mr. Pavlico's claim of entitlement to refund of unearned fees.

34. By letter dated March 18, 2024, Client Security informed Respondent that Mr. Pavlico's claim against him had been approved and that Mr. Pavlico had been awarded \$9,000.00.

35. On April 10, 2024, more than eight months after Mr. Pavlico paid Respondent's firm for services that were never provided, Respondent provided Mr. Pavlico a refund check for \$9,000.00.

RULES OF PROFESSIONAL CONDUCT VIOLATED

36. By his conduct as alleged in Paragraphs 4 through 35 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.5(a) – “A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;” and
- b. RPC 1.16(d) – “Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as ... refunding any advance payment of fee or expense that has not been earned or incurred.”

JOINT RECOMMENDATION FOR DISCIPLINE
PUBLIC REPRIMAND

37. ODC and Respondent jointly request that Respondent receive a Public Reprimand before the Disciplinary Board.

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

39. Respondent has a history of discipline, which is an aggravating factor:

- a. In 2019, Respondent received a Public Reprimand for misconduct in two

client matters. In both instances, Respondent accepted retainers to handle the clients' criminal matters and then contracted the work associated with the cases to unaffiliated attorneys without the clients' knowledge. As a condition of the Public Reprimand, Respondent issued full refunds to both clients.

- b. In 2021, Respondent received an Informal Admonition based on misconduct while administratively suspended for failing to comply with his annual continuing education requirements. Respondent was initially unaware of the administrative suspension and continued to practice law. When Respondent learned of his administrative suspension, he ceased all law-related activity and took immediate action to satisfy his remaining continuing education requirements. However, Respondent remained counsel of record in multiple open matters.

40. In support of the Joint Petition, ODC and Respondent respectfully submit that the following mitigating circumstances are present:

- a. Respondent issued a full refund to Mr. Pavlico;
- b. Mr. Kasisky's interests were not prejudiced by Respondent's misconduct;
- c. Respondent admits engaging in misconduct in violation of the charged Rules of Professional Conduct, and acknowledges his mistakes;
- d. Respondent has accepted responsibility for his wrongdoing;
- e. Respondent cooperated with ODC in connection with this Petition, as evidenced by Respondent's admissions herein and his consent to receiving a Public Reprimand; and

- f. Respondent understands and agrees he should be disciplined, as evidenced by his consent to receiving a Public Reprimand.

41. There is no *per se* discipline for certain misconduct, *see Office of Disciplinary Counsel v. Robert S. Lucarini*, 472 A.2d 186, 190 (Pa. 1983), rather, each case is considered based on the facts and circumstances presented. Respondent acknowledges he accepted a \$9,000 fee from his client, performed no work, refused to communicate with his client despite a demand for refund and only provided a refund eight months later after Client Security issued an award in favor of the client and was prepared to pay. On these facts, Respondent collected and retained an excessive fee and failed to protect his client's interests after he was terminated.

42. Disciplinary precedent supports the imposition of a Public Reprimand in matters where the underlying misconduct is aggravated by prior discipline. *See, e.g. Office of Disciplinary Counsel v. George W. Bills, Jr.*, No. 108 DB 2022 (D. Bd. Order 9/15/2022) (Public Reprimand with condition to refund fees to client for failure to communicate, mishandling of client funds, and failure to refund unearned fees in one client matter; prior Informal Admonition and Public Reprimand within previous four years aggravated) and *Office of Disciplinary Counsel v. William E. Vinsko, Jr.*, No. 4 DB 2022 (D. Bd. Order 1/18/2022) (Public Reprimand for neglect and failure to communicate in one civil litigation matter; prior Public Reprimand and Informal Admonition within previous three years aggravated); *see also Office of Disciplinary Counsel v. Jeffrey Dean Servin*, No. 118 DB 2015 (D. Bd. Order 7/23/2016) (Servin collected a \$3,000 fee to pursue a debt on behalf of a client; Public Reprimand for failing to promptly remit the collected funds to the client or refund the fee after promises to do so; two prior Informal Admonitions and Public Reprimand within the preceding four years aggravated). Respondent's disciplinary history,

including a Public Reprimand in 2019 and an Informal Admonition in 2021, mirrors the foregoing cases and supports the propriety of a Public Reprimand.

43. Disciplinary Board precedent further independently supports a Public Reprimand in matters where, as here, attorneys have charged and collected an excessive fee. *See, e.g. Office of Disciplinary Counsel v. Scott Richard Sanderson*, No. 160 DB 2023 (D. Bd. Order 3/20/2024) (Public Reprimand on consent for taking excessive fee in one client matter); *Office of Disciplinary Counsel v. Timothy M. Kolman*, No. 177 DB 2023 (D. Bd. Order 12/26/2023) (Public Reprimand on consent where respondent, *inter alia*, charged an excessive fee); and *Office of Disciplinary Counsel v. Venus Foster*, No 99 DB 2017 (D. Bd. Order 4/23/2020) (Public Reprimand on consent for collecting a fee that exceeded the amount and percentage set forth in the fee agreement; prior discipline aggravated); *Office of Disciplinary Counsel v. Manrico A. Troncelliti, Jr.*, No. 196 DB 2016 (D. Bd. Order 12/12/2016) (Public Reprimand imposed after Troncelliti unilaterally took and retained \$11,000.00 in unearned fees; prior informal admonition and private reprimand aggravated).


44. Based on the foregoing, Petitioner and Respondent jointly submit that a Public Reprimand is an appropriate disposition of the present matter. A Public Reprimand conforms to prior disciplinary case law addressing similar facts and advances the primary purpose of the disciplinary system, which is to protect the public by permitting potential clients to make informed decisions about whether to retain Respondent's services. A Public Reprimand also serves to deter other practitioners from engaging in similar misconduct by signaling that mishandling client funds and failing to refund unearned fees can result in severe consequences.

WHEREFORE, ODC and Respondent respectfully request, pursuant to Pa.R.D.E. 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 enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted.

Date: 12.30.2024

By: 
Nicholas K. Weiss
Disciplinary Counsel
Attorney Registration No. 324774
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: _____

By: _____
Mark M. Mack
Respondent
Attorney Registration No. 37985
281 Pierce Street
Kingston, PA 18704-5129
Telephone (570) 472-1110

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Date: 12-24-24

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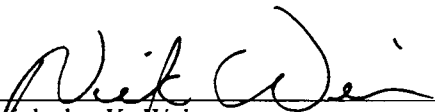
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v.	:	Attorney Reg. No. 37985
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MARK M. MACK,	:	
Respondent	:	(Luzerne County)
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VERIFICATION

The statements made 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. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

Date: 12.30.2024

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

I, Mark M. Mack, Respondent in the above-captioned matter, hereby consent to the imposition of a Public Reprimand, 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 acknowledge that I am entitled to employ and consult with counsel in connection with this matter and have chosen not to do so;
3. I am aware there is presently pending a proceeding involving allegations that I have been guilty of misconduct as set forth in the Joint Petition;
4. I acknowledge that the material facts set forth in the Joint Petition are true; and
5. I consent because I know that if the charges continued to be prosecuted in the pending proceeding, I could not successfully defend against them.

Subscribed and sworn to this 24 day of
Dec - 2024, before Sonia A Ramos Chesson,
Ramos Chesson, Notary Public

By: Mark M. Mack
Mark M. Mack
Respondent

Commonwealth of Pennsylvania - Notary Seal
Sonia A Ramos Chesson, Notary Public
Luzerne County
My commission expires May 2, 2026
Commission number 1274204

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	:	

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 Pa.R.A.P. 121.

First Class Mail and electronic mail as follows:

Mark M. Mack
281 Pierce Street
Kingston, PA 18704-5129

Attymackmack@gmail.com

Date: 12-30-2024

By: 
Nicholas K. Weiss
Disciplinary Counsel
Attorney Registration No. 324774
601 Commonwealth Avenue, Suite 5800
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Telephone (717) 772-8572

CERTIFICATE OF COMPLIANCE

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

Submitted by: Office of Disciplinary Counsel



Signature: _____

Name: Nicholas K. Weiss, Esq.

Attorney No. (if applicable): 324774