

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

FILED

April 26, 2023

ARDC CLERK

In the Matter of:

JAMES H. SCHULTZ,

Attorney-Respondent,

No. 6208540.

Commission No. 2023PR00008

REPORT AND RECOMMENDATION OF THE HEARING BOARD

DEFAULT PROCEEDING

The hearing in this matter was held by videoconference on April 24, 2023, before a Hearing Board Panel consisting of Sonni Choi Williams, Chair, Untress L. Quinn, and Brian B. Duff. Matthew D. Lango appeared on behalf of the Administrator. Respondent did not appear. We recommend that Respondent be suspended for three years and until further order of the Court, and that he be required to make restitution to his client before being reinstated to practice.

We have considered the Administrator's single-count Complaint, a copy of which is attached as Exhibit 1, as well as the Order entered on April 5, 2023, deeming the allegations and charges of the Complaint admitted, a copy of which is attached as Exhibit 2.¹ The allegations deemed admitted establish as follows:

Respondent represented two clients, Ruth Clark and Richard Doyle, where Ruth's interests were directly adverse to those of Richard, in that Respondent drafted a will, quitclaim deed, and power of attorney for Ruth that benefitted Richard to the detriment of Ruth. Respondent directed Ruth to sign those documents, but did not explain to her the impact of her actions or advise her to get independent advice. By transferring Ruth's assets to Richard and his minor son, Ethan,

Respondent rendered Ruth unable to pay for her medical care and rendered her ineligible for Medicaid benefits, and caused title in real estate to transfer to a minor who was unable to own real estate in his own name. Respondent also collected \$6,000 in legal fees from Ruth and attempted to collect an additional \$7,340.25, while acting in a manner that benefitted Richard to the detriment of Ruth. Moreover, he failed to refund the \$6,000 to Ruth after being ordered to do so by the Circuit Court of Rock Island County. By this conduct, Respondent violated Illinois Rules of Professional Conduct 1.1, 1.4(a)(2), 1.5(a), 1.7(a)(1), 1.16(d), and 3.4(a).

In mitigation, Respondent has no prior misconduct. In aggravation, Respondent was an experienced practitioner in the area of estate law at the time of his misconduct. His misconduct caused substantial harm to a vulnerable client, in that he deprived Ruth, who was nearly 100 years old and mentally and physically infirm, of her assets, which left her unable to pay for medical care that she needed and rendered her ineligible for Medicaid. His conduct required others to intervene and expend resources to protect Ruth and undue the harm that Respondent caused. Finally, despite being personally served with the Complaint, Respondent failed to participate at all in his disciplinary proceedings, which demonstrates an utter lack of regard for the privilege of practicing law and convinces us that Respondent is currently unwilling or unable to adhere to professional standards of conduct.

The Administrator requested that Respondent be suspended for one year or more, that the suspension continue until further order of the Court, and that Respondent be required to make restitution of \$6,000 to Ruth Clark prior to reinstatement. Based on Respondent's egregious misconduct, combined with the substantial aggravation and minimal mitigation involved in this matter, we agree with the Administrator and recommend that Respondent be suspended for three years and until further order of the Court, and that he be required to make restitution of \$6,000 to

Ruth Clark, as ordered by the Circuit Court of Rock Island County, before being reinstated to the practice of law.

Accordingly,

1. On February 27, 2023, an ARDC investigator appeared at Respondent's residence and handed the Complaint and accompanying documents to Respondent in person. Respondent accepted the documents. A copy of the Affidavit of Personal Service Pursuant to Illinois Supreme Court Rule 765 is attached as Exhibit 3.
2. The allegations and charges of the Complaint were deemed admitted in an Order filed on April 5, 2023. A copy of that Order is attached as Exhibit 2.
3. In consideration of the Order deeming the allegations and charges of the Complaint admitted, this Panel finds that Respondent committed the misconduct charged in the Complaint.
4. Given Respondent's misconduct, the serious aggravating factors present, and relevant case law, we recommend that Respondent be suspended for three years and until further order of the Court, and that he be required to make restitution of \$6,000 to Ruth Clark, as ordered by the Circuit Court of Rock Island County, before being reinstated to law practice.
5. The Panel has concluded that this report format will adequately and appropriately communicate its recommendation to the Court.

Respectfully submitted,

Sonni Choi Williams
Untress L. Quinn
Brian B. Duff

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on April 26, 2023.

/s/ Michelle M. Thome

Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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¹ Respondent did not file an appearance in this matter, an Answer to the Complaint, or a response to the Administrator's Motion to Deem the Allegations of the Administrator's Complaint Admitted Pursuant to Commission Rule 236.

Exhibit 1

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

In the Matter of:

JAMES H. SCHULTZ,

Attorney-Respondent,

No. 6208540.

Commission No. 2023PR00008

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Matthew D. Lango, pursuant to Supreme Court Rule 753(b), complains of Respondent, James H. Schultz, who was licensed to practice law in Illinois on January 24, 1992, and alleges that Respondent has engaged in the following conduct which subjects them to discipline pursuant to Supreme Court Rule 770:

COUNT I

*(Lack of Competence; Conflict of Interest; Failure to Comply with a Court Order;
Charging an Unreasonable Fee; Failure to Return an Unearned Fee)*

1. At all times related to this complaint, Respondent was a sole practitioner based in Rock Island, with a general law practice that included estate planning and probate matters.
2. Between 2016 and 2021, Respondent represented Richard Doyle (Richard) in a number of matters, including defending Richard with regard to an order of protection and representing him in a child custody case in Rock Island County. Respondent also represented Richard in a number of real estate transactions.
3. In February 2020, Richard's aunt, Ruth Clark (Ruth) retained attorney John L. Holmes to prepare her estate planning documents. At the time, Ruth was 98 years old, unmarried, had no children, and was living alone in a house in East Moline. Per the will that Holmes prepared

on Ruth's behalf, her estate would be split between her two living heirs – namely, Richard and Ruth's niece, Eugenia Wylie.

Ruth Clark's Estate Planning Documents and Transfer of Assets

4. In the course of preparing Ruth's will and other estate planning documents, Holmes contacted both Richard and Eugenia by letter dated February 12, 2020, asking both for their full names, addresses, phone numbers, and Social Security numbers so they could be listed as beneficiaries on a certificate of deposit held by Ruth at a local bank in the Quad Cities.

5. Upon receiving Holmes's letter of February 12, 2020, Richard contacted Respondent and told him that he wanted Respondent to handle all estate planning matters for Ruth and wanted Ruth to have a new will and other estate documents, separate from the ones already prepared by Holmes. At that time, Respondent was representing Richard in a number of other ongoing matters, including various real estate transactions.

6. In February 2020, Respondent and Richard agreed that Respondent would handle all estate planning matters for Ruth, with Respondent's initial retainer of \$2,000 to be paid by Richard. At the time Richard and Respondent reached this agreement, Respondent had never met or spoken to Ruth.

7. Between February 20, 2020 and March 5, 2020, Respondent spoke on a number of occasions with Richard and Ruth's primary caretaker, Lori Holt, who was also a neighbor of Ruth. On or about February 26, 2020, Respondent and Holt met in person to discuss Ruth's certificates of deposit and other assets.

8. On March 3, 2020, Richard tendered a check drawn from his personal checking account to Respondent for \$2,000 for the work that Respondent would perform with regard to Ruth's estate planning.

9. Between February 20, 2020 and March 5, 2020, following meetings and discussions with Richard and Holt, Respondent prepared Ruth's last will and testament, a durable power of attorney, and a quitclaim deed. The last will and testament prepared by Respondent provided that upon Ruth's death, any cash in Ruth's estate would be split between Richard and her niece, Eugenia. Under the terms of the will, the rest of Ruth's assets, including any real property or possessions were to pass to Richard upon Ruth's death. The durable power of attorney prepared by Respondent appointed Richard as Ruth's agent. The power of attorney appointed Respondent, the attorney who prepared it, and Richard's son Ethan, a minor, as successor agents. The quitclaim deed prepared by Respondent purported to transfer ownership of Ruth's home, previously owned solely by Ruth and unencumbered by any mortgage, to her, Richard, and Ethan as joint tenants. Ethan was a minor at the time and therefore unable to own real property solely in his own name. The quitclaim deed provided that the transfer of ownership of Ruth's home would take place for no consideration.

10. Prior to his first and only meeting with Ruth, Respondent and Richard were aware of serious issues related to Ruth's health and care. For example, Respondent was aware that on March 3, 2020, Ruth was hospitalized due to a bedbug infestation at her home. Respondent was also aware that the front door of Ruth's home had been damaged by police officers when they forcibly opened it while conducting a wellness check on Ruth. Respondent's billing records reflect that he and Richard discussed their concerns prior to Respondent's meeting with her. In addition, prior to his first and only meeting with Ruth, Respondent spoke to a representative of a social service agency called Alternatives for the Older Adult, which was working with Ruth in early 2020 to secure adequate care for her.

11. On March 6, 2020, Respondent met with Ruth and Holt at Respondent's office in Rock Island. At that meeting, Respondent told Ruth that he was her attorney and presented Ruth

with the last will and testament, durable power of attorney, and quitclaim deed described above. On Respondent's advice, Ruth signed these three documents. At that time, Ruth was not presented with, nor did she sign, any documents indicating that she understood that signing the last will and testament, durable power of attorney, and a quitclaim deed may be against her personal interests, nor did Ruth sign any waiver of potential conflicts of interest between herself and Richard. On March 6, 2020, at the time of the execution of the documents described above, Respondent served as a witness to both the last will and testament and the durable power of attorney.

12. At no time did Respondent advise Ruth that there may be a conflict between her interests and those of Richard, whom Respondent also represented. Respondent did not advise Ruth to obtain independent legal counsel.

13. After that meeting, on or about March 8, 2020, Respondent and Doyle executed a retainer agreement with the client listed as "Dick Doyle f/b/o Ruth Clark," which Richard signed. Respondent never executed a retainer agreement with Ruth.

14. On or about March 13, 2020, Respondent filed the executed quitclaim deed with the Rock Island County Recorder of Deeds, thus transferring ownership of Ruth's home to her, Richard, and Ethan as joint tenants. In addition, in March 2020, Richard began using his power of attorney to write checks from Ruth's bank account, purportedly for Ruth's benefit. This included writing checks to himself and to Holt.

15. In June 2020, Respondent and Richard had conversations about seeking ways to resist Alternatives for the Older Adult's attempts to help Ruth. At the time, Respondent advised Richard about the possibility of obtaining an order of protection on Ruth's behalf against Alternatives for the Older Adult, though at the time no such action was taken.

16. In July 2020, at Richard's request, Respondent prepared another quitclaim deed, which was executed by Richard, purportedly as Ruth's agent under the power of attorney drafted

by Respondent. This quitclaim deed transferred all of Ruth's remaining interest in her home to Richard and his minor son, Ethan. Respondent provided no advice and had no contact with Ruth regarding this transaction. The transfer of ownership of Ruth's home took place for no consideration.

17. On or about July 9, 2020, Respondent and Richard had a conversation about the fact that the transfer of Ruth's house to Richard for no consideration may render her ineligible for Medicaid benefits. Respondent never spoke to or advised Ruth regarding the second quitclaim deed and did not discuss with her the possibility that transferring ownership of her home to Richard and Ethan for no consideration may render her ineligible for Medicaid benefits. On or about July 13, 2020, Respondent recorded the second quitclaim deed with the Rock Island County Recorder of Deeds.

18. On August 4, 2020, Respondent assisted Richard in transferring Ruth's funds into a special bank account administered and managed solely by Richard, purportedly for the benefit of Ruth and until the time of her death. This resulted in all of Ruth's funds being taken from her and placed into an account under Richard's name.

19. At the time Respondent prepared the estate planning documents for Ruth described above, Respondent was representing both Ruth and Richard. Respondent knew that the estate planning documents he prepared purportedly for Ruth – including the last will and testament, quitclaim deeds, and durable power of attorney – benefitted Richard to the detriment of Ruth.

20. On November 12, 2020, Richard told Respondent that Ruth fell and required medical care. At that time, Respondent and Richard again spoke about the fact that the transfer of Ruth's assets to Richard, which took place for no consideration, rendered her ineligible for Medicaid benefits. Ruth was unable to afford the necessary medical care to treat injuries from her

fall. Respondent took no action to recover the assets that had been transferred to Richard to pay for Ruth's care.

Ruth Clark's Guardianship Proceedings and Respondent's Excessive Fees

21. On February 24, 2021, Alternatives for the Older Adult filed an emergency petition to establish a guardianship for Ruth in the Circuit Court of Rock Island County. The matter was docketed as case number 2021-P-95 and assigned to Judge Linnea E. Thompson (hereafter "the guardianship proceeding"). On that date, the court appointed attorney Mary Ann Brown as temporary guardian for Ruth. In addition, the court suspended Richard's durable power of attorney over Ruth.

22. On or about April 7, 2021, Respondent attempted to file an appearance in the guardianship proceeding on behalf of both Ruth and Richard. Respondent planned to oppose the petition for guardianship. The court struck Respondent's appearance on behalf of Ruth and instead appointed an independent attorney, Jennifer Kincaid, as counsel for Ruth. On or about April 19, 2021, Respondent withdrew from representation of Richard in the guardianship proceeding.

23. Despite Richard's power of attorney over Ruth being suspended by the court in the guardianship proceeding, between February 25, 2021 and April 19, 2021, Respondent claimed to have expended 44.75 hours in his representation of Ruth and billed Ruth \$8,950 for services that were of no value to her. According to his billing records, Respondent claimed to have spent significant time reviewing filings and correspondence that he himself had already created, as well as performing miscellaneous "work on file." For example, in his billing entry on April 13, 2021, Respondent claimed to have spent 5.5 hours performing the following tasks: "Work on file: Phone calls with Dick [Doyle]; Meeting with Dick regarding guardianship; Review of emails and Orders on email at office." In another billing entry, on April 19, 2021, Respondent claimed to have spent

2.5 hours performing the following tasks: “Work on file: Meeting regarding emails and substitution of Attorney Eagle or some other attorney on behalf of Dick.”

24. Between February 2020 and April 2021, Richard paid Respondent a total of \$10,000 for his services in connection with Ruth’s estate planning and the transfer of Ruth’s assets. During that time, using his power of attorney, Richard paid Respondent \$6,000 from Ruth’s bank account and an additional \$4,000 from his own personal account. Respondent’s billing records from the time period reflect that Respondent claimed to have performed 82.25 hours of work for a total of \$17,340.25. Accordingly, Respondent was seeking payment from Ruth for an additional \$7,340.25 for services that were of no value to her.

25. The value of the services that Ruth received from Respondent’s representation did not warrant Respondent’s retention of at least \$6,000 belonging to Ruth nor the additional \$7,340.25 that Respondent sought to collect from Ruth for services that were of no value to her.

26. Later in 2021, Ruth’s health deteriorated to the point that she had to be placed in a nursing home. Ruth did not have sufficient funds to pay for her care in the nursing home and was ineligible for Medicaid benefits as a result of the transfer of her assets to Richard, which Respondent facilitated. As of the date of this complaint, Ruth is 101 years old and remains in a nursing home.

27. Richard died of a heart attack on June 8, 2021, leaving his minor son, Ethan, as the purported sole owner of Ruth’s house in East Moline. Ethan was sixteen years-old at the time, and unable to own real estate in his own name. Respondent was aware of the fact that minors were unable to own real estate in their own names when he prepared the two quitclaim deeds referenced above. In addition, at the time he prepared the estate planning documents for Ruth described above, Respondent was aware that Richard had previously suffered a serious and near-fatal heart attack.

28. Following appointment of new counsel, attorneys for Ruth filed numerous citation proceedings and other actions in the Circuit Court of Rock Island County seeking to undo the transfers of Ruth's assets to Richard and Ethan which Respondent facilitated. Among those was a citation asking the court to order Respondent to disgorge the \$6,000 in fees that Richard paid Respondent from Ruth's account.

29. On June 30, 2021, the court in the guardianship proceeding held a hearing on Ruth's citation seeking disgorgement of the \$6,000 in fees that Richard paid Respondent out of Ruth's account. Respondent testified at that hearing and, among other things, acknowledged that he considered both Ruth and Richard to be his clients during the events described in this complaint. In addition, Respondent testified that at the time of his one and only meeting with Ruth on March 6, 2020, he was concerned that Ruth may be susceptible to undue influence of others who might try to take her house and other assets. Despite his concerns about Ruth being susceptible to undue influence, Respondent claimed that he believed that Ruth had testamentary capacity to sign a last will and testament, power of attorney, and quitclaim deed that would transfer ownership of her house to Richard and his son.

30. On August 19, 2021, the court in the guardianship proceeding issued an order granting the citation and directing Respondent to repay the \$6,000 he collected in fees, paid to him by Richard out of Ruth's bank account, back to Ruth. Among other things, the court found that Respondent engaged in a conflict of interest by representing both Richard and Ruth. In addition, the court found that Respondent failed to provide adequate or competent representation to Ruth by causing the transfer of her assets to Richard, which rendered her unable to pay for her nursing home care while also making her ineligible for Medicaid benefits. The court found that Respondent's actions served to benefit Richard to the detriment of Ruth. Finally, the court found Respondent's purported time spent on the matter to be excessive and unreasonable.

31. The court in the guardianship proceeding ordered Respondent to disgorge the \$6,000 in fees that Richard paid Respondent from Ruth's account no later than November 17, 2021. As of the date of this complaint, Respondent has not complied with the order and has not repaid any fees to Ruth.

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

- a. failure to provide competent representation to a client by conduct including: transferring Ruth Clark's assets to Richard Doyle and his minor son, Ethan, thus rendering Ruth Clark unable to pay for her medical care and making her ineligible for Medicaid benefits; and causing title in real estate to be transferred to a minor, Ethan, who was unable to own real estate in his own name, in violation of Rule 1.1 of the Illinois Rules of Professional Conduct (2010);
- b. failure to reasonably consult with a client about the means by which that client's objectives are to be accomplished by conduct including drafting and directing Ruth to execute estate planning documents and deeds to her property without consulting her or keeping her reasonably informed in violation of Rule 1.4(a)(2) of the Illinois Rules of Professional Conduct (2010);
- c. engaging in a concurrent conflict of interest by representing both Richard and Ruth where Ruth's interest were directly adverse to those of Richard, by conduct including drafting a will, quitclaim deeds, and power of attorney that benefitted Richard to the detriment of Ruth, without obtaining informed consent for the representation in violation of Rule 1.7(a)(1) of the Illinois Rules of Professional Conduct (2010);
- d. charging or collecting an unreasonable fee, by conduct including collecting \$6,000 in legal fees from Ruth and attempting to collect an additional \$7,340.25 that Respondent allegedly incurred for his representation of Ruth, which served to benefit his other client, Richard, to the detriment of Ruth, in violation of Rule 1.5(a) of the Illinois Rules of Professional Conduct (2010);
- e. failure to refund an unearned fee, by conduct including failing to refund the \$6,000 in legal fees Respondent received from

Exhibit 2

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

In the Matter of:

JAMES H. SCHULTZ,

Attorney-Respondent,

No. 6208540.

Commission No. 2023PR00008

ORDER

A telephonic pre-hearing conference was held in this matter on April 3, 2023, at 9:00 a.m. Participating were Sonni Choi Williams, Chair, and Matthew D. Lango, Counsel for the Administrator. Respondent was served with notice of the pre-hearing conference at his registered address but did not participate. Counsel for the Administrator advised the Chair of the status of the matter. Accordingly,

IT IS ORDERED:

1. Respondent having failed to file an answer or a response to the Administrator's Motion to Deem the Allegations of the Complaint Admitted Pursuant to Commission Rule 236 (Motion), the Administrator's Motion is granted. All factual allegations and disciplinary charges in the Complaint are deemed admitted, and no further proof is required. At hearing, the parties shall be limited to presenting evidence of aggravating and mitigating factors and arguments regarding the form and amount of discipline to be imposed;

2. The parties shall exchange any exhibits they propose to offer at hearing on or before April 17, 2023;

FILED

April 05, 2023

ARDC CLERK

3. The default hearing in this matter is scheduled for April 24, 2023, commencing at 9:30 a.m., and will be held remotely via Webex videoconference. The Clerk of the Commission shall provide the parties with Webex access information;

4. The parties shall prepare exhibits in conformance with Commission Rule 276 and the Clerk of the Commission's procedures regarding electronic exhibits; and

5. The Clerk of the Commission is directed to serve Respondent with this order and for the duration of this proceeding by regular mail at his registered address and by email at jim@jschultzlaw.com.

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, certify that the foregoing is a true copy of the order entered in the above entitled cause of record filed in my office on April 5, 2023.

/s/ Michelle M. Thome

Michelle M. Thome,
Clerk of the Attorney Registration and
Disciplinary Commission of the
Supreme Court of Illinois

Exhibit 3

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

In the Matter of:)	
)	
JAMES H. SCHULTZ,)	Commission No. 2023PR00008
)	
Attorney-Respondent,)	
)	
No. 6208540.)	
)	

AFFIDAVIT OF PERSONAL SERVICE
PURSUANT TO ILLINOIS SUPREME COURT RULE 765

I, EDGAR A. LEON (“Affiant”), being duly sworn, hereby state:

1. Affiant is over 18 years of age, possesses firsthand knowledge of the facts presented in this Affidavit and, if called as a witness, Affiant will testify to the truth of the facts as presented in this Affidavit.

2. Affiant is an Investigator for the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (“the Commission”) and, as such, is authorized to serve process.

3. On February 24, 2023, Affiant was asked to serve Respondent the Complaint and accompanying documents in person.

4. On February 27, 2023, at approximately 1:00 P.M., Affiant appeared at the Respondent’s residence, which is located at 7317 176th Ave, Reynolds, Illinois 61279, and handed the Complaint and accompanying documents to the Respondent in person, which Respondent accepted. Affiant recognized Respondent, having seen Respondent appear via Zoom for his sworn statement on January 9, 2023.

5. Further Affiant sayeth not.

FILED
2/28/2023 12:16 PM
ARDC Clerk

CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Edgar A. Leon

Edgar A. Leon

Dated: February 28, 2023

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