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**FILED**

JAN 14 2014

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**ROBERT JOSEPH PENFIELD,**

Lawyer (Bar No. 25081).

Proceeding No. 13#00017

AFFIDAVIT OF ROBERT JOSEPH  
PENFIELD RESIGNING FROM  
MEMBERSHIP IN WASHINGTON STATE  
BAR ASSOCIATION (ELC 9.3(b))

Robert Joseph Penfield, being duly sworn, hereby attests to the following:

1. I am over the age of eighteen years and am competent. I make the statements in this affidavit from personal knowledge.

2. I was admitted to practice law in the State of Washington on October 19, 1995.

3. I was served with a Formal Complaint and Notice to Answer in this matter on May 23, 2013.

4. I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule for Enforcement of Lawyer Conduct (ELC) 9.3.

5. I am aware of the alleged misconduct stated in Disciplinary Counsel's Statement of Alleged Misconduct for purposes of ELC 9.3(b), attached as Exhibit A.

1           6. Rather than defend against the allegations, I wish to permanently resign from  
2 membership in the Association.

3           7. I have agreed to entry of a confession of judgment for \$1,000 to cover expenses. I  
4 agree to pay any additional costs that may be ordered by a Review Committee under ELC  
5 9.3(g).

6           8. I understand that my resignation is permanent and that any future application by me  
7 for reinstatement as a member of the Washington State Bar Association is currently barred. If  
8 the Supreme Court changes this rule or an application is otherwise permitted in the future, it will  
9 be treated as an application by one who has been disbarred for ethical misconduct, and that, if I  
10 file an application, I will not be entitled to a reconsideration or reexamination of the facts,  
11 complaints, allegations, or instances of alleged misconduct on which this resignation was based.

12           9. I agree to (a) notify all other jurisdictions in which I am or have been admitted to  
13 practice law of this resignation in lieu of discipline; (b) seek to resign permanently from the  
14 practice of law in any other jurisdiction in which I am admitted; (c) provide disciplinary counsel  
15 with copies of these notifications and any response(s).

16           10. I acknowledge that the resignation could be treated as a disbarment by all other  
17 jurisdictions.

18           11. I agree to (a) notify all other professional licensing agencies in any jurisdiction from  
19 which I have a professional license that is predicated on my admission to practice law of this  
20 resignation in lieu of discipline; (b) seek to resign permanently from any such license; and (c)  
21 provide disciplinary counsel with copies of any of these notifications and any responses.

22           12. I agree that when applying for any employment, I will disclose the resignation in lieu  
23 of discipline in response to any question regarding disciplinary action or the status of my license  
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1 to practice law.

2 13. I understand that my resignation becomes effective on disciplinary counsel's filing  
3 of this document with the Clerk, and that under ELC 9.3(c) disciplinary counsel must endorse  
4 and do so promptly on receipt.

5 14. When my resignation becomes effective, I agree to be subject to all restrictions that  
6 apply to a disbarred lawyer.

7 15. Upon filing of my resignation, I agree to comply with the same duties as a disbarred  
8 lawyer under ELC 14.1 through ELC 14.4.

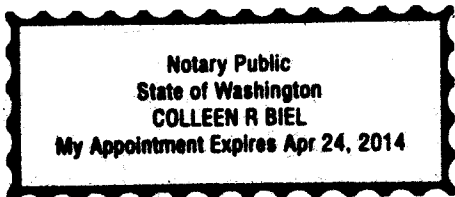
9 16. I understand that after my resignation becomes effective, it is permanent. I will  
10 never be eligible to apply and will not be considered for admission or reinstatement to the  
11 practice of law nor will I be eligible for admission for any limited practice of law.

12 17. I certify under penalty of perjury under the laws of the State of Washington that the  
13 foregoing is true and correct.

14 1/14/14 SEATTLE  
15 Date and Place

[Signature]  
16 Robert Joseph Penfield  
Bar No. 25081

17 SUBSCRIBED AND SWORN to before me this 14th day of January, 2014.



18 Colleen R. Biel  
19 NOTARY PUBLIC for the state of  
20 Washington, residing at King  
County, WA  
21 My commission expires: 4-24-2014

# EXHIBIT A

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**ROBERT JOSEPH PENFIELD,**

Lawyer (Bar No. 25081).

Proceeding No. 13#00017

STATEMENT OF ALLEGED  
MISCONDUCT UNDER ELC 9.3(b)(1)

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The following constitutes a Statement of Alleged Misconduct under Rule 9.3(b)(1) of the Rules for Enforcement of Lawyer Conduct (ELC).

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**ADMISSION TO PRACTICE**

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1. Respondent Robert Joseph Penfield was admitted to the practice of law in the State of Washington on October 19, 1995.

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**ALLEGED FACTS REGARDING BARTON PREECS MATTER**

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2. On November 2, 2010, Barton Preecs hired Respondent to represent him in a dispute involving Preecs' ex-wife. Respondent and Preecs entered into a written fee agreement that provided Preecs pay Respondent a "flat fee" of \$1,500. Preecs paid the \$1,500 fee and a \$1,000 cost advance.

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3. Respondent deposited the entire \$2,500 into his operating/business account.

1 Because Respondent's fee agreement did not comply with RPC 1.5(f), the \$1,500 fee as well as  
2 the cost advance should have been deposited into his IOLTA account.

3 4. On January 7, 2011, Respondent informed Preecs that he was spending more time on  
4 Preecs' case than he had anticipated and asked Preecs to pay an additional \$1,000 in attorney  
5 fees. Preecs paid the additional \$1,000, which Respondent deposited into his general/operating  
6 account.

7 5. On January 31, 2011, Preecs' ex-wife executed a quitclaim deed, thereby resolving  
8 her dispute with Preecs. Respondent advised Preecs that he should conduct a non-judicial  
9 foreclosure to clear junior liens that remained on the property. Preecs agreed, and on March 14,  
10 2011, Preecs signed and returned to Respondent an Appointment of Successor Trustee so that  
11 the foreclosure could proceed.

12 6. Respondent completed the foreclosure, and Preecs listed the property for sale. On  
13 October 1, 2011, Preecs received a purchase offer for the property, which he accepted.

14 7. Preecs learned that Respondent had not timely recorded the Appointment of  
15 Successor Trustee and, as a result, the foreclosure was ineffective to clear title.

16 8. The defect in the foreclosure could not be cured and a new foreclosure, which would  
17 take an additional 120 days and involve additional costs, was required to clear the liens. Preecs  
18 had to hire another lawyer to conduct the second foreclosure, thereby incurring additional fees  
19 and costs. Because of the delay, the buyer backed out of the purchase.

20 9. Preecs requested that Respondent provide an accounting and refund the fees he paid.  
21 Respondent has not provided Preecs with an accounting of the fees and costs.

22 10. Respondent agreed to refund the \$3,500 Preecs paid him in fees and costs, but has  
23 not done so. Respondent, with the intent to deprive Preecs of his funds, used some or all of the  
24

1 funds for his own use.

2 **ALLEGED FACTS REGARDING SANDRA O'REILLY MATTER**

3 11. On June 25, 2012, Sandra O'Reilly hired Respondent to file a lawsuit against the  
4 holder of the trust deed on her home. Respondent advised O'Reilly that she would be a plaintiff  
5 in a class action lawsuit against her lender based on irregularities in her loan. Respondent also  
6 told O'Reilly that the lawsuit would delay any foreclosure by her lender and increase her  
7 leverage in negotiating a modification of her loan.

8 12. Respondent and O'Reilly entered into a written fee agreement that provided O'Reilly  
9 pay Respondent a "flat fee" of \$3,500 plus an additional amount contingent upon any cash  
10 settlement realized from the lawsuit. The percentage of the contingent fee was not specified.

11 13. O'Reilly paid Respondent \$3,500, which he deposited into his general/operating  
12 account. Because Respondent's fee agreement did not comply with RPC 1.5(f), the funds  
13 should have been deposited into his IOLTA account.

14 14. On September 27, 2012, Respondent sent a Qualified Written Request for  
15 information to O'Reilly's lender.

16 15. Respondent failed to respond to O'Reilly's repeated requests for information about  
17 the status of her case. Respondent did not return her telephone calls or otherwise communicate  
18 with her.

19 16. Respondent has not filed the lawsuit. He has done little or no work on O'Reilly's  
20 case. Respondent has not refunded any of the fees O'Reilly paid him. Respondent, with the  
21 intent to deprive O'Reilly of the funds, used some or all of the fees for his own use.

22  
23 **ALLEGED FACTS REGARDING DAVID MCKINNON MATTER**

1 17. On April 6, 2012, David McKinnon hired Respondent to represent him in dealing  
2 with the IRS regarding additional income tax they alleged he owed for the year 2010.

3 18. McKinnon paid Respondent a "flat fee" of \$500, which Respondent deposited into  
4 his general/operating account. The fee should have been deposited into Respondent's IOLTA  
5 account. McKinnon also executed a power of attorney, authorizing Respondent to represent  
6 him in the matter.

7 19. McKinnon had until April 25, 2012, to respond to the IRS. On April 16, 2012,  
8 Respondent sent McKinnon an email stating he had all the documentation he needed to proceed.  
9 Respondent did not contact the IRS or otherwise do any work on McKinnon's matter.

10 20. On June 7, 2012, McKinnon received another notice from the IRS informing him  
11 that since they had not heard from him, he now owed \$143,576 in taxes, including penalties and  
12 interest.

13 21. Respondent failed to respond to McKinnon's repeated requests for information about  
14 the status of his case. Respondent did not return his telephone calls or emails or otherwise  
15 communicate with him.

16 22. On June 11, 2012, McKinnon sent Respondent an email asking what work he had  
17 done and requesting a refund of the \$500 he had paid him. Respondent did not respond to  
18 McKinnon's email.

19 23. Respondent has not refunded the \$500 McKinnon paid him. Respondent, with the  
20 intent to deprive McKinnon of his funds, used some or all of the funds for his own use.

21 **ALLEGED FACTS REGARDING DIANE OLSON MATTER**

22 24. Diane Olson's house was sold at a trustee's sale on November 28, 2011, following a  
23 non-judicial foreclosure by U.S. Bank.



1           25. On January 30, 2012, Olson hired Respondent to represent her in defending against  
2 an eviction that U.S. Bank had initiated. Respondent advised Olson that the foreclosure by U.S.  
3 Bank was unlawful because U.S. Bank was not the true beneficiary under the deed of trust that  
4 was the basis for its foreclosure. Respondent advised Olson that he would file a lawsuit to set  
5 aside the foreclosure and use the lawsuit as a way to increase Olson's leverage in negotiating  
6 reinstatement of her loan.

7           26. Respondent and Olson entered into a written fee agreement in which Olson agreed to  
8 pay \$5,000, plus 20% of any recovery. The fee agreement also required Olson to pay a \$1,000  
9 cost advance. Olson paid Respondent \$5,000, which he deposited into his operating/business  
10 account. Because Respondent's fee agreement did not comply with RPC 1.5(f), the funds  
11 should have been deposited into his IOLTA account.

12           27. A hearing on the eviction was scheduled for April 12, 2012. On April 11, 2012,  
13 Olson, having not heard from Respondent about the hearing the next day, sent an email to  
14 Respondent. Respondent did not respond.

15           28. On the day of the hearing, Olson sent Respondent a text message about the hearing.  
16 Respondent answered that he was out of town and would not be appearing at the hearing.  
17 Respondent advised Olson that the judge likely would issue the writ of restitution and she need  
18 not appear at the hearing. Respondent also advised Olson that he would file a class action  
19 lawsuit against U.S. Bank with Olson as the lead plaintiff.

20           29. Olson appeared at the hearing without counsel, at which time the court issued the  
21 writ of restitution. Appearing pro se, Olson filed a motion to vacate the judgment and stay  
22 enforcement of the writ. The commissioner set the matter for hearing on April 17, 2012.

23           30. Olson attempted to contact Respondent, but he did not get back to her until April 16,  
24

1 2012, when he left her a voicemail message advising her to not go to the hearing. In the  
2 voicemail message, Respondent admitted he had failed to represent Olson and that she should  
3 get back the money she had paid him.

4 31. Respondent also advised Olson he would appeal the commissioner's decision, which  
5 would require a bond, which he promised to obtain at his own expense. Olson contacted  
6 Respondent again, but he refused to appear with her.

7 32. Respondent did not obtain the bond as promised and Olson was evicted from the  
8 home.

9 33. Respondent, with the intent to deprive Olson of her funds, used Olson's funds for his  
10 own use.

11 **ALLEGED FACTS REGARDING ELIZABETH MCADAM MATTER**

12 34. On November 20, 2012, Elizabeth McAdam hired Respondent to represent her in  
13 filing a lawsuit in federal court against Seattle Savings Bank, the holder of the mortgage on her  
14 home. The purpose of the lawsuit was to improve McAdam's bargaining position in negotiating  
15 a loan modification.

16 35. McAdam entered into a written fee agreement with Respondent in which she agreed  
17 to pay Respondent a "flat fee" of \$5,000. McAdam gave Respondent two checks: one for  
18 \$2,000 for fees and one for \$350 for the filing fee.

19 36. Respondent deposited both checks into his general/operating account. Because  
20 Respondent's fee agreement did not meet the requirements of RPC 1.5(f)(2), the check for fees  
21 should have been deposited into his IOLTA account, as well as the \$350 check for the filing fee.

22 37. About a week later, Respondent informed McAdam that she should file a Chapter 13  
23 Bankruptcy Petition in order to stop a foreclosure that had been initiated.

1 38. Respondent did not respond to McAdam's repeated attempts to communicate with  
2 him about the status of her case and the lawsuit he had been hired to file.

3 39. Respondent failed to appear at McAdam's 341(a) meeting of creditors.

4 40. McAdam hired a new lawyer. Based on consultation with her new lawyer, McAdam  
5 determined that continuing the Chapter 13 bankruptcy was not in her best interest. The  
6 bankruptcy was dismissed on April 2, 2013.

7 41. McAdam's new lawyer asked Respondent to refund the money McAdam had paid  
8 him. Respondent refused. The lawsuit Respondent was hired to file was never filed.

9 42. On March 2, 2013, McAdam filed a grievance with the Association. On March 5,  
10 2013, the grievance was sent to Respondent, requesting a written response to the grievance  
11 within 30 days. Respondent has not provided a written response as requested.

12 **ALLEGED FACTS REGARDING CAROL SCACE MATTER**

13 43. On May 29, 2012, Carol Scace hired Respondent to file a class action lawsuit against  
14 JP Morgan Chase, Ms. Scace's lender, based on irregularities in her loan. The purpose of the  
15 lawsuit was to put pressure on the bank to negotiate a loan modification.

16 44. Respondent and Scace entered into a written fee agreement in which Scace agreed to  
17 pay Respondent a "flat fee" of \$3,500 to file the lawsuit. Scace paid Respondent \$3,500, which  
18 he deposited into his general/operating account. Respondent's fee agreement did not meet the  
19 requirements of RPC 1.5(f) and the fee should have been deposited into his IOLTA account.

20 45. Thereafter, Scace repeatedly attempted to communicate with Respondent about the  
21 status of her case. Respondent failed to return her telephone calls or otherwise communicate  
22 with her.

23 46. Respondent did no work on Scace's case.

1 47. Scace requested a refund of the money she had paid Respondent. With the intent to  
2 deprive Scace of her funds, Respondent did not refund the money.

3 48. On January 22, 2013, Scace filed a grievance with the Association. On January 24,  
4 2013, the Association sent a copy of the grievance to Respondent and requested a written  
5 response within 30 days. Respondent has not provided a written response.

6 **ALLEGED FACTS RELATING TO JOSEPH ZAHARA MATTER**

7 49. Joseph Zahara hired Respondent to negotiate modifications of two mortgages on  
8 properties he owned in Fountain Hills, Arizona and San Diego, California.

9 50. Respondent suggested Zahara join the class action lawsuit he planned to file against  
10 Zahara's lenders, which was intended to put pressure on the lenders and force loan  
11 modifications.

12 51. Zahara asked Respondent if the properties that were out of state presented any  
13 problems. Respondent advised him that was not a problem.

14 52. Zahara paid Respondent a "flat fee" of \$10,000, which Respondent deposited into  
15 his operating/business account.

16 53. Zahara called Respondent once or twice a month between July 2012 and January  
17 2013, inquiring about the status of the lawsuits. Respondent did not return his calls or otherwise  
18 communicate with him about the status of his case.

19 54. Respondent finally spoke with Zahara and explained that he could not represent him  
20 because the properties were out of state. Respondent has not refunded the fees Zahara paid him.

21 55. On February 27, 2013, Zahara filed a grievance with the Association. On February  
22 28, 2013, a copy of the grievance was sent to Respondent, requesting a written response within  
23 30 days. Respondent has not provided a written response.

1       **ALLEGED FACTS RELATING TO PATRICK AND JULIE MCHENRY MATTER**

2           56. Patrick and Julie McHenry were plaintiffs in a lawsuit alleging irregularities in their  
3 home loans. The case was dismissed, and the McHenrys, appearing pro se, filed an appeal with  
4 the Court of Appeals.

5           57. On August 21, 2012, the McHenrys hired Respondent to represent them in the  
6 pending case. They paid Respondent \$5,000.

7           58. About three weeks later, Respondent advised the McHenrys that they were unlikely  
8 to prevail at the Court of Appeals. Respondent advised them to file an application with the  
9 Washington Department of Commerce for a Fair Foreclosure Act mediation.

10          59. The McHenrys executed a new fee agreement covering the new work, which was  
11 described as enrolling the client in the mediation program and representing them through  
12 completion of the program. The fee agreement also provided that in the event that a successful  
13 modification of their loan was not obtained, Respondent agreed to file a lawsuit against Citibank  
14 and all other entities claiming an interest in their real property. The \$5,000 that the McHenrys  
15 had already paid Respondent was to be applied to the new services.

16          60. Respondent filed the application for mediation. On October 18, 2012, the McHenrys  
17 received notice that the mediation had been cancelled as they were ineligible for the program  
18 because no current Notice of Default had been issued by the lender.

19          61. Respondent never filed the lawsuit as agreed. His work for the McHenrys consisted  
20 of writing one letter and filing the application for mediation.

21          62. The McHenrys requested a refund of the \$5,000 they had paid Respondent.  
22 Respondent informed them that he earned all of the money and refused to refund any portion of  
23 the funds. Mrs. McHenry requested an accounting, which Respondent has not provided.

1 63. On January 9, 2013, the McHenryrs filed a grievance with the Association. On  
2 January 11, 2013, a copy was sent to Respondent, requesting a written response within 30 days.  
3 Respondent has not provided a written response.

#### 4 ALLEGED MISCONDUCT

##### 5 **Preecs Matter:**

6 64. By converting the fees and the cost advance Preecs paid him, Respondent violated  
7 RPC 1.15A(b) and/or RPC 8.4(c).

8 65. By failing to deposit and hold in trust the \$2,500 in fees Preecs paid him, as well as  
9 the \$1,000 cost advance, Respondent violated RPC 1.15A(c)(2).

10 66. By failing to refund unearned fees and/or any unused portion of the cost advance,  
11 Respondent violated RPC 1.15A(f) and/or RPC 1.16(d).

12 67. By failing to provide Preecs with a written accounting, Respondent violated RPC  
13 1.15A(e).

14 68. By keeping the \$2,500 fee for work that resulted in little or no benefit to Preecs  
15 and/or failing to complete the work he was hired to do, Respondent charged an unreasonable fee  
16 in violation of RPC 1.5(a).

17 69. By failing to timely record the Appointment of Successor Trustee, Respondent  
18 violated RPC 1.3.

##### 19 **O'Reilly Matter:**

20 70. By converting the fees O'Reilly paid him, Respondent violated RPC 1.15A(b) and  
21 RPC 8.4(c).

22 71. By failing to deposit and hold in trust the \$3,500 in fees O'Reilly paid him,  
23 Respondent violated RPC 1.15A(c)(2).

1 72. By failing to refund unearned fees to O'Reilly, Respondent violated RPC 1.15A(f)  
2 and RPC 1.16(d).

3 73. By keeping the full "flat fee" of \$3,500 for work that has resulted in little or no  
4 benefit to O'Reilly and/or failing to complete the work he was hired to do, Respondent violated  
5 RPC 1.5(a).

6 74. By failing to file a complaint against O'Reilly's lender and/or otherwise adequately  
7 represent her, Respondent violated RPC 1.3.

8 75. By failing to communicate with O'Reilly about the status of her case, Respondent  
9 violated RPC 1.4(a)(3) and RPC 1.4(a)(4).

10 **McKinnon Matter:**

11 76. By taking the \$500 McKinnon paid him and converting it to his own use,  
12 Respondent violated RPC 1.15A(b) and RPC 8.4(c).

13 77. By failing to contact the IRS as he was hired to do, Respondent violated RPC 1.3.

14 78. By failing to deposit and hold in trust the \$500 fee McKinnon paid, Respondent  
15 violated RPC 1.15A(c)(2).

16 79. By failing to refund the \$500 fee to McKinnon, Respondent violated RPC 1.15A(f)  
17 and 1.16(d).

18 80. By keeping the \$500 fee and failing to complete the work he was hired to do,  
19 Respondent violated RPC 1.5(a).

20 **Olson Matter:**

21 81. By converting Olson's funds for his own use, Respondent violated RPC 1.15A(b)  
22 and RPC 8.4(c).

23 82. By failing and refusing to appear at the April 12, 2012 hearing, and the later  
24

1 hearings, and failing to file the lawsuit to set aside the foreclosure as he was hired to do,  
2 Respondent violated RPC 1.3.

3 83. By failing to communicate with Olson about the status of her matter, Respondent  
4 violated RPC 1.4(a).

5 84. By failing to refund Olson all or part of the \$5,000 she paid him after doing little or  
6 no work, Respondent violated RPC 1.5(a).

7 85. By failing to deposit and hold Ms. Olson's funds into a trust account, Respondent  
8 violated RPC 1.15A(c).

9 86. By failing to refund Olson's money to her when she was entitled to receive the funds  
10 upon termination of the representation, Respondent violated RPC 1.15A(f) and RPC 1.16(d).

11 87. By telling Olson that he would file a lawsuit to set aside the foreclosure, and/or  
12 telling her that he would file a class action lawsuit on her behalf, and by promising to obtain a  
13 bond for her and not doing so, Respondent violated RPC 8.4(c).

14 **McAdam Matter:**

15 88. By converting the funds McAdam paid him, Respondent violated RPC 1.15A(b) and  
16 RPC 8.4(c)

17 89. By failing to deposit and hold in trust the \$2,000 in fees and the \$350 filing fee  
18 McAdam paid him, Respondent violated RPC 1.15A(c)(2).

19 90. By failing to refund unearned fees McAdam paid, Respondent violated RPC  
20 1.15A(f) and RPC 1.16(d).

21 91. By keeping the full "flat fee" of \$2,000 for work that has resulted in little or no  
22 benefit to McAdam and by keeping the fee despite the fact he did not complete the work he was  
23 paid to do, Respondent violated RPC 1.5(a).



1 92. By failing to file a lawsuit for McAdam, Respondent violated RPC 1.3.

2 93. By failing to communicate with McAdam regarding the status of her case,  
3 Respondent violated RPC 1.4(a)(3) and RPC 1.4(a)(4).

4 94. By failing to respond to McAdam's grievance, Respondent violated ELC 5.3(e).

5 **Scace Matter:**

6 95. By converting the fees Scace paid him, Respondent violated RPC 1.15A(b) and RPC  
7 8.4(c).

8 96. By failing to refund unearned fees to Scace, Respondent violated RPC 1.15A(f) and  
9 RPC 1.16(d).

10 97. By failing to deposit and hold in trust the \$3,500 in fees Scace paid him, Respondent  
11 violated RPC 1.15A(c)(2).

12 98. By keeping the full "flat fee" of \$3,500 and not doing any work, Respondent  
13 violated RPC 1.5.

14 99. By failing to file a lawsuit for Scace, Respondent violated RPC 1.3.

15 100. By failing to communicate with Scace regarding the status of her case,  
16 Respondent violated RPC 1.4(a)(3) and RPC 1.4(a)(4).

17 101. By failing to respond to Scace's grievance, Respondent violated ELC 5.3(e).

18  
19 **Zahara Matter:**

20 102. By converting the fees Zahara paid him, Respondent violated RPC 1.15A(b) and  
21 RPC 8.4(c).

22 103. By failing to refund Zahara all or part of the fee he was paid and having done  
23 little or no work on Zahara's case, Respondent violated RPC 1.5(a).

1 104. By failing to refund Zahara the fees that he had not earned, Respondent violated  
2 RPC 1.16(d).

3 105. By failing to communicate with Zahara regarding the status of his case,  
4 Respondent violated RPC 1.4(a)(3) and RPC 1.4(a)(4).

5 106. By failing to respond to Zahara's grievance, Respondent violated ELC 5.3(e).

6 **McHenry Matter**

7 107. By converting the fees Mr. and Mrs. McHenry paid him, Respondent violated  
8 RPC 1.15A(b) and RPC 8.4(c).

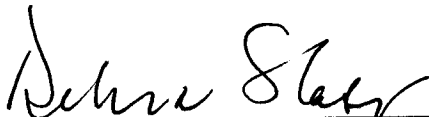
9 108. By failing to refund unearned fees to the McHenrys, Respondent violated RPC  
10 1.15A(f) and RPC 1.16(d).

11 109. By keeping the full "flat fee" of \$5,000 while performing little or no work,  
12 Respondent violated RPC 1.5(a).

13 110. By failing to prepare and file the lawsuit for the McHenrys that he had been hired  
14 to file, Respondent violated RPC 1.3.

15  
16 111. By failing to respond to Mr. and Mrs. McHenry's grievance, Respondent  
17 violated ELC 5.3(e).

18  
19 DATED this 14<sup>th</sup> day of January 2014.

20   
21 \_\_\_\_\_  
22 Debra Slater, Bar No. 18346  
23 Disciplinary Counsel  
24