

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY



CHARLES CENTINARO
DIRECTOR

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P.O. Box 963
TRENTON, NEW JERSEY 08625

April 18, 2016

UPS OVERNIGHT MAIL

Marc D. Garfinkle, Esq.
Law Office of Marc D. Garfinkle
89 Headquarters Plaza
North Tower – Suite 1212
Morristown, NJ 07960

Re: Office of Attorney Ethics v. Marc B. Schram, Esq.
Docket No. XIV-2015-0227E

Dear Mr. Garfinkle:

Pursuant to your representation that you are authorized to accept service in this matter, I enclose two (2) copies of our complaint and the original and one (1) copy of an Acknowledgment of Service. Please complete and return the original Acknowledgment to me.

In accordance with *R.1:20-4(e)*, your client is required to file a written answer within twenty-one (21) days of your receipt of this complaint. Please note that your client must personally verify the answer. Kindly file the original and one (1) copy of your client's answer and Acknowledgment of Service **directly with me**.

In filing your client's answer, you must follow *In re Gavel, 22 N.J. 248, 263 (1956)* and *R.1:20-4(e)*, which requires the answer to contain:

- (1) a full, candid and complete disclosure of all facts reasonably within the scope of the formal complaint;
- (2) all affirmative defenses, including all claim of mental or physical disability, if any, and whether it is alleged to be causally related to the offense charged;

- (3) any mitigating circumstances;
- (4) a request for a hearing either on the charges or in mitigation; and
- (5) any constitutional challenges to the proceedings. *R.1:20-4(e)*.

You are advised that, while the burden of proof by clear and convincing evidence is on disciplinary authorities to establish unethical conduct, the burden of going forward on all properly raised affirmative defenses and mitigating factors, including claims of mental and physical disability, if any, and whether such defenses or claims are causally related to the offense charged, is on your client. The burden of proof for all medical/psychiatric defenses is clear and convincing evidence. *R.1:20-6(c)(2)(B)*.

Please note that your client must personally verify the answer by attaching and signing the following form to the answer:

<u>VERIFICATION OF ANSWER</u>	
I, _____, am the respondent in the within disciplinary action and hereby certify as follows:	
1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.	
2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.	
DATE: _____	_____ (Sign Name Here)

TAKE NOTICE THAT YOUR FAILURE TO FILE A TIMELY, VERIFIED ANSWER WILL CONSTITUTE AN ADMISSION OF THE CHARGES. SUCH FAILURE MAY ALSO RESULT IN YOUR CLIENT'S IMMEDIATE TEMPORARY SUSPENSION FROM PRACTICE. IN EITHER EVENT, NO FURTHER HEARING NEED BE HELD AND THE ENTIRE RECORD, OR A RECORD SUPPLEMENTED BY THE PRESENTER, IN THIS MATTER CAN BE CERTIFIED DIRECTLY TO THE DISCIPLINARY REVIEW BOARD FOR IMPOSITION OF SANCTION, ALL PURSUANT TO *R.1:20-6(c)(1)*, *R.1:20-4(e) and (f)* AND *R.1:20-11*.

Marc D. Garfinkle, Esq.

April 18, 2016

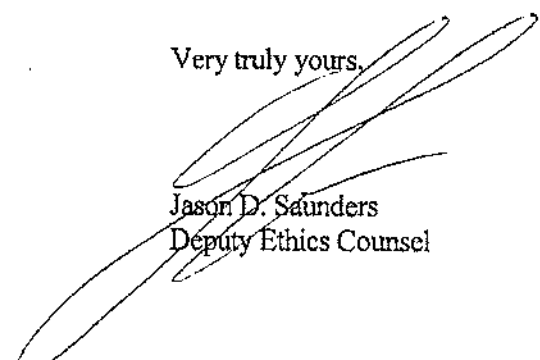
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This matter will be prosecuted before a three member panel of the District Ethics Committee. Pursuant to *R.1:20-7(i)*, you are entitled to the issuance of subpoenas necessary and relevant to your client's defense. This application should be directed to the hearing panel chair or any special ethics master at least two weeks prior to the hearing date. Your failure to timely request the issuance of subpoenas will constitute a waiver.

Pursuant to *R.1:20-5(a)*, discovery of all information specified therein is requested. In the event that any class of information specified in that rule is not available, a written representation to that effect is required.

If you have any questions regarding this matter, you should promptly communicate with me at 609-530-5808.

Very truly yours,



Jason D. Saunders
Deputy Ethics Counsel

JDS/mbb
Enclosures

cc: Joseph M. Casello, Esq., Secretary
District IX Ethics Committee (w/encl. - Complaint only)
Julie Bakle Beck, Investigator (w/o encl.)
William M. Ruskowski, Chief of Investigations (w/o encl.)

OFFICE OF ATTORNEY ETHICS
SUPREME COURT OF NEW JERSEY
P.O. Box 963
Trenton, New Jersey 08625
Trial Counsel: Jason D. Saunders
609-530-5808

SUPREME COURT OF NEW JERSEY
OFFICE OF ATTORNEY ETHICS
Docket No. XIV-2015-0227E

OFFICE OF ATTORNEY ETHICS,
Complainant

v.

MARC B. SCHRAM ESQ.,
Respondent.

COMPLAINT
Misconduct (Complex)
R. 1:20-4(b)

Complainant, Office of Attorney Ethics ("OAE") of the Supreme Court of New Jersey, Mountainview Office Complex, 840 Bear Tavern Road, P.O. Box 963, Trenton, New Jersey 08625, by way of complaint against Respondent, says:

GENERAL ALLEGATIONS

1. The respondent, Marc B. Schram, Esq. was admitted to practice law in the State of New Jersey in 1985. Respondent was admitted to practice law in New York in 1984.
2. At the time of the events forming the basis for this complaint, respondent's law office was located at 1390 State Route 36 Suite 101 Hazlet, N.J. 07730 (Monmouth County).
3. Respondent is a solo practitioner in the Law Office of Marc B. Schram P.C.
4. On March 15, 2015, Respondent reported the matter to the OAE consistent with R. 1:20-13(a)(1). [Exhibit 1]

5. On March 23, 2015, the OAE was separately notified of pending criminal charges by the Monmouth County Prosecutors Office. [Exhibit 2]

COUNT ONE

Commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects in violation of RPC 8.4(b).

6. The General Allegations are repeated as if set forth fully at length herein.
7. On Wednesday February 25, 2015, at approximately 4:00pm-4:30pm Arthur Alte ("Alte") IV cashed a payroll check for \$1,185.65 at the TD Bank located at 16 Bethany Road in Hazlet, N.J. [Exhibit 3]
8. Alte conducted the transaction by way of the bank's drive through teller. [Exhibit 3]
9. The teller returned Alte's license and the cash via the drive through transaction tube. [Exhibit 3]
10. Alte was engaged in a conversation on his cell phone during the transaction which distracted him and caused him to depart the TD Bank leaving \$1,185.65 in cash and his drivers license in the transaction tube. [Exhibit 3]
11. Alte's cash and license were in a white envelope. [Exhibit 3]
12. Realizing his oversight Alte immediately returned to the TD Bank where he found his license and 65 cents. [Exhibit 3]
13. Alte notified TD Bank of the missing \$1,185.00 and the Hazlet Police Department was contacted. [Exhibit 3]
14. The Hazlet Police Department obtained the surveillance video from TD Bank which revealed that Alte conducted his transaction between 4:05pm and 4:10pm. [Exhibit 3]
15. The investigation demonstrated that a suspect later identified as Respondent entered the same drive through banking window at 4:11pm. [Exhibit 3, 4]

16. Respondent opened the envelope, counted the money and removed the cash from the envelope. [Exhibit 3, 4]
17. At 4:12pm Respondent left the Bank without conducting a transaction and with \$1,185.00 in cash. [Exhibit 3, 4]
18. Respondent did not return the cash to the TD Bank. [Exhibit 3, 4]
19. Respondent cooperated with the Hazlet Police Department investigation and admitted taking the \$1,185.00. [Exhibit 4]
20. Respondent stated the following to the Hazlet Police Department with regard to the theft of the \$1,185.00:

MR. SCHRAM: Okay. And there were -- I think there's three lanes open; two of the lanes were full, so I went into the open lane.

And in the open lane I went to put my deposit in and when I opened the container to put my money in, my checks in with my deposit slip, there was cash in there. And I didn't know what to do.

And I had a momentary lapse of reason, and it was just sitting there, and I made a bad decision and I **decided to -- to take the money, because it was there.**

[Exhibit 4; T6-14 to 24][Emphasis Added]

21. On September 15, 2015, Respondent provided a written response to the grievance wherein Respondent acknowledged the accuracy of the police reports and the statement Respondent provided to law enforcement. [Exhibit 5]
22. In connection with the criminal matter Respondent successfully completed the Pre-Trial Intervention program and paid full restitution to Alte. [Exhibit 5]

23. In so doing, respondent violated the following *Rules of Professional Conduct*:

- a. RPC 8.4(b) – In that Respondent engaged in theft a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

WHEREFORE, respondent should be disciplined.

OFFICE OF ATTORNEY ETHICS

By: 
Charles Centinaro, Director

DATE: April 1, 2016