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<b>DAVID F. STERN</b>	:	<b>COURT OF COMMON PLEAS</b>
<i>Plaintiff,</i>	:	<b>PHILADELPHIA COUNTY, PA</b>
	:	
v.	:	<b>No. 191200319</b>
	:	
<b>POND LEHOCKY STERN GIORDANO</b>	:	<b>Term, December 2019</b>
<b>LLP; SAMUEL H. POND;</b>	:	
<b>JERRY M. LEHOCKY</b>	:	<b>COMMERCE PROGRAM</b>
and	:	
<b>THOMAS J. GIORDANO</b>	:	
<i>Defendants.</i>	:	

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**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFF’S VERIFIED EMERGENCY PETITION FOR INJUNCTIVE RELIEF**

Plaintiff David F. Stern (“Stern”), through his undersigned counsel, respectfully submits this Memorandum of Law in support of his Verified Emergency Petition for Injunctive Relief (the “Petition”) against defendants Pond Lehocky Stern Giordano LLP (the “Firm” or the “Partnership”), Samuel H. Pond (“Pond”), Jerry M. Lehocky (“Lehocky”) and Thomas J. Giordano (“Giordano”; Pond, Lehocky and Giordano are collectively referred to herein as the “Pond Defendants”).

**I. PRELIMINARY STATEMENT**

The Firm is one of the largest workers’ compensation and Social Security disability law firms in the region, having more than 40 attorneys and 250 staff members. Stern is one of the three founding partners of the Firm and, since its formation, has been integral to the Firm’s success as its top revenue generator, *de facto* managing partner of the worker’s compensation

department and mentor to numerous associates who have lined up outside his office to seek out his advice. This Petition arises from the unlawful, duplicitous, conniving and malicious conduct precipitously taken by the Pond Defendants.

On December 3, 2019, Stern commenced this action pursuant to 15 Pa.C.S. § 8481(a)(4)(iii), seeking an order from the Court dissolving the Partnership on the grounds that defendants' conduct, as detailed in the Complaint, makes it not reasonably practicable to carry on the business in partnership with them. A true and correct copy of the Complaint is attached hereto as **Exhibit "1"** and incorporated herein by reference.

On December 10, 2019, in furtherance of the Pond Defendants' wrongful conduct, oppression and freezing out of Stern, and in retaliation against him for having exercised his statutory right to seek dissolution, the Pond Defendants have purportedly caused Stern to be "expelled" from the Partnership, without any legitimate basis for doing so. The "expulsion" is null and void as a result of the Pond Defendants' unlawful conduct.

Immediately following the alleged "expulsion", the Pond Defendants have taken immediate, retributive, unlawful and unfair action against Stern, which runs contrary not only to Stern's interests but to the interests of the Partnership and the Firm's clients.

The Pond Defendants have and continue to interfere with Stern's relationships with his clients having delivered to them, within minutes of his alleged "expulsion", emails or letters (the "Client Selection Notices") pressuring them into deciding whether to sever their relationship with Stern in favor of their new venture, "Pond Lehocky".

The Client Selection Notices are vague and wholly insufficient. The Pond Defendants have made it appear that Stern's whereabouts are "unknown", causing some clients to believe

Stern has been physically harmed and others to believe he stopped practicing law and otherwise causing extreme confusion and upsetment amongst his clients.

The Pond Defendants' retaliatory, egregious and unlawful conduct, which blatantly violates the common law and statutory fiduciary duties that the Pond Defendants owe to Stern, include, *inter alia*,

- a. "locking" Stern out of the Firm and its computers and phones;
- b. cutting off his communication with his clients and staff;
- c. barring him from entering any of the Firm's offices or attending any Firm events;
- d. preventing him from coming to retrieve any personal belongings from the office;
- e. disseminating, without notice to, or the consent of Stern, the Client Selection Notices to Stern's clients and otherwise contacting and meeting with them for purposes of pressuring them into hastily deciding whether to sever their relationship with Stern without having sufficient information and without having been given a way to contact Stern to discuss the matter;
- f. usurping and misappropriating the assets and opportunities of the Partnership to the benefit of the Pond Defendants and their new venture "Pond Lehocky".

Accordingly, as explained herein, the Court should enter an injunction in favor of Stern to restore the parties to the *status quo ante* and appoint a receiver or special master/ neutral to oversee the Partnership's affairs during the pendency of this action.

## II. QUESTION PRESENTED

Should the Court enter injunctive relief in favor of Stern? *Suggested Answer: Yes.*

## III. FACTS

### The Partnership Must be Dissolved

As detailed in the Complaint, as a result of certain imaginary complaints that Pond wrongly believed Stern had made toward him, Pond has gone on the warpath against Stern attempting to make his life at the Firm so untenable that Stern voluntarily withdraws from the Partnership and accepts a one-dollar buyout of his 31.67% ownership stake in the Firm which has been valued in excess of \$90,000,000 by valuation experts hired by Pond himself.

Pond has admitted to Stern that the complaints were never actually made by Stern and were fanciful.

Upon information and belief, Pond was simply jealous of the respect that Stern has generated at the Firm and erroneously perceived Stern as a threat to his dictatorial ways.

Stern's statutory claim for dissolution is well founded and likely to succeed on the merits inasmuch as the Pond Defendants cannot dispute that as a result of the Pond Defendants' conduct relating to the Partnership business, it is no longer reasonably practicable to carry on the business in partnership together.

Indeed, the evidence in this case, most of which has not even been provided to Stern or discovered, will demonstrate that "it not reasonably practicable to carry on the business" as a result of:

- a. Pond's oppressive conduct directed toward Stern;
- b. Pond's efforts to disrupt Stern's practice;
- c. Pond's efforts to turn the other equity partners against Stern;

- d. Pond's repeated and false accusations that Stern has declared an intent to voluntary withdraw from the Partnership;
- e. Pond's false accusations that Stern is placing the Firm, its employees and clients in jeopardy; and
- f. Pond's actions taken on behalf of the Firm, including cutting him out of a lucrative Firm venture in Washington D.C., promising to remove his name from the Firm's masthead and entering into a transaction with the Philadelphia 76ers, forming a new firm, among other things, without Stern's knowledge and input.

### **Stern's Purported Expulsion**

On December 10, 2019, at 4:30 p.m., Pond emailed Stern, Lehocky and Giordano announcing a "partners' meeting" that day at 5:30 p.m. in his office. A true and correct copy of the email is attached hereto as **Exhibit "2"**. No partners' meetings have been held since before July of 2019. Firm Partners' meetings have never been scheduled on just one hour's notice.

At the time the meeting was scheduled, Stern was out of the office, which the Pond Defendants knew. His calendar, available to the entire Firm, including, Pond, stated Stern was out of the office at a meeting from 2:30 to 5:00 p.m.

The meeting was deliberately scheduled on less than reasonable advance notice and at a time when they knew Stern was out of the office and unavailable.

At 5:44 p.m., a mere fourteen (14) minutes after the purported partners' meeting had started, Pond emailed Stern stating that "[p]ursuant to a call of a vote conducted at the partnership meeting of December 10, 2019, the partnership has voted to expel you from the partnership." A true and correct copy of the expulsion email is attached hereto as **Exhibit "3"**.

In the email, Pond advised Stern not to enter any of the Firm's offices or to attend any Firm events.

Pond also claimed that Stern owed the Firm "approximately \$311,000.00", and that any "consideration" owed to him (i.e., \$1.00) would be "offset" against that amount.

The bogus claim that Stern somehow owed the Firm "approximately \$311,000.00" was made without explanation or support and without having provided to him any of the financial information previously requested by Stern in writing on December 5, 2019.

Previously, on November 18, 2019, Pond presented Stern with an absurd and unsolicited buy-out of his 31.67% share of the Firm (which has been valued in excess of \$90,000,000 by persons hired by Pond himself), which, at bottom, ended with Stern paying the Firm approximately \$200,000.

Stern's personal belongings are being stored in boxes at the office and his name has been removed from the signage around the office.

### **Interference and Usurpation**

On December 10, 2019 at 6:20 p.m., Jennifer Heinz, one of Pond's subordinates and non-lawyer Firm employee, advised the staff that the Firm has "rebranded" and that as part of the "launch of our rebrand" a host of new documents had been created, including new contingency fee agreements (CFA's), "for you to hand out to clients immediately", including Stern's clients. A true and correct copy of Heinz's email is attached hereto as **Exhibit "4"**.

In addition, amongst the newly created documents, are new "Client Packages" and "One Sheets", which essentially serve as a law firm's resume that provides prospective clients with information about the firm, highlighting why prospective clients should hire the firm, and new letterhead. *See id.*

The Pond Defendants have thus executed on a plan to usurp the opportunities of the Partnership in favor of a new venture, a plan which, upon information and belief, the Pond Defendants have had in the works since as early as June of 2019.

In furtherance of their scheme, Pond has caused the formation of a new entity called “Pond Lehocky, LLC”, a Delaware professional Limited Liability Company, expressly for the purposes of engaging in the practice of law.<sup>1</sup> A true and correct copy of the Pennsylvania Foreign Registration Statement is attached hereto as **Exhibit “5”**.

The Firm’s website’s “Terms of Use” page now declares “Welcome to our website (the “site”), which is owned and operated by Pond Lehocky, LLP”.

Heinz, the Firm’s Chief Human Resource Officer, is using “Pond Lehocky, LLP” in her email signature in emails sent to Firm staff, including those concerning the “rebranding”.

Presently, there is no entity registered of record in the Commonwealth of Pennsylvania called “Pond Lehocky, LLP.”

The Pond Defendants are using a new “Pond Lehocky” logo and operating the revamped website that has been scrubbed of any mention of Stern, one of its founders.

The Pond Defendants are using the Partnership’s assets, including its offices, staff, attorneys and other resources in furtherance of their interests and their new venture.

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<sup>1</sup> Duane Morris LLP executed and filed the formation document. Duane Morris has represented the Firm and Stern, individually, drafting his living will and preparing his taxes and providing legal advice regarding the same. Fox Rothschild LLP has entered their appearance in this action for the defendants. Abe Reich, Esq. previously represented Stern when the Stern, Pond, and Lehocky left their prior firm and formed the Partnership. He has also served as outside “general counsel” to the Firm since its inception and has worked closely with Stern on Firm matters. Upon information and belief, assets of the Partnership, of which Stern owns 31.67%, are being used to pay the Firm’s general counsel to take adverse action against Stern. Stern does not waive the conflict and specifically reserves his right to move to disqualify Fox Rothschild LLP and its lawyers from representing defendants in this action against him.

Upon information and belief, the Pond Defendants are misusing Partnership assets for purposes of a lucrative new legal venture in Washington D.C. and a recent transaction with the Philadelphia 76ers.

With respect to Stern's cases and clients, the Pond Defendants have directed Stern's staff not to take calls, not to file any petitions and Pond himself is usurping Stern's cases by reassigning them to himself.

Without Stern's knowledge or consent, Pond has disseminated Client Selection Notices to his clients informing them that "your attorney [Stern] is no longer with our firm", and pressuring them, to decide "as soon as possible" between Pond and Lehocky or Stern and another lawyer.

The Client Selection Notices refer to and appear to have been sent on behalf of "Pond Lehocky, LLP". A true and correct copy of one such client selection notice is attached hereto as **Exhibit "6"**.

The Client Selection Notices do not accurately disclose the circumstances surrounding their dissemination (i.e., the Pond Defendants' wrongful conduct and Stern's complaint seeking to dissolve the Firm) and Stern's alleged "departure" (i.e., freeze out and wrongful expulsion), which is vaguely described.

The Client Selection Notices do not provide a way for the clients to contact Stern, their attorney.

The Client Selection Notices are misleading inasmuch as they do not disclose to the clients that if they select Stern, their files will be transitioned to Stern.

In response to the Client Selection Notices, clients have informed Stern that they "love him" and are extremely confused by the notices and the Pond Defendants' actions.



The Pond Defendants are directing attorneys to bring the Client Selection Notices with them to any events with the client in order to have them decide and sign the document in their presence, adding to the coercion.

At least one of Stern's clients, and likely others, inadvertently selected to remain with Pond Lehocky believing that he had no other choice but to do so, given the lack of information provided about Stern in the notice.

The Pond Defendants are also calling and meeting with clients for purposes of pressuring them to decide on who they wish to represent them and requesting that the clients meet personally with either Pond or Lehocky with whom they have no relationship.

On December 5, 2019, pursuant to 15 Pa.C.S. § 8446(c), Stern made demand for: (1) detailed summaries of all of the Partnership's receipts and disbursements; (2) copies of any new contract entered into by the Partnership; (3) an inventory of new cases opened and the attorney assigned to such case; (4) an inventory of referral cases opened; and (5) any other material information concerning the Partnership's business, financial condition and other circumstances. A true and correct copy of the demand is attached hereto as **Exhibit "7"**.

Despite Stern's demand for information that he is entitled to by statute, to date defendants have ignored the request, while they plunder and pillage the Partnership.

#### IV. ARGUMENT

##### A. Legal Standard

###### *i. Immediate Injunctive Relief*

“The purpose of injunctive relief is to preserve the status quo as it exists or previously existed before the acts complained of, thereby preventing irreparable injury or gross injustice.”

*See Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 529 Pa. 241, 602 A.2d 1277 (1992).

A party seeking a special or immediate injunction must establish that:

- (1) relief is necessary to prevent immediate and irreparable harm that cannot be compensated by money damages;
- (2) greater injury will occur from refusing the injunction than granting it;
- (3) the injunction will restore the parties to the *status quo* as it existed before the wrongful conduct;
- (4) the wrong is actionable and the right to relief is clear; and
- (5) the injunction is reasonably suited to abate the wrong.

*See Farm Journal, Inc. v. Tribune Entertainment Co.*, 2006 Phila. Ct. Com. Pl. LEXIS 217

(Philadelphia May 25, 2006; Sheppard, J.); *John G. Bryant Co. v. Sling Testing and Repair, Inc.*,

369 A.2d 1164, 1167 (Pa. 1977); *New Castle Orthopedic Assoc. v. Bums*, 392 A.2d 1383 (Pa.

1978); *Beck Computing Services v. Anderson*, 524 A.2d 990 (Pa. Super. 1987).

To be actionable, it must breach a duty imposed by statute or by common law. *See The York Group, Inc. v. Yorktowne Caskets, Inc.*, 924 A.2d 1234, 1241 (Pa. Super. 2007). To establish a clear right to relief, the petitioner must be able to show that he has a reasonable likelihood of success on the merits. *See T.W. Phillips Gas & Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776, 780 (Pa. Cmwlth. 1985).

The Pennsylvania Supreme Court has illustrated the “clear right” requirement as follows:

Where the threat of immediate and irreparable harm to the petitioning party is evident, that the injunction does no more than restore the status quo and the greater injury would result by refusing the requested injunction than granting it, an injunction may properly be granted where substantial legal questions must be resolved to determine the rights of the respective parties.

*Fischer v. Dep’t of Public Welfare*, 439 A.2d 1172, 1174 (Pa. 1982); *see also Shenango Valley Osteopathic Hospital v. Dep’t of Health*, 451 A.2d 434, 440 (Pa. 1982) (one seeking a preliminary injunction need not establish the merits of a claim absolutely, but need only establish a *prima facie* case).

The Court may enter an injunction even “where substantial legal questions must be resolved to determine the rights of the respective parties.” *Fischer v. Dep’t of Public Welfare*, 497 Pa. 267, 271, 439 A.2d 1172, 1174, 1982 Pa. LEXIS 378, \*5-6 (Pa. 1982).

Under the egregious circumstances presented here, plaintiff easily satisfies the criteria for immediate injunctive relief and for appointment of a receiver or special master/ neutral *pendente lite*.

## **B. The Court Should Enter Injunctive Relief in Favor of Plaintiff**

### ***i. Plaintiff Will Suffer Immediate and Irreparable Harm***

#### ***1. Dissipation***

Pennsylvania courts have held that dissipation of assets results in irreparable harm that cannot be compensated by money damages. *See, e.g., Williams v. Cresswell*, 2013 Pa. Dist. & Cnty. Dec. LEXIS 13363, at \*1 (Lancaster C.P. Aug. 26, 2013) (“Plaintiff will suffer immediate and irreparable harm and loss if Defendant is permitted to have control of any assets of [the

partnership] and/or to dissipate assets of such partnership which have been converted by him or are at risk of conversion by him” and plaintiff “has no adequate remedy at law.”<sup>2</sup>

Here, the Pond Defendants have and continue to usurp and misuse the assets of the Partnership to the benefit of their own interests and that of “Pond Lehocky, LLC” and/or “Pond Lehocky LLP” or some other new entity through which they are operating that is presently unknown to Stern.

## 2. *Statutory Violations*

“In Pennsylvania, the violation of an express statutory provision *per se* constitutes irreparable harm.” *Pa. Public Utility Commission v. Israel*, 356 Pa. 400, 52 A.2d 317 (1947).<sup>3</sup> This applies to violations of 15 Pa.C.S. § 8101 *et seq.* as well.

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<sup>2</sup> *Citizens Bank v. Myers*, 872 A.2d 827, 836 (Pa. Super. 2005) (“Since the undisputed record demonstrates that the account’s assets had their **genesis in theft**, there is a reasonable likelihood that absent an injunction, the assets will simply disappear or be dissipated); *Eagle Nat’l Bank v. ISCP Funding, LLC*, 24 Pa. D. & C.5th 414, 421 (Phila. C.P. May 3, 2011) (citation omitted) (“In Pennsylvania, a preliminary injunction maybe [sic] granted to enjoin the dissipation of funds” and holding “[i]n this case, enjoining [defendant] from using the disputed funds preserves the status quo among the parties.”); *Am. Express Travel Related Servs. Co. v. Laughlin*, 623 A.2d 854 (Pa. Super. 1993) (affirming order enjoining defendant from dissipating plaintiff’s assets and holding plaintiff had no adequate remedy at law); *Sheridan Broad. Networks v. NBN Broad.*, 693 A.2d 989, 995 n. 8 (Pa. Super. 1997) (citing *Cappiello v. Duca*, 672 A.2d 1373, 1377-79 (Pa. Super. 1996) (“lower court granted a preliminary injunction in favor of one partner in order to prevent the other partner from withdrawing funds out of the partnership’s account”)).

<sup>3</sup> Where the offending conduct sought to be restrained through preliminary injunction violates a statutory mandate, irreparable injury will have been established. *See Commonwealth v. Coward*, 489 Pa. 327, 414 A.2d 91, 98-99 (Pa. 1980) (holding that where a statute prescribes certain activity, the court need only make a finding that the illegal activity occurred to conclude that there was irreparable injury for purposes of issuing a preliminary injunction); *Pa. Public Utility Comm’n v. Israel*, 356 Pa. 400, 52 A. 2d 317, 321 (Pa. 1947) (holding that when the Legislature declares certain conduct to be unlawful, it is tantamount to calling it injurious to the public, and to continue such unlawful conduct constitutes irreparable injury for purposes of seeking injunctive relief); *Commonwealth ex rel. Corbett v. Snyder*, 977 A.2d 28 (Pa. Cmwlth. 2009) (affirming issuance of a preliminary injunction and finding that irreparable harm was presumed where there was a credible violation of the state consumer protection statute).

Pennsylvania statute, 15 Pa. C.S. § 8447(b), provides that “[t]he fiduciary duty of loyalty of a partner includes the duties:

(1) to account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner: ...

(iii) from the appropriation of a partnership opportunity; ...

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a person having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct of the partnership’s business before the dissolution of the partnership.

Violations of 15 Pa. C.S. § 8447 allow for the Court’s imposition of equitable remedies.

*See id.* at cmt.

Here, Pond, without accounting (or notice) to Stern formed “Pond Lehocky LLC”, a Delaware limited liability company on October 3, 2019 and licensed it to do business in Pennsylvania. He indicated on its registration form that the purpose of the LLC was the practice of law. The Pond Defendants are also now trading under the name “Pond Lehocky, LLP”.

The Pond Defendants are believed to be usurping and misappropriating the Partnership assets and corporate opportunities in furtherance of these new ventures. The Pond Defendants’ actions are a clear violation of § 8447(b)(2) and (3) in that it is believed to be in competition with the Partnership and Pond Lehocky, LLC was formed before dissolution of the Partnership.

Further, any business conducted by any other entity other than the Partnership would be a business opportunity for the Partnership, and thus wrongfully appropriated therefrom. These violations of express statutory provisions *per se* constitute irreparable harm.

### ***3. Breaches of Fiduciary Duties***

Injunctive relief has long been recognized as an appropriate remedy for the breach of fiduciary duties, particularly in the analogous and familiar context where a former employee unfairly competes with his employer for the employer's customers. *See e.g., Carl A. Colteryahn Dairy, Inc. v. Schneider Dairy*, 203 A.2d 469 at 471 (Pa. 1964) (former employer can enjoin the competitive use of confidential information obtained as a result of the trust and confidence of a former employment, even absent a restrictive covenant); *Hagy v. Premier Mfg. Corp.*, 172 A.2d 283 at 287-88 (Pa. 1961) (former employer is entitled to equitable protection against competitive use of information acquired by former employees in positions of trust); *Dozor Agency, Inc. v. Rosenberg*, 169 A.2d 771, 772 (Pa. 1961) (same); *A.M. Skier Agency, Inc. v. Gold*, 747 A.2d 936 (Pa. Super. 2000) (affirming injunction against plaintiff's ex-employee prohibiting him, from among other things, soliciting plaintiff's clients); *Boyd v. Cooper*, 410 A.2d 860 at 861 (Pa. Super. 1979) (fiduciary may be enjoined from use of information acquired in a confidential relationship in addition to being liable for damages resulting from breach of fiduciary duty).

Here, the Pond Defendants' conduct constitutes an egregious breach both of their common law fiduciary obligations to Stern and their statutory fiduciary obligations.

#### 4. *Unique Business Opportunity/ Interference*

“Pennsylvania courts have consistently held that the loss of a unique business opportunity constitutes ‘irreparable harm.’” *See e.g., The York Group, Inc. v. Yorktowne Caskets, Inc.*, 2007 PA Super 114, 924 A.2d 1234, 1242-43 (Pa. Super. 2007) (breach of exclusivity provision in distributor agreement loss of business opportunity sufficient to meet irreparable harm standard).<sup>4</sup>

“The relationship between a lawyer and his client is a serious, vital and solemn one. No third person may interfere with the relationship . . . .” *Joseph D. Shein, P.C. v. Myers*, 394 Pa. Super. 549, 556, 576 A.2d 985, 988, 1990 Pa. Super. LEXIS 957, \*9 (Pa. Super. 1990). Sending “misleading letters to clients accompanied by forms to be used by clients to discharge” an attorney constitutes tortious interference with that relationship. *Id.* at \*12.

In *Adler, Barish, Daniels, Levin and Cresskoff v. Epstein*, 393 A.2d 1175 (Pa. 1978), the Court reinstated an injunction to prohibit interference with a law firm’s clients, reasoning that the tortious interference undermined the clients’ freedom of choice in their selection of counsel. The defendants in *Adler*, while still employed by the plaintiff firm, alerted the firm’s clients that their new firm wanted to procure their active cases, and provided them with forms that would sever their relationship with the plaintiff firm and establish one with the new firm. The Court observed that the defendants’ aim was “to encourage speedy simple action” by the clients, which posed “too great a risk that clients would not have an opportunity to make a careful, informed decision.” *Adler*, at 1181.

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<sup>4</sup> *Sovereign Bank v. Harper*, 449 Pa. Super. 578, 674 A.2d 1085, 1093 (Pa. Super. 1996) (“[T]he impending loss of a business opportunity or market advantage may aptly be characterized as an ‘irreparable injury’”); *West Penn Specialty MSO, Inc. v. Nolan*, 1999 PA Super 218, 737 A.2d 295, 299 (Pa. Super. 1999) (court affirmed preliminary injunction enforcing a non-competition provision of an employment contract because doctor’s “departure signaled a significant loss of business opportunity and market advantage.”).

Here, the conduct is virtually the same. In a highly coordinated attack upon Stern and his clients, the Pond Defendants have contacted his clients *en masse* by telephone and through the Client Selection Notices, the contents of which are misleading, pressuring them to decide hastily whether to sever their relationship with him and without providing them with a way to contact Stern. Pond and Lehocky are also holding meetings with Stern's clients for the purpose of having the clients sever their relationship with Stern and transfer the relationship to Pond or Lehocky in furtherance of a new venture, to the detriment of the Partnership.

In *Adler*, the Supreme Court would not countenance anything less than full and fair disclosure and the opportunity for a client to make a choice as to who would represent him or her in as neutral and unpressured a context as possible. Here, the Pond Defendants' actions are designed to ensure that *none* of those safeguards are afforded to Stern's clients. The Pond Defendants actions have and continue to substantially interfere with Stern's existing client relationships. The Pond Defendants' actions have and continue to create extreme confusion amongst the clients, which in turn harms the relationship between Stern and his clients.

***ii. Greater Injury Will Result to Plaintiff if Injunctive Relief Is Denied***

The "balance of harms" overwhelmingly favors injunctive relief.

The only "harm" that might befall the Pond Defendants if injunctive relief were to be granted proscribing any dissipation or usurpation of Partnership assets, enjoining their breaches of fiduciary duty, and their tortious conduct, is that they would be forced to fairly "compete" with Stern for clients on a level playing field – one that, parenthetically, preserves the right of the clients to make an orderly and informed choice free of undue influence or coercion.

This is not a legally cognizable harm, and thus there is no "balance" of harms to consider.



***iii. Injunctive Relief Will Restore the Parties to Their Status as it Existed Immediately Prior to the Alleged Wrongful Conduct***

The *status quo* to be maintained here by a preliminary injunction is the legal status that preceded the pending controversy. See *Allegheny Anesthesiology Associates v. Allegheny General Hospital*, 826 A.2d 886, 894 (Pa. Super. 2003). Here, the *status quo* is the relationship between the parties before the Pond Defendants' breaches of fiduciary duty, and interference with his relationships with his clients. The injunctive relief sought by Stern will prevent the chaos caused by the Pond Defendants' actions and allow for the orderly dissolution of the Partnership and winding up of its affairs.

***iv. The Public Interest Favors Injunctive Relief***

Courts will sometimes require a showing that a preliminary injunction will not adversely affect the public interest. See e.g., *Warehime v. Warehime*, 860 A.2d 41, 47 (Pa. 2003). Here the interest of the clients, and the public interest in general, would be well-served by the grant of injunctive relief sought by Stern. Indeed:

The state bears a special responsibility for maintaining standards among members of the licensed professions. The interest ... in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the courts.' While lawyers act in part as 'self-employed businessmen,' they also act 'as trusted agents of their clients, and as assistants to the court in search of a just solution to disputes.'

*Ohralik v. Ohio State Bar Assoc'n*, 436 U.S. 447, 460 (1978) (internal citations omitted).

Here, the grant of injunctive relief will serve the interest of the clients, and of the public generally, in being able to voluntarily choose their legal representation on an orderly and informed basis without undue influence by the Pond Defendants.

***Plaintiff Is Likely to Succeed on the Merits***

Stern commenced this action pursuant to 15 Pa.C.S. § 8481(a)(4)(iii), seeking an order from the Court dissolving the Partnership on the grounds that the Pond Defendants' conduct, as detailed in the Complaint, has made it not reasonably practicable to carry on the business in partnership together. Indeed, it is clearly *impossible* to carry on the business partnership. There can be no dispute that in light the Pond Defendants' conduct, dissolution should be ordered.

**C. The Court Should Appoint a Receiver or Special Master/ Neutral**

The authority to appoint a receiver or special master/ neutral is governed largely by equitable principles. *See McDougal v. Huntingdon & Broad Top Mountain R.R. & Coal Co.*, 294 Pa. 108, 143 A. 574, 577 (Pa. 1928). "Receivership, as an extraordinary remedy, like an injunction, is frequently termed the hand or arm of the court, indicating not only authority and power to act, but a means of preserving equality and justice to all interested." *Id.*

Among the factors that various courts have considered are the existence of dissension among the partners, dissipation of the partnership assets, fraud or mismanagement by the controlling partners, the denial of the plaintiff partner's rights as a partner, and the balance of necessity and benefits against injury incident to the appointment of a receiver. *See Hankin v. Hankin*, 507 Pa. 603, 493 A.2d 675, 677-78 (Pa. 1985). All of which appear present here.

The requirements for appointment of a receiver overlap substantially with those for obtaining injunctive relief. *See McDougal*, 143 A. at 578.

Conversely, a court should not appoint a receiver when it will cause irreparable injury to the rights and interests of others, will result in greater injury than if no receiver was appointed, or will do no good. *See McDougal*, 143 A. at 578. However:

The rule of caution applies only to the determination of whether there is a good reason for such relief, but once such ground exists, courts are not denied the power inherent in them to prevent a scheme of irreparable injury and wrong merely because the movers speak and act in a corporate capacity. ***Solvent corporations are wrecked through mismanagement, dishonest acts and other wrongs*** .... Because judges proceed cautiously does not mean their hands are stayed. The court will not hesitate to make the appointment [citations omitted].

*Id.* (emphasis added.)

Here, the Pond Defendants are attempting to steal Stern's and the Partnership's assets - i.e., clients and cases - tortiously, and in violation of his fiduciary duties and ethical obligations. This establishes a clear right to the appointment of a receiver or special master/ neutral, as the assets need to be preserved against their unlawful conduct and purposes.

Irreparable harm is discussed above in the context of injunctive relief and applies here with equal force. There is no adequate remedy at law.

Like the balance of harms analysis in connection with plaintiff's request for injunctive relief, on the one side of the scale, the Court may place a receiver or special master/ neutral to ensure that the Firm is dissolved in an orderly and equitable fashion and clients can freely choose their lawyer free from duress and confusion.

Conversely, the Court, in the absence of a receiver, may place the Pond Defendants in a position of working without any oversight to unlawfully strip out and/or usurp all or substantially all of the Firm's assets and corporate opportunities in violation of their statutory obligations for their own benefit and that of their new venture.

In short, there is no balance to calibrate. The Pond Defendants cannot be trusted to act lawfully during the pendency of the action and to refrain from continuing to engage in the unlawful conduct herein described.

V. **RELIEF REQUESTED**

Plaintiff respectfully requests that the Court grant this Petition and enter the proposed form of order submitted herewith that, *inter alia*, (i) restores the *status quo ante*, (ii) enjoins the Pond Defendants and/or their proxies from engaging in any dissipation, misappropriation and/or usurpation of any Partnership assets and from any continued interference with Stern's client relationships, (iii) compels defendants to produce expedited discovery to plaintiff such that plaintiff can discover the full scope of their conduct, and (iv) appoints a receiver or special master/ neutral to oversee and/or manage the affairs of the Firm *pendente lite*.

Respectfully submitted,

Dated: December 12, 2019

**BRAVERMAN KASKEY, P.C.**

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