

IN THE SUPREME COURT OF ILLINOIS

In the Matter of:

JAN R. KOWALSKI,

Attorney No. 6291301,

Movant.

Supreme Court No. M.R.

Commission No. 2023PR00047

MOTION PURSUANT TO SUPREME COURT RULE 762(a)

Movant, Jan R. Kowalski, respectfully represents to the Court that:

1. Movant was licensed to practice law in Illinois on June 12, 2007.
2. Movant desires to have her name stricken from the Roll of Attorneys pursuant to Rule 762(a), effective immediately.
3. Filed contemporaneously with this motion are a statement of charges prepared by the Administrator and Movant's affidavit in support of this motion.

WHEREFORE, Movant respectfully requests that the Court enter an order striking her name from the Roll of Attorneys.

Respectfully submitted,

/s/ Jan R. Kowalski

Jan R. Kowalski

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In the Matter of:

JAN R. KOWALSKI,

Movant,

No. 6291301.

Supreme Court No. M.R.

Commission No. 2023PR00047

STATEMENT OF CHARGES
PURSUANT TO SUPREME COURT RULE 762(a)

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Melissa A. Smart, pursuant to Supreme Court Rule 762(a), states that on the date Movant Jan R. Kowalski filed a motion requesting that her name be stricken from the Roll of Attorneys licensed to practice law in Illinois, a one-count complaint was pending against Movant before the Commission's Hearing Board, charging her with the conduct that formed the basis for Movant's plea of guilty to, and conviction for, concealing assets from a bankruptcy trustee, in violation of Title 18, United States Code, Section 152(1) before the Hon. Virginia M. Kendall in the Northern District of Illinois. Had that conduct been the subject of a hearing, the Administrator would have introduced the evidence described below, and that evidence would have clearly and convincingly established the conclusions of misconduct described below.

I. FACTUAL BACKGROUND

Movant's admissions and records from *United States of America v. Robert M. Kowalski & Jan R. Kowalski*, docket number 19CR226 in the federal district court in Chicago, including the judgment of conviction from that case, would have established the following facts and conclusions by clear and convincing evidence:

1. On March 28, 2019, a federal grand jury in the Northern District of Illinois returned an indictment charging Movant with the offense of bankruptcy fraud. That indictment was

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thereafter superseded on February 6, 2020 (First Superseding Indictment), August 27, 2020 (Second Superseding Indictment), February 25, 2021 (Third Superseding Indictment) and December 7, 2021 (Fourth Superseding Indictment). The Fourth Superseding Indictment, which contained thirty-seven counts and named Movant, her brother, Illinois attorney Robert M. Kowalski, and twelve other individuals as defendants, charged Movant with four counts of bankruptcy fraud, in violation of Title 18, United States Code, Section 157, paragraphs (1), (2) and (3) (Counts Eleven through Fourteen), and one count of concealing assets from a bankruptcy trustee, in violation of Title 18, United States Code, Section 152(1) (Count Fifteen) for her participation in a continuing bankruptcy fraud scheme to enable Robert M. Kowalski to conceal approximately \$567,200 from his creditors, and later a bankruptcy trustee. The matter was captioned *United States of America v. Robert M. Kowalski, Jan R. Kowalski, Rosallie C. Corvite, Jane V. Iriundo, fka Jane V. Tran, Alicia Mandujano, Cathy M. Torres, James R. Crotty, Boguslaw Kasprowicz, Miroslaw Krejza, Marek Matczuk, William M. Mahon, Janice M. Weston, George F. Kozdomba and William A. Kowalski*, docket number 19CR226, and was assigned to the Hon. Virginia M. Kendall.

2. Counts Eleven through Fifteen of the Fourth Superseding Indictment charged that Movant and Robert M. Kowalski, whom she represented in a 2018 Chapter 11 bankruptcy petition, committed the offense of bankruptcy fraud when they, as part of a scheme to defraud Robert M. Kowalski's creditors, including the Federal Deposit Insurance Corporation and the trustee appointed to administer Robert M. Kowalski's bankruptcy proceeding, made false and fraudulent representations, claims and promises in Robert M. Kowalski's bankruptcy petition and documents filed in the matter, in violation of Title 18, United States Code, Section 157, paragraphs (1), (2) and (3). More specifically, the indictment charged that on March 29, 2018, Robert M. Kowalski

filed a bankruptcy petition in bankruptcy case number 18-09130 in the United States District Court in Chicago. On November 26, 2018, Movant filed an appearance on behalf of Robert M. Kowalski in the bankruptcy case. (Count Eleven, ¶ 1). The indictment charged that Movant and Robert M. Kowalski filed statements and schedules in bankruptcy case number 18-09130 which intentionally omitted his interests in at least approximately \$567,200 in property belonging to his bankruptcy estate, including cash and cash equivalents, interests in corporate entities and trusts, causes of action, interests in real estate, and rents and the rights to collect rents. (Count Eleven, ¶ 2-3).

3. The indictment further charged that, following the filing of the bankruptcy petition, Movant and Robert M. Kowalski concealed his income from his creditors and the trustee by not depositing that income into the proper accounts and by filing reports which did not account for a material amount of his income. In furtherance of their scheme to conceal property and assets from Robert M. Kowalski's trustee and creditors, Movant utilized her trust account to conceal funds that were part of Robert M. Kowalski's bankruptcy estate and to engage in transactions with funds which were property of that bankruptcy estate for the purpose of concealing Robert M. Kowalski's interest in those funds and in property acquired with those concealed funds. (Count Eleven, ¶ 4).

4. The indictment also charged that, in or around June 2018 through October 2018, Movant and Robert M. Kowalski deposited cashier's checks and rental income checks into Movant's trust account, instead of tendering the checks to the trustee, and used those funds to engage in transactions, including the purchase of property, that went to the benefit of Movant's brother. The indictment further charged that Movant and her brother engaged in these actions in furtherance of their scheme to obstruct, misrepresent, conceal and hide property that belonged to Movant's brother's bankruptcy estate from his creditors and the trustee. (Count Eleven, ¶ 21).

5. On March 3, 2022, Movant appeared before Judge Kendall in docket number 19 CR 226-2 and voluntarily pled guilty to Count Fifteen of the Fourth Superseding Indictment which charged Movant with concealing assets from a bankruptcy trustee in violation of Title 18, United States Code, Section 152(1). In pleading guilty, Movant admitted the following facts:

- a) On or about March 29, 2018, Robert M. Kowalski filed a petition under Title 11 of the United States Code initiating a Chapter 11 bankruptcy case, *In re Robert M. Kowalski*, docket number 18-09130, in the United States Bankruptcy Court for the Northern District of Illinois;
- b) As a debtor in bankruptcy, Robert M. Kowalski was required to appear at a Meeting of Creditors and to testify under oath concerning his financial affairs;
- c) Movant was aware that Robert M. Kowalski had filed a Chapter 11 bankruptcy no later than on or about May 24, 2018, when Movant was present at Robert M. Kowalski's Meeting of Creditors;
- d) As Movant knew, Robert M. Kowalski's filing of a bankruptcy petition created a bankruptcy estate that included all legal and equitable interests of debtor Robert M. Kowalski in property as of the commencement of the case;
- e) Movant had previously filed her own bankruptcy, a Chapter 13, *In re Jan R. Kowalski McDonald*, 08-27573, and thus understood that all of Robert M. Kowalski's interests in property became the property of his bankruptcy estate;
- f) By filing a Chapter 11 bankruptcy petition, Robert M. Kowalski became a "debtor-in-possession" and was charged with certain obligations and responsibilities as if the debtor was a trustee;
- g) As a debtor-in-possession, Robert M. Kowalski was a fiduciary for his creditors, and his obligations included being accountable for all estate property;
- h) Movant understood that Robert M. Kowalski had a fiduciary obligation to his creditors;
- i) On or about August 7, 2018, the Bankruptcy Court issued an order removing Robert M. Kowalski as the debtor-in-possession and appointing a trustee to administer the *Kowalski* bankruptcy case;
- j) On or about November 26, 2018, Movant filed an appearance on behalf of Robert M. Kowalski in the *Kowalski* bankruptcy case and continued to represent Robert M. Kowalski through at least in or around January 2019;

- k) During the pendency of the *Kowalski* bankruptcy case, Movant used her attorney trust account both to conceal approximately \$364,600 in cash equivalents which she knew were property of Robert M. Kowalski's bankruptcy estate from Robert M. Kowalski's creditors and the Trustee and to engage in transactions with funds which were property of Robert M. Kowalski's bankruptcy estate for the purpose of concealing the bankruptcy estate's interest in those funds and in property acquired with those concealed funds;
- l) From in or around August through October 2018, Movant concealed from Robert M. Kowalski's creditors and the Trustee approximately \$352,100 in cashier's checks for which Robert M. Kowalski was both the remitter and the payee, by depositing the cashier's checks into her attorney trust account;
- m) In or around September through October 2018, Movant concealed from Robert M. Kowalski's creditors and the Trustee approximately \$3,400 in rent checks payable to Robert M. Kowalski by causing the checks to be deposited into her attorney trust account;
- n) In or around June, July, and October 2018, Movant concealed from Robert M. Kowalski's creditors and the Trustee approximately \$96,600, including funds which Movant had concealed in her attorney trust account, by using those funds, as described below, to purchase 6821 West 96th Street, Oak Lawn, Illinois (the Oak Lawn Property), in the name of a nominee for Robert M. Kowalski;
- o) On or about October 12, 2018, Movant concealed from Robert M. Kowalski's creditors and the Trustee approximately \$75,600, causing these funds to be wired to a title company account to fund the purchase of the Oak Lawn property;
- p) On or about September 13, 2018, Movant concealed from Robert M. Kowalski's creditors and the Trustee approximately \$2,500 which Movant had concealed in her attorney trust account by using the funds as earnest money in an attempt to purchase 9441 South Indiana Avenue, Chicago, Illinois, in the name of a fictitious trust of which Robert M. Kowalski was the beneficiary;
- q) In or around September through October 2018, Movant concealed from Robert M. Kowalski's creditors and the Trustee funds that had been concealed in her attorney trust account by purchasing approximately \$350,300 in cashier's checks payable to or for the benefit of Robert M. Kowalski;
- r) In or around October through December 2018, Movant concealed funds from Robert M. Kowalski's creditors and the Trustee by depositing into her attorney trust account approximately \$325,900 of the cashier's checks that Movant had purchased as described above;

- s) In or around October through December 2018, Movant concealed funds from Robert M. Kowalski's creditors and the Trustee through Movant's withdrawal of approximately \$241,800 in United States currency from her attorney trust account;
- t) On or about January 9, 2019, Movant filed and caused to be filed a Combined Response to Trustee's Motion For Accounting and Turnover of Estate Funds Against Jan Kowalski and Rule to Show Cause Against Jan Kowalski and Debtor (Combined Response), in the *Kowalski* bankruptcy case, in which Movant falsely represented that the approximately \$364,600, including cashier's checks for which Robert M. Kowalski was both the remitter and the payee and checks payable to Robert M. Kowalski, deposited into Movant's attorney trust account were not property of Robert M. Kowalski's bankruptcy estate;
- u) On or about January 14, 2019, Movant testified under oath during a hearing in the *Kowalski* bankruptcy case and made numerous false statements designed and intended to deceive creditors and the Trustee, including testimony that the hundreds of thousands of dollars in cashier's checks in which Robert M. Kowalski was both the remitter and the payee which Movant deposited in her attorney trust account were not property of the estate and were attorney's fees, and that these hundreds of thousands of dollars in purported attorney's fees became due and payable to Movant upon execution of retention agreements with entities known as Indomitable LLC, Piorun Properties LLC, and Burros Blancas; and
- v) Movant further provided to the Bankruptcy Court, creditors, and Trustee purported IOLTA trust account client ledgers and retention agreements which she knew were false, after-created, and back-dated to support her false testimony; and that from on or about March 29, 2018, through in or around June 2020, at Chicago, in the Northern District of Illinois, Eastern Division, Movant knowingly and fraudulently concealed from a trustee charged with the control and custody of property and, in connection with a case under Title 11, namely, *In re Robert M. Kowalski*, docket number 18-09130, from creditors and the United States Trustee, property belonging to the estate of a debtor Robert Kowalski in the amount of approximately \$364,600 in violation of Title 18, United States Code, Section 152(1).

6. On June 27, 2023, Judge Kendall entered a judgment of conviction in Movant's criminal case that, among other things, sentenced Movant to 37 months in prison, followed by two years of supervised release, and ordered Movant to pay \$357,492.92 in restitution. On July 12, 2023, Judge Kendall entered an amended judgment of conviction in Movant's criminal case

modifying one of the terms of Movant’s supervised release to specifically include the condition that Movant refrain from the practice of law during the two-year term of supervised release. All other aspects of the June 27, 2023 judgment of conviction, including the prison term and restitution, remained unchanged.

II. CONCLUSIONS OF MISCONDUCT

7. By reason of the conduct described above, Movant has engaged in the following misconduct:

- a. committed criminal acts that reflect adversely on her honesty, trustworthiness or fitness as a lawyer in other respects, by conduct including her conviction for the federal criminal offense of concealing assets from a bankruptcy trustee in violation of Title 18, United States Code, Section 152(1) and Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010); and
- b. conduct involving dishonesty, fraud, deceit or misrepresentation, by conduct including utilizing her attorney trust account to conceal funds from Robert M. Kowalski’s creditors and a bankruptcy trustee and making materially false statements to the United States Bankruptcy Court, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Melissa A. Smart
Melissa A. Smart

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JAN R. KOWALSKI,

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AFFIDAVIT

Affiant, Jan R. Kowalski, being first duly sworn, states:

1. Affiant has filed with this Court a motion to strike her name from the Roll of Attorneys licensed to practice law in Illinois, pursuant to Rule 762(a).

2. Affiant has received and reviewed a copy of the Administrator's statement of the charges that were pending against Affiant as of the filing of the instant motion. If the case proceeded to a hearing, the judgment of conviction would be offered into evidence and would constitute conclusive evidence of Affiant's guilt of the crimes for purposes of these disciplinary proceedings.

3. Affiant's motion is freely and voluntarily made.

4. Affiant understands the nature and consequences of this motion.

5. 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 she verily believes the same to be true.

DATED: 7/18/2023

/s/ Jan R. Kowalski

Jan R. Kowalski

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Movant,

No. 6291301.

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Commission No. 2023PR00047

NOTICE OF FILING

TO: Jan R. Kowalski
Attorney- Respondent
1918 West Cermak Road
Chicago, IL 60608-4237
Email: jdma22@hotmail.com

PLEASE TAKE NOTICE that on August 2, 2023, electronic copies of Movant's MOTION PURSUANT TO SUPREME COURT RULE 762(a), Administrator's STATEMENT OF CHARGES and Movant's AFFIDAVIT, were submitted to the Clerk of the Supreme Court for filing. On that same date, a copy was served on Movant, by email at jdma22@hotmail.com at or before 4:00 p.m.

Respectfully submitted,

Jerome Larkin, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Melissa A. Smart

Melissa A. Smart

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PROOF OF SERVICE

The undersigned, an attorney, hereby certifies, pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/109, that the Administrator served copies of the Notice of Filing, Movant's MOTION PURSUANT TO SUPREME COURT RULE 762(a), Administrator's STATEMENT OF CHARGES PURSUANT TO SUPREME COURT RULE 762(a) and Movant's AFFIDAVIT, on the individual at the address shown on the forgoing Notice of Filing, by regular mail and email at jdma22@hotmail.com on August 2, 2023 at or before 4:00 p.m.

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 she verily believes the same to be true.

/s/ Melissa A. Smart

Melissa A. Smart

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