

IN THE SUPREME COURT

STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:)	SUPREME COURT DOCKET
)	NO. _____
DAVID EDMUND RALSTON,)	
State Bar No. 592850,)	STATE DISCIPLINARY BOARD
)	DOCKET NO. 6523
Respondent.)	

PETITION FOR APPOINTMENT OF SPECIAL MASTER

NOW COMES the State Bar of Georgia, by its Counsel, and petitions the Court for Appointment of Special Master in the above-captioned disciplinary proceeding, and in support of such petition shows as follows:

1.

The Investigative Panel of the State Disciplinary Board has concluded its probable cause investigation pursuant to Bar Rules and determined that probable cause exists for the issuance of a Formal Complaint against David Edmund Ralston, State Bar No. 592850, with this motion.

2.

Under Bar Rule 4-209, a Special Master who does not reside in the Appalachian Judicial Circuit, should now be appointed by the Supreme Court of

Georgia to conduct further proceedings in the above-captioned matter pursuant to Bar Rules.

WHEREFORE, the State Bar of Georgia prays that a properly qualified Special Master be appointed by the Supreme Court of Georgia pursuant to Rules 4-209, 4-209.2 & 4-209.3 and that an Order evidencing such appointment be entered and returned to the Office of General Counsel for the State Bar of Georgia for further proceedings under Bar Rules.

This 26 day of June, 2014.

RESPECTFULLY SUBMITTED,



Jonathan Hewett
Senior Assistant General Counsel
State Bar No. 350265

STATE BAR OF GEORGIA
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Suite 100
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(404) 527-8720

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NOTICE OF FINDING OF PROBABLE CAUSE

Pursuant to Bar Rule 4-204.4, the Investigative Panel of the State Disciplinary Board hereby notifies the above-named Respondent that it has found probable cause to charge him with a violation of Rules 1.3, 1.4, 1.5, 1.7, 1.8, 1.15 (II), 1.16, 3.2 and 8.4 of the Georgia Rules of Professional Conduct.

The Panel has ordered counsel for the State Bar of Georgia to prepare a Formal Complaint in this matter and to proceed with prosecution of these proceedings as outlined at Bar Rule 4-204.4.

The Panel warns Respondent that successful Bar action against him in these proceedings could result in the imposition of disciplinary sanctions as set forth in

Bar Rule 4-102(b). Respondent is further notified that he may hire counsel if he so desires, and that he should take proper steps to preserve his interest in this proceeding.

This 1st day of November, 2013.
THE INVESTIGATIVE PANEL OF THE STATE
DISCIPLINARY BOARD

IN THE SUPREME COURT

STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS

IN THE MATTER OF:

SUPREME COURT

DAVID EDMUND RALSTON,

DOCKET NUMBER _____

STATE BAR NO. 592850,

STATE DISCIPLINARY BOARD

RESPONDENT.

DOCKET NO. 6523

_____/

FORMAL COMPLAINT

The State Bar of Georgia, after a probable cause investigation into the captioned matter by the Investigative Panel of the State Disciplinary Board of the State Bar of Georgia and a finding of probable cause by the Panel, brings this formal complaint against attorney David Edmund Ralston, stating in detail the acts complained of, the basis for discipline, and the identity of known witnesses, all pursuant to Bar Rule 4-211 in Part IV (Discipline) of the Rules and Regulations for the Organization and Government of the State Bar of Georgia. The State Bar of Georgia respectfully submits this formal complaint to the Supreme Court of Georgia.

JURISDICTION AND VENUE

1. The Respondent is David Edmund Ralston. Respondent resides in Fannin County, Georgia. Respondent is licensed to practice law in the State of Georgia and has been a member of the State Bar of Georgia since 1980. Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Georgia, the State Disciplinary Board of the State Bar of Georgia, and a Special Master properly designated by the Supreme Court of Georgia.

STATEMENT OF FACTS

2. In 2006, Respondent's associate, attorney Amanda Harper Mercier, undertook to represent Paul E. Chernak in a case arising out of an automobile collision which occurred on March 20, 2006.

3. Mr. Chernak, who was seriously injured as a result of the collision, was not at fault in the accident.

4. Respondent became involved in the representation in 2008 and Respondent assumed sole responsibility for representing Mr. Chernak in 2010 when his associate became a superior court judge.

5. On March 24, 2008, Respondent filed suit in the Superior Court of Gilmer County on behalf of Mr. Chernak seeking damages for the injuries he suffered in the collision.

6. The case was assigned to Judge Weaver who, since 2009, the year after the case was filed, has had two jury trial weeks per year in Gilmer County.

7. For the period 2009 through 2013 there were a total of ten possible jury trial weeks in Gilmer County.

8. Respondent is a member of the Georgia House of Representatives.

9. Of the ten possible weeks, Respondent requested and received legislative leave in seven weeks.

10. In two of the remaining three weeks, Respondent was involved in criminal cases that were specially set.

11. Respondent did not consult with Mr. Chernak about seeking or obtaining delays in placing the case, or asking for the case, to be placed on the trial calendar, nor did Respondent explain to Mr. Chernak the status or progress in the case, including plans to schedule the case, or request that the case be scheduled, for trial.

12. Respondent did not make reasonable efforts to expedite the litigation consistent with Mr. Chernak's interests.

13. Respondent allowed his interest in being, and his duties as, a member of the Georgia Legislature to adversely affect his representation of Mr. Chernak.

14. Because he did not make reasonable efforts to expedite the litigation consistent with Mr. Chernak's interests, Respondent should have withdrawn from representing Mr. Chernak, but did not.

15. In the meantime, while periodically asking Respondent about the status of or any progress in his case, Mr. Chernak told Respondent about his unpaid rent and other outstanding living expenses.

16. In response to Mr. Chernak's description of his financial difficulties, Respondent advanced to Mr. Chernak for living expenses a total of \$22,000 in twelve checks written by Respondent on his attorney trust account.

17. The eleven checks were written between May 24, 2010 and October 11, 2011.

18. Respondent told Mr. Chernak the advances would be deducted from his portion of the settlement proceeds upon completion of the case.

19. At the times Respondent wrote the eleven trust account checks, there were no funds belonging to Mr. Chernak in Respondent's trust account.

20. To make the advances to Mr. Chernak, Respondent used funds belonging to his other clients or third persons, or out of his personal funds comingled in his trust account with those belonging to his other clients or third persons.

21. In a letter dated October 11, 2011, Respondent wrote to Mr. Chernak's new counsel and told her that Mr. Chernak owed him \$22,000 for the funds he had advanced to Mr. Chernak for his rent and other living expenses.

22. Respondent agreed to represent Mr. Chernak on a contingency fee basis, but did not have a written fee agreement with Mr. Chernak.

23. Because Mr. Chernak had been a law enforcement officer, Respondent as a courtesy had agreed to represent Mr. Chernak for a contingency fee of 25% of a recovery, but later insisted on a 30% contingency fee.

24. After Mr. Chernak filed a grievance against Respondent with the State Bar of Georgia, Respondent in his letter to Ms. Chernak dated January 28, 2013, agreed to a 25% rate, but still without mentioning the method by which the fee would otherwise be determined, or obtaining a written fee agreement.

25. In addition, in his letter dated January 7, 2013 in response to Mr. Chernak's grievance, Respondent outlined actions he could take in the future to advance Mr. Chernak's case.

26. Respondent took none of those proposed actions, nor had he attempted them previous to Mr. Chernak's grievance.

27. With still no action by Respondent on his case, Mr. Chernak discharged Respondent, and hired new counsel.

28. On July 15, 2013, Mr. Chernak's new attorney wrote to Respondent and requested Mr. Chernak's file.

29. On July 24, 2013, Respondent sent Mr. Chernak's new attorney a letter acknowledging receipt of the file request letter of July 15, 2013.

30. Respondent's letter of July 24, 2013 also indicated the Respondent would contact Ms. Chernak during the week of July 29, 2013 to "let her know when the file will be ready to pick up."

31. Respondent's letter of July 24, 2013 also contained a request to discuss with the Chernak's new attorney the "matter of repayment of sums owing [sic] to this office by the Chernaks."

32. On August 13, 2013, Mr. Chernak's new attorney wrote a second letter to Respondent again requesting Mr. Chernak's file and furnishing Respondent her FedEx account number so that the file could be sent to her by FedEx.

33. Mr. Chernak's new attorney finally received the file on or about September 6, 2013.

COUNT ONE – RULE 1.3

34. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

35. Rule 1.3 of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in this Rule means that a lawyer shall not without just cause to the detriment of the client in effect willfully abandon or willfully disregard a legal matter entrusted to the lawyer.

The maximum penalty for a violation of this Rule is disbarment.

36. Respondent violated Rule 1.3 when he did not pursue Mr. Chernak's case with reasonable diligence and promptness.

COUNT TWO – RULE 1.4

37. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

38. Rule 1.4 of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

COMMUNICATION

(a) A lawyer shall:

1. promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(h), is required by these Rules;
2. reasonably consult with the client about the means by which the client's objectives are to be accomplished;
3. keep the client reasonably informed about the status of the matter;
4. promptly comply with reasonable requests for information; and
5. consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The maximum penalty for a violation of this Rule is a public reprimand.

39. Respondent violated Rule 1.4 when he did not confer with Mr. Chernak about delays in his case, including whether Respondent should seek a stay from the superior court because of his legislative duties or whether Respondent could handle the matter with reasonable diligence or promptness given his legislative duties.

COUNT THREE – RULE 1.5

40. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

41. Rule 1.5 (c)(1) of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

FEES

(c)(1) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall

state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

The maximum penalty for a violation of this Rule is a public reprimand.

42. Respondent violated Rule 1.5 (c)(1) when he agreed to represent Mr. Chernak on a contingency basis, but the agreement was not in writing.

COUNT FOUR – RULE 1.7

43. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

44. Rule 1.7 (a) of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

CONFLICT OF INTEREST: GENERAL RULE

(a) A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's

own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client, except as permitted in (b).

The maximum penalty for a violation of this Rule is disbarment.

45. Respondent violated Rule 1.7 (a) when he continued to represent Mr. Chernak though his legislative duties materially and adversely affected the representation.

COUNT FIVE – RULE 1.8

46. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

47. Rule 1.8 (e) of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

**CONFLICT OF INTEREST: PROHIBITED
TRANSACTIONS**

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; or

(2) a lawyer representing a client unable to pay court costs and expenses of litigation may pay those costs and expenses on behalf of the client.

The maximum penalty for a violation of Rule 1.8 (b) is disbarment. The maximum penalty for a violation of Rule 1.8(a) and 1.8(c)-(j) is a public reprimand.

48. Respondent violated Rule 1.8 (e) when he provided financial assistance to Mr. Chernak for his rent and other living expenses.

COUNT SIX – RULE 1.15(II)

49. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

50. Rule 1.15(II) (b) of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

**SAFEKEEPING PROPERTY – TRUST ACCOUNT AND
IOLTA**

(b) No personal funds shall ever be deposited in a lawyer's trust account, except that unearned attorney's fees may be so held until the same are earned. Sufficient personal funds of the lawyer may be kept in the trust account to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be so kept and maintained as to reflect at all times the exact balance held for each client or third person. No funds shall be withdrawn from such trust accounts for the personal use of the lawyer maintaining the account except earned attorney's fees debited against the account of a specific client and recorded as such.

The maximum penalty for a violation of Rule 1.15(II)(a) and Rule 1.15(II)(b) is disbarment. The maximum penalty for a violation of Rule 1.15(II)(c) is a public reprimand.

51. Respondent violated Rule 1.15(II) (b) when he withdrew other client or third party funds from his attorney trust account to pay Mr. Chernak, or, even if he did not pay Mr. Chernak out of funds belonging to other clients or third persons, he comingled his personal funds with those of other clients or third persons in his trust account and paid the money to Mr. Chernak.

COUNT SEVEN – RULE 1.16

52. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

53. Rule 1.16 (a)(1) of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Georgia Rules of Professional Conduct or other law;

The maximum penalty for a violation of this Rule is a public reprimand.

54. Respondent violated Rule 1.16 (a)(1) when he should have withdrawn from representing Mr. Chernak to avoid violating Rule 3.2, but did not.

COUNT EIGHT – RULE 1.16

55. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

56. Rule 1.16 (d) of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

DECLINING OR TERMINATING REPRESENTATION

(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 that has not been earned.

The maximum penalty for a violation of this Rule is a public reprimand.

57. Respondent violated Rule 1.16 (d) when he did not promptly surrender the client file to Mr. Chernak's new attorney.

COUNT NINE – RULE 3.2

58. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

59. Rule 3.2 of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

The maximum penalty for a violation of this Rule is a public reprimand.

60. Respondent violated Rule 3.2 when he did not take any action to expedite Mr. Chernak's superior court case.

COUNT TEN – RULE 8.4

61. The allegations contained in paragraphs 1 through 33 are realleged and incorporated here by reference.

62. Rule 8.4 (a)(4) of the Georgia Rules of Professional Conduct, part of Bar Rule 4-102 (d), provides as follows:

MISCONDUCT

(a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:

4. engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

The maximum penalty for a violation of Rule 8.4 (a)(1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4 (a)(2) through Rule 8.4 (c) is disbarment.

63. Respondent violated this Rule 8.4 (a)(4) when he withdrew other client or third party funds from his attorney trust account to pay Mr. Chernak.

WITNESSES

64. The names and addresses of witnesses currently known to the State Bar of Georgia that it intends to call on its behalf in this matter are as follows:

(a) David Edmund Ralston, P. O. Box 1196, Blue Ridge, GA 30513;

(b) Paul E. Chernak, 8425 Mt. Tabor Road, Cumming, GA 30028; and

(c) Shanda M. Chernak, 8425 Mt. Tabor Road, Cumming, GA 30028;

and

(d) Barbara Cole, 380 Green Street, Gainesville, GA 30501.

WHEREFORE, the State Bar of Georgia requests that Respondent be appropriately disciplined for the disciplinary violations alleged in this formal complaint.



William P. Smith, III
Ethics Counsel
State Bar No. 665000



Jonathan Hewett
Senior Assistant General Counsel
State Bar No. 350265

STATE BAR OF GEORGIA
104 Marietta Street, N. W.
Suite 100
Atlanta, Georgia 30303
(404) 527-8720

Certificate of Service

I certify that copies of this formal complaint, notice of finding of probable cause and the petition for appointment of special master were mailed to: James E. Spence, Jr., attorney for Respondent, 125 Clairemont Avenue, Suite 420, Decatur, GA 30030, on June 26, 2014.


Jonathan Hewett