

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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| In re<br><br>Kenneth Mitchell-Phillips SR,<br><br>Lawyer (Bar No. 47720). | Supreme Court No.<br><br>DISCIPLINARY COUNSEL<br>DECLARATION |
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I, Erica Temple, declare and state:

1. I am the disciplinary counsel assigned to the disciplinary proceedings against lawyer Kenneth Mitchell-Phillips Sr., and I have primary responsibility for the investigation and the litigation of grievances against Mr. Mitchell-Phillips. I make the statements in this declaration from personal knowledge and from my review of the records of the Office of Disciplinary Counsel (ODC). This statement is submitted in support of the accompanying Petition for Immediate Interim Suspension under Rule 7.2(a)(3) of the Rules for Enforcement of Lawyer Conduct (ELC).

2. ODC received Linda Ann Tiokasin's grievance on June 14, 2016. On June 16, 2016, ODC sent a letter to Mr. Mitchell-Phillips requesting his response to the grievance. He did not respond. On July 20, 2016, ODC sent Mr. Mitchell-Phillips a letter requiring his response within ten days. Mr. Mitchell-Phillips has never responded to this letter. Documents relating to Ms. Tiokasin's grievance are attached as Exhibit A.

3. ODC received Eduart Singeorzan's grievance on July 15, 2016. On July 26, 2016, ODC sent a letter to Mr. Mitchell-Phillips requesting his response to the grievance. He did not respond. On August 30, 2016, ODC sent Mr. Mitchell-Phillips a letter requiring his response within ten days. Mr. Mitchell-Phillips has never responded to this letter. Documents relating to Mr. Singeorzan's grievance are attached as Exhibit B.

4. On August 17, 2016, Mr. Mitchell-Phillips was personally served with a subpoena requiring his attendance at a deposition relating to the Tiokasin grievance, scheduled for August 31, 2016. Mr. Mitchell-Phillips failed to appear at the deposition on August 31, 2016. The subpoena, affidavit of service and transcript are attached as Exhibit C.

5. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

9/13/16 Seattle, WA  
Date & Place

  
Erica Temple, Bar No. 28458  
Disciplinary Counsel

# **EXHIBIT A**



# WSBA

## OFFICE OF DISCIPLINARY COUNSEL

### Acknowledgment That We Have Received A Grievance

Date: June 16, 2016 ODC File: 16-00924

#### To the Grievant:

We received your grievance against a lawyer and opened a file with the file number indicated above. We are requesting a written response from the lawyer. You generally have a right to receive a copy of any response submitted by the lawyer. After we review the lawyer's response, if it appears that the conduct you describe is not within our jurisdiction, does not violate the Supreme Court's Rules of Professional Conduct (RPC), or does not warrant further investigation, we will write you a letter to tell you that. If we begin an investigation of your grievance, we will give you our investigator's name and telephone number. If, as a result of an investigation and formal proceeding, the lawyer is found to have violated the RPC, either the Disciplinary Board or the Supreme Court may sanction the lawyer. Our authority and resources are limited. We are not a substitute for protecting your legal rights. We do not and cannot represent you in legal proceedings. If you believe criminal laws have been broken, you should contact your local police department or prosecuting attorney. There are time deadlines for both civil and criminal proceedings, so you should not wait to take other action.

Grievances filed with our office are not public information when filed, but **all information related to your grievance may become public**. Our office handles a large number of files. We urge you to communicate with us only in writing, including any objection you have to information related to your grievance becoming public, until we complete our initial review of your grievance. You should hear from us again within four weeks.

### Request for Lawyer Response

#### To the Lawyer:

The grievance process is governed by the Rules for Enforcement of Lawyer Conduct (ELC). Although we have reached no conclusions on the merits of this grievance, we are requesting your preliminary written response. If you do not respond to this request within **thirty (30) days** from the date of this letter, we will take additional action under ELC 5.3(h) to compel your response. You must personally assure that all records, files, and accounts related to the grievance are retained until you receive written authorization from us, or until this matter is concluded and all possible appeal periods have expired.

Absent special circumstances, and unless you provide us with reasons to do otherwise, **we will forward a copy of your entire response to the grievant**. If the grievant is not your client, or you are providing personal information, please clearly identify any information to be withheld and we will forward a copy of your redacted response to the grievant, informing the grievant that he or she is receiving a redacted copy. Decisions to withhold information may be considered by a review committee of the Disciplinary Board. If you believe further action should be deferred because of pending litigation, please explain the basis for your request under ELC 5.3(d).

Sincerely,

A handwritten signature in cursive script that reads "Felice P. Congalton".

Felice P. Congalton  
Associate Director

Original: **Grievant: Linda Tiokasin**  
cc: **Lawyer: Kenneth Mitchell-Phillips Sr. (with copy of grievance)**

DO NOT SEND US ORIGINALS. We will scan and then destroy the documents you submit.



# WSBA

## OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton  
Associate Director

July 20, 2016

Kenneth Mitchell-Phillips Sr.  
The Law Offices of Ken Mitchell-Phillips  
650 NE Holladay St Ste 1600  
Portland, OR 97232-2035

Re: ODC File: 16-00924  
Grievance filed by Linda Tiokasin

Dear Mr. Mitchell-Phillips:

We asked you to provide a written response to the above referenced grievance. To the best of our knowledge, your response, which is required by Rule 5.3(b) of the Rules for Enforcement of Lawyer Conduct (ELC), has not been received.

Under ELC 5.3(h), you must file a written response to the allegations of this grievance within ten days of this letter, *i.e.*, on or before **August 2, 2016**. If we do not receive your response within the ten-day period, we will subpoena you for a deposition. If we must serve a subpoena, you will be liable for the costs of the deposition, including service of process, and attorney fees of \$500. You should be aware that failing to respond is, in itself, grounds for discipline and may subject you to interim suspension under ELC 7.2(a)(3).

Sincerely,

A handwritten signature in cursive script that reads "Felice P. Congalton".

Felice P. Congalton  
Associate Director

cc: Linda Tiokasin

# **EXHIBIT B**



# WSBA

## OFFICE OF DISCIPLINARY COUNSEL

### Acknowledgment That We Have Received A Grievance

Date: July 26, 2016      ODC File: 16-01098

#### **To the Grievant:**

We received your grievance against a lawyer and assigned the file number indicated above. The Office of Disciplinary Counsel must review and may investigate a grievance against a lawyer to determine if the lawyer's conduct should affect his or her license to practice law. We are requesting a written response from the lawyer. After we review the lawyer's response, if we believe your grievance should be dismissed, we will write you a letter to tell you that. If we begin an investigation of your grievance, the staff member assigned will contact you. We are not a substitute for protecting your legal rights. We cannot offer you legal advice or represent you in legal proceedings. There are time deadlines for civil and criminal cases, so you should not wait to take other action.

Grievances filed with our office are not public information when filed, but **all information related to your grievance may become public**. We urge you to communicate with us only in writing, including any objection to grievance information becoming public, until we complete our initial review of your grievance. You should hear from us again within four weeks.

### Request for Lawyer Response

#### **To the Lawyer:**

The grievance process is governed by the Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). Although we have reached no conclusions on the merits of this grievance, we are asking for your preliminary written response. If you do not respond to this request within **thirty (30) days** from the date of this letter, we will take additional action under ELC 5.3(h) to compel your response. You must personally assure that all records, files, and accounts related to the grievance are retained until you receive written authorization from us, or until this matter is concluded and all possible appeal periods have expired.

Absent special circumstances, and unless you provide us with reasons to do otherwise, **we will forward a copy of your entire response to the grievant**. See ELC 5.1(c)(3)(A) about disciplinary counsel's limited ability to withhold information from a grievant, and [wsba.org/Licensing-and-Lawyer-Conduct/File-a-Complaint-Against-a-Lawyer/Responding-to-a-Grievance](http://wsba.org/Licensing-and-Lawyer-Conduct/File-a-Complaint-Against-a-Lawyer/Responding-to-a-Grievance) for additional information. If you believe further action should be deferred because of pending litigation, please explain the basis for your request under ELC 5.3(d).

Sincerely,

Felice P. Congalton  
Associate Director

Original:      **Grievant: Eduart Singeorzan**  
cc:              **Lawyer: Kenneth Mitchell-Phillips Sr. (with copy of grievance)**

DO NOT SEND US ORIGINALS. We will scan and then destroy the documents you submit.



# WSBA

## OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton  
Associate Director

August 30, 2016

Kenneth Mitchell-Phillips Sr.  
The Law Offices of Ken Mitchell-Phillips  
650 NE Holladay St Ste 1600  
Portland, OR 97232-2035

Re: ODC File: 16-01098  
Grievance filed by Eduart Singeorzan

Dear Mr. Mitchell-Phillips:

We asked you to provide a written response to the above referenced grievance. To the best of our knowledge, your response, which is required by Rule 5.3(b) of the Rules for Enforcement of Lawyer Conduct (ELC), has not been received.

Under ELC 5.3(h), you must file a written response to the allegations of this grievance within ten days of this letter, i.e., on or before **September 12, 2016**. If we do not receive your response within the ten-day period, we will subpoena you for a deposition. If we must serve a subpoena, you will be liable for the costs of the deposition, including service of process, and attorney fees of \$500. You should be aware that failing to respond is, in itself, grounds for discipline and may subject you to interim suspension under ELC 7.2(a)(3).

Sincerely,

A handwritten signature in cursive script that reads "Felice P. Congalton".

Felice P. Congalton  
Associate Director

cc: Eduart Singeorzan

# **EXHIBIT C**



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Erica Temple  
Disciplinary Counsel

direct line: (206) 727-8328  
fax: (206) 727-8325

August 3, 2016

**HAND DELIVERED WITH SUBPOENA DUCES TECUM**

Kenneth Mitchell-Phillips Sr.  
The Law Offices of Ken Mitchell-Phillips  
650 NE Holladay St Ste 1600  
Portland, OR 97232-2035

The Law Offices of Ken Mitchell-Phillips, P.C.  
1217 NE Burnside Rd, Suite 801,  
Gresham, OR 97080

Kenneth Mitchell-Phillips  
3201 SW Brixton Ave  
Gresham, OR 97080-8483

Re: Grievance of Linda Tiokasin against lawyer Kenneth Mitchell-Phillips Sr.  
ODC File No. 16-00924

Dear Mr. Mitchell-Phillips Sr.:

Enclosed is a subpoena duces tecum compelling your attendance at a deposition in accordance with Rule 5.3(h) of the Rules for Enforcement of Lawyer Conduct (ELC). The subpoena has been issued because of your failure or refusal to cooperate with this investigation. As you already have been informed, you will be liable for the costs associated with the deposition, including service of the subpoena, court reporter charges, and a \$500 attorney fee.

We wish to avoid any further delay in the completion of this investigation. Accordingly, we will not cancel or continue the deposition unless disciplinary counsel so confirms in writing. Absent a written confirmation of cancellation or continuance, your appearance at the deposition in our offices on August 31, 2016 at 10:00 am. is mandatory. If you fail to appear, we may treat your failure to appear as a violation of disciplinary rules, we may refer this grievance to Review

Kenneth Mitchell-Phillips SR

August 3, 2016

Page 2

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Committee with a recommendation of a public disciplinary hearing without your response, and we may petition the Washington Supreme Court for your immediate interim suspension from the practice of law under ELC 7.2(a)(3).

Sincerely,

A handwritten signature in black ink, appearing to read "Erica Temple", with a long horizontal line extending to the right.

Erica Temple  
Disciplinary Counsel

Enclosure

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
Kenneth Mitchell-Phillips SR,  
Lawyer (Bar No. 47720).

ODC File No. 16-00924  
SUBPOENA DUCES TECUM

THE STATE OF WASHINGTON TO: Kenneth Mitchell-Phillips SR

YOU ARE HEREBY COMMANDED under Rules 5.3 and/or 5.5 of the Rules for Enforcement of Lawyer Conduct (ELC) to be and appear at the Washington State Bar Association offices, 1325 4<sup>th</sup> Avenue, Suite 600, Seattle, WA 98101, on August 31, 2016 at 10:00 a.m., to testify in investigatory proceedings being conducted by the Office of Disciplinary Counsel of the Washington State Bar Association. The testimony will be recorded by a certified court reporter.

YOU ARE FURTHER COMMANDED to bring the following with you at the above time:

Your complete file and whatever documents may be in your possession or control relating to your representation of Linda Ann Tiokasin, and all financial records,

1 including trust account and client ledgers, canceled checks, and bank statements  
2 relating to funds received in connection with your representation of Ms. Tiokasin.

3  
4 Dated this 3 day of August 2016.

5 

6 Erica Temple, Bar No. 28458  
7 Disciplinary Counsel

8 CR 45 Sections (c) and (d):

9 (c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

10 (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

11 (B) Subject to subsection (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

12 (3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) fails to comply with RCW 5.56.010 or subsection (c)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

13 (iv) subjects a person to undue burden, provided that the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

14 (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

15 (d) Duties in Responding to Subpoena.

16 (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

17 (2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

18 (B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information in camera to the court for a determination of the claim. The person responding to the subpoena must preserve the information until the claim is resolved.

**BEFORE THE DISCIPLINARY BOARD OF THE**  
**WASHINGTON STATE BAR ASSOCIATION**

Case Number: 16-00924

**IN RE**

**KENNETH MITCHELL-PHILLIPS SR,  
LAWYER (BAR NO. 47720)**

Service Documents:  
CORRESPONDENCE; SUBPOENA  
DUCES TECUM

For:

WASHINGTON STATE BAR ASSOCIATION  
1325 - 4th Avenue  
Suite 600  
Seattle, WA 98101-2539

Received by VANCOUVER LEGAL MESSENGERS, INC. to be served on **KENNETH MITCHELL-PHILLIPS SR, 3201 SW BRIXTON AVE, GRESHAM, OR 97080.**

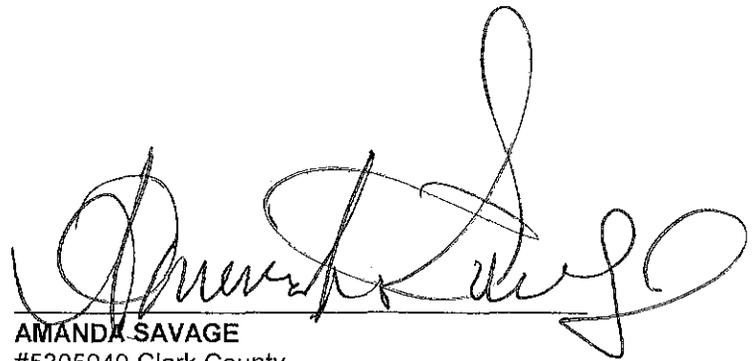
I, AMANDA SAVAGE, do hereby affirm that on the **17th day of August, 2016** at **7:35 pm, I:**

Personally served the within named person with a true copy of the **CORRESPONDENCE; SUBPOENA DUCES TECUM**, at the address of **3201 SW BRIXTON AVE, GRESHAM, OR 97080** pursuant to state statutes.

**BEFORE THE DISCIPLINARY BOARD OF THE  
WASHINGTON STATE BAR ASSOCIATION For 16-00924**

I certify that I am over the age of 18, a US citizen, and have no interest in the above action. I hereby state under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

DATED this 30 day of August, 2016, at Clark County, Vancouver, Washington.



**AMANDA SAVAGE**  
#5305949 Clark County

**VANCOUVER LEGAL MESSENGERS, INC.**  
212 W 13th Street  
Suite H  
Vancouver, WA 98660  
(360) 695-3654

Our Job Serial Number: VLM-2016001054  
Service Fee: \$60.00

BEFORE THE DISCIPLINARY BOARD  
OF THE WASHINGTON STATE BAR ASSOCIATION

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IN RE: )  
 ) ODC File No. 16-00924  
KENNETH MITCHELL-PHILLIPS SR, )  
 )  
Lawyer (Bar No. 47720) )

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SCHEDULED DEPOSITION UPON ORAL EXAMINATION OF  
KENNETH MITCHELL-PHILLIPS SR

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Wednesday, August 31, 2016  
10:23 a.m. to 10:24 a.m.

Held at the Offices of  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, Washington

REPORTED BY: J. GAYLE HAYS, RPR, CCR  
Registered Professional Reporter  
Washington CCR No. 1964  
Treece, Shirley & Brodie, Inc.  
425.652.9497  
haysreporting@gmail.com

A P P E A R A N C E S

FOR THE WASHINGTON STATE BAR ASSOCIATION:

Erica W. Temple  
Disciplinary Counsel  
Office of Disciplinary Counsel  
Washington State Bar Association  
1325 4th Avenue, Suite 600  
Seattle, Washington 98101-2539  
206.727.8328  
ericat@wsba.org

NO APPEARANCE BY THE RESPONDENT:

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MS. TEMPLE: On the record. Good morning.

This is in the matter of Kenneth Mitchell-Phillips, Senior, ODC File No. 16-00924. Mr. Mitchell-Phillips is not present.

I have not received a phone call, email or letter from him this morning. He was served personally by process server on August 17, 2016, and he is not present today. Off the record.

(Proceedings concluded at 10:24 a.m.)



**FILED**  
SEP 15 2016  
WASHINGTON STATE  
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

Kenneth Mitchell-Phillips SR,  
  
Lawyer (Bar No. 47720).

Supreme Court No.

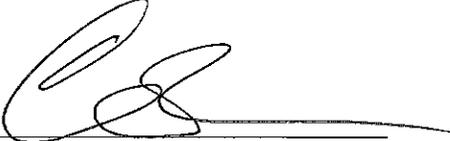
DECLARATION OF MAIL  
SERVICE

The undersigned Disciplinary Counsel of the Washington State Bar Association declares that she caused a copy of the Petition for Interim Suspension and Disciplinary Counsel Declaration to be mailed by regular first class mail with postage prepaid on September 13, 2016 to:

Kenneth Mitchell-Phillips Sr.  
The Law Offices of Ken Mitchell-Phillips  
650 NE Holladay St Ste 1600  
Portland, OR 97232-2035

I declare under penalty of perjury under the laws of the State of Washington that the foregoing declaration is true and correct.

9/13/16 Seattle, WA  
Date and Place

  
Erica Temple,  
Bar No. 28458  
Disciplinary Counsel  
1325 4<sup>th</sup> Avenue, Suite 600  
Seattle, WA 98101-2539  
(206) 727-8328