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In the
Supreme Court of Pennsylvania

DR. AHLAM KHALIL,
Plaintiff/Appellant,

v.

GERALD J. WILLIAMS, ESQUIRE; BETH COLE, ESQUIRE; WILLIAMS CUKER BEREZOFSKY, LLC,
Defendants/Appellees.

Appeal from Order of January 5, 2021 of the Superior Court of Pennsylvania at No. 2549 EDA 2019

BRIEF FOR AMICI CURIAE THE PENNSYLVANIA BAR ASSOCIATION, THE PHILADELPHIA BAR ASSOCIATION AND THE ALLEGHENY COUNTY BAR ASSOCIATION IN SUPPORT OF AFFIRMANCE

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STATEMENT OF INTEREST

The Pennsylvania Bar Association ("PBA") submits this brief as *amicus curiae*. The PBA is a non-profit, independent, voluntary-membership organization founded more than 120 years ago in 1895. It is the largest organization representing lawyers in Pennsylvania. Its mission is to promote justice, respect for the rule of law, professional excellence, and the betterment of the legal profession. The Supreme Court has designated the PBA under 42 Pa.C.S. § 1728(a)(3) as the organization "most broadly representative of the members of the bar of this Commonwealth." *In re: Recognition of the Pennsylvania Bar Association as the Association representing members of the bar of this Commonwealth*, No. 198 Supreme Court Rules Docket No. 1 (June 29, 1998). The PBA's mission statement includes the advancement of the science of jurisprudence and the promotion of the administration of justice.

The PBA has an abiding interest in this appeal because the outcome could potentially permit clients to settle matters and then sue their attorneys for legal malpractice due to dissatisfaction with the settlement. It is a core function of the PBA to aid in the advancement of a proper balance between the interests of the public, the bar, and the bench.[1]

[1] The *amicus curiae* brief was authored by the members of the *amicus curiae* identified as counsel for *amicus curiae*. The authors of the *amicus curiae* brief were not paid for the preparation of the *amicus curiae* brief.

The Philadelphia Bar Association, with more than 10,000 members, is the oldest chartered metropolitan bar association in the United States and the largest local bar association in Pennsylvania. The Charter of the Philadelphia Bar Association states, in part, that "[t]his Association is formed to further the cause of justice; to sustain and improve the law and its administration." The mission of the Philadelphia Bar Association is "to serve the profession and the public by promoting justice, professional excellence and respect for the rule of law."

The Philadelphia Bar Association has a strong interest in furthering the cause of justice, serving the profession and the public and promoting respect for the rule of law by upholding the conclusiveness of settlements in civil proceedings while protecting the public in the event of fraud, legal deficiency or bad advice regarding the consequences of settlement. The Philadelphia Bar Association has an interest in this appeal because the outcome could potentially impact this interest.

The Allegheny County Bar Association ("ACBA") has nearly 5,500 members and is an organization of legal professionals committed to serving its members by providing education, advocacy and professional services; promoting equality and diversity among its membership; fostering collegiality; advancing the public image of the profession and the highest standards of professional ethics; supporting and advocating for a fair and effective judicial system that is accessible to every individual regardless of economic status; and exercising leadership on a local, state,

and national level so as to further these goals. The Association's Board of Governors met and discussed the central issue in this case and unanimously approved the filing of the amici curiae brief on behalf of the ACBA.

SUMMARY OF ARGUMENT

In *Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick*, 526 Pa. 541, 587 A.2d 1346 (Pa. 1991), *rehearing denied*, 528 Pa. 345, 598 A.2d 27 (Pa. 1991), *cert denied* _U.S._, 112 S.Ct. 196, (1991), this Court correctly identified the strong public policy that settlements be final and conclusive generally precludes legal malpractice cases filed after the settlement against the attorney who negotiated the settlement. *Muhammad* and other Pennsylvania decisions have identified three obvious exceptions to the general bar against legal malpractice cases following a settlement: 1) fraud by the attorney; 2) errors in legal advice regarding the consequences of the settlement; or 3) that the settlement was somehow legally deficient. The Bar Association supports the position that *Muhammad* serves an important public policy and that *Muhammad* with its exceptions provides a balance between that policy and protecting clients who settle cases due to either bad advice or bad acts by counsel.

The present matter does not present any compelling need to overturn the well established precedent set forth in *Muhammad*. The Superior Court correctly determined that the allegation that counsel had substituted one page of a release for another sounds purely in fraud. The Bar Association supports affirmance of the Superior Court decision.

Muhammad and its exceptions would have permitted a legal malpractice claim in this matter if sufficient facts were pleaded to state a claim for legal malpractice. Under no circumstances were Appellant's claims barred under the *Muhammad* doctrine. There is no reason for the Supreme Court to overturn the *Muhammad* doctrine with its established exceptions.

ARGUMENT

In this discretionary appeal, plaintiff-appellant, Dr. Ahlam Khalil ("Khalil"), asks this Court to reject its prior precedent and overturn the well-established precedent of *Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick*, 526 Pa. 541, 587 A.2d 1346 (Pa. 1991), *rehearing denied*, 528 Pa. 345, 598 A.2d 27 (Pa. 1991), *cert denied* __U.S.__, 112 S.Ct. 196, (1991), even while arguing that *Muhammad* would not apply to bar her legal malpractice claims.

A. The *Muhammad* Doctrine and Established Exceptions

In 1991, this Court recognized the important public policy of precluding clients from settling a case and then turning around and suing the lawyer who settled the case for legal malpractice. *Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick*, 526 Pa. 541, 587 A.2d 1346 (Pa. 1991), *rehearing denied*, 528 Pa. 345, 598 A.2d 27 (Pa. 1991), *cert denied* _U.S._, 112 S.Ct. 196, (1991). In *Muhammad*, the Court held: "[W]e foreclose the ability of dissatisfied litigants to agree to a settlement and then file suit against their attorneys in the hope that they will recover additional moneys." The Court continued: "Simply stated, we will not

permit a suit to be filed by a dissatisfied plaintiff against his attorney following a settlement to which that plaintiff agreed, unless that plaintiff can show he was fraudulently induced to settle the original action." *Muhammad,* 587 A.2d at 1351.

The rationale of this Court in *Muhammad* was centered on the important public policy in encouraging settlements. This Court recognized a cause of action for dissatisfaction with a settlement threatened the long standing principle in favor of encouraging settlements since such a cause of action would cause lawyers to be "reluctant to settle a case for fear some enterprising attorney representing a disgruntled client will find a way to sue them for something that 'could have been done, but was not.'" *Muhammad*, 587 A.2d at 1349. The continuing importance and vitality of *Muhammad* has since been confirmed by other decisions. *Piluso v. Cohen*, 2000 Pa. Super. 335, 764 A.2d 549 (Pa. Super. 2000) *appeal denied* 568 Pa. 663, 793 A2d 909; *Spirer v. Freeland & Kronz*, __Pa. Super.__, 643 A.2d 673, 676 (Pa. Super. 1994)(Former client could not maintain legal malpractice action against his lawyer based on dissatisfaction with marital property settlement absent fraud by the lawyer to induce client to accept settlement even though settlement was achieved based on incomplete information due to failure of attorney to adequately investigate and perform discovery); *Banks v. Jerome Taylor & Associates*, 700 A.2d 1329, 1332 (Pa. Super. 1997); *Martos v. Concilio*, 427 Pa. Super. 612, 629 A.2d 1037 (Pa. Super.

1993) (in the absence of fraud, client who was displeased with results of settlement agreement could not sue his attorney for malpractice).

Our courts have recognized three exceptions to the bar to legal malpractice actions after settlement created by *Muhammad*. To overcome the *Muhammad* bar, a plaintiff must be able to prove the defendants 1) fraudulently induced him into signing the Compromise and Release Agreement; 2) failed to explain the effect of that settlement; or 3) negotiated a settlement that was somehow legally deficient. *Silvagni v. Shorr*, 2015 PA Super 62, 113 A.3d 810, 816 (Pa. Super. 2015) ("Unless Silvagni had specifically pled, and could prove, Defendants fraudulently induced him into signing the Compromise and Release Agreement, or he could prove that Defendants failed to explain the effect of that settlement, or that the settlement was somehow legally deficient, Silvagni is barred from maintaining an action in negligence against Defendants."). Likewise, in *Banks* the court noted:

> In cases wherein a dissatisfied litigant merely wishes to second guess his or her decision to settle due to speculation that he or she may have been able to secure a larger amount of money, i.e "get a better deal" the Muhammad rule applies so as to bar that litigant from suing his counsel for negligence. If, however, a settlement agreement is legally deficient or if an attorney fails to explain the effect of a legal document, the client may seek redress from counsel by filing a malpractice action sounding in negligence.

Banks v. Jerome Taylor & Assocs., 700 A.2d 1329, 1332 (Pa. Super. 1997).

Our courts have justifiably avoided second-guessing settlements in all contexts, not just the legal malpractice context. "Settlement of matters in dispute

are favored by the law and must, in the absence of fraud and mistake, be sustained. Otherwise any settlement agreement will serve no useful purpose." *Greentree Cinemas, Inc. v. Hakim*, 432 A.2d 1039, 1041 (Pa. Super. 1981).

> It is a well settled doctrine that settlement agreements are a highly favored judicial tool... [C]ourts are loathe to second guess or undermine the original intention of the parties to a settlement agreement. If it were the role of courts to re-evaluate settlement agreements, the judicial policies favoring settlements would be useless....[I]f all of the material terms of the bargain are agreed upon, the court will enforce the settlement.

In re Estate of Misko, 2002 WL 372943, at *3 (C.C.P. Phila. 2002) (citations and quotations omitted). *See also*, *Ogle v. Columbia Gas Transmission, LLC*, 2014 WL 3895500, at *3 (S.D. Ohio 2014) ("The parties ultimately choose the terms on which they will settle...it is not the Court's job to second-guess that decision...."); *Martinez v. Hilton Hotels Corp.*, 2013 WL 4427917, at *3 (S.D.N.Y. 2013) ("[T]he Court finds [the amounts paid to parties and counsel] justifiable and the result of arm's length negotiations that the Court will not second-guess.").

In the legal malpractice context, even before *Muhammad*, Pennsylvania courts refused to permit legal malpractice cases which were based on speculation regarding settlement. *McCartney v. Dunn & Conner, Inc.*, 386 Pa. Super. 563, 573, 563 A.2d 525, 530 (1989)("In any event, this Court has not allowed legal malpractice actions based upon speculations regarding settlement negotiations."), *citing to Mariscotti v. Tinari,* 335 Pa. Super. 599, 485 A.2d 56 (1984). In *Mariscotti* the court wrote:

> Her only contention is that she would have been in a better bargaining position if she had known the value of his stock. With this knowledge, she suggests, she *may* have been able to achieve a better settlement. Her claim, it seems obvious, is based on pure speculation. Whether she could have obtained a better settlement is anyone's guess. How much better, of course, is even more speculative. These issues cannot properly be left to the surmise of a jury. Because these issues are entirely speculative, they defeat any cause of action for malpractice of the attorney negotiating the settlement.

Mariscotti v. Tinari, 335 Pa. Super. 599, 602, 485 A.2d 56, 58 (1984).

If this Court were to overturn *Muhammad* so that a legal malpractice action could be based upon a contention that a more favorable settlement could be achieved, then the Court would severely undermine the established public policy favoring settlements and require the courts and juries in our Commonwealth to make determinations regarding the myriad of reasons parties enter into settlements resolving their differences. This may also require courts and juries to examine the roles of mediators and courts in assisting parties in negotiations, the financial pressures and other extrinsic considerations that cause parties to enter into settlements, and/or the willingness of parties and insurers to fund settlements.

Muhammad, with its recognized exceptions, strikes an appropriate balance between encouraging settlements, protecting attorneys who settle cases, and permitting clients to bring an action when a settlement involves fraud, incorrect legal advice about the settlement, or a legal insufficiency in the settlement itself. The longstanding aphorism in the legal community is that a good settlement is one where

no one is happy. Permitting the second-guessing of the parties' decision to settle a matter opens up a Pandora's Box of issues. Simply put, there is no reason to permit the second guessing of settlements by courts or juries in the legal malpractice context when such speculation would not be permitted in any other context.

Other states and experts have addressed this issue under the rubric of "settle and sue." As one commentator put it:

> After signing the release, a client -- perhaps prodded by others -- may come to believe that he or she accepted too little or paid too much in settlement because counsel failed to explain what the case was really worth.
>
> It's easy to say, but hard to prove, because the case's true value would have been determined by a jury or arbitrator, and that kind of determination is no longer going to happen.

Settle and Sue: Settlements as Preludes to Malpractice Claims, Louie Castoria, Esq., Kaufman Dolowich & Voluck, Westlaw Journal of Professional Liability, 26 No. 12 WJPROFL 1, 2017 WL 2311215, at *2. The California Court of Appeal in *Filbin v. Fitzgerald*, 211 Cal. App. 4th 154 (Cal. Ct. App., 1st Dist. 2012), required a plaintiff in a "settle and sue" case to prove "to a legal certainty" that if the case had not settled the plaintiff would have recovered damages much greater than the settlement. Other California Courts interpreting this standard have noted the near impossibility of proving what "would" have happened. *See, Namikas v. Miller*, 225 Cal. App. 4th 1574, 1582, 171 Cal. Rptr. 3d 23, 29 (2014)("In other words, the plaintiff must show that he would *certainly* have received more money or had to pay less in settlement

or at trial.")(emphasis in the original, internal cites and quotations omitted). In *Namikas*, the court recognized the "inherently speculative" nature of "settle-and-sue" cases and granted summary judgment because plaintiff could not establish that a better settlement or outcome at trial would have been achieved. *Id*. California, like Pennsylvania, provides a narrow set of circumstances for plaintiffs to bring legal malpractice actions following a settlement. In contrast to the limited ability to bring these cases in states like California, overturning *Muhammad* would throw open the door to these types of cases without restriction.

Appellant presents a flawed argument that the "high burden" of proof in a legal malpractice case and the need to present a case-within-a-case are "significant deterrents to frivolous lawsuits." Despite these obstacles, if a client has settled a case, bringing a legal malpractice claim against the counsel who settled the case is essentially a free second bite at the apple. The client will retain the settlement whether or not they lose on the case-within-the-case. Overturning *Muhammad* would permit a plaintiff to not only have the certainty of the settlement in the underlying action, but to then bring an action against their counsel without risk of losing the settlement. If a plaintiff faces an insolvent defendant or a defendant from whom it may be difficult to collect against, there can also be a temptation to focus on the potential of collecting from a well insured counsel in a legal malpractice action instead of the actual defendant in the underlying action.

B. Appellant's Misplaced Reliance on *McMahon*

Appellant urges *Muhammad* should be overturned due to "confusion" appellant asserts was created by the Supreme Court's divided opinion in *McMahon v. Shea*, 547 Pa. 124, 688 A.2d 1179 (1997). While the fractured opinion in *McMahon* is in and of itself confusing, the actual outcome of *McMahon* did not change the viability or applicability of *Muhammad* and its established exceptions.

In *McMahon*, the plaintiff entered into a counseled agreement with his estranged wife to pay her alimony and child support. Upon counsel's recommendation, McMahon entered into a stipulation to incorporate, but not merge, the agreement into the final divorce decree. When his ex-wife remarried two months later, McMahon filed a motion to terminate alimony. The trial court denied the request because the agreement survived the divorce since it was not merged into the final decree. Alleging negligence, McMahon initiated a legal malpractice claim alleging negligence against counsel representing him in the divorce. The trial court, relying on *Muhammad*, granted McMahon's attorney's preliminary objections and dismissed the complaint. The Superior Court, sitting *en banc*, reversed the trial court, finding that the policy set forth in *Muhammad* was not applicable where an attorney's alleged negligence does not lie in the judgment regarding the amount to be accepted or paid in settlement, but rather lies in the failure to advise a client of

well established principles of law and the impact of a written agreement. *Id.* at 128-29, 688 A.2d at 1181.

The Supreme Court affirmed the decision of the Superior Court, but did not issue a majority opinion. Two Justices joined the opinion written by Justice Zappala which found the reasoning of *Muhammad* had no application to the facts of McMahon's legal malpractice claim:

> . . .there is no element of speculation as to whether a jury would return a verdict greater than the amount recovered by a settlement. Also, Mr. McMahon is not attempting to gain additional monies by attacking the value that his Attorneys placed on his case. Instead, Mr. McMahon is contending that his counsel failed to advise him as to the possible consequences of entering into a legal agreement. The fact that a legal document at issue had the effect of settling a case should not exempt his attorneys from liability…

Id. at 130, 688 A.2d at 1182.

Justice Zappala then, unnecessarily, concluded "that the analysis of *Muhammad* is limited to the facts of that case." Justice Cappy, joined by Justice Castille and Justice Newman concurred in Justice Zappala's opinion except to the extent that it limited *Muhammad* to its facts. *Id*. at 132, 688 A.2d 1182-83. Justice Cappy wrote "to emphasize the continuing need for, and validity of, [the Supreme Court's] decision in Muhammad." *Id*. The concurring opinion agreed with the distinction between a legal malpractice claim based on a challenge to an attorney's professional judgment regarding an amount to be accepted in settlement of a claim (*Muhammad*) and a challenge to an attorney's failure to correctly advise his client

about well established principles of law in settling a case (*McMahon*). *Id*. *McMahon* stands only for the proposition that a client may pursue a legal malpractice action against an attorney if the attorney provides incorrect information regarding the effect of the settlement.

Our Superior Court has repeatedly addressed the limited applicability of *McMahon*. *See*, *Moon v. Ignelzi*, 2009 Pa. Super. LEXIS 7016 (Pa. Super. 2009) ("With the stroke of the pen that prevented the Supreme Court in *McMahon* from rendering a majority opinion, Justice Zappala then went on to conclude 'that the analysis of Muhammad is limited to the facts of that case.'"); *Silvagni v. Shorr*, 2015 PA Super 62, 113 A.3d 810, 816 (Pa. Super. 2015). In *Abeln v. Eidelman*, 118 A.3d 452 (Pa. Super. 2015), the court stated:

> Appellant has greatly exaggerated the effect of the *McMahon* decision. While the *McMahon* majority purported to restrict *Muhammad* to its facts, we note that the *McMahon* "majority" was not even a plurality decision. Rather, *McMahon* was the product of an equally divided, six-member supreme court. In point of fact, the three-member "minority" concurred in the result, but specifically objected to limiting *Muhammad* to its facts. *McMahon*, 688 A.2d at 1182-1183. Consequently, *McMahon* did not serve to limit *Muhammad* to its facts, and *Muhammad* remains as controlling precedent until a true majority of the supreme court rules otherwise.

Id.

Appellant cites to *Kilmer v. Sposito,* 146 A.3d 1275, 1280 (Pa. Super. 2016), as an example of a case in which the Superior Court found *McMahon* to provide "helpful guidance." It is important to note that the *Kilmer* opinion found this

guidance in Justice Cappy's concurrence. As in *McMahon*, *Kilmer* did not involve a question of speculative future harm, but an action where harm had already occurred. In *Kilmer*, there was no speculation about the damage caused. The alleged improper advice of the attorney caused plaintiff to make a filing that reduced her "interest in her husband's estate by 17 2/3% if accepted by the court." *Id*. The *Kilmer* court determined that *Muhammad* did not apply as its facts "take it outside the scope of the *Muhammad* prohibition against second-guessing an attorney's judgment as to settlement amounts." *Id*.

McMahon does not provide a basis for this court to overturn the *Muhammad* doctrine as the decision in *McMahon* was fully consistent with *Muhammad* and its established exceptions. Appellant's assertion that *McMahon* created "confusion" is not a sufficient basis to overturn established precedent.

C. This Action is Not a Basis to Disturb Established Precedent

The present action presents no reason to disturb established Pennsylvania precedent. The Superior Court correctly determined that the present action sounds in fraud rather than legal malpractice and remanded the action to the trial court on that basis. As this court has recently held:

> Stare decisis is "a principle as old as the common law itself." *Morrison Informatics, Inc. v. Members 1st Fed. Credit Union*, 635 Pa. 636, 139 A.3d 1241, 1249 (2016) (Wecht, J., concurring). The phrase "derives from the Latin maxim '*stare decisis et non quieta movere*,' which means to stand by the thing decided and not disturb the calm." *Ramos v. Louisiana*, —— U.S. ——, 140 S. Ct. 1390, 1411, 206 L.Ed.2d 583

> (2020) (Kavanaugh, J., concurring in part). "Without *stare decisis*, there would be no stability in our system of jurisprudence." *Flagiello v. Pennsylvania Hosp*., 417 Pa. 486, 208 A.2d 193, 205 (1965). It is therefore preferable "for the sake of certainty," *Commonwealth v. Tilghman*, 543 Pa. 578, 673 A.2d 898, 903 n.9 (1996), to follow even questionable decisions because *stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991) (citation omitted). As the United States Supreme Court recently stated, "To reverse a decision, we demand a special justification, over and above the belief that the precedent was wrongly decided." *Allen v. Cooper*, —— U.S. ——, 140 S.Ct. 994, 1003, 206 L.Ed.2d 291 (2020) (quotation marks and citation omitted).

Commonwealth v. Alexander, 243 A.3d 177, 195–96 (Pa. 2020). As this Court stated over 100 years ago:

> It is sometimes said that this adherence to precedent is slavish; that it fetters the mind of the judge, and compels him to decide without reference to principle. But let it be remembered that *stare decisis* is itself a principle of great magnitude and importance. It is absolutely necessary to the formation and permanence of any system of jurisprudence. Without it we may fairly be said to have no law; for law is a fixed and established *rule*, not depending in the slightest degree on the caprice of those who may happen to administer it. I take it that the adjudications of this Court, when they are free from absurdity, not mischievous in practice, and consistent with one another, are the law of the land.
>
> * * *
>
> The inferior tribunals follow our decisions, and the people conform to them because they take it for granted that what we have said once we will say again. There being no superior power to define the law for us as we define it for others, we ought to be a law unto ourselves. If we are not, we are without a standard altogether. The uncertainty of the law-an uncertainty inseparable from the nature of the science-is a great

> evil at best, and we would aggravate it terribly if we could be blown about by every wind of doctrine, holding for true to-day what we repudiate as false to-morrow.

McDowell v. Oyer, 21 Pa. 417, 423 (Pa. 1853) (emphasis in original). Consistent with the principle of *stare decisis*, this Court should not overturn established precedent when the case can be decided on other grounds. The Court takes into account multiple factors when deciding whether to overturn precedent, including "the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, ... and reliance on the decision." *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2178, 204 L. Ed. 2d 558 (2019) *citing to Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018).

Stare decisis allows precedent to be overturned only on a showing of need. Here there is no need to overturn established precedent because the underlying matter was properly decided on a basis other than *Muhammad* and even if *Muhammad* were applied, it would not serve to bar the underlying action.

As set forth in Appellant's brief, Appellant's case is based upon two primary factual allegations: 1) That counsel did not appropriately advise her of the consequences of entering into a settlement agreement; and 2) That counsel substituted a page on the release which caused her to lose a separate action. The Superior Court determined Appellant pleaded facts to establish that her counsel

substituted her signature page on the release. The Superior Court appropriately determined that Appellant alleged her damages were caused by this fraud. As the Superior Court stated: "Appellant is not alleging that it is her attorneys' negligence that caused her damages; instead, she is alleging that her damages—dismissal of her claims in a separate case—were caused by fraud." The Superior Court correctly determined that the allegation that counsel had substituted one page of a release for another sounds purely in fraud.

Muhammad, and its exceptions would have permitted a legal malpractice claim in this matter if sufficient facts were pleaded to state a claim for legal malpractice. Appellant's claims other than fraud were not barred by *Muhammad*, rather, as the court determined, the claims sounded in fraud rather than negligence or breach of contract. The Superior Court effectively determined Appellant did not state a claim of legal malpractice because the gist of her claim was one of pure fraud.

If Appellant pleaded facts sufficient to state a claim for legal malpractice, then such a claim would not be barred under the *Muhammad* doctrine and its accepted exceptions. If counsel erred in providing legal advice regarding the consequences of the settlement, then the case would fall under one of the established exceptions to the general bar of *Muhammad*. If Appellant was induced into settling due to fraud, then the case would fall under one of the established exceptions to the general bar of *Muhammad*. Under no circumstances were Appellant's claims barred under the

Muhammad doctrine. The present action presents no reason for the Supreme Court to overturn the *Muhammad* doctrine with its established exceptions.

CONCLUSION

This action does not provide any basis for overruling well established precedent of this Court.

The present action does not present a claim where the Appellant would receive any benefit from overturning *Muhammad*. The Superior Court decision should be affirmed as Appellant's claims sound in fraud. However, if Appellant had stated a claim for legal malpractice based upon the contention that her counsel substituted a page in the settlement agreement, then that claim would not be barred by *Muhammad*.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, which require filing confidential information and documents differently from non-confidential information and documents.

I further certify that this Brief complies with the word limitation of Pa.R.A.P. 2135(a)(3) in that it contains 4590 words, excluding supplementary matter.

MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN

BY: /s/ Josh J.T. Byrne

Date: October 13, 2021 Josh J.T. Byrne