

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,:

Petitioner :

: No. DB 2023

v. :

RALPH DAVID KARSH, :

: Attorney Registration No. 58782

Respondent : (Allegheny County)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Thomas J. Farrell, Chief Disciplinary Counsel, and Cory John Cirelli, Disciplinary Counsel, files the within Petition for Discipline, and charges Respondent Ralph David Karsh with professional misconduct in violation of the Rules of Professional Conduct and the Pennsylvania Rules of Disciplinary Enforcement as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the

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The Disciplinary Board of the
Supreme Court of Pennsylvania

duty to investigate all matters involving alleged misconduct of a lawyer admitted to the practice of law by the Supreme Court of Pennsylvania or a lawyer who provides or offers to provide any legal services in this Commonwealth, and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Ralph David Karsh, was born in 1958. He was admitted to practice law in the Commonwealth of Pennsylvania on November 26, 1990. Respondent's attorney registration mailing address is 5516 Baywood Street, Unit 3, Pittsburgh, PA 15206. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

CHARGE

3. On May 5, 2016, after a jury trial, Eric Taylor was convicted of, among other offenses, Third Degree Murder of Unborn Child and Criminal Attempt-Murder of the First Degree filed in the Allegheny County Court of Common Pleas at CP-02-CR-0010212-2014.

4. On August 3, 2016, Mr. Taylor was sentenced to a period of incarceration of 180 to 360 months on the charge of Third Degree Murder of Unborn Child, and 90 to 180 months on the charge of Criminal Attempt-Murder of the First Degree, to run consecutively.

5. On August 12, 2016, Rachael C. Arianna Santoriella filed Post-Sentence Motions on behalf of Mr. Taylor.

6. By Order of Court dated November 29, 2016, Mr. Taylor's Post-Sentence Motions were denied.

7. Ms. Santoriella was counsel for Mr. Taylor in his appeals to both the Superior Court and the Pennsylvania Supreme Court.

8. On December 9, 2016, a notice of appeal was filed on behalf of Mr. Taylor.

9. On September 25, 2018, the Superior Court affirmed the Judgment of Sentence.

10. On October 25, 2018, a Petition for Allowance of Appeal was filed on behalf of Mr. Taylor.

11. On March 22, 2019, Mr. Taylor's Petition for Allowance of Appeal was denied by the Supreme Court of Pennsylvania.

12. By Respondent's letter dated December 30, 2019, sent to Mr. Taylor's aunt, Michelle Kenney, he stated:

(a) He was willing to represent Mr. Taylor in the matter by investigating and filing a Post-Conviction Relief Act (PCRA) Petition and a "first appeal to Superior Court, to be negotiated depending on circumstances."

(b) His fee for the representation was \$15,000.

(c) Any additional cases would involve "additional fees to be negotiated."

(d) "All fees are non-refundable" and "All fees are considered earned when paid."

(e) "In addition to [Respondent's] fee [Ms. Kenney] was responsible for costs which may include private investigators, ... experts associated with trial, ... and any other necessary expenses."

13. On or about January 27, 2020, Ms. Kenney met Respondent at a bank in Squirrel Hill and provided Respondent with PNC Bank Cashier's Check No. 7899112, drawn in the amount of \$25,000, made payable to Respondent, and dated January 27, 2020.

14. At the time Respondent received the \$25,000 check, he did not discuss with Ms. Kenney how he would handle the \$10,000 in excess of the \$15,000 fee he had requested in his written communication about the fee.

15. On January 27, 2020, Respondent negotiated the \$25,000 check by depositing \$17,500 of the proceeds of the check to his PNC Bank IOLTA ending 7692 and receiving \$7,500 in cash.

16. The terms of basis or rate of Respondent's fee set forth in his letter to Ms. Kenney dated December 30, 2019, required to split the deposit of the \$25,000 check as follows: \$15,000 to Respondent's business/operating account and \$10,000 to Respondent's IOLTA or other trust account, to be drawn upon only as an additional fee was earned or the expenses of the representation were incurred.

17. It was not until several days after Respondent's receipt of the \$25,000 from Ms. Kenney that he communicated with her about the \$10,000 portion of the proceeds of the \$25,000 check.

18. During that conversation it was orally agreed that Respondent would hold the \$10,000 portion for any additional fee and any expenses incurred in his representation of Mr. Taylor.

19. The following are the dates, transaction amounts, and balances for Respondent's PNC Bank IOLTA activity:

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>	<u>Account Balance</u>	<u>Entrustment Balance</u>	<u>Amt. Out of Trust</u>
01/27/20	deposit	\$17,500.00	\$17,648.06	\$10,000	\$ 0.00
01/28/20	withdrawal	6,000.00	11,648.06	10,000	0.00
02/03/20	withdrawal	2,500.00	9,148.06	10,000	-851.94
02/26/20	withdrawal	3,000.00	6,148.06	10,000	-3,851.94
03/12/20	withdrawal	3,000.00	3,148.06	10,000	-6,851.94
03/25/20	withdrawal	2,000.00	1,148.06	10,000	-8,851.94
04/16/20	check	800.00	348.06	10,000	-9,651.94

06/08/20 check 300.00 48.06 10,000 **-9,951.94**

20. Respondent thereby misappropriated funds with which he was entrusted by Ms. Kenney on behalf of Mr. Taylor.

21. Respondent failed to keep Mr. Taylor reasonably informed about the status of his legal matter and failed to timely inform either Mr. Taylor or Ms. Kenney that Respondent would not be filing a PCRA Petition on behalf of Mr. Taylor.

22. Respondent failed to substantially perform any of the services on behalf of Mr. Taylor for which Respondent had been retained by Ms. Kenney.

23. On several occasions between January 2020 and late April 2021, Ms. Kenney inquired of Respondent, both by phone calls and text messages, about the status of Mr. Taylor's PCRA.

24. During Respondent's initial communications he told Ms. Kenney that he was working on Mr. Taylor's case and asked her to be patient.

25. In or about April 2021, Ms. Kenney became aware that Respondent had not filed a PCRA Petition on behalf of Mr. Taylor.

26. Thereafter, text messages were exchanged between Respondent and Ms. Kenney about the services Respondent had agreed to perform for Mr. Taylor and the \$25,000 she had advanced for fees and expenses she had provided to Respondent.

27. Among the text messages they exchanged on April 4, 2021, were the following:

(a) Ms. Kenney demanded that Respondent refund the \$25,000 that he had received from her because Respondent had not performed the services for which he had been retained.

(b) Ms. Kenney stated that if Respondent did not refund the \$25,000 she would file a disciplinary complaint against him or sue him.

(c) Respondent requested that Ms. Kenney give him until the end of that week and asked her to speak with him by phone.

28. Among the text messages they exchanged on April 19, 2021, were the following:

(a) Respondent stated he was trying to come up with a “viable plan” as his “money situation is not good.”

(b) Respondent stated he knew that Ms. Kenney had “blasted” him on social media but he wanted her to remember that if “he can't work he can't pay.”

(c) Respondent “[would] not claim to be right” if Ms. Kenney sued him.

(d) Respondent would “try to get [Ms. Kenney] paid but ... [i]t will take forever for that case to settle if you sue and I do have some time in.”

(e) Ms. Kenney stated she had not hired successor counsel for Mr. Taylor because she “can’t afford one and [Respondent] missed the deadline dates so [Mr. Taylor] is screwed.”

29. Among others, between April 26, 2021 and April 30, 2021, the following text messages were exchanged:

(a) Respondent requested that Ms. Kenney answer his phone call.

(b) Respondent wanted her permission to pursue the Court's permission to file a PCRA Petition *nunc pro tunc*.

(c) Ms. Kenney replied "Send me my [money] otherwise I will have to sue you."

(d) Respondent asked Ms. Kenney to give him until Wednesday, April 28, 2021, because he was waiting to hear "to see if I can do this."

(e) Ms. Kenney gave Respondent until Friday, April 30, 2021, to refund her money or she would "take legal action the following Monday, which is May 3, 2021."

30. On May 4, 2021:

(a) Ms. Kenney texted Respondent because she had not heard back from him nor received a refund of her \$25,000.

(b) Respondent replied to Ms. Kenney by stating "I have \$2,000. I can send [it] to you right now and am meeting with family to try and get more this weekend."

(c) Ms. Kenney agreed to accept the \$2,000 but asked Respondent when he planned on repaying the full amount that he owed to her.

(d) Respondent replied “I will pay your money back but if I can’t work I can’t pay. I couldn’t find a way to win this case.”

31. Respondent began refunding money to Ms. Kenney via Cash App on May, 5, 2021.

32. By text message to Respondent dated May 6, 2021, Ms. Kenney confirmed her receipt of the first \$2,000 refund and requested that he send her every document in his possession regarding Mr. Taylor’s case.

33. Initially, Respondent did not comply with Ms. Kenney’s requests for the contents of Mr. Taylor’s client file and a full refund of the \$25,000.

34. Respondent’s reimbursement payments were made to Ms. Kenney on the following dates and in the following amounts:

<u>DATE</u>	<u>AMOUNT</u>
05/05/21	\$2,000
06/03/21	2,000

07/01/21	2,000
07/29/21	2,000
08/31/21	2,000
10/04/21	1,000
10/06/21	1,000
11/01/21	1,000
11/03/21	500
11/06/21	500
12/03/21	1,000
12/13/21	500
12/17/21	500
01/04/22	1,000
01/25/22	1,000
02/01/22	1,000
02/23/22	1,000
03/17/22	500
06/10/22	1,000
<u>06/10/22</u>	<u>2,500</u>
TOTAL	\$25,000

35. Respondent eventually returned the contents of Mr. Taylor's case file to Ms. Kenney, on behalf of Mr. Taylor.

36. On Respondent's 2020-2021 PA Attorney's Annual Fee Form, he did not list a business/operating account maintained or used by him in his law practice, as required by Rule 219(d)(1)(v), Pa.R.D.E.

37. By his conduct as alleged in Paragraphs 3 through 36 above, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

(a) Rule of Professional Conduct 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) Rule of Professional Conduct 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

(c) Rule of Professional Conduct 1.5(a) - A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(d) Rule of Professional Conduct 1.15(b) - 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.

(e) Rule of Professional Conduct 1.15(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

(f) Rule of Professional Conduct 1.15(i) - 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.

(g) Rule of Professional Conduct 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 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.

(h) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(i) Rule of Professional Conduct 8.4(d) – It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice

(j) Pennsylvania Rule of Disciplinary Enforcement 219(d)(1)(v) -
On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures: (1) The form shall set forth: Every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.

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 charge 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

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL

A handwritten signature in blue ink, appearing to read 'CJ Cirelli', is positioned above the typed name of the signatory.

By _____
Cory John Cirelli
Disciplinary Counsel
Attorney Registration No. 59954
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VERIFICATION

The statements contained in the foregoing Petition for 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. §4904, relating to unsworn falsification to authorities.

1/20/2023

Date




Cory John Cirelli
Disciplinary Counsel

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: Cory John Cirelli

Signature: 

Name: Cory John Cirelli

Attorney No. (if applicable): 59954