

**OFFICE OF ATTORNEY ETHICS  
SUPREME COURT OF NEW JERSEY  
P.O. BOX 963  
TRENTON, NEW JERSEY 08625  
609-530-4008  
Trial Counsel: Melissa A. Czartoryski  
Deputy Ethics Counsel**



**SUPREME COURT OF NEW JERSEY**  
District XIV Ethics Committee  
Docket No. XIV-2012-0606E

**OFFICE OF ATTORNEY ETHICS,  
Complainant**

v.

**YARON HELMER,**

**Respondent**

Disciplinary Action  
**COMPLAINT**

*R. 1:20-4(b)*

### **GENERAL ALLEGATIONS**

Complainant, Office of Attorney Ethics of the Supreme Court of New Jersey, (hereinafter "OAE"), by way of formal complaint against Respondent, Yaron Helmer, says:

1. Yaron Helmer (hereinafter "Respondent") was admitted to the New Jersey Bar in 1978.
2. During the relevant time period, Respondent maintained offices for the practice of law at Helmer, Conley & Kasselmann, PA, 111 White Horse Pike, Haddon Heights, New Jersey.

### **FIRST COUNT**

*Presenting, Participate in Presenting or Threatening to Present Criminal Charges to Obtain an Improper Advantage in a Civil Matter in violation of RPC 3.4(g) and Advisory Committee on Professional Ethics Opinions 347 and 551; Attempting to Violate the Rules of Professional*

***Conduct in violation of RPC 8.4(a) and Conduct Prejudicial to the Administration of Justice  
in violation of RPC 8.4(d)***

The General Allegations of the Complaint are incorporated herein as if repeated at length.

1. During the relevant time period, David Branco (hereinafter “AP Branco”) and G. Harrison Walters (hereinafter “AP Walters”) were Assistant Prosecutors with the Cumberland County Prosecutor’s Office (hereinafter “CCPO”) located at 43 Fayette Street, Bridgeton, New Jersey.

2. NFI is a New Jersey corporation with its principal and/or regional place of business located in Cherry Hill, New Jersey. NFI also has offices in Vineland, New Jersey. According to NFI CEO Sidney R. Brown’s July 13, 2010 letter to the CCPO, NFI “...has been operating in Cumberland County for over 75 years, and is one of the County’s largest employers and largest Real Estate holders.” **(Exhibit 1)**

3. Trident, LLC (hereinafter “Trident”) was a Delaware corporation, formed after assets and liabilities of Wissahickon Spring Water, Inc. (hereinafter “Wissahickon”) were contributed and/or combined with assets and liabilities of ClearSource, Inc. (hereinafter “ClearSource”) pursuant to an Amended and Restated Contribution and Transfer Agreement by and among ClearSource, Inc., Wissahickon Spring Water, Inc., and Trident, LLC dated September 11, 2007. Trident maintained an office in Hamburg, Pennsylvania.

4. James Land (hereinafter “Land”) was a principal owner of Trident.

5. Michael Pessiki (hereinafter “Pessiki”) was Trident’s President and Chief Financial Officer.

6. Fifth Third Bank in Chicago, Illinois extended multiple lines of credit to Trident. Trident maintained a “zero balance account” with Fifth Third Bank. With a “zero balance account”, Trident would notify the bank when Trident was issuing checks and the bank would then fund the account on which the checks were drawn. When Trident’s vendors paid Trident, the incoming checks were deposited into a “lock box”. The bank would then “sweep” those funds from the “lock box” into the account to cover the payment for the checks issued.

7. Trident operated from September 2007 through May 2008, at which time Trident ended its operations.

8. On September 3, 2008, Trident was forced into involuntary bankruptcy by three of its creditors, not including NFI (**Exhibit 2**). NFI was later named a creditor to the bankruptcy filing.

9. During the time that Trident was operating, on October 22, 2007, NFI, in the capacity of carrier, and Trident, in the capacity of shipper, executed a contract entitled Amendment to Transportation of Goods Agreement, Trident, Hamburg, Pennsylvania (hereinafter “the Agreement”) (**Exhibit 3**). Although this contract was referred to as an “Amendment” there was no prior agreement between the parties.

10. The Agreement provided that NFI was to purchase a dedicated fleet of tractors and trailers to be placed at and utilized to ship water from Trident’s Hamburg, Pennsylvania location. It provided the NFI would provide personnel and equipment to the Hamburg, Pennsylvania location. It provided that NFI would bill Trident on a weekly basis for all trips completed each week. It provided that invoices were due and payable within forty-five (45) days of the date of invoice.

11. NFI and Trident did business for a period of approximately seven (7) months. During this period of time, Trident issued NFI checks totaling \$1,031,563.56 (**Exhibit 4**).

12. On March 17, 2008, Trident issued a \$100,000.00 check (Third Fifth Bank check no. 3296) to NFI (**Exhibit 5**). On or about March 21, 2008, that check was returned for insufficient funds.

13. Following the \$100,000.00 bounced check, Trident agreed to start paying NFI \$17,000.00 on a daily basis, instead of causing the \$100,000 check to be re-deposited (**Exhibit 6**).

14. Trident issued a series of checks in the amount of \$17,000.00 daily to satisfy Trident's obligations to NFI. While some of the checks cleared, Trident issued the following four (4) checks to NFI from Trident's operating account which were returned for insufficient funds:

<u>Check Date</u>	<u>Check no.</u>	<u>Check Amount</u>	<u>Operating Acct. Bal.</u>
April 23, 2008	3539	\$17,000 ( <b>Exhibit 7</b> )	(\$159,882.69)
April 24, 2008	3540	\$17,000 ( <b>See Exhibit 7</b> )	(\$162,457.52)
April 25, 2008	3541	\$17,000 ( <b>Exhibit 8</b> )	(\$98,930.60)
April 28, 2008	3542	\$17,000 ( <b>Exhibit 9</b> )	(\$138,209.75)

15. At or around the time that Trident issued the aforementioned four \$17,000.00 checks to NFI, Land and Pessiki travelled to Chicago to meet with Fifth Third Bank principals. Before leaving for Chicago, Land issued the four (4) \$17,000.00 checks listed above. Those checks were to be presented to Carol Crosby (Crosby) of NFI at the Hamburg, Pennsylvania location while Land and Pessiki were away. According to Land and Pessiki, they left Chicago believing Third Fifth Bank was going to continue to finance Trident. However, on Friday, April 25, 2008, after Land and Pessiki left Chicago, Fifth Third Bank rescinded Trident's line of credit,

thereby causing the aforementioned four (4) \$17,000.00 checks to be returned for insufficient funds.

16. On or about April 30, 2008, Land wired \$35,588.00 to NFI to partially cover the four dishonored checks and to ensure that NFI would continue to transport Trident's product (**Exhibit 10**). However, without financing from Fifth Third Bank, Trident closed its doors for good in May 2008.

17. On May 11, 2008, NFI filed a civil suit against Trident and Trident principals, Land and Pessiki, in the Superior Court of New Jersey, Law Division, Camden County, Docket no. L-002627-08. Robert L. Saldutti Esq. (hereinafter "Saldutti") represented NFI in the suit. Several Amended Complaints were subsequently filed by Saldutti. (**Exhibit 11**).

18. The civil suit alleged that Trident, Land and Pessiki, among others, breached its/their contract with NFI, were unjustly enriched, committed fraud and engaged in a conspiracy to defraud.

19. The civil suit alleged that at some point prior to Trident's formation, Wissahickon's principals decided to bifurcate Wissahickon's two (2) lines of business. Wissahickon had a "bottling business" which involved the manufacturing and selling of brand-named and private-label bottled water products and a "delivery business" whereby larger bottles of water were delivered to various businesses and third-parties. NFI alleged that Wissahickon's delivery business was profitable, but the bottling business was not.

20. The civil suit alleged that in order to bifurcate Wissahickon's two (2) lines of business, the principals formed an entity known as W.S. Water, a Pennsylvania S Corporation and

an entity known as W.S. Water Wholesale, a Delaware corporation. The profitable delivery business and all related assets became part of W.S. Water and the struggling bottling business and all related assets became property of W.S. Water Wholesale.

21. The civil suit alleged that following the bifurcation, W.S. Water Wholesale contributed the bottling business to the newly formed Trident, pursuant to the Amended and Restated Contribution and Transfer Agreement dated September 11, 2007. Wissahickon sold the delivery business to Nestle Waters North America (Nestle) for approximately \$13 million by Asset and Purchase Agreement dated April 4, 2008.

22. The civil suit alleged that Trident was nothing more than a shell company. NFI alleged that the individual defendants conspired to defraud creditors, such as NFI, through a complicated series of transactions wherein Trident was formed with certain Wissahickon assets and subsequently absorbed \$26 million in debt, while other Wissahickon assets were sold to Nestle for \$13 million.

23. NFI alleged that two (2) months after Trident's formation and one (1) day after Trident contracted with NFI for services, Joseph F. Finn, Jr., Esquire (Finn) of Finn, Warnke & Gayton wrote to Trident's creditors on November 12, 2007 the following:

Dear Valued Vendor/Creditor:

We have been retained by Trident, LLC to assist them in rehabilitating themselves. You have received prior correspondence from them concerning the recent merger of ClearSource and the retail store division of Wissahickon. The FEIN # for Trident LLC is 45-0571339.

The Company is genuinely sorry for not having paid you and thanks you for your patience. The Company is a seasonal business and, unfortunately, we are entering the slowest time of the year. They anticipate losses and

they will be unable to pay-down, in any significant way, your outstanding balance during the slow time of the year.

May they kindly ask you to accept a weekly modest good faith payment, check enclosed, for the next 120 days until the Spring at which time the Company anticipates that it will be able to increase the weekly payment significantly.

If you have any questions, please call me at 781-237-8840 or email me at [jfionnjr@earthlink.net](mailto:jfionnjr@earthlink.net) or contact Mike Pessiki, who is the new President of Trident. His office number is 802-728-7229 and his email is [mikep@wspringwater.com](mailto:mikep@wspringwater.com).

**(Exhibit 12)**

24. The civil suit alleged that Trident received a \$20 million credit line from Fifth Third Bank and that during the seven (7) months that Trident operated, Trident continually over-drafted its operating account with Fifth Third Bank and incurred \$26,869,848.47 in liabilities to its creditors.

25. The civil suit alleged that Land and Pessiki practiced a pattern of issuing checks to third parties when they knew, or should have known, that there were insufficient funds in Trident's operating account. NFI alleged that as a result of its agreement with Trident, it suffered damages reaching \$3 million.

26. On May 16, 2008, NFI Vice President of Security Willard Graham (hereinafter "Graham") wrote to Land. Graham referenced the four (4) checks totaling \$68,000 that were remitted to NFI by Trident between April 23, 2008 and April 26, 2008 and returned for insufficient funds. In Graham's May 16, 2008 letter to Trident he wrote:

This is not acceptable and we urgently request that you handle this matter before criminal charges are brought against you.

This is our last attempt; we will allow you twenty (20) days, until June 12<sup>th</sup> to make arrangements on your debt. On June 13<sup>th</sup> we will proceed with criminal court action against you directly. **(Exhibit 13).**

27. Land denies that he or Trident ever received NFI's May 16, 2008 letter.

28. Having not received payment from Trident, on June 19, 2008, NFI Corporate Security Manager James Matlock (hereinafter "Matlock") visited the Vineland Police Department to report that Pessiki and Land had presented bad checks to NFI.

29. Vineland Police Department Officer William Mazzola's (Officer Mazzola's) report of August 5, 2009 references the five checks issued to NFI by Trident that were returned for insufficient funds. The report indicates that Officer Mazzola spoke with Pessiki who advised that the company went bankrupt and that Fifth Third Bank seized all of their accounts and assets. The report indicates that Officer Mazzola spoke to Henry Kaminski of Fifth Third Bank who confirmed that the monies and company holdings were seized by the Bank sometime in early May. The report indicates that Officer Mazzola turned the investigation over to Vineland Police Department Detective Phillip Martinez (hereinafter "Detective Martinez") **(Exhibit 14).**

30. Detective Martinez traveled to Hamburg, Pennsylvania to investigate the matter. Detective Martinez spoke with Walter Weir, Esquire (Weir), of Weir & Partners, LLP, attorneys for Trident. On July 2, 2008, Detective Martinez sent an email to Weir stating that the documents provided by Weir should be sufficient to close the matter out as a civil matter but he would be checking with the prosecutor's office to confirm that **(Exhibit 15).**

31. On July 24, 2008, Matlock signed criminal complaints against Pessiki who was alleged to have signed check no. 3296 in the amount of \$100,000.00 and against Land who was alleged to have signed check nos. 3539, 3540, 3541 and 3542, each in the amount of \$17,000.00

**(Exhibits 16 and 17).** Matlock alleged that each of the aforementioned checks were issued with the knowledge that they would not be honored, in violation of N.J.S.A. 2C:21-5C (2).

32. N.J.S.A. 2C:21-5. Bad Checks, provides **(Exhibit 18)**:

A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, commits an offense as provided for in subsection c. of this section. For the purposes of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check or money order (other than a post-dated check or order) would not be paid if:

a. The issuer had no account with the drawee at the time the check or order was issued; or

b. Payment was refused by the drawee for lack of funds, or due to a closed account, after a deposit by the payee into a bank for collection or after presentation to the drawee within 46 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal or after notice has been sent to the issuer's last known address. Notice of refusal may be given to the issuer orally or in writing in any reasonable manner by any person.

c. An offense under this section is:

(1) a crime of the second degree if the check or money order is \$75,000.00 or more;

(2) a crime of the third degree if the check or money order is \$1,000.00 or more but less than \$75,000.00;

(3) a crime of the fourth degree if the check or money order is \$200.00 or more but is less than \$1,000.00;

(4) a disorderly persons offense if the check or money order is less than \$200.00.

33. Matlock's criminal complaints were assigned to CCPO Assistant Prosecutor Wettstein (hereinafter "AP Wettstein") and CCPO Detective Breslin for investigation. Detective Breslin contacted NFI and obtained from Matlock copies of the four (4) \$17,000.00 checks (but not the \$100,000.00 check). Detective Breslin also obtained a copy of a memorandum prepared by Matlock dated June 18, 2008 which referenced the four (4) \$17,000.00 checks, as well as the

\$100,000.00 check which had been returned for insufficient funds and referenced NFI's May 16, 2008 letter sent to Trident in an effort to receive payment. **(Exhibit 19)**.

34. On September 17, 2008, AP Wettstein wrote to Matlock advising that the CCPO had decided to dismiss the complaints because the complaints appeared to represent a civil dispute between two (2) companies in different states **(Exhibit 20)**. AP Wettstein further advised Matlock that the matter could be resolved outside of the criminal process. AP Wettstein wrote, "[t]he Cumberland County Prosecutor's Office is not in the business of operating as a collection agency on your company's behalf."

35. NFI, dissatisfied with AP Wettstein's decision, retained Respondent to represent it. According to the terms of the retainer arrangement as set forth in a December 8, 2008 letter from NFI's General Counsel Robert Barron (hereinafter "Barron") to Respondent, Respondent's role was to "act as a middleman" between NFI and the CCPO with regard to Trident's alleged criminal actions and to persuade the CCPO to take criminal action against Land and Pessiki **(Exhibit 21)**.

36. The retainer arrangement between NFI and Respondent indicated that Respondent agreed to represent NFI for a one-time \$10,000.00 retainer. In the event NFI received money from the defendants as restitution in the criminal matter, NFI would make additional payments to Respondent of 20% of the first \$500,000.00 collected as restitution, plus 15% of any money in excess of \$500,000.00 collected as restitution paid by the defendants in the criminal matter.

37. In or about December 2008, Respondent contacted AP Branco who acted as Chief of the Major Crimes and Organized Crime Bureau for the CCPO. Respondent was deposed during the civil litigation filed by NFI through its attorney Saldutti. When asked at his deposition about his first conversation with AP Branco, Respondent stated:

I don't recall the exact conversation. Basically, I said to him that – I think I refer to this letter. I said that I didn't understand why bounced checks, the sums involved are not criminal activity. That do they give serious matters to attorneys who are rookies such as C.J. Wettstein. And I thought it would be possible for someone to look at the matter, that I would –I was hoping to have a meeting with any attorney, whether it's C. J. Wettstein or anyone else that was there, so I could review the facts of the case as to why I thought that it was not a civil matter.... (See Exhibit 22, pp. 47-48).

38. AP Branco stated to OAE investigators that after talking with Respondent about NFI's allegations against Trident, AP Branco believed that the matter needed to be investigated further. AP Branco recalled that AP Walters expressed an interest in working on white collar cases, so AP Branco assigned the matter to AP Walters for investigation. AP Branco stated that this was AP Walters' first white collar case.

39. Respondent stated at his deposition that on May 27, 2009, he met with AP Branco, AP Walters, Matlock and Barron. Respondent testified that at the meeting, AP Walters told Respondent that AP Walters would be reviewing the case. (See Exhibit 22, p. 48).

40. According to AP Walters, AP Branco brought him into a meeting with Respondent, Matlock and Barron to discuss the bad checks remitted to NFI by Trident. AP Walters recalled that the meeting had already begun when he joined in. AP Walters described that a swift resolution to NFI's problem was planned. That plan involved a sealed indictment, a meeting where the defendants would be arrested on warrants with high bail after the indictment was unsealed and a seizure of the bail monies was to be used as restitution. AP Walters acknowledged that at the time of the meeting, he realized the plan would result in NFI being placed ahead of other creditors to whom Trident owed money. However, AP Walters also stated that no one specifically told him the plan was fashioned for that purpose. Later, AP Walters admitted he came to the conclusion that the prosecution was likely designed and initiated for that purpose after all. (Exhibit 23, p. 2).

41. Respondent testified at his deposition that the NFI folks advised him that it had a serious problem in that Trident was a company with no assets, leaving NFI unprotected in the event of a default. (See Exhibit 22, pp. 34-36).

42. Respondent told OAE investigators that the current Grand Jury session was nearing its end. The Trident case was either going to be presented at the end of the current Grand Jury's term or the CCPO would have to wait until the next Grand Jury convened and became more seasoned as to the intricacies of a white collar crime case. Respondent stated that his client, NFI, was already disgruntled with the criminal process. NFI would have been very upset if the case had to be delayed even further.

43. On June 11, 2009, Respondent sent AP Walters an e-mail wherein he indicated that the last day for the then-sitting Grand Jury was June 24, 2009. Respondent suggested to AP Walters, "How about doing it a week earlier (June 17, 2009)?" (Exhibit 24). According to AP Walters, the understanding was that it would be easier to obtain an indictment at the end of the Grand Jury term (See Exhibit 23, p. 3).

44. Respondent, in his June 11, 2009 e-mail to AP Walters, listed who the defendants should be, specifically Pessiki, Land and Trident. In Respondent's June 11, 2009 e-mail to AP Walters, Respondent provided AP Walters with the following summary:

Narrative: NFI did business with company called Clear Source, also trying to do business deal in 2005 and 2006 with Wissahickon Mountain Spring Water.  
5/17/07 Mike Pessiki interested. June meeting Pessiki and Land  
July 23, 2008 proposed agreement.  
September 24 change contract to Trident (never mentioned before).  
September 25, 2007 now want special trucks. October 22, 2007 execute agreement effective November 11, 2007. never disclose negotiations with Nestles to sell assets of Wissahickon and

November 12 letter to vendors and creditors of Trident by CPA  
NFI starts hauling, 3 trucks special use only obtained. Payments  
Late, 100k bounces made good. Promises, excuses (e.g. Check is in  
the mail, did not know any payments missed, please tell us which  
ones missed, no one to sign it, did not get authorization to sign it  
and Pessiki suddenly not reachable, money is in different account,  
etc. cycle.

4 checks for 17k never made good and on for 100k. 4-22-08  
(overdrawn operating account of \$84,556.38), 4-23-08 (overdrawn  
\$159,882.69), 4/24-08 (overdrawn account \$162,457.52), 4-25-08  
(overdrawn \$98,930.60)

17K each

3-17-08=100k (overdrawn account \$9,628.50)

Notification and certified mail sent re each bounced check. April  
8, 2008, find out Wissahickon assets not part of Trident and sold to  
Nestles. Nestles eventually sues too for fraud, misrepresentation,  
Conversion, etc.

**(See Exhibit 24)**

45. In his June 11, 2009 e-mail to AP Walters, Respondent further set forth that the  
indictment should be ten (10) counts. Respondent outlined precisely how the ten (10) counts of  
the indictment should be framed:

1,2,3, diverse dates between September 2007 and April 2008 JL,  
MP and T conspired to commit.

1. theft by deception of over 75k from NFI 2C:5-2 2C:20-  
4 (second degree)

2. theft of services over 75k from NFI 2C:5-2 2C:20-8  
(second degree)

3. conspiracy to issue or pass bad checks totaling in excess of 75k  
to NFI 2:5-2 2C21-5 (second degree)

45 diverse dates between November 11, 2007 through April of  
2008 JL, MP and T

4 theft by deception against NFI in an amount over 75k  
(second degree) 2C:20-4

5 theft of services against NFI in an amount over 75k  
(second degree) 2C:20-8

6 JL, MP, And T did issue or pass a check over 75k on or  
About 3-17-08 (100k check) for payment of money knowing that  
said check would not be honored for payment 2C:21-5 (second  
degree)

7 JL, MP and T on or about April 22, 2008 (same as count

6 except that the check was for 17k a crime of the third degree  
8,9,10 identical to count 7 except that the 17k bad check  
Was on or about April 23, 24 and 25 respectively  
**(See Exhibit 24)**

46. On June 16, 2009, AP Walters provided his secretary Pearl Johnson (hereinafter “Johnson”) with a memorandum instructing Johnson how to prepare the indictment **(Exhibit 25)**. The memorandum followed the outline provided to Walters by Respondent in Respondent’s June 11, 2009 e-mail.

47. Johnson prepared the indictment as instructed **(Exhibit 26)**. The indictment charged the following:

COUNT ONE – Conspiracy to Commit Theft by Deception – Second Degree (Pessiki, Land and Trident)

COUNT TWO – Conspiracy to Commit Theft of Services – Second Degree (Pessiki, Land and Trident)

COUNT THREE – Conspiracy to Issue a Bad Check – Second Degree (Pessiki, Land and Trident)

COUNT FOUR – Theft by Deception – Second Degree (Pessiki, Land and Trident)

COUNT FIVE - Theft of Services – Second Degree (Pessiki, Land and Trident)

COUNT SIX – Issuing a Bad Check – Second Degree (Pessiki, Land and Trident)

COUNT SEVEN – Issuing a Bad Check – Third Degree (Pessiki, Land and Trident)

COUNT EIGHT – Issuing a Bad Check Third Degree (Pessiki, Land and Trident)

COUNT NINE – Issuing a Bad Check Third Degree (Pessiki, Land and Trident)

COUNT TEN – Issuing a Bad Check Third Degree (Pessiki, Land and Trident)

48. On June 17, 2009, AP Walters presented the matter of State of New Jersey vs. Michael Pessiki, Jay Land and Trident, LLC to the grand jury. Respondent was AP Walters’ only

witness. Respondent was asked to explain to the grand jurors what happened. Respondent's grand jury testimony was transcribed (**Exhibit 27**).

49. Before the grand jury, AP Walters asked Respondent whether it was Trident's intent to deceive NFI. Respondent replied, "Sure. I mean—and it also helped them in negotiations with Nestles. Look at what a great things they're buying into because we're hauling all this water, et cetera, et cetera. So it helps them with their—with the next buyer" (**See Exhibit 27, p. 17**).

50. One of the grand jurors asked Respondent, "So the allegation is that these men and the company knowingly wrote checks to you, knowing that they did not have the money in the account to cover the checks?" To which Respondent answered, "Sure." (**See Exhibit 27, p. 31**).

51. One of the grand jurors asked Respondent, "Now, has anyone been arrested yet?" To which Respondent answered, "No, because this is why, as I understand it, the grand jury is considering the case. Because the bankruptcy proceeding, it's basically, you know, too bad. You're out \$1.2 million." (**See Exhibit 27, p. 24**).

52. Direct Presentment Indictment No. 09-06-515-I/C, State v. Michael Pessiki, Jay Land and Trident, LLC, was returned by the grand jury on June 17, 2009. (**See Exhibit 26**).

53. An arrest warrant for Pessiki was issued on June 18, 2009 with bail set in the amount of \$150,000.00 full cash (**Exhibit 28**). The arrest warrant was signed by Judge John W. Waters, J.S.C (hereinafter "Judge Waters"). When questioned by the CCPO through the

Administrative Office of the Courts (AOC), Judge Waters indicated that the amount of bail, \$150,000.00, was already typed onto the warrant when it was presented to him **(Exhibit 29)**.<sup>1</sup>

54. On June 18, 2009, AP Branco requested that Indictment No. 09-06-515-I/C be sealed. Judge Robert P. Becker, Jr. J.S.C. (hereinafter "Judge Becker") signed the Order to Seal Indictment **(Exhibit 30)**. The sealing of the indictment was not put on the record or recorded on the court's log **(See Exhibit 29)**. When later questioned by the CCPO through the AOC, Judge Becker could not recall the matter.

55. On June 26, 2009, Saldutti, who represented NFI in the civil suit attempted a second effort to mediate the civil litigation. **(Exhibit 31)**.

56. On July 13, 2009, the attorney assigned to mediate the civil matter Samuel J. Myles, Esquire (Myles), scheduled a second mediation for August 6, 2009 to be held at the mediator's law firm located in Woodbury, New Jersey. **(Exhibit 32)**.

57. On July 22, 2009, Respondent's legal assistant sent e-mails to AP Branco and CCPO employee Suzanne Koller regarding various matters scheduled for discussion with Branco at the CCPO the next day. One such matter was listed as "National Freight Industries – will discuss mediation/arrest date AUGUST 6 9:30 AM." **(Exhibit 33, p. 5)**

58. AP Walters went on sick leave from July 21, 2009 through August 4, 2009. AP Walters first day back to the CCPO was August 5, 2009.

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<sup>1</sup> Land's arrest warrant could not be located, but various documentation prepared by the CCPO indicated that Land's bail was also set at \$150,000.00.

59. On August 5, 2009, Branco was participating in a jury trial in Gloucester County before Presiding Judge Walter L. Marshall, Jr., and as such, was out of the CCPO Bridgeton Office.

60. On or about August 5, 2009, Respondent contacted CCPO Trial Chief John Jespersen (hereinafter "AP Jespersen") to unseal the indictment. Respondent communicated to AP Jespersen that he wanted two (2) detectives from the CCPO to arrest defendants who were appearing from out-of-state for mediation in connection with a civil matter within a day or two. Respondent indicated that the mediation was scheduled to be held in Gloucester County. AP Jespersen refused Respondent's request. According to AP Jespersen, AP Branco was not at work that day and AP Walters had been expected to return to work in a day or two after having been out of the office for a while (**Exhibit 34, p. 18**).

61. Since AP Branco was still on trial and AP Jespersen refused Respondent's request, AP Walters, on his first day back from sick leave, made the effort to have Land and Pessiki arrested at the civil mediation.

62. On August 5, 2009, AP Walters presented an Order to Unseal Indictment to the Honorable Anne McDonnell, which she signed (**Exhibit 35**). The Order provided that the warrants previously issued against Land and Pessiki remain "in full force."

63. AP Walters then contacted CCPO Sergeant Jasmin Calderon (hereinafter "Sergeant Calderon"), who was assigned to supervise the trial team detectives. AP Walters requested that Sergeant Calderon assign a detective(s) to carry out an arrest.

64. Sergeant Calderon spoke with her superior officer, Lieutenant Neal Evans (hereinafter "Lieutenant Evans"), concerning AP Walters' request. Lieutenant Evans indicated that

he did not have sufficient information to determine whether to carry out the request. For that reason, Lieutenant Evans obtained a copy of the Vineland Police Department's investigation report prepared by Officer Mazzola (See Exhibit 34, p. 20).

65. Lieutenant Evans had a subsequent "contentious" telephone call with AP Walters concerning AP Walters' request to have Land and Pessiki arrested. Following that telephone call with AP Walters, Lieutenant Evans directed Sergeant Calderon to disregard AP Walters' request (See Exhibit 34, pp. 20-21, 37).

66. Lieutenant Evans then discussed the matter with his superior, Chief Tomasso. Chief Tomasso discussed the matter with CCPO First Assistant Prosecutor Kenneth Pagliughi (hereinafter "First Assistant Pagliughi"). Upon learning of the plan to arrest Land and Pessiki at a civil proceeding, First Assistant Pagliughi directed that the arrests not occur. FAP Pagliughi was not comfortable with the idea of serving arrest warrants on the defendants while they were in New Jersey for what he characterized as a business meeting (See Exhibit 34, pp. 40-41, 19, 20, 22, 31)

67. On August 5, and August 6, 2009, the following contacts were made between the cellular telephones of AP Branco, AP Walters and Respondent:

<u>Date</u>	<u>Time</u>	<u>Parties Participating in the Call</u>
8/5/09	8:51 am	AP Walters to AP Branco
8/5/09	9:27 am	Respondent call to AP Walters
8/5/09	2:18 pm	AP Walters call to Respondent
8/5/09	2:24 pm	Respondent call to AP Walters
8/5/09	2:26 pm	AP Walters to AP Branco
8/5/09	5:18 pm	AP Walters to AP Branco (home)
8/5/09	5:19 pm	AP Branco to AP Walters

8/6/09 10:34 am AP Walters to Respondent  
**(Exhibit 36)**

68. On August 6, 2009, Cumberland County Superior Court Judge Walter L. Marshal, Jr., P.J. Cr. (hereinafter "Judge Marshal") signed an Order to Modify Bail canceling the bail warrants and indicating that the defendants may be released on their own recognizance (**Exhibit 37**).

69. On that same date, Walters sent a fax to Branco advising Branco of Judge Marshal's Order (**Exhibit 38**).

70. On August 6, 2009, the civil mediation occurred but no arrests of Land and Pessiki were effectuated by the CCPO.

71. Land and Pessiki were arraigned on September 15, 2009 before Judge Becker. At the arraignment, Judge Becker asked AP Walters to tell him about the case. AP Walters responded:

It's a little complicated, but the short version is during the course of business, a few checks, you know, bouncing, and (indiscernible) bouncing is (indiscernible). What the State alleges here is that the – the defendants create a – an entity, specifically, a (indiscernible) LLC, in order to pump up their business, which (indiscernible) and hide behind bankruptcy, never intending to pay their creditors, specifically National Freight – excuse me – yes, NFI, Vineland.

That's the short version of it sir.

**(Exhibit 39, p. 4)**

72. Judge Becker asked AP Walters about a possible resolution of the case. AP Walters advised that even though the defendants were charged with second degree offenses, which would make them presumptively ineligible for Pretrial Intervention (PTI), the case could be resolved by way of PTI or alternatively probation, with a condition of restitution (allowing for sentencing

treatment as a third degree offender). AP Walters emphasized: Again restitution would be a – the big chunk of the – of the plea.” (See Exhibit 39, p. 5)

73. Following the arraignment and continuing until July 2010, the criminal case proceeded in the pretrial phase. Brett Datto, Esq. (hereinafter “Datto”) represented Pessiki; Carl Poplar Esq. (hereinafter “Poplar”) represented Land.

74. On October 5, 2009, Respondent wrote to AP Walters addressing NFI’s restitution claim (Exhibit 40). Respondent advocated for restitution or alternatively incarceration. In his October 5, 2009 letter to AP Walters, Respondent wrote:

My client would either like, as the victim, to have restitution made or for the culprits to be incarcerated. If restitution is going to be made however, my client has made it very clear that it should not be limited to the bounced checks.

Respondent elaborated on the basis for restitution claim as follows:

You are aware that they contracts [sic] for services which included the purchase of very expensive trucks by my client resulted in a tremendous loss to my client. The defendant’s knew when they entered into these agreements and accepted the services of my client (the basis of theft of service charges) that my client would detrimentally rely on the agreement, incur hundreds of thousands of dollars in expense and incur hundreds of thousands of dollars in additional loss under the contract, which Trident would not honor.

This contract and services were negotiated and accepted by Trident, all the while they were selling the asset to Nestle’s.

75. Respondent continued in the letter with respect to the restitution claim, requesting that in addition to the many hundreds of thousands of dollars lost which should be subject to restitution, restitution should also include NFI expenses for accountants, attorneys and related expenses.

76. Respondent concluded his October 5, 2009 letter to AP Walters by stating, “As the victim’s representative, I’m sure that we would be consulted in advance of any agreement being negotiated with the defendants.” (See Exhibit 40)

77. Respondent wrote to AP Walters again on October 14, 2009 (**Exhibit 41**). Respondent advised AP Walters that in addition to the substantial money NFI lost on the bounced check, the hundreds of thousands of dollars in unpaid delivery charges and the tremendous amount of money spent for special tractors for the job, NFI incurred many hundreds of thousands of dollars in additional losses because of Trident's actions.

78. Respondent concluded his October 14, 2009 letter by stating, "My client trusts that all these things will be taken into account in working out a restitution figure with Trident or in seeking prison and restitution for the miscreants involved."

79. On December 17, 2009, Poplar prepared a Motion to Dismiss the Indictment. (**Exhibit 42**). In Poplar's Motion, Poplar explained what he perceived to be fundamentally wrong with the Grand Jury presentation:

Ron Helmer, who parenthetically is a lawyer not experienced or familiar with civil litigation, was hired by NFI to help them pursue criminal charges against the Defendants and navigate through the criminal system. On June 17, 2009, Mr. Helmer appeared before the Cumberland County Grand Jury. He was the sole witness called by the State. Without any direct knowledge, understanding or appreciation of the civil transactions involved or the disputed debt issues, Mr. Helmer testified, without giving attribution to any source of the information he provided, and without offering any exhibits.

...In the limited discovery provided to date, it has been revealed that Mr. Helmer sent an e-mail to the Assistant Prosecutor in which Mr. Helmer actually drafted all ten counts of the indictment, from the language to the specific statutory provisions.

80. A central premise of Poplar's Motion was that the grand jury had been improperly utilized for the purpose of pursuing a civil remedy on behalf of NFI. Poplar wrote:

The use of a Grand Jury "to compile evidence and solely to pursue a civil remedy is improper." This strongly appears to be the case here. In fact, one grand juror even questioned what NFI's motivation was in trying to pursue this criminally – whether it was to recoup their losses or simply to "punish" the defendant.

In his brief, Poplar continued:

...Mr. Helmer's opinion statements and personal conclusions were improperly prejudicial. The grand jurors' questions underscored these concerns, but they were never addressed. At the very least, it cannot be denied that the independence of the Grand Jury was compromised.

81. On January 11, 2010, the Court conducted a hearing on the defense motion to dismiss. **(Exhibit 43)**. On that date, the Court denied the motion, finding that that the role Respondent played before the Grand Jury was appropriate.

82. On July 6, 2010, the matter was again before the Court following which the Court entered an Order of Dismissal with Prejudice dated August 16, 2010 **(Exhibit 44)**. The reason for the dismissal of the indictment was the prosecution had been directed to produce certain discovery (i.e. bank records, specifically the dishonored checks) and failed to do so.

83. Following the entry of the Court's August 16, 2010 Order of Dismissal with Prejudice, the CCPO was required to make a determination whether to appeal the ruling on the discovery issue or whether it should allow the forty-five (45) day period in which to appeal to lapse, which would then have the practical effect of confirming the dismissal with prejudice.

84. By way of correspondence dated September 29 and 30, 2010, the CCPO separately advised NFI, Poplar and Datto of its determination not to appeal the Court's Order of Dismissal with Prejudice **(Exhibits 45 and 46)**. Each letter essentially contained that same content and presentation as the others. The CCPO explained its position, as articulated in the letter to defense counsel, as follows:

The Cumberland County Prosecutor's Office ("CCPO") has decided not to appeal Judge Becker's August 16, 2010 Order of Dismissal with Prejudice. Please allow me to provide explanation into the decision-making process.

At the outset, it should be noted that a determination has been made that a good faith, meritorious basis to appeal exists. Dismissal with prejudice as to all charges based upon the State's inability to obtain original checks from Trident's bank does not appear correct as a matter of discovery procedure and the best evidence rule. Notwithstanding that the CCPO has determined that a good faith, meritorious basis to appeal exists, a decision has been made to permit the Order of Dismissal with Prejudice to stand, but for other reasons.

As I believe you are aware the CCPO has recently undertaken a comprehensive review and analysis of this matter. Our review and analysis informs our determination not to continue the prosecution of this case and permit its conclusion by way of dismissal with prejudice (but as noted for reasons different than and fundamentally more important than the more narrow basis of Judge Becker's Order).

The CCPO has carefully considered your position that the manner in which this case was presented to the Grand Jury was improper. At this time the CCPO without equivocation or hesitation agrees, as a matter of professional responsibility that the manner of presentation to the Grand Jury was not proper and shall not be sanctioned or condoned by Prosecutor Webb-McCrae.

Additionally, the CCPO has reviewed this case on the merits, mindful of your position that the dispute between NFI and defendants is civil in nature. As you are aware, the Assistant Prosecutor first assigned to this matter came much earlier to the same conclusion. The CCPO has analyzed the alleged crimes, including conspiracy, theft by deception, theft of services and the issuance of bad checks. Out best professional judgment is that there does not exist a good faith basis to prove a criminal case beyond a reasonable doubt.

85. With the Prosecutor's September 29 and 30, 2010 letters to the parties in the criminal matter, the prosecution of Land, Pessiki and Trident was concluded.

86. On May 19, 2011, an Amended Settlement Agreement and Release between NFI and Lynne E. Feldman, as Chapter 7 Trustee (Trustee) for the Estate of Trident, Wissahickon, Land, Pessiki, et al Trident was entered in the bankruptcy matter (**Exhibit 47**). It provided that the civil action pending in the Superior Court under Docket no. L-002677-08 would be dismissed with prejudice and that NFI would be permitted to pursue its allowed unsecured claim in the amount of

\$2,500,000.00 and that NFI would be entitled to receive a distribution on account of the NFI Claim *pari passu* with the holders of Allowed Unsecured Claims whenever the Trustee makes distribution to such creditors. The Amended Settlement Agreement and Release provided that the Defendant Parties would pay \$450,000.00 to the Trustee but did not provide for any monetary payment by Land, Pessiki, Trident or any related entities to NFI.

87. This Amended Settlement Agreement and Release followed the Chapter 7 Trustee's Motion to Prevent Further Prosecution of the NFI Litigation in Violation of the Automatic Stay Pursuant to Sections 362(a) and 105(a) of the Bankruptcy Code. **(Exhibit 48).**

88. According to the Trustee's Final Report filed July 31, 2012, the Trustee realized gross estate receipts from Trident of \$4,786,269. NFI was paid \$89,223.15 on its \$2,500,000 Unsecured Claim **(Exhibit 49).**

89. Respondent's conduct as set forth above constitutes a violation of *RPC 3.4(g)* (presenting, participate in presenting or threatening to present criminal charges to obtain an improper advantage in a civil matter) and *Advisory Committee on Professional Ethics Opinions 347 and 551*, for reasons including, but not limited to:

- A. Entering into a retainer arrangement with NFI whereby respondent's fee was in part contingent upon percentage of restitution paid in the criminal cases;
- B. Respondent's meeting with Branco, Walters, Matlock and Barron to press for a criminal prosecution following AP Wettstein's declination to prosecute the case;
- C. Respondent's participation in drafting the Indictments;
- D. Respondent's testimony before the Grand Jury;

E. Respondent's participation in influencing Branco and Walters to seek high bail, to have the Indictments sealed and to attempt to arrest Land and Pessiki during the civil mediation in New Jersey.

90. Respondent's conduct set forth above also constitutes violations of *RPC 8.4(a)* (attempting to violate the Rules of Professional Conduct) and *RPC 8.4(d)* (conduct prejudicial to the administration of justice) in that Respondent's actions to collect money utilizing the criminal process on behalf of NFI (which would also have benefitted himself financially due to the contingent nature of his retainer arrangement) would have impacted the administration of justice in the criminal, civil and bankruptcy cases.

WHEREFORE, respondent should be disciplined.

DATED:

March 20, 2015

By:



Charles Centinaro  
Director