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DISCIPLINARY  
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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re	Proceeding No. 16#00086
<b>KENNETH MITCHELL-PHILLIPS SR.,</b>	ODC File No(s). 16-00924
Lawyer (Bar No. 47720).	RESIGNATION FORM OF Kenneth Mitchell-Phillips, Sr. (ELC 9.3(b))

I, Kenneth Mitchell-Phillips Sr., declare as follows:

1. I am over the age of eighteen years and am competent. I make the statements in this declaration from personal knowledge.
2. I was admitted to practice law in the State of Washington on September 10, 2014.
3. After consultation with my counsel, Frederic Cann, I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Rules for Enforcement of Lawyer Conduct (ELC).
4. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in

Resignation Form of Kenneth Mitchell-Phillips Sr.  
(ELC 9.3(b)).  
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001

1 disciplinary counsel's statement but, rather than defend against the allegations, I wish to  
2 permanently resign from membership in the Association.

3 5. I consent to entry of an order under ELC 13.9(e) assessing expenses of \$1,500 in  
4 this matter.

5 6. I agree to pay any additional costs or restitution that may be ordered by a Review  
6 Committee under ELC 9.3(g).

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

13 8. I agree to (a) notify all other states and jurisdictions in which I am admitted,  
14 including Oregon, of this resignation in lieu of discipline; (b) seek to resign permanently from  
15 the practice of law in Oregon; and (c) provide disciplinary counsel with copies of this  
16 notification and any response(s). I acknowledge that this resignation could be treated as a  
17 disbarment by all other jurisdictions.

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

22 10. I agree that when applying for any employment, I will disclose the resignation in

1 lieu of discipline in response to any question regarding disciplinary action or the status of my  
2 license to practice law.

3 11. I understand that my resignation becomes effective on disciplinary counsel's  
4 endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) disciplinary  
5 counsel must do so promptly following receipt of this document and payment of costs and  
6 expenses.

7 12. When my resignation becomes effective, I agree to be subject to all restrictions that  
8 apply to a disbarred lawyer.

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

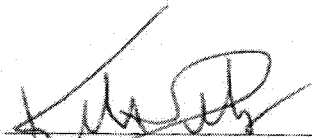
11 14. I understand that, after my resignation becomes effective, it is permanent. I will  
12 never be eligible to apply and will not be considered for admission or reinstatement to the  
13 practice of law nor will I be eligible for admission for any limited practice of law.

14 15. I certify under penalty of perjury under the laws of the State of Washington that  
15 the foregoing is true and correct.

16

17

18 October 23, 2017  
Date and Place

  
Kenneth Mitchell-Phillips, Sr., Bar No. 47720

19  
20 ENDORSED BY:

21   
22 Benjamin J. Attanasio, Disciplinary Counsel  
Bar No. 43032

23 Resignation Form of Kenneth Mitchell-Phillips Sr.  
24 (ELC 9.3(b))  
Page 3

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# EXHIBIT A

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BEFORE THE  
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In re	Proceeding No. 16#00086
<b>KENNETH MITCHELL-PHILLIPS SR.,</b>	ODC File No(s). 16-00924
Lawyer (Bar No. 47720).	STATEMENT OF ALLEGED MISCONDUCT UNDER ELC 9.3(b)(1)

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

**I. ADMISSION TO PRACTICE**

1. Respondent Kenneth Mitchell-Phillips Sr. was admitted to the practice of law in the State of Washington on September 10, 2014.

**II. ALLEGED FACTS**

2. In June 2015, Linda Tiokasin hired Respondent to represent her as plaintiff in a case in Clark County Superior Court involving an unlawful lis pendens (the lis pendens case). She paid him an advance fee of \$2,500, which was deposited into trust.

1           3. Ms. Tiokasin later informed Respondent that she wanted to file a second lawsuit  
2 against the defendant for a claim of fraud (the fraud case). In October 2015, Ms. Tiokasin paid  
3 Respondent an advance fee of \$2,500 for representation in the fraud case, which Respondent  
4 deposited into trust.

5           4. Respondent received a copy of the Defendant's First Request for Production of  
6 Documents, dated July 6, 2015, with a reply due August 5, 2015. But he did not prepare  
7 responses to the defendant's discovery requests or transmit them to Ms. Tiokasin.

8           5. In advance of trial, Ms. Tiokasin paid Respondent an additional \$5,000 for  
9 representation in the lis pendens matter, a portion of which was an advance fee. The check was  
10 deposited on or about November 19, 2015. The money was not deposited into trust.  
11 Respondent earned the entire fee \$5,000 within a few days of the deposit.

12           6. Respondent represented Ms. Tiokasin at her bench trial on November 24, 2015.  
13 After the trial, Ms. Tiokasin asked about an appeal and Respondent promised to get back to her,  
14 but did not.

15           7. In December 2015, Ms. Tiokasin requested a refund of the \$2,500 she had paid for  
16 representation in the fraud case.

17           8. On January 22, 2016, Ms. Tiokasin received a refund of the \$2,500 she paid for the  
18 fraud case. The check was drawn on Mr. Mitchell-Phillip's business account.

19           9. On February 4, 2016, Respondent filed a notice of intent to withdraw. Ms.  
20 Tiokasin did not hear from Respondent's office until she received an email that Respondent had  
21 already filed his notice of intent to withdraw on February 4, 2016.

22           10. Respondent did not keep a checkbook register for his trust account or  
23 reconciliations between his client ledgers and his checkbook, and his client ledgers were not

1 accurate.

2 11. Respondent sent invoices to clients before removing funds from trust, but did not  
3 always remove the earned fees. He left earned client fees in his trust account, sometimes for six  
4 months to a year.

5 12. He did not write checks on his trust account. Instead, to remove funds, he  
6 transferred money from his trust account to his business account and then wrote a checks drawn  
7 on his business account, even if the funds belonged to a client.

8 13. The invoices Respondent sent to Ms. Tiokasin and his trust account records as a  
9 whole were incomplete and inaccurate.

10 14. On June 14, 2016, Ms. Tiokasin filed her grievance. On June 16, 2016, ODC sent  
11 a letter to Respondent requesting his response to the grievance. He did not respond. On July  
12 20, 2016, ODC sent Respondent a letter requiring his response within ten days. He did not  
13 respond to this letter.

14 15. On August 17, 2016, Respondent was personally served with a subpoena from  
15 ODC requiring his attendance at a deposition relating to Ms. Tiokasin's grievance, scheduled  
16 for August 31, 2016. Respondent failed to appear at the deposition on August 31, 2016.

17 16. On September 13, 2016, ODC filed a petition with the Supreme Court for  
18 Respondent's interim suspension from the practice of law, which was personally served on  
19 September 27, 2016. Shortly before the showcause hearing before the Supreme Court set for  
20 October 20, 2016, Respondent provided a response to Ms. Tiokasin's grievance.

21 17. By letter dated March 28, 2017, ODC requested additional information about Mr.  
22 Mitchell-Phillip's trust account records. He did not respond. On May 2, 2017, ODC sent him a  
23 request for response within ten days. He did not provide the requested documents. On June 20,

1 2017, Respondent appeared for a non-cooperation deposition.

2 **III. ALLEGED MISCONDUCT.**

3 18. By failing to provide Ms. Tiokasin with a copy of the discovery requests from  
4 opposing counsel, Respondent violated RPC 1.4 and RPC 1.3.

5 19. By failing to prepare an accurate client ledger for Ms. Tiokasin that recorded and  
6 identified all transactions, Respondent RCP 1.15A(h)(3) and RPC 1.15B(a)(2).

7 20. The invoices sent to Ms. Tiokasin were not accurate as to when the funds were  
8 disbursed from the trust account or as to the amount of funds held in trust. Ms. Tiokasin's funds  
9 were disbursed before she was provided reasonable notice of the intent to withdraw her fees  
10 from trust. In taking these actions, Respondent violated RPC 1.15A(h)(3), RPC 1.5(b) and RPC  
11 1.4.

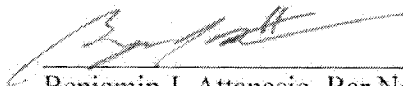
12 21. By failing to place Ms. Tiokasin's \$5,000 fee into his trust account before earning  
13 the entire amount, Respondent violated RPC 1.15A(b).

14 22. By failing to keep accurate records as required by RPC 1.15B, Respondent violated  
15 RCP 1.15A(h)(2) and (6).

16 23. By holding his earned fees in his trust account, and by placing client funds into his  
17 business account before disbursing them, Respondent violated RPC 1.15A(c) and RPC  
18 1.15A(h)(1).

19 24. By failing to respond to numerous requests for a response related to the grievance,  
20 Respondent violated RPC 8.4(l).

21 DATED this 11<sup>th</sup> day of October, 2017.

22 

23 Benjamin J. Attanasio, Bar No. 43032  
Disciplinary Counsel

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