

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

MATTHEW ERIC PEEK,

Attorney-Respondent,

No. 6313706.

Commission No. 2022PR00045

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Tammy L. Evans, pursuant to Supreme Court Rule 753(b), complains of Respondent, Matthew Eric Peek, who was licensed to practice law in Illinois on October 31, 2013, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Lack of diligence and failure to communicate – Samuel and Kellie Preston)

1. On June 24, 2016, Jeremy and Renee Walker (“the Walkers”) filed a complaint against Samuel and Kellie Preston (“the Prestons”) in Champaign County Circuit Court. The matter was docketed as case number 2016L104 and titled *Jeremy Walker and Renee Walker v. Samuel Preston and Kellie Preston*. The Walkers’ complaint alleged that the Prestons failed to disclose a defect in the property that they had sold to the Walkers.

2. On or before December 7, 2016, Respondent and the Prestons agreed that Respondent would represent the Prestons in case number 2016L104. Respondent and the Prestons agreed that the Prestons would pay Respondent a \$2,500 retainer, and that Respondent would bill

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the Prestons at an hourly rate of \$225. On December 7, 2016, Respondent filed an appearance in case number 2016L104 on behalf of the Prestons.

3. On December 16, 2020, the Walkers filed a motion for summary judgment in case number 2016L104. On December 18, 2020, the court entered a briefing schedule that directed the Prestons to file any materials in opposition to the Walkers' motion no later than January 15, 2021, and scheduled a hearing on the Walkers' motion. The court sent a copy of its December 18, 2020 order by email message to both Respondent and counsel for the Walkers. Respondent received the court's email message and the court's December 18, 2020 order.

4. At no time between December 16, 2020 and January 15, 2021, did Respondent respond or file any materials in opposition to the Walkers' motion for summary judgment on behalf of the Prestons.

5. At no time between December 16, 2020 and January 15, 2021, did Respondent inform the Prestons that the Walkers had filed a motion for summary judgment.

6. On February 5, 2021, the court issued a ruling on the Walkers' motion. The court granted the Walkers' motion and entered a judgment in favor of the Walkers and against the Prestons. Respondent received and reviewed the court's February 5, 2021 order.

7. At no time between February 5, 2021 and August 17, 2021, did Respondent inform the Prestons that the court had entered a judgment in favor of the Walkers and against them.

8. On July 31, 2021, Samuel Preston ("Samuel") checked the online docket history for case number 2016L104 on the Champaign County Circuit Clerk's website and discovered that a judgment had been entered against him and his wife on February 5, 2021. Samuel sent an email message to Respondent asking him about the judgment. Respondent did not respond to Samuel's July 31, 2021 email.

9. On August 2, 2021, Samuel sent another email message to Respondent asking about the status of case number 2016L104. Respondent did not respond to Samuel's August 2, 2021 email.

10. On or before August 17, 2021, Samuel went to Respondent's law office to inquire about the status of case number 2016L104. Respondent told Samuel that the judgment was not a problem and that Respondent would file a motion to vacate the judgment.

11. On August 17, 2021, Respondent, on behalf of the Prestons, filed a motion to vacate the order for summary judgment. The court scheduled a hearing on September 1, 2021, for Respondent's motion.

12. On September 1, 2021, the court held a hearing on Respondent's motion. The court denied Respondent's motion to vacate the court's summary judgment order and scheduled the matter for a hearing on the issue of damages. Respondent was present for the hearing.

13. On September 21, 2021, the court held a hearing on the issue of damages and entered a judgment in favor of the Walkers and against the Prestons in the amount of \$64,120.36. Respondent was present for the hearing.

14. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable diligence and promptness in representing a client, by conduct including failing to respond or file a response to the Walkers' motion for summary judgment by January 15, 2021, which resulted in the court entering a judgment in favor of the Walkers and against the Prestons in the amount of \$64,120.36, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent, is required, by conduct including failing to inform the Prestons that the Walkers had filed a motion for

summary judgment, and failing to inform the Prestons that the court had entered a judgment in favor of the Walkers and against them, in violation of Rule 1.4(a)(1) of the Illinois Rules of Professional Conduct (2010);

- c. failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished, by conduct including failing to inform the Prestons that the Walkers had filed a motion for summary judgment, and failing to inform the Prestons that the court had entered a judgment in favor of the Walkers and against them, in violation of Rule 1.4(a)(2) of the Illinois Rules of Professional Conduct (2010);
- d. failing to keep the client reasonably informed about the status of the matter, by conduct including failing to inform the Prestons that the Walkers had filed a motion for summary judgment, and failing to inform the Prestons that the court had entered a judgment in favor of the Walkers and against them, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- e. failing to promptly comply with reasonable requests for information, by conduct including failing to respond to Samuel's July 31, 2021 and August 2, 2021 email messages, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Lack of diligence, failure to communicate and failure to safeguard client funds -Unique Homes)

15. On August 22, 2014, Unique Homes and Lumber ("Unique") filed a complaint against Kahlil and Amara Andrews ("the Andrews") in Champaign County Circuit Court. The matter was docketed as case number 2014L145 and titled *Unique Homes v. Khalil and Amara Andrews*. The complaint alleged that the Andrews had entered into a contract with Unique for the construction of a new home, but refused to pay Unique or take possession of the home upon the completion of construction.

16. On or before January 25, 2018, Respondent and Unique agreed that Respondent would file a motion to substitute in as counsel for Unique in case number 2014L145. Respondent and Unique agreed that Respondent would bill Unique at an hourly rate of \$225. On January 25, 2018, Respondent filed a motion to substitute as counsel for Unique in case number 2014L145. At this time, Respondent was employed as an associate attorney with Erwin, Martinkus & Cole, LTD, a law firm in Champaign.

17. On October 1, 2018, the court entered a judgment in the amount of \$130,530 in favor of Unique and against the Andrews, and the parties agreed to a payment plan.

18. On or before September 13, 2019, Respondent joined the law firm of Kesler, Nelson, Garman, Brougher, Townsley and Perkins (“Kesler Nelson”) in Danville, as an associate attorney.

19. On September 13, 2019, Respondent, on behalf of Unique, filed a petition to enforce settlement after the Andrews defaulted on the payment plan.

20. On November 26, 2019, the court granted Respondent’s petition to enforce settlement agreement, and on March 12, 2020, the court entered a wage deduction order garnishing the Andrews’ wages. Shortly thereafter, Amara Andrews’ wages were garnished and Automatic Data Processing, Inc. (“ADP”) began mailing garnishment checks to Kesler Nelson on a biweekly basis.

21. Between March 2020 and January 2021, Kesler Nelson deposited the biweekly garnishment checks into the firm’s client trust account, issued checks payable to Unique for the garnishment amount, and then gave the checks to Respondent. Respondent then forwarded the checks to Randy Porter (“Porter”), the Chief Financial Officer and Vice-President of Finance for Unique.

22. In January 2021, Kesler Nelson disbanded and Respondent joined Rincker Law, PLLC (“Rincker Law”) in Champaign. Between January 2021 and March 2021, garnishment checks for case number 2014L145 continued to be sent to Kesler Nelson. In March 2021, William Townsley (“Townsley”), a partner with Kesler Nelson, endorsed the checks that were sent to Kesler Nelson and forwarded the checks to Respondent at Rincker Law. Respondent then sent the garnishment checks to Porter.

23. On April 6, 2021, Respondent sent Porter an email message stating that he would file an updated withholding agreement in case number 2014L145 so that the garnishment checks would go directly to Porter, and he would provide Porter with an accounting of the funds that Respondent had received from ADP.

24. Between April 1, 2021 and November 22, 2021, Respondent received 13 garnishment checks from ADP.

25. Respondent did not negotiate or deposit the 13 garnishment checks into a client trust account.

26. At no time between April 6, 2021 and June 30, 2021, did Respondent provide Porter with an accounting of the funds that he received from ADP or file an updated withholding agreement in case number 2014L145.

27. On June 30, 2021, Porter sent an email message to Respondent asking for an accounting of the funds that Respondent had received from ADP, and asking about the status and whereabouts of any garnishment checks that Respondent had received between April 2021 and June 2021. Porter also asked Respondent to contact him so “we can move in another direction.” Respondent did not respond to Porter’s June 30, 2021 email message.

28. On or before September 13, 2021, Porter contacted Richard Harden (“Harden”), a partner with Thomas Mamer, LLP (“Thomas Mamer”), to substitute in as counsel for Unique in case number 2014L145.

29. On October 12, 2021, Miranda White (“White”), Harden’s legal assistant, electronically filed a motion for substitution of counsel in case number 2014L145 with the Champaign County Circuit Clerk. On October 12, 2021, White sent an email message to Robert Burkhalter (“Burkhalter”), a clerk in the Circuit Clerk’s office, requesting a remote hearing date for the motion. White copied Harden, Respondent, and Marshall J. Burt (“Burt”), counsel for the Andrews, on her email message. Respondent received White’s October 12, 2021 email message.

30. On October 14, 2021, Burkhalter sent an email message to White and Michelle Morse (“Morse”), Respondent’s legal assistant, providing the available dates and times when the court could accommodate a remote hearing on the motion for substitution. Burkhalter copied Harden, Respondent, and Burt on his email message. Respondent received Burkhalter’s email message.

31. On October 14, 2021, Morse sent an email message to Burkhalter confirming the dates that Respondent was available. On the same date, Burkhalter sent an email to White, Morse, Harden, Respondent, and Burt confirming that Unique’s motion for substitution was scheduled for a remote hearing on November 1, 2021 at 10:30 a.m., and provided a link to the Zoom meeting in his email. Respondent received Burkhalter’s email message.

32. On October 14, 2021, Harden wrote a letter to Respondent requesting that he immediately forward any checks that Respondent had in his possession to Porter, and that he provide an updated accounting to Porter. On the same date, White sent an email message to

Respondent with Harden's letter as an attachment. Respondent received White's email message and Harden's letter, but did not respond.

33. On October 18, 2021, Harden sent an email message to Respondent stating that, "we are hoping to hear from you before the upcoming hearing." Respondent received Harden's October 18, 2021 email message, but did not respond.

34. At no time between October 14, 2021 and November 1, 2021, did Respondent provide Porter with an updated accounting of the funds that he had received from ADP or forward any checks that he had in his possession to Porter.

35. On November 1, 2021, Respondent sent an email to Burkhalter stating, "I have signed movant's order on substitution. I do not plan to attend."

36. On November 1, 2021, the court entered an order substituting Thomas Mamer as counsel for Unique in case number 2014L145.

37. On November 8, 2021, Harden sent a subpoena *duces tecum* to Respondent by certified U.S. Mail, return receipt requested, to Rincker Law. On November 10, 2021, the letter was delivered to Rincker Law and the return receipt was signed by "R.T."

38. On November 22, 2021, Respondent was terminated by Cari Rincker ("Rincker"), the firm principal of Rincker Law.

39. On November 29, 2021, Rincker sent a letter to Harden confirming that Respondent was terminated on November 22, 2021. In her letter, Rincker stated that any garnishment checks that were made payable to Rincker Law were signed payable to Thomas Mamer or Unique and returned to Respondent. Rincker enclosed one garnishment check that she had in her possession and confirmed that there were no checks in Respondent's former office at Rincker Law.

40. On February 8, 2022, Respondent provided 13 garnishment checks to Harden but did not provide him with an accounting of the funds that he had received from ADP.

41. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to act with reasonable diligence and promptness in representing a client, by conduct including failing to file an updated withholding agreement in case number 2014L145 so that any future garnishment checks would be sent directly to Porter, failing to forward any garnishment checks in his possession to Porter, and failing to provide Porter with an updated accounting of funds that he had received from ADP, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failing to keep the client reasonably informed about the status of the matter, by conduct including failing to respond to Porter's requests for information regarding the status or whereabouts of any garnishment checks in Respondent's possession, and failing to provide Porter with an updated accounting of funds that he had received from ADP, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- c. failing to promptly comply with reasonable requests for information, by conduct including failing to respond to Porter's requests for information regarding the status or whereabouts of any garnishment checks in Respondent's possession, and failing to provide Porter with an updated accounting of funds that he had received from ADP, in violation of Rule 1.4(a)(4) of the Illinois Rules of Professional Conduct (2010);
- d. failing to hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property, by conduct including failing to deposit the 13 garnishment checks that Respondent received from ADP into a client trust account, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (2010); and

- e. upon receiving funds or other property in which a client or third person has an interest, failing to promptly notify the client or third person; failing to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive; and, upon request by the client or third person, failing to promptly render a full accounting regarding such property, by conduct including, failing to promptly notify Porter that he had received garnishment checks from ADP, failing to promptly deliver the garnishment checks that he had in his possession to Porter, and failing to provide a full accounting of the funds that he had received from ADP to Porter, in violation of Rule 1.15(d) of the Illinois Rules of Professional Conduct (2010).

COUNT III

(Using means that have no substantial purpose other than to embarrass a third person – Stephanie Schnepfer, Sami Anderson, and Kristen Fischer)

42. At all times related to this complaint, Kristen Fischer (“Fischer”) operated as a sole practitioner at the Law Office of Kristin Fischer in Champaign.

43. At all times related to this complaint, Sami Anderson (“Anderson”) operated as a sole practitioner at the Law Office of Sami Anderson in Champaign.

44. At all times related to this complaint, Fischer and Anderson shared office space in the same building located at 301 E. Neil Street in Champaign.

45. At all times related to this complaint, Stephanie Schnepfer (“Schnepfer”) worked as a paralegal for both Fischer and Anderson.

46. In or about August 2021, Respondent entered Fischer and Anderson’s office. Schnepfer greeted Respondent by saying, “Hello, how are you?” In reply, Respondent stated that he was great and that he had just been “naked in [his] office.”

47. Respondent’s statement that he had just been “naked in [his] office” had no substantial purpose other than to embarrass Schnepfer.

48. In 2021, Respondent and Fischer were opposing counsel in a domestic relations matter that was pending in Champaign County Circuit Court. A custody trial was scheduled for the matter during the second week of October 2021.

49. On October 4, 2021, Respondent met with Fischer in her office to discuss the case and attempt to settle the matter before the trial. During their discussion, Fischer told Respondent that she did not want to hear Respondent's proposed settlement terms. In reply to Fischer's statement, Respondent stated, "Would you just let me finish, I promise I won't get any in your hair."

50. Respondent's statement "would you just let me finish, I promise I won't get any in your hair" had no other purpose than to embarrass Fischer.

51. When Respondent and Fischer exited Fischer's office, they continued to discuss their case in front of Schnepfer's desk. Schnepfer stated that, "These parties should go to a private island to sort out their differences." In reply to Schnepfer's comment, Respondent stated, "I have a better plan. [Respondent's client] needs butt fucked and for added torture some sand thrown in."

52. Respondent's statement that, "[Respondent's client] needs butt fucked and for added torture some sand thrown in" had no other purpose than to embarrass Fischer and Schnepfer.

53. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. in representing a client, using means that have no substantial purpose other than to embarrass, delay, or burden a third person, by conduct including making the statement to Schnepfer that Respondent "was naked in [his] office," making the statement to Fischer "would you just let me finish, I promise I won't get any in your hair," and making the statement to Schnepfer and Fischer that "[Respondent's client] needs butt fucked and for added torture some sand thrown in," in violation of Rule 4.4(a) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator respectfully requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Tammy L. Evans
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