

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

In the Matter of:

TODD WILLIAM SIVIA,

Attorney-Respondent,

No. 6285179.

Commission No. 2021PR00015

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Rachel C. Miller, pursuant to Supreme Court Rule 753(b), complains of Respondent, Todd William Sivia ("Respondent"), who was licensed to practice law in Illinois on May 5, 2005, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

(lack of communication and conflict of interest)

1. Since 2006, Respondent operated Sivia Business and Legal Services, P.C. in Edwardsville, Illinois. Respondent concentrated his practice in business law, special needs trusts, and estate planning.
2. Prior to August 11, 2018, Respondent provided legal services to Eliot Deters ("Deters") and his business, The Mailbox Store of Illinois, Inc. ("Mailbox Store"), in an ongoing client relationship.
3. On August 11, 2018, Deters held an employee retreat at Harpole's Heartland Lodge ("Harpole's") in Nebo, Illinois. During the retreat, each employee had the opportunity to drive an

all-terrain vehicle (“ATV”). Dana Bourland (“Bourland”) attended the retreat at Harpole’s as a Mailbox Store employee.

4. Deters and Bourland each signed indemnification of liability agreements and agreements listing rules for operating Harpole’s ATVs. While driving the ATV, Bourland had an accident during which she sustained injuries and the ATV sustained damages.

5. On February 13, 2019, Harpole’s filed a small claims case against Deters and Bourland for damages to its ATV in a matter docketed as *Harpole’s Heartland Lodge, Inc. vs. Eliot Deters and Dana Bourland*, 2019 SC 41 (Pike County Circuit Court).

6. Prior to March 22, 2019, Respondent made a \$1,000 settlement offer on behalf of Deters to Harpole’s attorney, Edward Fanning (“Fanning”).

7. On March 22, 2019, Respondent sent an email to Fanning and stated:

“My client [Deters] did not drive the vehicle. You have received a signed agreement between Dana and your client. My client did not sign as a surety on behalf of Dana. The language is vague and the vagueness is against your client the drafter. Section 12 says the rider will be responsible for their damage to “ATV” not to all ATVs in the party, it does not say they will be responsible for everyone in the parties [*sic*] responsibility. If that is the case, you should sue everyone that was there that day and not single my client out.

You have a signature of Dana. You can pursue her all you want to.

It would be in your client’s interest to accept my client’s offer.”

8. Prior to April 8, 2019, Respondent and Deters agreed that Respondent would enter his appearance on behalf of Bourland.

9. At no time prior to April 8, 2019 did Bourland tell Respondent that she wanted him to represent her in 2019 SC 41 nor did Respondent discuss possible conflicts of interest with Bourland.

10. On April 8, 2019, Respondent entered his appearance in 2019 SC 41 on behalf of Deters and Bourland.

11. On June 3, 2019, Respondent sent Fanning an email asking, “Did you talk to your client about accepting the \$1000 and pursuing the other defendant [Bourland] for the rest?”

12. Later in June 2019, Respondent contacted Bourland for the first time. During this conversation, Respondent represented to Bourland that he would defend her in the 2019 SC 41 and he discussed settlement options with her, including the offer that Bourland pay a majority of the ATV damages.

13. Respondent knew at the time he discussed settlement offers with Bourland in June 2019 that he sought to enter into a settlement on her behalf to lessen Deters’s financial responsibility in 2019 SC 41.

14. On August 7, 2019, Bourland emailed Respondent to state that she did not feel Respondent represented her interests and to ask Respondent to explain her rights related to seeking out other counsel.

15. At no time between the August 11, 2018 ATV accident and August 6, 2019 did Respondent discuss conflicts of interest with Bourland, provide her with a written conflict consent form, or advise her that she could seek independent counsel.

16. At no time between August 11, 2018 and August 6, 2019 did Respondent ask Bourland about injuries she sustained, nor did he discuss potential worker’s compensation claims with her.

17. On August 22, 2019, Respondent filed a motion to withdraw as Bourland’s counsel. The court entered to order for withdrawal on August 26, 2019 and reset the matter for a status date on September 23, 2019.

18. On September 23, 2019, the court held a status hearing in 2019 SC 41 and Bourland failed to appear. The court defaulted her and entered a judgment against Bourland for \$4,971.92 and \$2,994.40 in attorney fees and costs.

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

- a. failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, by conduct including Respondent's failure to discuss and obtain informed consent from Bourland regarding conflicts of interest prior to entering his appearance on her behalf, in violation of Rule 1.4(b) of the Illinois Rules of Professional Conduct (2010);
- b. representing a client with a concurrent conflict of interest where the representation of one client is directly adverse to another client, by conduct including Respondent failing to discuss a potential worker's compensation claim with Bourland and seeking to settle 2019 SC 41 to Bourland's disadvantage and Deters benefit, in violation of Rule 1.7(a)(1) of the Illinois Rules of Professional Conduct (2010);
- c. representing a client in a concurrent conflict where the lawyer does not reasonably believe that the lawyer will be able to provide competent and diligent representation to each affected client, by conduct including filing his appearance on behalf of Bourland without intending to represent her interests, in violation of Rule 1.7(b)(1) of the Illinois Rules of Professional Conduct (2010);
- d. representing a client in a concurrent conflict without each affected client giving informed consent, by conduct including failing to obtain informed consent to representation from Bourland, in violation of Rule 1.7(b)(2) of the Illinois Rules of Professional Conduct (2010); and
- e. representing two or more clients and participating in attempting to make an aggregate settlement of the claims of or against the clients without each client giving informed consent, in a writing signed by the client, by conduct

