[J-2-2019]
IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2485 Disciplinary Docket No. 3
Petitioner	:	No. 56 DB 2106
	:	Attorney Registration
v.	:	No. 90137
JOSEPH Q. MIRARCHI,	:	(Philadelphia)
Respondent	:	ARGUED: March 5, 2019

ORDER

PER CURIAM **DECIDED: MARCH 18, 2019**

Upon consideration of the Report and Recommendations of the Disciplinary Board and following oral argument, Joseph Q. Mirarchi is disbarred from the Bar of this Commonwealth and he shall comply with the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

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ORDER

PER CURIAM

AND NOW, this 14th day of December, 2018, Respondent's Application for Leave to File an Affidavit is denied. The Office of Disciplinary Counsel's Motion to Strike is granted.

03.05.19 PA Supreme Court ODC v. Mararchi

Justice Sailor: Want to call the first case.

_____: Office of Disciplinary Counsel versus Joseph Mararchi. Mr. Scot Withers, Mr. Richard Hernandez.

Justice Sailor: Mr. Withers, before we begin argument, let me say as a general matter to you and the counsel that follow, and as you know, having been here before, the court's very familiar with the issues. In most instances, these cases present but a discrete legal issue. In fact, we've selected I think all of these for review. So armed with that knowledge, I think you can come directly to the point. I'll say a few words about each case to introduce the thing, and then you can begin argument. Thanks. An attorney facing disciplinary action may introduce mitigation evidence of a mental infirmity that was a substantial causal factor of the alleged misconduct. Through counsel, respondent expressed an intent to offer such evidence, but failed to comply with deadlines imposed by the Disciplinary Board's hearing committee. The committee, thus, precluded the evidence and recommended disbarment. The Disciplinary Board agreed, and with that recommendation, respondent maintains that his counsel was

ineffective for failing to submit the evidence in a timely manner or failing to seek to reopen the record for its submission.

Scot Withers: May it please the court, good morning your honors. Scot Withers of Lamb, McErlane on behalf of the respondent in this matter, Joseph Mirarchi. The respondent has briefed a single issue before this court, and that's a request for a remand to produce Braun mitigation evidence.

Justice: Could you pull the microphone closer? Thank you.

Scot Withers: You're welcome, Justice. At the June 27, 2017 hearing, the hearing committee denied respondent's request for a continuance for additional time to present Braun testimony and evidence. The closest thing in the record that we have to an offer of proof was given by respondent's counsel at that hearing, and the Braun evidence that he sought to introduce related to "prior head trauma" and in another page "prior brain trauma and its impact on respondent's behavior".

Justice Baer: But the difficult, Mr. Withers, and you obviously know this, is I think you would get some sympathy, because we care about lawyers in practice, if this was not the third

time that he had said I want to provide Braun evidence and the third time he failed to do so, and this was after three prior continuances. So I think this, as you come before us, is the fourth time that you ask. And I assume, is he practicing today?

Scot Withers: Technically, he is still admitted, but he has very limited -

Justice Baer: He remains admitted since 2011 with a record like this and, you know, how many times do you get to ask. I mean, we've been known to grant reconsideration, but not typically four times.

Scot Withers: I understand, Your Honor. We believe that this case and the nature of the impairment is a factor to be considered. And the fact that counsel did not follow his wishes and provide those reports in a timely fashion.

Justice Sailor: How can we assume that? How can we assume that? How would the fact finding on effectiveness work in a case like this?

Scot Withers: Well, Your Honor, along with the brief, we did file an application for leave with the court to submit an affidavit in support of that fact. That was denied. That was opposed by ODC and was denied by this court

prior to argument. The other thing that we requested in the alternative is a remand to the hearing committee to provide that kind of fact-finding function.

Justice: These things would never end. You'd have a whole collateral set of precedings [sic] after a disbarment recommendations, right? And these volunteer lawyers on these hearing committees would be pressed back into service to have this collateral fact finding on effectiveness?

Scot Withers: I can't disagree with you, Justice Wecht, on that fact, no.

Justice Todd: Mr. Withers, oh, I'm sorry, Justice -

Justice: No, I'm done, I'm done.

Justice Todd: The fundamental problem that we have here is that we, of course, have never recognized ineffectiveness of counsel as a grounds for review on disciplinary matters, and so that would be a huge change were we to accept that. And I wondered if you might argue why we should make such a major change from the way we've historically handled disciplinary actions.

Scot Withers: Your Honor, Justice Todd, I haven't been able to find any case hole that says it's not cognizable, but you're

correct. There is no case law that says such a claim is cognizable.

Justice Baer: Are you even entitled to counsel, period?

Scot Withers: Entitlement to counsel? I do not believe. The right to practice has never been characterized as a liberty interest, Justice Baer. There is case law that talks about the due process component that while a law license does not constitute a property interest, there's a general consensus that some level of due process is required, but I do not think there's a right, Mr. Justice Baer.

Justice Todd: I'm sorry. You were beginning to answer my question about -

Justice Baer: Oh, I'm sorry.

Justice Todd: That's all right.

Justice Baer: I apologize if I interrupted you. Go right ahead.

Justice Todd: About whether we should begin to recognize ineffectiveness of counsel claims in the disciplinary arena.

Scot Withers: Well, Your Honor, I understand, as Justice Wecht pointed out, the pitfalls associated with that. But in representing my client here today, I have to ask you to do so because of his best interests. And so I would respond that in a circumstance such

as this where you have an allegation of a severe head trauma and the associative affects that that would have on a person, we would hope that the court would, under the unique circumstances of this case and in the interest of justice, allow a remand to present that evidence.

Justice Donohue: Counsel, may I just follow up on that? I can tell from what I've seen of the record so far, but even if we remanded this, it's unclear to me that when the request for continuance was made, there was even the assertion that there would be an expert who would give causation on the Braun theory. Can you help me with that?

Scot Withers: Sure, Your Honor. The June 27, 2017 hearing before the hearing committee, at the beginning of that hearing, prior counsel did make a request, and that was the offer of proof that I mentioned earlier in my presentation. There was a representation made by prior counsel that there would be an expert who was going to be providing testimony and had found causation with regard to the conduct and the Braun evidence. And that is at the beginning of the hearing in the first 25 pages on June 27, 2017, Your Honor.

Justice Wecht: If I could just follow up on that, your facts have the problem that your client was trying to get an expert who could say x, y, or z. He couldn't get that in a timely fashion and missed the hearing committee's deadlines. I mean, you don't have the facts where your client was denied process. Your client was granted process, and you're really complaining about discretionary calls made by the hearing committee. You blew our deadline. Now you're out of court.

Scot Withers: Right. I think -

Justice Wecht: How could we ever get there?

Scot Withers: You know, you have to look at the case law where an expert has been precluded, and, you know, such is the case of Finegold v Septa that we site [sic] in our briefs, Justice Wecht. Where an expert is sought to be introduced in an untimely fashion, the court must balance the facts and circumstances of each case to determine the prejudice to each party. And here, we contend there would've been no prejudice. At that hearing on 6/26/17, at page 22, counsel for ODC said that it would only take several weeks after receipt of the amended report to prepare its cross examination. So you were talking about at that time a short delay, not

a lengthy delay. And for that reason, we believe that there was no prejudice and that extension should've been granted, Your Honor.

Justice Saylor: We'll take a look at it, that's for sure.

Scot Withers: Thank you very much, Chief Justice Saylor.

R. Hernandez: Good morning, Chief Justices, Justices of the Court. Richard Hernandez for the Office of Disciplinary Counsel. I want to take this opportunity to point out a significant difference between the brief that our office filed and the brief that was filed by respondent's counsel, and it concerns this one important fact: the record. If you take a look at our brief, you'll see that we emphasize the record. If you take a look at the brief that was filed by respondent's counsel, it's record light. Why is that? It's for several reasons, because if you look at the record, the record shows one, that the respondent engaged in egregious misconduct warranting disbarment. Second, that there were several weighty aggravating factors that supported the recommendation of the board to disbar respondent. One of those was respondent's incredible testimony offered at the hearing. Second, third, pardon me, the record also shows that there was

ample due process provided to respondent. He had notice of the charges, and he had four days. He had four days to present his defense and mitigation evidence. The record also shows that respondent's former counsel, at the pre-hearing conference in January of 2017 up through the end of the proceedings, pardon me, in June of 2017, was pursuing the possibility of presenting Braun mitigation evidence. And finally, the record shows that the hearing committee acted appropriately in denying another request for a continuance to present Braun mitigation evidence when there were several continuances offered before that. And so I would submit to the court that when you look at the record, it's very clear that there was ample due process provided and that this court should adopt the recommendation of the hearing committee and the recommendation of the board to disbar respondent.

Justice Baer: Mr. Hernandez, before you conclude, one of the issues that universally in disciplinary cases, so this is an opportunity for us to dialogue with you, is the argument, and you presented it in this case, that a continuance allows the respondent to continue to practice law. He remains on active status. He has since 2011,

despite this record. Why in the world did your office not move for a suspension under Rule 208f when you say in the Majors matter, Mrs. Majors matter, Ms. Majors matter, you used the words in your averments that he misappropriated funds. It dovetails entirely with the rule, and yet you never moved to suspend somebody who you say is a present danger to the practice and yet has been practicing every day or has the capacity to practice every day since 2011, as we stand here today.

R. Hernandez: I understand the question. Response to that would be this, is that the hurdle in 208 is fairly significant. It requires our office to be able to prove an immediate and I believe a danger to the public. At the time when those, the complaint was received and the matter was evaluated, we had made the determination that we didn't believe we would be able to surmount that hurdle. Also in light of the fact of the respondent's purported defense to those charges, which was to claim that this was a gift that was made to him by Ms. Majors and his support for that, which was this document that he had Ms. Majors sign, which our office believes, and was able to show to the committee and to the board,

that that document was signed without Ms. Majors having full knowledge of what was, in fact, in that document. So it was under those circumstances that we made that determination.

Justice Baer: I think I can understand that at the get go. As you went further into your discovery and you prepared your evidence that in fact the $80,000 had been misappropriated from Ms. Majors, why not then? Why in the last eight years has your office not moved to suspend him?

R. Hernandez: Well, what I will say to you in response to that, Justice Baer, is that perhaps you are correct that in this case it should've been a matter that we would've considered for a temporary suspension on an emergency basis. But I will also simply say as well too is that it wasn't an eight-year period. The complaint came in several years later than what you're stating, so we're talking a much finite period of time. And I will say that if you look from when the complaint came in until when the matter was prosecuted, we began prosecuting this matter in November of 2016.

Justice Donohue: Counsel -

Justice Baer: Only one more follow-up, thank you Justice Donohue. In your view, does the rule need to be changed so that lawyers who are a danger to the public can be gotten off the street more easily, taken from the practice of law more easily?

R. Hernandez: I believe the court should consider that, based on the language of the rule. I think it does, from the standpoint of our office, we try to be cautious and not to submit petitions for emergency suspension unless we believe we can actually meet the requirement of that rule because it is an extraordinary step to take to take someone's license on an emergency basis.

Justice Donohue: Counsel, if I might follow-up on that. It can't be more extraordinary than moving for disbarment. How could it possibly be the that [sic] burden is higher to get a temporary suspension than it is to disbar?

R. Hernandez: But I would submit to you, Justice Donohue, is that we're discussing this matter after it's been fully vetted, and we've had an opportunity to present our case. Our case was fairly substantial. It was one of the most extensive joint stipulations I've ever entered into. It was well over I believe 100 exhibits, and we

needed to present four witnesses to prove our case. And the respondent also presented a number of witnesses as well. So what I would submit to you is that the posture of the case as it was presented before the committee, the board, and now this court, is a very extensive record showing the breadth and depth of the misconduct and that it's incontrovertible at this point in time. But I would -

Justice Donohue: But that's not the standard for suspension pending the outcome.

R. Hernandez: No, it is not. No. And it's actually -

Justice Donohue: What is the standard?

R. Hernandez: Well, if I may have a moment. The language in the emergency temporary suspension rule is this, is that there has to be an affidavit demonstrating facts that the continued practice of law by a person subject to this rule is causing immediate and substantial public or private harm because of the misappropriation of funds by such person. So is meaning presently. And what I would submit to you, Justice Donohue, and as well as to the entire court, is that at the time when the complaint was received by Ms. Majors, that was a complaint that was received several years after the misappropriation of

the funds, and there is an argument that could be made that evidence of that misappropriation was several years back and not occurring presently, is, so the is language.

Justice Wecht: We appreciate that. One of the points emerging from my colleague's questions here, though, is that this, to some extent, undercuts your argument that any delay associated with remand would put the public at great risk, since you never moved for temporary suspension.

R. Hernandez: I don't believe so. What I would submit to this court is that you have to look at the language of the rule. It says is at the time, and this is at the time when we're considering a complaint that we've received, and whether that complaint is evidencing the fact that there is presently, at that time, a danger to the public to pursue the extraordinary relief of an emergency temporary suspension. But I don't believe that that undercuts our position at this point in time based on the full record that's been submitted to the committee, the board, and the court that there's a need to disbar the respondent.

Justice Wecht: What I'm trying to say is that it seems like, and again, this is just a

part of the picture here, I understand, but it seems like there was a great risk, then there wasn't, but now there is again for purposes of disbarring and not allowing a delay on remand. It seems like emergency, non-emergency, and emergency again.

R. Hernandez: I wouldn't see it that way, but let me propose this back to you as a rhetorical question. Is the court now taking the position then that any time we believe a case is warranting disbarment, that we have then met the standard for getting an attorney out on an emergency basis? I would submit they're not synonymous, and that in fact the rule makes that plain in terms of the specific language that it's using. Again, I would -

Justice Mundy: Wouldn't it have been within your wheelhouse to office [sic] the attorney the option of agreeing to a temporary suspension in order to consider the Braun evidence? Would that resolve your concerns?

R. Hernandez: Let me respond to that by saying this. I don't believe the way that the court should approach this matter is was there some sort of way to accommodate any concerns we had about the respondent continuing to practice law so that he could present Braun mitigation evidence. I think

instead that the analysis should be is that was he given the opportunity to present that, and did he essentially waive it by inaction. And that's what we're submitting to the court happened. Because consider this: Respondent's counsel refers to Finegold. That's a case that involves private litigants, private issues at play, right. That's not what we're seeing here when we're talking about an attorney disciplinary preceding [sic]. The societal concerns that this court has is one, protection of the public and maintaining the integrity of the legal profession. So I would submit to you that the prejudice standard shouldn't be what this court should be looking at. Instead, we should be examining whether the committee acted appropriately in this case and in any other case where this issue might come up and deny an attorney's request for another continuance when several were granted in the past to present such evidence. The rule on the issue of pre-hearing conferences, one of the things it talks about is having the committee be able to issue rulings to establish pre-hearing conference order that will result in, I believe it's like a prompt and expedited resolution of the matter, of the disciplinary preceding. And I would submit to you

you're not going to see that if on this kind of a weak record there's going to be a remand that would be provided to the respondent. On this sort of a record, I can't see why this court wouldn't be seeing multiple requests being made by respondents to please give me the opportunity to present this mitigation evidence or this other evidence because of x, y, and z. The hearing committee's authority, in my view, would be undermined, not only in this case, but in other cases if this court on this record were to issue a remand. And so what you need to ask yourself is this real simple question: On this record, can you find that the hearing committee acted unreasonably? They've set out an abusive discretion standard in footnote 5 on page 11 of their brief. Did the hearing committee abuse its discretion under these circumstances? I think the answer to that is no.

Justice Baer: We're going to finish, but it's hard to get a question in because -

R. Hernandez: I'm done. Pardon me.

Justice Baer: You do a nice job in a stream of conscious argument. Just I want to respond to your rhetorical question to Justice Wecht. I think that your office's responsibility, when you believe, considered that a lawyer is a danger

to the public if that lawyer continues to practice, your responsibility is to move to have that lawyer temporarily suspended. You can't win a lottery if you don't buy a ticket. You can't be afraid that you're not going to be successful. At least you've done your due diligence, as your office should, if you try to take that lawyer off the street. And finally, if you think that that rule is too onerous to protect the public from a lawyer who's a danger to the public, then have chief disciplinary counsel write a letter to the court and tell us so, and we can look at it. All right.

R. Hernandez: We'll take it. Thank you, Your Honor.

Justice: Thank you.

Justice: Thanks to both of you.

CERTIFICATE

I certify that the foregoing is a correct transcript of the PCN digital file from the March 5, 2019, PA Supreme Court argument of Office of Disciplinary Counsel v Mirarchi.

JULIE M. ZANARAS, CSR, CCR License
No. 30X100206700 expires 6/30/2020
Notary ID 1184523 expires 9/22/2022

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 56 DB 2106
	:	Attorney Registration No. 90137
v.	:	(Philadelphia)
JOSEPH Q. MIRARCHI, Respondent	:	

REPORT AND RECOMMENDATIONS OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On November 4, 2016, Petitioner, Office of Disciplinary Counsel ("ODC") filed a Petition for Discipline against Respondent, Joseph Q. Mirarchi, charging him with violating multiple Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary

Enforcement ("Pa.R.D.E.") in five matters. Respondent filed an Answer to Petition on November 29, 2016.

At the January 18, 2017 prehearing conference, the Committee Chair established February 9, 2017 as the deadline for, among other things, Respondent's counsel to advise Petitioner if Respondent would be presenting mitigation evidence in the form of psychiatric testimony and the names of Respondent's witnesses. The Chair also directed that if Respondent determined to present psychiatric testimony, a second hearing would be scheduled and Respondent would be required to provide Petitioner with the expert report and treatment notes three weeks prior to that second hearing.

A disciplinary hearing was held on March 27, 2017, before a District I Hearing Committee, at which Petitioner presented its case. Before recessing, the Committee Chair established April 3, 2017, as the deadline for the parties to exchange names of witnesses, to identify whether the witnesses were character or fact witnesses, and to exchange any additional proposed exhibits. The hearing reconvened on April 10, 2017. Respondent did not provide the expert reports and treatment notes to Petitioner as directed by the Committee. Petitioner requested that the Committee preclude Respondent from presenting any expert testimony. The Committee ruled that Respondent must provide Petitioner with an expert report and treatment notes two weeks prior to the next scheduled hearing date.

The parties reconvened on June 27, June 28, and June 29, 2017. Respondent did not provide an expert report and treatment notes as directed by the Committee. At the June 27 hearing, the Committee denied Respondent's request to obtain an expert report and list the matter for an additional hearing date.

Petitioner introduced Joint Stipulations of Fact, Law and Exhibits, and Petitioner's Exhibits ODC-1 through ODC-174. Petitioner introduced the testimony of four witnesses and a rebuttal witness. Respondent appeared at all five days of hearing and was represented by Stuart L. Haimowitz, Esquire. Respondent introduced Respondent's Exhibit R-1. Respondent testified on his own behalf and introduced the testimony of 14 witnesses.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 20, 2017, concluding that Respondent violated the rules as charged in the Petition for Discipline and recommending that Respondent be disbarred from the practice of law.

On January 11, 2018, Respondent filed a Brief on Exceptions to the Committee's Report and recommendation and requested oral argument before the Board.

On January 16, 2018, Respondent's counsel withdrew his appearance.

On January 30, 2018, Petitioner filed a Brief Opposing Exceptions.

On January 30, 2018, Petitioner filed a Motion to Strike the Reports and Curricula Vitae of Dr. Paul J. Sedacca and Dr. Kirk Heilbrun Attached to Respondent's Brief on Exceptions.

On February 14, 2018, Respondent filed a Reply Brief and Response to Petitioner's Motion to Strike.

On March 29, 2018, a three-member Board panel held oral argument.

The Board adjudicated this matter on April 11, 2018.

By Order dated May 2, 2018, after review of Petitioner's Motion to Strike the Reports and Curricula Vitae attached to Respondent's Brief on Exceptions and Respondent's Response, the Board granted the Motion to Strike.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement. Stipulation ("S")-1.

2. Respondent, Joseph Q. Mirarchi, was born in 1967, was admitted to practice law in Pennsylvania in 2002, has a public access address at 1717 Arch Street, Suite 3640, Philadelphia, PA 19103, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. S-2.

CHARGE I: The ODC Matter

3. At all times relevant hereto, Respondent maintained an IOLTA account for holding fiduciary funds with TD Bank (IOLTA 1 account"). S-3.

4. At all times relevant hereto, Respondent maintained an operating account for the private practice of law with TD Bank ("the operating account"). S-8.

INSTANCES OF MISAPPROPRIATION OF FUNDS HELD IN THE IOLTA 1 ACCOUNT THAT WERE OWED TO CLIENTS AND THIRD PARTIES

Diane Vanmeter Case

5. By letter dated February 3, 2011, sent by Joseph Longo, Esquire, to Respondent, Mr. Longo confirmed that they had spoken and referred a personal injury case involving Ms. Diane Vanmeter to Respondent. N.T.IV[1] 304-305; ODC-153.

6. By letter dated October 4, 2011, sent by Mr. Longo to Respondent, Mr. Longo confirmed that they

[1] Notes of testimony of the June 28, 2017 hearing.

had spoken about Ms. Vanmeter's personal injury case and the information that Respondent had provided to Mr. Longo about that matter. N.T.IV 305; ODC-154.

7. On November 30, 2011, Respondent deposited a $15,000.00 settlement check relating to Diane Vanmeter and Daniel Vanmeter's personal injury case into the IOLTA 1 account.

8. In connection with that personal injury case, Respondent owed a referral fee of $1,665.00 to Joseph Longo, Esquire.

9. Respondent failed to pay Mr. Longo a referral fee when Respondent received the $15,000.00 settlement check. N.T.IV 305-306; ODC-1, 3; S-10.

10. On January 5, 2012, the IOLTA 1 account balance was $3.83. S-9.

11. As of January 5, 2012, the amount of funds that Respondent was required to hold in trust in the IOLTA 1 account on behalf of Mr. Longo was no less than $1,665.00, which was the amount of the referral fee that Respondent owed to Mr. Longo. S-11.

12. As of January 5, 2012, the balance in the IOLTA 1 account was $1,661.17 below the amount of funds that Respondent was required to hold in trust on behalf of Mr. Longo. ODC-1; S-12.

13. Mr. Longo did not authorize Respondent to use any funds belonging to Mr. Longo. S-13.

14. Respondent knowingly misappropriated $1,661.17 of funds belonging to Mr. Longo.

Augustine Matticola Case

15. On February 28, 2012, Respondent deposited a $15,000.00 settlement check relating to Augustine Matticola's personal injury case into the IOLTA 1 account.

16. In connection with that personal injury case, Respondent owed a referral fee of $1,569.09 to Mr. Longo. ODC-1, 4; S-14.

17. Respondent failed to pay Mr. Longo a referral fee when Respondent received the $15,000.00 settlement check. N.T.IV 308-309; ODC-1, 4; S-14.

Anne E. Loisch Case

18. On March 20, 2012, Respondent deposited a $15,000.00 settlement check relating to Anne E. Loisch's personal injury case into the IOLTA 1 account. ODC-1.

19. In connection with that personal injury case, Ms. Loisch was entitled to the sum of $7,991.16. ODC-1, 5; S-15.

20. Respondent immediately took his $6,000.00 fee from the settlement proceeds for Ms. Loisch's personal injury case. N.T.IV 311-312, 316; ODC-1, 6.

21. Although Respondent knew when he took his fee that Ms. Loisch was entitled to $7,991.16 from her settlement proceeds, Respondent failed to promptly distribute any funds to her. N.T.IV 312, 316-317; ODC-1, 9.

Money Owed to Longo and Loisch

22. As of March 20, 2012, the amount of funds that Respondent was required to hold in trust in the IOLTA 1 account in the above matters was no less than $11,225.25, which were the amounts of the two referral fees that Respondent owed to Mr. Longo and Ms. Loisch's share of the proceeds from the settlement of her personal injury case. S-16.

23. Commencing on April 23, 2012, and continuing through July 25, 2012, the balance in the IOLTA 1 account was below the amount of funds that Respondent was required to hold in trust on behalf of Mr. Longo and Ms. Loisch; the deficit ranged from $3,579.65 (6/4/12) to $11,202.88 (7/13/12). N.T.IV 313; ODC-1; S-16-18.

24. Ms. Loisch did not authorize Respondent to use any funds belonging to her. S-19.

25. Between May 2012 and July 2012, Mr. Longo called Respondent and left messages with Respondent's assistant because Mr. Longo had not received payment of the referral fees that Mr. Longo was owed in the matters involving Ms. Vanmeter and Ms. Matticola; Respondent failed to return Mr. Longo's messages. N.T.IV 306-308; ODC-155.

26. Based on Respondent's withdrawals from, transfers to and from, and checks written on, the IOLTA 1 account during the period of January 1, 2012 through March 22, 2013, it is evident that Respondent was continuously aware of the balance in the IOLTA 1

account and was taking care to ensure that he did not become overdrawn on that account. N.T.IV 317-323, ODC-1

27. Respondent knowingly misappropriated $10,593.50 of funds belonging to Mr. Longo and Ms. Loisch, which funds Respondent used to:

a. honor check number 509, in the amount of $9,237.86, made payable to Respondent's client, Augustine Matticola, which represented her share of settlement proceeds and which cleared the IOLTA 1 account on April 20, 2012;

b. make several transfers of funds to the operating account between April 27 and May 10, 2012; and

c. make withdrawals to have monies for Respondent's own personal use. ODC-1, 7; S-10-20.

28. By letter dated July 16, 2012, sent by Mr. Longo to Respondent, Mr. Longo:

a. noted that Respondent had agreed to pay referral fees to Mr. Longo for the matters involving Ms. Vanmeter and Mr. Matticola, that "both matters had been resolved for some time now," and that he had not been paid any referral fees;

b. stated that he had "called [Respondent] for the past two (2) months to discuss these matters, and left several messages with [Respondent's] assistant, but to date, have not received a returned call"; and

c. advised that he was "making one (1) last effort to contact [Respondent] prior to taking legal

action against [Respondent]." N.T.IV 306-308; ODC-155.

29. After Respondent received Mr. Longo's July 16, 2012 letter, and more than seven months after depositing the Vanmeter funds and more than four months after depositing the Matticola funds, Respondent issued two separate checks to Mr. Longo, drawn on the IOLTA 1 account, in payment of the referral fees that Respondent owed to Mr. Longo. N.T.IV 306-311; ODC-8; S-21-22.

30. On September 11, 2012, almost six months after Respondent received and used Ms. Loisch's settlement funds, Respondent issued a check to Ms. Loisch, drawn on the IOLTA 1 account, in payment of Ms. Loisch's share of the settlement proceeds. ODC-9; S-23.

J.S. Case

31. On July 16, 2012, Respondent deposited into the IOLTA 1 account a $5,000.00 first party benefits check that he received on behalf of J. S., a minor. N.T.IV 327; ODC-10; S-24.

32. Under 75 Pa.C.S.A. § 1798(a), an attorney is prohibited from charging and collecting a contingent fee for any services provided in connection with obtaining first party benefits on behalf of a client. ODC-11; S-25.

33. Respondent was familiar with 75 Pa.C.S.A. § 1798(a) because he had performed legal work in the

areas of first party insurance benefits and personal injury law. N.T.IV 50-51.

34. The proceeds from the $5,000.00 first party benefits check that Respondent received on behalf of J. S. could be used either to satisfy J. S.'s medical bills or, absent any unpaid medical bills, to compensate J. S. S-26.

35. Between July 16, 2012, and April 12, 2013, Respondent did not make payments to either J. S.'s medical providers or to J. S. from funds drawn from the IOLTA 1 account. S-27.

36. At the hearing, Respondent claimed that he believed that the $5,000.00 first party benefits check was actually a third party benefits check (despite the front of that check stating it was issued to satisfy a healthcare lien) and that the proceeds from that check could be apportioned between him and J. S. N.T.IV 328-329; ODC-10.

37. Respondent knew that in connection with J. S.'s personal injury case, Respondent had to file a petition for minor's compromise and obtain court approval of that petition before: any settlement he negotiated could be consummated; and any proceeds from that settlement could be distributed, including distribution for attorney's fees. N.T.IV 329-330.

38. On July 20, 2012, the balance in the IOLTA 1 account was $2,377.10. ODC-1; S-28.

39. Between July 17, 2012, and July 20, 2012, Respondent used $2,622.90 of the $5,000.00 he was

entrusted to hold in the IOLTA 1 account on behalf of either J. S. or his medical providers by making:

a. withdrawals to have monies for Respondent's own personal use; and

b. electronic payments of Respondent's telephone bills. N.T.IV 331; ODC-12; S-29.

40. On April 12, 2013, Respondent closed the IOLTA 1 account and had the remaining balance of $4.83 transferred to a new IOLTA account. ODC-1; S-30-31.

41. As of April 12, 2013, the balance in the IOLTA 1 account was $4,995.17 below the amount of funds that Respondent was required to hold in trust on behalf of either J. S.'s medical providers or J. S. ODC-1; S-32.

42. Respondent was not authorized to use any funds belonging to J. S. S-33-34.

43. Respondent knowingly misappropriated $4,995.17 of funds belonging to either J. S.'s medical providers or to J. S. N.T.IV 337, 359-360.

Theresa Ingargiola Tooley Case

44. On August 2, 2012, Respondent deposited a $7,250.00 settlement check relating to Theresa Ingargiola Tooley's personal injury case into the IOLTA 1 account.

45. In connection with that personal injury case, Respondent owed Ms. Tooley the sum of $3,077.18. N.T.IV 354; ODC-14-15; S-35.

46. On November 14, 2012, Respondent deposited a $12,500.00 settlement check relating to Ms. Tooley and her husband, James Tooley's personal injury case into the IOLTA 1 account.

47. In connection with that personal injury case, Respondent owed Mr. and Ms. Tooley the sum of $5,714.05. N.T.IV 353; ODC-17-18; S-37.

48. After Respondent received the two settlement checks for Mr. and Ms. Tooley's personal injury cases, he immediately took his fees from those settlement proceeds. N.T.IV 338-339, 344-348; ODC-1, 15, 156-157.

49. Although Respondent knew when he took his fees that Mr. and Ms. Tooley were entitled to their shares of the settlement proceeds from their personal injury cases, Respondent failed to promptly distribute any funds to Mr. and Ms. Tooley. N.T.IV 339-340, 343, 350, 358-359; ODC-1, 15, 156-157.

50. Respondent also knew he had to use a portion of the settlement proceeds to satisfy Mr. and Ms. Tooley's medical providers' bills; however, Respondent failed to promptly distribute to those medical providers their shares from the settlement proceeds. N.T.IV 343, 352-353; ODC-15, 18.

51. As of November 14, 2012, the amount of funds that Respondent was required to hold in trust in

the IOLTA 1 account on behalf of Mr. and Ms. Tooley was no less than $8,791.23. S-38.

52. As of November 14, 2012, the amount of funds that Respondent was required to hold in trust in the IOLTA 1 account on behalf of the Tooleys' medical providers was $3,914.52. ODC-15, 18.

53. Between December 24, 2012, and January 14, 2013, Respondent used $8,541.65 of the $8,791.23 he was entrusted to hold in the IOLTA 1 account on behalf of Mr. and Ms. Tooley by making:

a. electronic debits to pay loans;

b. several transfers of funds to Respondent's personal checking account; and

c. a rental payment of $3,774.81 to The Arden Group by check number 530, which cleared the IOLTA 1 account on January 14, 2013. ODC-1, 19; S-39-40.

54. As of January 18, 2013, the balance in the IOLTA 1 account was $8,700.65 below the amount of funds that Respondent was required to hold in trust on behalf of Mr. and Ms. Tooley. ODC-1, 19, S-41-42.

55. Mr. and Ms. Tooley did not authorize Respondent to use any funds belonging to them. S-43.

56. Respondent knowingly misappropriated $8,700.65 of funds belonging to Mr. and Ms. Tooley.

57. Respondent knowingly misappropriated the funds he had been holding on behalf of Mr. and Ms. Tooley's medical providers.

58. Ms. Tooley received check number 520 from Respondent, drawn on the IOLTA 1 account and dated September 16, 2012, in the amount of $3,077.18.

a. This payment represented the proceeds that Ms. Tooley was owed in connection with the $7,250.00 settlement of her personal injury case.

b. Ms. Tooley transacted check number 520 on February 25, 2013. N.T.IV 358; ODC-16; S-36.

59. Mr. and Ms. Tooley received a cashier's check from Respondent in the amount of $5,714.05 on March 15, 2013. S-44.

60. This payment represented the proceeds that Mr. and Ms. Tooley were owed in connection with the $12,500.00 settlement of their personal injury case. N.T.IV 358-359; S-44.

61. On or about March 15, 2013, Respondent paid Mr. and Ms. Tooley's medical providers' bills from the IOLTA 1 account. N.T.IV 356-359.

Respondent's Endorsement of Clients' Checks

62. Respondent had a pattern and practice of placing his clients' endorsements on the settlement checks that he received on behalf of his clients. N.T.IV 332, 334.

63. Respondent claimed that the fee agreements he entered into with his clients authorized him to place his clients' endorsements on their settlement checks; however, Respondent's fee agreements did not explicitly

or implicitly authorize him to endorse his clients' signatures on their settlement checks. N.T.IV 332-337.

64. Respondent's misappropriation of fiduciary funds was facilitated by Respondent's practice of placing his clients' endorsements on their settlement checks without their authorization because Respondent's clients, such as Ms. Loisch, were unaware as to when Respondent received their settlement proceeds and whether Respondent had failed to promptly distribute their proceeds. (*Id*.)

INSTANCES OF COMMINGLING IN THE IOLTA 1 ACCOUNT

65. Between June 1, 2012 and March 7, 2013, Respondent engaged in a pattern of commingling his personal funds with fiduciary funds belonging to clients and third parties that were held in the IOLTA 1 account. N.T.IV 300-301; ODC-1, 20-23; S-45-46.

INSTANCES OF MAKING DEPOSITS OF NON-FIDUCIARY FUNDS INTO THE IOLTA 1 ACCOUNT

66. Between May 14, 2012 and March 5, 2013, Respondent engaged in a pattern of making deposits of non-fiduciary funds into the IOLTA 1 account. ODC-1, 24-39; S-47, 48.

FAILURE TO MAINTAIN RECORDS

67. Beginning no later than January 1, 2012, and continuing through April 12, 2013, Respondent failed to maintain complete records for the IOLTA 1 account, such as a check register or separately maintained ledger, which lists the payee, date and amount of each check, each withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction. S-49.

FAILURE TO IDENTIFY IOLTA ACCOUNT

68. At all times relevant hereto, Respondent maintained an IOLTA account for holding fiduciary funds with TD Bank (the IOLTA 2 account"). N.T.IV 361-362; ODC-158; S-50.

69. On or before July 1, 2013, Respondent completed and filed the 2013-2014 PA Attorney's Annual Fee Form ("the Annual Fee Form"). N.T.IV 360; ODC-40; S-51.

70. Respondent failed to identify the IOLTA 2 account on the Annual Fee Form. N.T.IV 361-362; S-53.

71. In submitting the Annual Fee Form, Respondent certified that:

> a. " . . . EACH TRUST ACCOUNT HAS BEEN IDENTIFIED AS SUCH TO THE ELIGIBLE INSTITUTION IN WHICH IT IS MAINTAINED"; and

b. " . . . THE INFORMATION PROVIDED IS TRUE. IF ANY STATEMENT MADE ON THIS FORM IS FALSE, I REALIZE I AM SUBJECT TO DISCIPLINE BY THE SUPREME COURT." S-54.

FAILURE TO RESPOND TO THE DB-7A LETTER

72. Following Petitioner's initial DB-7 Letter dated May 27, 2014, to which Respondent timely filed a response, Respondent received a DB-7A Supplemental Request for Statement of Respondent's Position ("the DB-7A letter") dated August 8, 2016, in which ODC notified Respondent:

a. of supplemental allegations relating to ODC's complaint; and

b. that the failure to respond to the DB-7A letter without good cause would be an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7). ODC-41; S-55-57.

73. Respondent failed to:

a. submit to ODC a response to the DB-7A letter; or

b. present to ODC evidence that he had good cause for not responding to the DB-7A letter. S-58.

CHARGE II: The Elizabeth Majors Matters

THE $85,488.92 SETTLEMENT CHECK

74. On July 2, 2009, Mr. Aniello Joseph Leone ("decedent"), a Philadelphia resident, died testate. S-60-61.

75. Ms. Elizabeth Majors was decedent's cousin. S-62.

76. Sometime in and around January 2010, Respondent contacted Ms. Majors and advised her that: he had a copy of an executed Will dated February 15, 2006 that he had prepared on behalf of decedent; and the Will designated Ms. Majors to serve as Executrix and to receive a 50% share of decedent's estate.

77. The Will provided that decedent's sister-in-law, Helen Tomasetta, would also receive a 50% share of decedent's estate and that decedent's friend, Mr. Roy Peffer, would receive $5,000.00 before Ms. Major and Ms. Tomasetta received their shares of decedent's estate. S-63.

78. Ms. Majors retained Respondent to represent her in administering the decedent's estate. S-64.

79. In or about January 26, 2010, Respondent filed a Petition for Citation to Show Cause Why a Photocopy of the Will of Aniello Joseph Leone Should Not be Admitted to Probate ("the Probate Petition"), won [sic] behalf of Ms. Majors with the Register of Wills for Philadelphia County ("the Register"). S-65.

80. Decedent's grandson, Mr. Jason Buck, decided to challenge the Probate Petition and retained Benjamin L. Jerner, Esquire. S-66-68.

81. By Decree dated August 27, 2010, the Deputy Register granted the Probate Petition. S-69-70.

82. On August 31, 2010, the Register granted Letters Testamentary to Ms. Majors. S-71.

83. Respondent and Ms. Majors opened an account for decedent's estate at Citizens Bank ("the estate account"); Respondent maintained the checkbook. S-72-73.

84. In October 2010, Mr. Buck filed an appeal from the August 27, 2010 Decree with the Orphans' Court Division of the Court of Common Pleas of Philadelphia County ("the Will contest"). ODC-42; S-74.

85. On August 21, 2011, Respondent filed with the Pennsylvania Department of Revenue an inheritance tax return with respect to decedent's estate. ODC-43; S-77.

86. According to the information contained in that inheritance tax return, Ms. Majors' share of the estate would have been a little over $240,000.00. N.T.V[2] 62-64; ODC-43.

87. Judge Herron, by Decree and Opinion dated February 8, 2012, sustained Mr. Buck's appeal from the August 27, 2010 Decree and set aside the Decree of

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[2] Notes of testimony of the June 29, 2017 hearing.

probate and grant of letters testamentary to Ms. Majors. ODC-44; S-75-76, 78.

88. After Ms. Majors' filed exceptions to the February 8, 2012 Decree and Opinion and Mr. Buck filed cross-exceptions, Judge Herron, by Decrees and Opinion dated May 7, 2012, *inter alia*:

a. denied Ms. Major's exceptions;

b. granted Mr. Buck's cross-exceptions;

c. amended the February 8, 2012 Decree to state that the August 27, 2010 Decree of probate and grant of letters testamentary was vacated; and

d. directed the Register to issue letters of administration to Mr. Buck. ODC-45; S-79-80.

89. On June 8, 2012, Respondent filed on behalf of Ms. Majors a Notice of Appeal with the Superior Court of Pennsylvania ("the Majors appeal"). ODC-46; S-81.

90. On June 15, 2012, Mr. Buck, Ms. Majors, Mr. Peffer, and Mr. Joseph Venezia, in his capacity as Personal Representative of the estate of Ms. Tomasetta, entered into a Settlement Agreement & Release ("the Settlement Agreement"). ODC-47; S-82.

91. The Settlement Agreement provided that decedent's estate would pay, *inter alia*, Ms. Majors and the estate of Ms. Tomasetta $115,669.15, less any adjustments found to be necessary upon Mr. Buck's completion of the administration of decedent's estate,

as specified in the Settlement Agreement. ODC-47; S-83.

92. On July 2, 2012, Respondent filed a praecipe for discontinuance of the Majors appeal. S-84.

93. Respondent provided to Mr. Jerner the legal file that Respondent maintained for decedent's estate, as well as the checkbook, checkbook register, and financial records related to the estate account. S-85.

94. By August 4, 2011, Respondent had received fee payments totaling $35,439.25, in addition to reimbursement of Respondent's expenses, for representing Ms. Majors.

95. Respondent also paid Karen Deanna Williams a total of $6,290.00 for legal services that she had provided. N.T.V 64-65; ODC-48; S-86.

96. On July 10, 2012, the Register issued Letters of Administration to Mr. Buck; thereafter, Mr. Jerner assisted Mr. Buck in administering decedent's estate. S-87-89.

97. In August 2012, Ms. Majors' son died and Ms. Majors lacked the funds to pay for her son's funeral expenses. N.T.[3] 21-22; N.T.V 72; ODC-173.

98. Between August 2, 2012 and August 4, 2012, Respondent sent a series of email messages to Mr. Jerner in which Respondent, *inter alia*:

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[3] Notes of testimony of the March 27, 2017 hearing.

a. requested on behalf of Ms. Majors an $8,500.00 advance of her share of the settlement proceeds to pay for her son's funeral because she "is on SSI and has not funds available for this emergency"; and

b. described Ms. Majors as not being "computer literate." N.T.V 71-72, 74; ODC-173.

99. Mr. Buck advanced Ms. Majors the $8,500.00 by sending her a check; Ms. Majors cashed the check and used the proceeds to pay for her son's funeral expenses. N.T. 22-25; ODC-50-51, 119.

100. By letter dated May 21, 2013, sent via e-mail to Respondent and counsel for Mr. Venezia and Mr. Peffer, Mr. Jerner, *inter alia*:

a. advised that Mr. Buck had prepared three checks, one of which was made payable to Respondent and Ms. Majors, in the amount of $85,488.92;

b. explained that adjustments were made to the amounts to be paid to Ms. Majors, Mr. Peffer, and the estate of Ms. Tomasetta in accordance with the Settlement Agreement;

c. requested that Ms. Majors, Mr. Peffer, and Mr. Venezia sign the letter and that Respondent and counsel return the signed copies to Mr. Jerner; and

d. stated that upon receipt of the signed copies he would forward the checks. ODC-50; S-90.

101. On May 23, 2013, Ms. Majors signed Mr. Jerner's May 21, 2013 letter and expected to receive

her share of the settlement proceeds sometime thereafter. N.T. 29-30, 58-59; ODC-51; S-91.

102. On May 28, 2013, Respondent arranged to pick up the $85,488.92 check ("the settlement check") from Mr. Jerner's office. S-92.

103. The settlement check was dated May 20, 2013, and made payable to Respondent and Ms. Majors. ODC-53; S-93.

104. On May 28, 2013, Respondent received an e-mail from Mr. Jerner in which he requested that Respondent not deposit the settlement check until May 30, 2013, because Mr. Buck had been advised by Wells Fargo that funds would not be available until that date to honor the settlement check. N.T.V 88-89; ODC-52; S-94.

105. Respondent advised Ms. Majors that he had received the settlement check and that she would receive her share of the proceeds from the settlement check after the settlement check had "cleared." N.T. 31; S-95.

106. On May 28, 2013, Respondent sent an e-mail to Mr. Jerner in which Respondent:

a. acknowledged receipt of the settlement check; and

b. stated that Ms. Majors was "okay with holding the check until Thursday, being 5/30/13." N.T.V 88-89; ODC-52; S-96.

107. Respondent informed Ms. Majors that he would be taking an additional fee of $6,000.00 from the settlement check, which in combination with the prior fee payments received by Respondent, compensated him fully for the time he had expended in representing her. N.T. 31-32, 86; N.T.V 65-66.

108. Respondent endorsed the back of the settlement check. N.T.V 82; ODC-53.

109. Respondent placed Ms. Majors' endorsement on the back of the settlement check. N.T. 30; N.T.V 82; ODC-53.

110. Respondent failed to obtain Ms. Majors' authority and consent to endorse her name on the back of the settlement check. N.T. 30, 79.

111. On May 31, 2013, Respondent deposited the settlement check into an IOLTA account that he maintained with TD Bank ("IOLTA 3 account"). ODC-53, 126; S-97.

112. Based on Respondent's statement to Ms. Majors that Respondent was taking an additional fee of $6,000.00 from the settlement check, Ms. Majors' share of the settlement check was $79,488.92. N.T. 31; N.T.V 65; ODC-53.

113. Respondent failed to provide Ms. Majors with her share of the proceeds from the settlement check. N.T. 32-33; ODC-126-128.

114. Respondent knowingly misappropriated to Respondent's own use $79,488.92 of settlement funds

belonging to Ms. Majors; by December 9, 2013, Respondent had completely expended Ms. Majors' funds. N.T. 132-139, 141; ODC-126-128.

115. On or about August 29, 2014, Respondent:

a. obtained and presented to Ms. Majors a $7,343.90 Cashier's Check issued by Wells Fargo Bank, made payable to Ms. Majors;

b. obtained a $2,653.10 Cashier's Check issued by Wells Fargo Bank, made payable to the City of Philadelphia, which listed "2620 S. Mildred," the street address for Ms. Majors' residence, on the "Memo" section of the Cashier's Check; and

c. represented to Ms. Majors that the Cashier's Checks were a portion of Ms. Majors' "money from the estate." N.T. 34-36; N.T.V 100-101; ODC-124-125; S-98.

116. Respondent obtained the two Cashier's Checks by borrowing funds from Respondent's sister, Nancy Mirarchi, and Respondent's brother, Eric Mirarchi. N.T.IV 205, 213-214; N.T.V 101-104.

117. Respondent had not previously borrowed money from family members in order to "gift" a client a sum of money; Respondent did so on behalf of Ms. Majors to appease Ms. Majors, who had been asking Respondent for money from her settlement proceeds. N.T. 34-36, 42, 63; N.T.V 101, 103-104.

118. From time to time over the course of 2014, 2015, and early 2016, Ms. Majors frequently asked Respondent for financial assistance either in person or by

text message in order to pay her real estate taxes and bills, to purchase gifts for her daughter, and to have money for Christmas; on occasion, Respondent gave Ms. Majors money. N.T. 33, 36-37, 41-42, 44-46, 63, 88; N.T.V 101, 105-108, 110-115, 129-132; ODC-55, 151; S-102-105)

119. Ms. Majors asked Respondent for money because she knew he had received her settlement proceeds and she was seeking her money from the estate. N.T. 36-37, 42, 63.

120. From time to time, Respondent would tell Ms. Majors that he would obtain the rest of the money that he owed her from his sister, Nancy Mirarchi. N.T. 46-47; 127-128.

121. During Petitioner's investigation of the ODC matter, which principally involved a review of financial records pertaining to the IOLTA 1 account, Petitioner sent a September 17, 2014 letter to Respondent in which Petitioner requested certain information and documents from Respondent. N.T.V 117-118; ODC-156.

122. In the September 17, 2014 letter, Petitioner had requested certain information and documents that related to the IOLTA 3 account, in which Respondent had deposited the settlement check. N.T.V 118-119; ODC-126, 156.

123. When Petitioner sent the September 17, 2014 letter to Respondent, Ms. Majors had yet to file a disciplinary complaint with Petitioner. N.T. 81-83.

124. Respondent had Ms. Majors sign a document that falsely claimed that Ms. Majors had gifted to Respondent her share of the proceeds from the settlement check, which document Respondent presented to Petitioner the day after Ms. Majors signed that document. N.T.V 118-122; ODC-54, 156-157.

125. Respondent carried out his scheme by calling Ms. Majors on February 11, 2015, and explaining to her that he was coming to her house to have her sign a document so that Respondent would not get into "trouble" with the "Bar Association." N.T. 38-39; N.T.V 119; ODC-54.

126. On February 11, 2015, Respondent appeared at Ms. Majors' residence with a one-page document titled "AFFIDAVIT" that he had prepared and wanted Ms. Majors to sign. N.T. 39-40, 124-125; N.T.V 119, 128-129; ODC-54; S-99.

127. Ms. Kathleen Postiglione, Ms. Majors' first cousin, was present during Respondent's visit. N.T. 123-124, N.T.V 128-129.

128. When Respondent presented the AFFIDAVIT to Ms. Majors, he:

a. directed Ms. Majors to sign the AFFIDAVIT;

b. informed Ms. Majors he needed her to sign the AFFIDAVIT so that Respondent would not get into "trouble" with the "Bar Association";

c. did not review the contents of the AFFIDAVIT with Ms. Majors;

d. did not provide Ms. Majors with a copy of the AFFIDAVIT;

e. was in a hurry and did not give Ms. Majors an opportunity to review the AFFIDAVIT. N.T. 39-41, 64-65, 67-68, 88, 123-126.

129. Paragraph 10 of the AFFIDAVIT represented that Ms. Majors "told [Respondent] to keep the settlement because he work [sic] so many hours and fought so hard that [Ms. Majors] thought he earned it." ODC-54; S-100.

130. When Ms. Majors signed the AFFIDAVIT, she:

a. relied on the explanation that Respondent told her as to Respondent's reason for wanting Ms. Majors to sign the AFFIDAVIT;

b. was not acting on the advice of independent counsel;

c. was on medication after having been recently released from the hospital; and

d. had not read the document and was inattentive to what was contained therein. N.T. 40-41, 64-65, 67-68, 125-126, 129-130; S-101.

131. Respondent held a position of trust with Ms. Majors as not only her lawyer, but her close friend. N.T. 46-47, 50-52, 60-61, 88; N.T.IV 116-117, 122-123.

132. Respondent knew when he requested that Ms. Majors sign the AFFIDAVIT that she was extremely reliant on his advice and guidance because she

had a history of serious mental illness that required her to take medication and that had previously resulted in her being hospitalized. N.T. 89-90; N.T.V 77-81.

133. Both the AFFIDAVIT and Respondent's February 12, 2015 answer to Petitioner's question 8 in the September 17, 2014 letter that dealt with the recent IOLTA account omitted information concerning:

a. the amount of Ms. Majors' settlement proceeds that Ms. Majors purportedly gifted to Respondent; and

b. when Ms. Majors made the purported monetary gift to Respondent. N.T.V 120-121, 123; ODC-54, 156-157.

134. Respondent's February 12, 2015 answer to Petitioner's question 8 in the September 17, 2014 letter did not disclose the amount of Ms. Majors' share of the settlement proceeds and misleadingly characterized Ms. Majors' approximately $80,000.00 share of those proceeds as "a small percentage of the intended bequest." N.T.V 124-126; ODC-156-157.

135. In 2014, Respondent met with Ms. Postiglione at the residence she shares with Ms. Majors so that Respondent could discuss an employment issue with Ms. Postiglione. N.T. 126-127; N.T.V 109.

136. Ms. Majors was present when Respondent came to meet with Ms. Postiglione. N.T. 127; N.T.V 109-110.

137. After Respondent finished his meeting with Ms. Postiglione, Respondent told Ms. Majors not to worry, that he was "going to get that money from [Respondent's] sister." N.T. 127-128.

138. Respondent's claim is not credible that shortly after Ms. Majors entered into the Settlement Agreement, she expressed to Respondent that she was unhappy with the amount of the settlement and wanted Respondent to have her share of the settlement check because of the legal work that he had performed on her behalf because:

a. Ms. Majors testified that she had not told Respondent that she was gifting to him her share of the settlement check;

b. Ms. Majors has been unemployed since 2000 and has meager financial resources, in that for years she and her husband's sole sources of monthly income are monthly federal and state disability payments that total slightly over $1,000.00;

c. Ms. Majors needed to use an advanced portion of her settlement proceeds to pay for her son's funeral;

d. after Ms. Majors had purportedly disclaimed any interest in the settlement proceeds, Respondent apprised Ms. Majors that he had received the settlement check, that she would receive her share of the proceeds when the settlement check had "cleared," and that Mr. Jerner had requested that Respondent wait until May 30, 2013, before depositing the settlement check;

e. after Respondent had received Ms. Majors' settlement proceeds, Ms. Majors was frequently asking Respondent for money, which Ms. Majors testified was due to Respondent having received the settlement check;

f. Respondent provided intermittent financial assistance to Ms. Majors after he received and misappropriated her proceeds from the settlement check, having gone so far as to borrow $10,000.00 from his brother and sister to obtain two Cashier's Checks for the benefit of Ms. Majors;

g. Respondent took no action to memorialize Ms. Majors' purported monetary gift until Petitioner began making inquiries into the IOLTA 3 account as part of Petitioner's investigation of Respondent's manner of handling fiduciary funds; and

h. Ms. Majors filed a disciplinary complaint against Respondent with Petitioner after she contacted Mr. Jerner and explained to him that she had not received her share of the proceeds from the settlement check. N.T. 18-19, 24-28, 43, 59-60, 82-83, 89; N.T.IV 119, 121; N.T.V 68-70, 75-77, 87-91, 100-104, 127-128, 130-131; ODC-50-55, ODC-104, 121-125, 173; S-95-96)

THE OCTOBER 18, 2014
SLIP AND FALL ACCIDENT

139. During Respondent's handling of the estate matter, Ms. Majors retained Respondent to represent her for any claims she had arising from a slip and fall

accident that occurred on October 18, 2014. ODC-56; S-106-108.

140. On February 6, 2016, Ms. Majors sent Respondent a text message and advised Respondent that he was discharged. ODC-58; S-110.

141. Thereafter, Ms. Majors called Respondent to request that he provide her with a copy of the legal file that he maintained for her slip and fall case; Respondent failed to provide Ms. Majors with a copy of the legal file for her slip and fall case in response to her calls. N.T. 43-44; S-114.

142. Ms. Majors retained Leonard P. Haberman, Esquire, to represent her in the slip and fall case. S-111.

143. By letter dated September 2, 2016, which was sent by regular mail and drafted on the stationery of Mr. Haberman's law firm, Ms. Majors requested that Respondent release the legal file for her slip and fall case to Mr. Haberman. ODC-59; S-112.

144. On September 9, 2016, Mr. Haberman filed a lawsuit on behalf of Ms. Majors ("the Majors lawsuit"). ODC-60; S-113.

145. During the week of March 6, 2017, Respondent provided Mr. Haberman with the legal file for Ms. Majors' slip and fall case. S-114.

CHARGE III: Administrative Suspension and Unauthorized Practice of Law

146. Pennsylvania Continuing Legal Education Board ("the CLE Board") assigned Respondent to Compliance Group 3; therefore, Respondent has a deadline of December 31st to comply with the Pennsylvania Continuing Legal Education ("CLE") requirements. S-116.

Administrative Suspension in 2012

147. From September 2011 through September 2012, Respondent maintained an office for the practice of law at the North American Building, 121 S. Broad Street, Suite 1010, Philadelphia, PA 19107 ("the NAB address"). N.T. 220; ODC-140-148.

148. Respondent received a September 30, 2011 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

a. notified Respondent that he had yet to comply with the CLE requirements due by December 31, 2011; and

b. informed Respondent that if he failed to complete the CLE requirements by the compliance deadline, he would be assessed a $100 late fee and he would be subject to having his law license administratively suspended. N.T.IV 220-221; ODC-140.

149. Respondent received a February 24, 2012 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

a. notified Respondent that he had failed to comply with the CLE requirements due by December 31, 2011;

b. advised Respondent that he had sixty days from the date of that notice to complete the CLE requirements and to pay any outstanding late fees and that Respondent's failure to do so would result "in the assessment of a second $100 late fee and [Respondent's] name being included on a non-compliant report to the Supreme Court of Pennsylvania." N.T.IV 222-223; ODC-141.

150. Respondent received a May 30, 2012 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

a. notified Respondent that the letter served as a second notification that he was non-compliant with the CLE requirements due on December 31, 2011;

b. advised Respondent that if he failed to complete the CLE requirements and pay any outstanding late fees by 4:00 p.m. on June 29, 2012, Respondent's name would be included on a non-compliant report for submission to the Supreme Court of Pennsylvania; and

c. informed Respondent that upon receipt of that non-compliant report, the Supreme Court of Pennsylvania would issue an Order to "administratively suspend [Respondent's] license to

practice law in the Commonwealth of Pennsylvania and a third $100 late fee [would] be assessed." N.T.IV 224-225; ODC-142.

151. By Order dated August 2, 2012 ("the 2012 Order"), the Supreme Court of Pennsylvania placed Respondent on administrative suspension for having failed to comply with the CLE requirements. ODC-143.

152. By letter dated August 2, 2012, sent to Respondent by certified mail, return receipt requested, at the NAB address, Suzanne E. Price, Attorney Registrar, *inter alia*:

a. enclosed a copy of the 2012 Order and one page of the attachment, which contained Respondent's name;

b. advised that Respondent was to be administratively suspended effective September 1, 2012, for having failed to comply with the CLE requirements by December 31, 2011;

c. enclosed a written guidance for administratively suspended lawyers, a copy of Pa.R.D.E. 217, and various forms for Respondent to use to comply with the 2012 Order; and

d. notified Respondent that in "order to resume active status, [Respondent] must comply with the PA.C.L.E. Board before a request for reinstatement to the Disciplinary Board will be considered." N.T.IV 225-230; ODC-143-144.

153. Respondent failed to claim this letter when he was notified by the United States Postal Service that he had been sent correspondence via certified

mail; however, Respondent received this letter when the Attorney Registration Office sent this letter to Respondent at the NAB address by first class mail on September 7, 2012. N.T.IV 226-228; ODC-144.

154. Respondent filed a 2012-2013 PA Attorney Registration Form with the Attorney Registration Office. N.T.IV 230-231; ODC-145.

155. Sometime after the effective date of the 2012 Order, Respondent complied with the CLE requirements and Ms. Price was notified of that fact by letter dated September 17, 2012, sent by the CLE Board; Respondent was copied on that letter. N.T.IV 236-237; ODC-146.

156. By letter dated September 17, 2012, sent to, and received by, Respondent at the NAB address, Ms. Price, *inter alia*:

> a. stated that the CLE Board had certified that Respondent had complied with the CLE requirements;
>
> b. informed Respondent that he had to comply "with Rule 219(h) of the Pennsylvania Rules of Disciplinary Enforcement";
>
> c. notified Respondent that to be reinstated, he had to submit the Attorney's Annual Fee Form and a Statement of Compliance, and payment of the current annual fee, the annual fee due if he had not been administratively suspended, any late payment penalty, and a reinstatement fee of $300.00; and

d. requested that Respondent submit payment of the $300.00 reinstatement fee and file the Statement of Compliance. N.T.IV 237-242; ODC-147.

157. After Respondent received Ms. Price's September 17, 2012 letter, he paid the $300.00 reinstatement fee and filed a Statement of Compliance; Respondent was thereafter reinstated to active status. N.T. 241-242; ODC-147-148.

Administrative Suspension in 2015

158. Respondent knew from his experience with having been administratively suspended in 2012 that if he were administratively suspended in the future, he:

a. had to cease and desist from the practice of law until he resumed active status; and

b. had to comply with the CLE requirements, file certain paperwork with the Attorney Registration Office, and pay certain fees before he would be reinstated to active status. N.T.IV 239-243.

159. Between October 2014 and early August 2015, Respondent had an office for the practice of law at 1806 S. Broad Street, Floor 1, Philadelphia, PA 19145 ("the law office address"). S-117

160. Between October 3, 2014 and early 2015, Respondent received letters from the Attorney Registration Office and the CLE Board identical to those

letters he received related to his 2012 administrative suspension, advising him of his CLE obligations and the consequences for failing to fulfill those obligations. ODC-61; S-118, 127; ODC-62; S-119, 127; ODC-63; S-120, 127.

161. By Order dated July 15, 2015 ("the Order"), the Supreme Court of Pennsylvania placed Respondent on administrative suspension for having failed to comply with the CLE requirements. ODC-64; S-121.

162. Between July 15, 2015 and early August 2015, Respondent received letters and emails from the Attorney Registration Office and the CLE Board identical to those letters he received related to his 2012 administrative suspension, notifying him of his administrative suspension and obligations pursuant thereto. N.T. IV 254, 256, 258-261, 262-263; N.T. V 234-235; ODC-65, 66, 67; S-122, 123, 124, 125, 127.

163. Pursuant to the letters and emails, Respondent knew that as of August 14, 2015, he was administratively suspended. N.T.II[4] 150; N.T.IV 262-263; S-127.

164. Respondent knew that he was ineligible to practice law in Pennsylvania by virtue of:

a. the letters and e-mails that he received from the CLE Board;

b. Ms. Price's July 15, 2015 letter and enclosures;

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[4] Notes of testimony of the April 10, 2017 hearing.

c. the expiration of Respondent's Pennsylvania attorney's license on July 1, 2015; and

d. Respondent's failure to obtain a Pennsylvania attorney license after July 1, 2015. N.T.IV 251-253; PFOF 154-156, 158-162; S-127.

b. Respondent violated Pa.R.D.E. 217(e), in that he did not timely file a verified Statement of Compliance (Form DB-25(a)) with the Disciplinary Board Secretary. S-128.

Instances of Unauthorized Practice

165. On August 14, 2015, Respondent was counsel of record for the defendant in ***Commonwealth of Pennsylvania v. William J. Janisheck***, MC-51-CR-0009263-2014, a criminal case that was pending in the Philadelphia Municipal Court ("the Janisheck criminal case"). ODC-68; S-129.

166. Respondent failed to advise Mr. Janisheck that:

a. he had been administratively suspended; and

b. he could not represent Mr. Janisheck. S-130.

167. Respondent failed to advise the judge and opposing counsel assigned to the Janisheck criminal case that Respondent had been administratively suspended. S-131.

168. Respondent failed to withdraw from the Janisheck criminal case. S-132.

169. In the Janisheck criminal case, Respondent engaged in the unauthorized practice of law by representing Mr. Janisheck at a September 11, 2015 bench trial before the Honorable William Austin Meehan. N.T.IV 269-270; ODC-68; S-133.

170. On August 14, 2015, in the following civil cases that were pending in the Philadelphia Court of Common Pleas, Respondent was counsel of record for:

a. the defendants in the case of ***Tambar Washington vs. Stephanie Mancini, et al.***, docket number 120203153;

b. the plaintiff in the case of ***Ercole Mirarchi vs. Richmond and Hevenor, Attorneys at Law, et al.***, docket number 150303429 ("the Mirarchi I case");

c. the plaintiff in the case of ***Ercole Mirarchi vs. Richmond and Hevenor, Attorneys at Law, et al.***, docket number 150303942 ("the Mirarchi II case"); and

d. the defendant, Tristate Property, LLC, in the case of ***Dana O'Neill et al. vs. David L. Heckenberg, et al.***, docket number 150702250. N.T.IV 270-271; ODC-69-72; S-134.

171. On August 14, 2015, Respondent was counsel of record for the appellee, Ercole Mirarchi, in an appellate case pending in the Superior Court of Pennsylvania, said case captioned ***Richmond and Hevenor,***

Attorneys at Law v. Ercole Mirarchi, docketed at 2102 EDA 2015. ODC-73; S-135.

172. Respondent failed to advise Respondent's clients in the aforementioned civil and appellate cases that:

a. he had been administratively suspended; and

b. he could not represent them in their legal matters. S-136.

173. Respondent failed to advise the judges and opposing counsel who participated in the aforementioned civil and appellate cases that he had been administratively suspended. S-137.

174. Respondent failed to withdraw Respondent's representation of his clients in the aforementioned civil and appellate cases. ODC-69-73; S-138.

175. In the Mirarchi I case, Respondent engaged in the unauthorized practice of law by filing a Reply to New Matter & Crossclaim on August 25, 2015. N.T.IV 270-271; S-139.

176. Sometime in early August 2015, Respondent had moved his office to 2000 Market Street, Suite 2925, Philadelphia, PA 19103 ("the new law office address"). S-140.

CLE Compliance and Resumption of Practice

177. By letter dated August 28, 2015, Mr. Ilgenfritz certified to Ms. Price that "since the effective date

of the Supreme Court's order on 8/14/2015," Respondent had complied with the CLE requirements. ODC-74; S-141.

178. By letter dated August 28, 2015, sent to, and received by, Respondent via electronic submission, Mr. Ilgenfritz, *inter alia*:

a. enclosed a copy of the August 28, 2015 letter he sent to Ms. Price;

b. stated that the "Disciplinary Board has mailed out the necessary paperwork to [Respondent] in order to remove the administrative suspension"; and

c. advised Respondent that upon "receipt of the form(s) and fee(s), the Disciplinary Board will authorize [Respondent's] reinstatement." N.T.IV 273-275; ODC-75; S-142-143.

179. By letter dated August 28, 2015, sent to, and received by, Respondent at the new law office address, Ms. Price, *inter alia*:

a. stated that the CLE Board had certified that Respondent had complied with the CLE requirements;

b. informed Respondent that he had to comply "with Rule 219(h) of the Pennsylvania Rules of Disciplinary Enforcement";

c. listed the procedure Respondent had to follow to be reinstated;

d. advised Respondent that her office's "records show that [Respondent had] not paid the current license fee"; and

e. requested that Respondent "submit a U.S. check, money order or cashier's check in the amount of $650.00 (payable to Attorney Registration)." (N.T.IV 276-279; ODC-76; S-144-145)

180. Between August 14, 2015, and September 15, 2015, Respondent continued to maintain an office for the practice of law and to hold himself out as eligible to practice law, through the use of letterhead, business cards, and Respondent's Linked In profile. N.T.II 150-153; N.T.IV 147, 153, 265-266; ODC-78; S-151.

181. On September 16, 2015, the Attorney Registration Office received from Respondent the 2015-2016 Status Change Form and a $650.00 payment. ODC-117; S-146.

182. On September 16, 2015, the Attorney Registration Office received from Respondent a Statement of Compliance that was dated September 15, 2015. ODC-77; S-147.

183. Respondent signed the Statement of Compliance and certified that "under the penalties provided by 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the foregoing statements are true and correct and contain no misrepresentations or omissions of material fact." N.T.IV 279-280; ODC-77; S-149.

184. In the Statement of Compliance, Respondent misrepresented that he had:

a. complied with the Order and the Pennsylvania Rules of Disciplinary Enforcement; and

b. "ceased and desisted from using all forms of communication that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania. . . ." ODC-77; N.T.II 150-153; N.T.IV 281-284; S-148.

185. On September 16, 2015, Respondent was reinstated to active status in the Commonwealth of Pennsylvania. S-150.

186. Respondent falsely testified at the disciplinary hearing that while he was administratively suspended, he "did not work on any cases." N.T.IV 147, 153, 266-267.

187. Based on Respondent's prior administrative suspension in 2012, and the correspondence he received from the CLE Board and the Attorney Registration Office in July, August, and September 2015, Respondent knew that to resume active status, he had to comply with the CLE requirements ***and*** file certain forms and pay certain fees.

188. Respondent knowingly engaged in the unauthorized practice of law and disregarded the Order.

Failure to Respond to DB-7 Letter

189. Respondent received a DB-7 Request for Statement of Respondent's Position ("the DB-7 letter") dated February 4, 2016, in which ODC notified Respondent:

a. of allegations relating to Respondent's unauthorized practice while administratively suspended, as set forth above, and The Joseph Gargano Matter (Charge V, *infra*); and

b. that the failure to respond to the DB-7 letter without good cause would be an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7). ODC-79; S-152-154.

190. Respondent failed to:

a. submit to ODC a response to the DB-7 letter; or

b. present to ODC evidence that he had good cause for not responding to the DB-7 letter. S-155.

CHARGE IV: The Linda Sacchetti Matter

191. On December 6, 2008, Linda Sacchetti, a/k/a Kai Mui Yau, participated in a marriage ceremony with Mario Sacchetti ("decedent"). S-160.

192. On June 22, 2011, Mario Sacchetti died; his will named a nephew, Charles Sacchetti, as executor. S-157.

193. Linda Sacchetti and Charles Sacchetti became involved in a dispute over decedent's estate, at

the conclusion of which the Orphan's Court declared, *inter alia*, that the purported marriage between Ms. Sacchetti and decedent was null and void, and that all bequests made to Ms. Sacchetti in decedent's will were to be treated as part of the residue of decedent's estate. S-163.

194. Subsequently, Ms. Sacchetti retained Respondent to prosecute an appeal from the Orphan's Court order, paying him $15,000.00. S-166-170.

195. Respondent timely filed a notice of appeal, but on February 6, 2014, the Superior Court dismissed the appeal for Respondent's failure to file a Docketing Statement. Upon Respondent's motion, the Court reinstated the appeal, and permitted Respondent to file a Docketing Statement. S-171-180.

196. After being granted a 30-day extension within which to file a brief for Ms. Sacchetti in the Superior Court, respondent failed to file a brief. Upon Ms. Sacchetti's *pro se* motion for an extension of time, and Charles Sacchetti's motion to dismiss the appeal, on November 14, 2014, the Superior Court ordered Respondent to either file a brief within 14 days or file a motion to withdraw as counsel. S-187, 191-194, 205-213.

197. Respondent failed to comply with the Superior Court's Order. S-214, 215.

198. By letter dated November 17, 2014, Ms. Sacchetti stated that she had learned that Respondent had failed to file a brief on her behalf, terminated

Respondent's representation and requested a return of the retainer paid to him. Respondent failed to answer the letter, refund any portion of the retainer, provide Ms. Sacchetti with her file, or withdraw his appearance. S-216, 219.

199. On July 3, 2014, Ms. Sacchetti was arrested after Charles Sacchetti accused her of stealing decedent's personal property. S-182.

200. While representing Ms. Sacchetti in the estate matter, Respondent agreed to represent Ms. Sacchetti in the criminal case for a fee of $2,000.00; he subsequently agreed to accept a partial payment of $750.00, and the balance over time, and entered his appearance. S-184-186, 188, 190.

201. Respondent was granted continuances of the criminal case on two occasions, but took no other action in the case, and on November 18, 2014, was removed as counsel and replaced by appointed counsel. S-220-222.

202. Ms. Sacchetti was born in China; she moved to Hong Kong when she was 21 and lived there from 1974 through 2000. Ms. Sacchetti grew up speaking Taiwanese and Mandarin, and began speaking Cantonese after she moved to Hong Kong. N.T. 94.

203. Ms. Sacchetti is not fluent in the English language in that she has a limited ability to speak the English language and to understand when spoken to in the English language. N.T. 95, 97-100, 102-6, 112, 115; N.T.V 137-140, 156-162; ODC-89, 149.

204. Ms. Sacchetti used the assistance of others to draft checks to Respondent in payment of Respondent's fee, to communicate with Respondent, and to prepare motions and correspondence filed with the Superior Court of Pennsylvania. N.T. 97-100, 102-106, 119-120.

205. When Ms. Sacchetti met with Respondent on November 20, 2013, she was accompanied by an interpreter. N.T. 98-99.

206. Ms. Sacchetti met with Respondent after she was arrested on July 3, 2014; Ms. Sacchetti's daughter attended this meeting and served as an interpreter. N.T. 101, 119-120; S-182, 184-185; N.T.V 157-158.

207. The meeting between Respondent, Ms. Sacchetti, and Ms. Sacchetti's daughter lasted about one hour. N.T. 101.

208. After Respondent exchanged emails with Ms. Sacchetti on October 16, 2014, Respondent ceased communicating with Ms. Sacchetti and no longer responded to Ms. Sacchetti's inquiries about the appeal and the criminal case. N.T. 103-6; N.T.V 145-150; ODC-99, 102-104; S-202-204, 207-211, 216-217, 219.

209. Respondent failed to refund to Ms. Sacchetti the $750.00 that he had received to represent her in the criminal case. N.T. 107; N.T.V 149.

210. During the period that Respondent represented Ms. Sacchetti in the appeal of the estate case, Ms. Sacchetti called Respondent from time to time to inquire about the status of that matter. S-226.

211. Respondent failed to return the messages left for him by Ms. Sacchetti. N.T. 107.

212. During the period that Respondent represented Ms. Sacchetti in the appeal of the estate case, Ms. Sacchetti went to Respondent's office from time to time to inquire about the status of that matter. S-227.

213. On those occasions that Ms. Sacchetti went to Respondent's office, Respondent was not present. N.T. 107-108.

214. On June 26, 2015, Petitioner served Respondent with a DB-7 letter concerning allegations relating to Ms. Sacchetti's complaints about Respondent's representation. S-229, 230; ODC-106.

215. Respondent had received the Sacchetti DB-7 letter and knew from his counsel that a response was due. N.T.V 152-154; ODC-106, 150; S-229-230.

216. Respondent failed to:

a. submit to ODC a response to the Sacchetti DB-7 letter; or

b. present to ODC evidence that he had good cause for not responding to the DB-7 letter. N.T.V 153-154.

CHARGE V: The Joseph Gargano Matter

217. On June 25, 2014, Respondent, having been retained by Joseph Gargano, filed a lawsuit on Mr. Gargano's behalf captioned ***Joseph Gargano v. Index Realty, Inc., D.B.A. Le Castagne*** ("Gargano lawsuit"),

in the Court of Common Pleas of Philadelphia County. ODC-107.

218. The Gargano lawsuit was listed for an arbitration hearing on March 26, 2015, at the Arbitration Center; neither Respondent nor Mr. Gargano appeared, and so the Honorable Idee Fox approved a judgment of *non pros*, which was entered on the docket the following day. ODC-107.

219. On March 29, 2015, Respondent sent a text message to Mr. Gargano stating, *inter alia*, that he had to file a motion to "fix a dismissal" of the Gargano lawsuit. ODC-110.

220. Respondent did not file a petition to open the judgment of *non pros* of the Gargano lawsuit until May 19, 2016, more than one year after the *non pros* was entered; the motion was denied. ODC-107.

221. By letter dated August 14, 2015, Daniel J. Siegel, Esquire, informed Respondent that he was representing Mr. Gargano on a claim that Respondent had failed properly to represent Mr. Gargano, requested that Respondent put his malpractice carrier on notice, and advised Respondent to preserve all items relating to the claim. ODC-111.

222. On August 24, 2015, the defendants in the Gargano lawsuit filed an action against Respondent and Mr. Gargano, alleging a violation of the Dragonetti Act. ODC-112.

223. On October 19, 2015, Mr. Gargano advised Respondent by text message that Mr. Siegel would

represent Mr. Gargano on all matters, stated that he was aware that Respondent had refused to give Mr. Gargano his legal file, and told Respondent to make Mr. Gargano's legal file available. ODC-113.

224. That same day, Respondent answered Mr. Gargano's message by text message in which he refused to release the legal file unless he was reimbursed for his costs, and stated that he had told Mr. Gargano's father that he was preparing a petition to open the case. ODC-113.

225. Mr. Gargano responded to Respondent's text message as follows: "LOL 7 months later to file petition now I'm being sued for your mistake," to which Respondent texted, in part: "You can laugh all you want. If I don't fix it, you and they get nothing out of me. I'm broke." ODC-114.

226. Despite additional requests by Mr. Siegel, Respondent failed to provide him or Mr. Gargano with the contents of Mr. Gargano's legal file, which included documents given by Mr. Gargano to Respondent. ODC-115; N.T.IV 6-10.

227. In his 2014-2015 PA Attorney's Annual Fee Form and 2015-2016 Administrative Change in Status from Administrative Suspension Form, Respondent represented that he maintained professional liability insurance. ODC-116,117.

228. Respondent received notice of the scheduled March 26, 2015 arbitration hearing. ODC-167, ¶3, ODC-168, pp. 2, 4, 10.

229. Respondent failed to inform Mr. Gargano of the date, time, and location of the arbitration hearing. ODC-167, ¶5, ODC-168, p. 11.

230. Mr. Gargano failed to appear for the March 26, 2015 arbitration hearing because he was unaware of the date, time, and location of the arbitration hearing. ODC-167, ¶5, ODC-168, p. 11.

231. Respondent failed to take prompt action to have the judgment of *non pros* vacated and the Gargano lawsuit reinstituted. N.T.V 172-174; ODC-167-168.

232. When Respondent sent Mr. Gargano an October 19, 2015 text message that stated that Respondent was "working on a Petition," Respondent made a misrepresentation to Mr. Gargano because Respondent was not preparing a petition at that time. N.T.V 171-173; ODC-114, 167-168.

233. In May 2016, fourteen months after the Gargano lawsuit was dismissed, and seven months after Respondent claimed that he was "working on a Petition," Respondent filed in the Gargano lawsuit a Petition to Open the Judgment by Default ("the Petition to Open") in order to have the judgment of *non pros* vacated and the Gargano lawsuit reinstituted. N.T.V 171-174; ODC-114, 167-168.

234. By Order dated June 14, 2016, Judge Fox:

a. denied the Petition to Open; and

b. stated that the Petition to Open failed "to provide a reasonable explanation for the fourteen month delay in filing the Petition to Open the Non Pros" and "to state a reasonable excuse for Plaintiff's failure to attend the Arbitration and/or why a request for a continuance was not made." ODC-169.

235. Respondent's mishandling of the Gargano lawsuit and failure to provide Mr. Siegel with the documents that Respondent received from Mr. Gargano prejudiced Mr. Gargano in that:

a. Mr. Gargano was unable to fully litigate his meritorious claims against the defendants in the Gargano lawsuit;

b. the manner in which the Gargano lawsuit was dismissed afforded defendants a basis to allege a violation of the Dragonetti Act by Mr. Gargano and Respondent;

c. Mr. Gargano had to retain and pay Mr. Siegel to represent him in the Index Realty lawsuit; and

d. when Mr. Siegel filed on behalf of Mr. Gargano a crossclaim asserting legal malpractice by Respondent, Mr. Siegel was unable to establish the extent of Mr. Gargano's damages, thereby precluding Mr. Gargano from obtaining a recovery. N.T.IV 8-12, 20-22; N.T.V 174-175; ODC-112, 115, 167, ¶6, ODC-168, p. 11.

236. Respondent's October 19, 2015 text messages to Mr. Gargano indicated that Respondent did not maintain professional liability insurance. ODC-114.

237. Respondent testified that in October 2015, he learned that he no longer had professional liability insurance. N.T.IV 291.

238. Sometime before October 2015, Respondent ceased maintaining professional liability insurance because he was unable to pay for such insurance. N.T.IV 291; N.T.V 164-165.

239. Respondent was unable to state when his professional liability insurance lapsed and for how long he was without such insurance. N.T.IV 295-297; N.T.V 167-168, 170.

240. Respondent failed to notify the Attorney Registration Office within 30 days after he ceased maintaining professional liability insurance that he no longer maintained professional liability insurance. N.T.V 169-170; S-254-258.

241. After Respondent ceased maintaining professional liability insurance, Respondent failed to inform:

a. Respondent's new clients that he did not maintain professional liability insurance; and

b. Respondent's existing clients that his professional liability insurance had terminated. N.T.V 170-171.

AGGRAVATING AND MITIGATING FACTORS

Liens

242. In March 2012, July 2012, and December 2015, the IRS filed three liens against Respondent in the amounts of $22,732.47, $10,527.68, and $10,753.72, respectively. ODC-129-130, 132.

a. The IRS liens were based on Respondent having failed to pay federal taxes on behalf of Respondent's employees for the years 2008, 2011, 2012, and 2013. N.T.V 52-55; ODC-129-130, 132.

b. In August 2012, Respondent had satisfied the IRS lien in the amount of $22,732.47; the other two IRS liens remain unsatisfied. (*Id*.)

243. In April 2013, the Commonwealth of Pennsylvania filed a lien against Respondent in the amount of $1,213.76 for non-payment of state taxes on behalf of Respondent's employees for the year 2011; this lien remains unsatisfied. N.T.V 56-57; ODC-131.

Civil Suit Against Respondent for Nonpayment of Bill

244. In December 2015, a civil case was filed against Respondent in the Philadelphia Municipal Court by ADR Options, Inc. ("ADR"), in which ADR sought payment of its bill in the amount of $3,000.00 for having provided private arbitration services to Respondent. N.T.V 60-61; ODC-138.

a. On March 30, 2016, ADR obtained a default judgment against Respondent in the amount of $4,464.50. (*Id*.)

b. On May 4, 2016, ADR took action to execute on the default judgment. (*Id*.)

c. On or about June 10, 2016, Respondent satisfied the default judgment. (*Id*.)

Bankruptcy

245. In August 2012, Respondent had filed a Chapter 11 bankruptcy petition on behalf of his incorporated solo law practice in the United States Bankruptcy Court for the Eastern District of Pennsylvania due to the debt that the law practice had accumulated. N.T.V 61-62, 205; ODC-139

246. At the request of the assigned United States Trustee, the bankruptcy case was dismissed without the entry of an order granting the bankruptcy petition. ODC-139.

Lawsuit Based on Respondent's Failure to Comply with Notification Requirements of Loan

247. In August 2013, Lawyers Funding Group, LLC ("LFG") filed a lawsuit against Respondent and his law firm in the Philadelphia Court of Common Pleas ("the LFG lawsuit"). N.T.V 31; ODC-136.

248. The Complaint in the LFG lawsuit alleged that Respondent had:

a. breached two agreements that, in essence, resulted in LFG loaning Respondent the total sum of $20,000.00, which loan was secured by Respondent's anticipated fees in certain specified personal injury cases;

b. failed to notify LFG that he had received attorney's fees in several of the personal injury cases; and

c. failed to use those attorney's fee [sic] to satisfy Respondent's obligation to LFG. N.T.V 10-11, 32, 34-37, 45, 209-210; ODC-136.

249. On January 23, 2012, Respondent and LFG entered into the first agreement ("the January 2012 agreement"), which involved LFG loaning Respondent $15,000.00. N.T.V 9-10; ODC-1, ODC-136, Exhibit "A".

a. Respondent obtained the $15,000.00 because he was in need of money. N.T.V 11-12, 20; ODC-1.

b. Among Respondent's personal injury cases identified in the January 2012 agreement were one of the two lawsuits involving Ms. Tooley and the lawsuit involving J. S. N.T.V 38-39; ODC-136, Exhibit "A".

c. The January 2012 agreement also identified two personal injury cases that Respondent was handling on behalf of Glenn Bozzacco, one lawsuit having been filed in May 2010 ("the 2010 Bozzacco lawsuit") and the second lawsuit having been filed in June 2011 ("the 2011 Bozzacco lawsuit"). N.T.V 38-39; ODC-136, Exhibit "A" and "E".

250. On July 16, 2012, Respondent and LFG entered into the second agreement ("the July 2012 agreement"), which was treated as an amendment to the January 2012 agreement. N.T.V 43-44; ODC-136, Exhibit "D".

a. The July 2012 agreement documented LFG's loan to Respondent of an additional $5,000.00, secured by Respondent's anticipated fees in the same personal injury cases identified in the January 2012 agreement. (*Id*.)

b. Respondent obtained the $5,000.00 loan because he was in need of money due [sic] Respondent's landlord having filed an eviction complaint against Respondent. N.T.V 20, 45-46; ODC-136, Exhibit "F".

251. When Respondent received his attorney's fees for the personal injury case involving Ms. Tooley, Respondent: failed to notify LFG that he had received the settlement proceeds in that matter; and converted to his own use the attorney's fees that LFG was entitled to receive. N.T.V 42, 46-47, 209-210; ODC-1, 136.

252. Respondent settled the 2010 Bozzacco lawsuit for the sum of $14,000.00 and the 2011 Bozzacco lawsuit for the sum of $15,000.00. N.T.V 18-20; ODC-1, ODC-160-162.

253. Knowing that Respondent had financial problems, Mr. Bozzacco allowed Respondent to use Mr. Bozzacco's shares of the settlement proceeds. N.T.II 22, 27-29, 33-36; N.T.V 18-20, 22.

254. On November 13, 2012, Respondent deposited into the IOLTA I account the $14,000.00 settlement check for the 2010 Bozzacco lawsuit and used all of the proceeds from that check for his own benefit. N.T.V 18-20; ODC-1, 157.

255. On June 14, 2013, Respondent deposited into the IOLTA 2 account the $15,000.00 settlement check for the 2011 Bozzacco lawsuit and used a substantial portion of the proceeds from that check for his own benefit. N.T.V 20-22; ODC-158, 160.

256. In August 2013, Respondent used $20,000.00 of funds that he had misappropriated from Ms. Majors' share of the settlement check to repay Mr. Bozzacco the monies that he had borrowed from Mr. Bozzacco. ODC-126-127, 158; N.T. 135-138; N.T.V 27-30.

a. In connection with the 2010 Bozzacco lawsuit, Respondent forewent his contingent fee and only deducted his costs, resulting in Mr. Bozzacco receiving a check in the amount of $9,435.98 that was drawn on the IOLTA 2 account. N.T.V 42; ODC-161.

b. In connection with the 2011 Bozzacco lawsuit, Respondent reduced his contingent fee from 33.3% to 25% and deducted his costs, resulting in Mr. Bozzacco receiving a check in the amount of $10,239.00 that was drawn on the IOLTA 2 account. N.T.V 42; ODC-162.

257. Respondent: failed to notify LFG that he had received the settlement proceeds for the 2010 Bozzacco lawsuit and the 2011 Bozzacco lawsuit; failed to

obtain LFG's permission to forego on the one lawsuit, and to reduce on the second lawsuit, the attorney's fees that Respondent was entitled to receive for representing Mr. Bozzacco; and converted to his own use the fees that LFG was entitled to receive in connection with the settlement of the 2011 Bozzacco lawsuit. N.T.V 42; ODC-1, 136.

258. On September 27, 2013, LFG obtained a default judgment against Respondent in the amount of $50,531.29. N.T.V 34-35; ODC-136.

259. Respondent paid an agreed-upon compromised amount to satisfy the default judgment; Respondent entered into this agreement with LFG after LFG had taken action to execute on the default judgment and had scheduled a Sheriff's sale of Respondent's property. N.T.V 47-51; ODC-136, Exhibit "F," 165-166.

Financial Situation

260. During the period that Respondent had misappropriated fiduciary funds belonging to his clients and third parties, Respondent's financial circumstances were dire as evidenced by: his testimony; his witnesses' testimony; his inability to pay for office staff; his nonpayment of rent for several office locations and his eviction from one office location; his inability to pay taxes owed to federal and state authorities; his borrowing of funds from Mr. Bozzacco; his borrowing of funds from LFG; his asking Ms. Majors for a $500.00 loan after misappropriating approximately $80,000.00 of her

settlement funds; his text messages to clients; his failed business venture; and his having become overdrawn on his operating accounts on multiple occasions, which resulted in one of the operating accounts being closed for deficient funds. N.T. 35; N.T.II 22, 28, 33-34, 61, 63-64, 140-141; N.T.IV 78-80, 85-86, 90-92, 94, 126-127, 147, 166-167, 190, 310; N.T.V 12-17, 205; ODC-55, 114, 128, 151, 163-164.

Failure to Comply with Court Orders and Procedures

261. In March 2015, Respondent filed in the Philadelphia Court of Common Pleas a legal malpractice lawsuit (referred to under Charge III as "the Mirarchi I case," *supra*) on behalf of his brother, Ercole Mirarchi, and against Kenneth W. Richmond, Esquire, William E. Hevenor, Esquire, and Richmond and Hevenor, Attorneys at Law ("R&H firm"). N.T.V 176; ODC-135.

262. In the Mirarchi I case, Respondent filed several Certificates of Merit as to Mr. Richmond, Mr. Hevenor, and the R&H firm, in which Respondent had certified the following:

> [A]n appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. N.T.V 177-178; ODC-135.

263. The Certificates of Merit filed by Respondent in the Mirarchi I case were false because Respondent had not obtained a written statement from an appropriate licensed professional before filing the lawsuit. N.T.V 181-190; ODC-70, 135, 170, 174; R-1.

264. During an October 5, 2016 hearing that was held in the Mirarchi I case on a Motion for Sanctions filed by Mr. Richmond, Respondent withdrew those counts in the Complaint that were based on a theory of legal malpractice. N.T.V 189; ODC-70, 135, 170.

265. In August 2011, Respondent filed a lawsuit on behalf of J. S. in the Philadelphia Court of Common Pleas. N.T.V 192; ODC-171.

266. In connection with that lawsuit:

a. the Honorable John W. Herron had issued an Order dated September 10, 2012, which dismissed a Petition for Leave to Compromise a Minor's Action that Respondent had filed and directed Respondent to refile a Petition that provided for immediate distribution of the sums due to J. S.;

b. Respondent failed to promptly comply with Judge Herron's Order; and

c. the Honorable Marlene F. Lachman issued an Order dated May 1, 2014, which, *inter alia*, found that Respondent had failed to comply with Judge Herron's Order, determined that Respondent was solely responsible for a nineteen-month delay in resolving that lawsuit, and imposed a

monetary sanction on Respondent. N.T.V 193-195; ODC-171.

Miscellaneous

267. Respondent's hearing testimony was not credible.

268. Respondent never made restitution to Ms. Majors.

269. Respondent failed to exhibit sincere remorse for his misconduct or acknowledge his wrongdoing.

270. Respondent's character evidence was not weighty and compelling.

271. Ten witnesses who offered character testimony had no information regarding Respondent's admitted and alleged misconduct, while four other witnesses had incomplete information. N.T. II 38-39, 48, 57, 64, 70-71, 79-80, 101-104, 134-135, 146-148, 172, 181-182, 199-200; N.T.III[5] 43-44, 48-49; N.T.IV 32-36, 210)

272. Respondent has no record of discipline.

[5] Notes of testimony of the June 27, 2017 hearing.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

THE ODC Matter

1. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

2. RPC 1.15(c) [effective 9/20/08] – Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(i): (1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks, deposited items and records of electronic transactions; and (3) [sic] check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; (3) the records required by this rule may be maintained in electronic or hard copy form. If the records are kept only in electronic form, then such

record shall be backed up at least monthly on a separate electronic storage device.

3. RPC 1.15(c) [effective 2/28/15] – Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.15(b) and the records identified in Rule 1.15(c). A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l): 1) all transactions records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks in whatever form, deposited items and records of electronic transactions; and (2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were distributed, and the dates of all deposits, transfers, withdrawals and disbursements. (3) The records required by this Rule may

be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up on a separate electronic storage device at least at the end of any day on which entries have been entered into the records. These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or demand by either agency made pursuant to the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.

4. RPC 1.15(c)(2) [effective 9/20/08] – A lawyer shall maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l) . . . (2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction.

5. RPC 1.15(c)(2) [effective 2/28/15] – A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l) . . .

(2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.

6. RPC 1.15(e) – Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

7. RPC 1.15(h) – A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the

sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.

8. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

9. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, §87.7(b), for a statement of the respondent-attorney's position, shall be grounds for discipline.

10. Pa.R.D.E. 203(b)(3) – via 219(d)(1)(iii) [superseded effective 2/28/15], which states that on or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Attorney Registration Office a signed form prescribed by the Attorney Registration Office in accordance with the following procedures: (1) The form shall set forth: (iii) The name of each financial institution in this Commonwealth in which the attorney on May 1 of the current year or at any time during the preceding 12 months held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The form shall include the name and account number for each account in which the lawyer holds such funds, and each IOLTA Account shall be identified as such. The form provided to a person holding a Limited In-House Corporate Counsel License or a Foreign Legal Consultant License need not request the information required by this subparagraph.

The Elizabeth Majors Matters

1. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

2. RPC 1.15(e) – Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

3. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

4. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Administrative Suspension and Unauthorized Practice of Law

1. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.

2. RPC 7.1 – A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's service. A communication is false or misleading if it contains a material misrepresentation of act [sic] or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

3. RPC 8.1(a) – An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.

4. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

5. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

6. Pa.R.D.E. 203(b)(3) – Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline via Pa.R.D.E. 217(a), 217(b), 217(c)(1), 217(c)(2), 217(d)(2), 217(e)(1), 217(j)(3), 217(j)(4)(ii), 217(j)(4)(iv), 217(j)(4)(v), 217(j)(4)(vi), 217(j)(4)(vii), and 217(j)(4)(ix).

7. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, §87.7(b) for a statement of the respondent-attorneys' position, shall be grounds for discipline.

The Linda Sacchetti Matter

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

4. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. RPC 1.15(e) – Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but

not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

6. RPC 1.16(a)(3) – Except as stated in paragraph(c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.

7. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

8. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

9. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary

Counsel's request or supplemental request under Disciplinary Board Rule §87.7(b), for a statement of the respondent-attorneys [sic] position, shall be grounds for discipline.

The Joseph Gargano Matter

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

4. RPC 1.4(c) – A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

5. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as

giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that ash [sic] not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

6. RPC 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

7. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

8. Pa.R.D.E. 203(b)(3) – Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline, via Pa.R.D.E. 219(d)(1)(viii) and 219(d)(3).

IV. DISCUSSION

Petitioner instituted disciplinary proceedings against Respondent by way of a Petition for Discipline filed on November 4, 2016, which charged Respondent with violating multiple Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement in five separate matters. Respondent filed an Answer, in which he denied violating many of the charged rules. Petitioner has the burden of proving ethical misconduct by a preponderance of clear and satisfactory

evidence. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730, 732 (Pa. 1981). The evidence overwhelmingly proved that Respondent violated all of the rules charged in the Petition.

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge I, between November 2011 and April 2013, Respondent: failed to maintain inviolate fiduciary funds he was holding in an IOLTA account on behalf of client and third parties; misappropriated over $24,000 in fiduciary funds and commingled Respondent's personal funds with fiduciary funds that were held in the IOLTA account; deposited funds that belonged to Respondent into the IOLTA Account; failed to maintain certain required records relating to the IOLTA Account; failed to identify an IOLTA Account on his 2013-2014 annual attorney registration form; and failed, without good cause, to respond to a DB-7A letter.

Respondent knowingly and intentionally misappropriated funds belonging to Mr. Longo, Ms. Loisch, J.S., and Mr. and Mrs. Tooley. Respondent conceded that he used funds belonging to those individuals, but claimed that he did so unintentionally due to inadequate staffing. N.T. IV 309-310, 314, 316, 331. Respondent's testimony was contradicted by: the letters that Mr. Longo sent to Respondent, which alerted Respondent to Respondent's obligation to pay referral fees to Mr. Longo; Respondent's failure to fulfill that obligation; Respondent using Mr. Longo's funds; Respondent's knowledge that he had received proceeds belonging to Ms. Loisch, J.S., and the Tooleys; Respondent's taking

of his fees from the proceeds that he received on behalf of Ms. Loisch and the Tooleys, without making a corresponding distribution to those individuals; Respondent's knowledge that he could not distribute any funds on behalf of J.S., a minor, without obtaining court approval; the records for the IOLTA 1 account, which showed that Respondent was aware of the balance in that account; Respondent's witness, Renata D'Angelo-Ginansante, who testified that she was hired by Respondent to handle bookkeeping duties for Respondent's law practice, but her duties did not extend to Respondent's trust accounts because Respondent had sole responsibility for the trust accounts; and Respondent's dire financial circumstances. N.T. II 207-208; N.T. IV 300-301.

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge II, in May 2013, Respondent misappropriated approximately $80,000.00 in settlement funds that belonged to Ms. Majors, and failed to comply with Ms. Majors' request that Respondent provide her with a copy of her legal file for a personal injury case.

Respondent claimed that Ms. Majors gave her share of the settlement proceeds to Respondent due to Respondent's hard work on her behalf and her unhappiness with the settlement. Respondent's claim is wholly unsupported by the record. The evidence established that Ms. Majors was living in straitened financial circumstances and not in a position to relinquish almost $80,000 because she was "unhappy" with the amount of the settlement. In fact, Ms. Majors

repeatedly requested financial assistance from Respondent because she had not received her share of the proceeds from him. Respondent's claim that Ms. Majors made a "gift" to him was an attempt to conceal his misappropriation of her funds.

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge III, Respondent: engaged in the unauthorized practice of law and continued to maintain an office for the practice of law from August 14, 2015 through September 15, 2015, after he was administratively suspended for failing to satisfy Continuing Legal Education requirements; failed to promptly notify his clients, the courts, and opposing counsel of his administrative suspension; used letterhead, business cards and a professional website profile that made it appear that Respondent was eligible to practice law; failed to timely file a verified statement of compliance with the Secretary of the Disciplinary Board and made misrepresentations on that statement; and failed, without good cause, to respond to a DB-7 letter.

When Respondent learned that he was administratively suspended in 2015, he continued to practice law, even though his status as a formerly admitted attorney prohibited him from doing so. He claimed that he believed he had resumed active status after he made up the deficiency in his Continuing Legal Education requirements. We find this claim to be not credible. Respondent was aware from a previous administrative suspension in 2012 that merely rectifying the CLE deficiency would not result in his instantaneous

resumption of active status. Respondent received correspondence from the Attorney Registration Board and the CLE Board advising him that he was required to file paperwork and pay certain fees before reinstatement to active status. Respondent's testimony indicated that he was aware that he had to pay certain fees but did not do so because he "was broke." N.T. IV 278; N.T.V 214-215. Even if Respondent was found to be credible on this point, this would not excuse his misconduct because the Board has found that "it is not unreasonable to expect an attorney to be continuously aware of the status of his privilege to practice law." ***Office of Disciplinary Counsel v. Steven Clark Forman***, No. 70 DB 2001 (D. Bd. Rpt. 11/13/2002) (S. Ct. Order 1/31/2003).

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge IV, in 2014, Respondent failed to: file an appellate brief on behalf of Linda Sacchetti and appear for a preliminary hearing in Ms. Sacchetti's criminal case; advise his client as to the status of her appellate case; respond to his client's written and telephonic inquiries concerning the appellate case; refund the fees that he received to represent Ms. Sacchetti; withdraw his appearance in the appellate case after he was discharged; comply with two orders issued by the Superior Court of Pennsylvania; and respond to a DB-7 letter, without good cause.

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge V, in 2015, Respondent: failed to appear for an arbitration

hearing for a lawsuit that he filed on behalf of Joseph Gargano; failed to advise his client about the date, time, and location of the arbitration hearing; misrepresented to Mr. Gargano that Respondent would have the lawsuit reopened; failed to advise Mr. Gargano about the actual status of the lawsuit; failed to return to Mr. Gargano the original documents that Respondent had received from Mr. Gargano; failed to advise the Attorney Registration Office within 30 days after he ceased maintaining professional liability insurance; and allowed the Disciplinary Board to continue to misinform the public that Respondent maintained professional liability insurance when that was no longer true.

The misconduct in this matter is aggravated by several factors, which demonstrate Respondent's unfitness to practice law.

Notably, the Hearing Committee found Respondent's testimony to be not credible, and we give great deference to this finding, as the Committee had first hand observation of Respondent's testimony. The Board has found that a respondent's failure to provide credible testimony is an aggravating factor. *See* ***Office of Disciplinary Counsel v Glenn D. McGogney***, No. 194 DB 2009 (D. Bd. Rpt. 2/25/2011) (S. Ct. Order 3/28/2012).

Respondent failed to express sincere remorse, a significant aggravating factor. *See*, ***Office of Disciplinary Counsel v. Thomas Allen Crawford, Jr.***, 160 DB 2014 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 11/4/2017);

Office of Disciplinary Counsel v. John Andrew Klamo, No. 90 DB 2015 (D. Bd. Rpt. 12/23/2016) (S. Ct. Order 3/13/2017). Intrinsic to the concept of remorse as an expression of deep regret or guilt is the ability to acknowledge wrongdoing. Respondent fell far short of acknowledging the most serious of his disciplinary violations, and exhibited little understanding of what steps he must take to bring his conduct into alignment with ethical requirements. An aggravating factor underscoring Respondent's lack of repentance is his failure to make restitution to Ms. Majors. *See* ***Office of Disciplinary Counsel v. Anonymous (Ronald L. Muha)*** No. 121 DB 1999 (D. Bd. Rpt. 11/3/2000) (S. Ct. Order 3/23/2001) (Muha's misappropriation was "compounded by the fact that [Muha] never reimbursed his client for any of the funds he converted.").

Respondent has a history of fiscal irresponsibility as shown by the civil cases filed against him seeking payment of debts, the unsatisfied tax liens entered against him, and the borrowing of funds from a client and third party. *See* ***Office of Disciplinary Counsel v. Anthony Dennis Jackson***, No. 145 DB 2007 (D. Bd. Rpt. 11/21/2008) (S. Ct. Order 4/3/2009) (Jackson was deemed "unable to effectively manage his personal affairs and professional matters" because of default judgments, unsatisfied judgments, and open liens entered against him; the Board treated this as an aggravating factors [sic]); ***Office of Disciplinary Counsel v. Raymond Quaglia***, 78 DB 2015 (D. Bd. Rpt. 11/15/2016) (S. Ct. Order 1/30/2017) (The Board considered as aggravating Quaglia's history of failing to pay taxing

authorities, which resulted in the imposition of interest, penalties, open liens, and the listing of his former law office for a Sheriff's sale.)

Respondent presented character evidence; however, this evidence was not weighty and sufficiently compelling because the character witnesses either had no information or had incomplete information regarding Respondent's misconduct. *See*, ***Office of Disciplinary Counsel v. John J. Koresko, V***, No. 119 DB 2013 (D. Bd. Rpt. 6/1/2015) (S. Ct. Order 9/4/2015) ("nominal weight" afforded to Koresko's character evidence because witnesses were not aware of the factual basis for the disciplinary charges against Koresko.) Respondent presented character testimony from fourteen witnesses; ten of the witnesses had no information concerning the disciplinary charges filed against Respondent and the remaining four witnesses had incomplete information regarding some, but not all, of the disciplinary charges. This evidence fails to overcome the substantial evidence of Respondent's misdeeds, and cannot serve to reduce the need for severe sanction. ***Office of Disciplinary Counsel v. Julia Passyn***, 644 A.2d 699, 705 (Pa. 1994).

Following the close of the record of the proceeding before the Hearing Committee on June 29, 2017, Respondent attempted to introduce mitigating evidence *de hors* the record by attaching expert reports and curricula vitae to his Brief on Exceptions to the Hearing Committee Report, filed on January 11, 2018. Following oral argument before a Board panel on Petitioner's Motion to Strike the reports and curricula vitae, by

Order dated May 2, 2018, the Board granted Petitioner's Motion, based on our conclusion that Respondent waived his opportunity to present expert evidence by having failed to comply with earlier Hearing Committee orders setting deadlines for Respondent to provide Petitioner with such expert reports, and by having failed to file a petition with the Hearing Committee, pursuant to Disciplinary Board Rules §89.251 (a), requesting permission to reopen the proceedings for the purpose of taking additional evidence.

Respondent was admitted to practice law in 2002 and has no record of discipline. While this factor is appropriate to consider in mitigation, ***Office of Disciplinary Counsel v Sharmil Donzella McKee***, No. 29 DB 2016 (D. Bd. Rpt. 7/7/2017) (S. Ct. Order 10/18/2017), upon this record, we conclude that Respondent's lack of prior discipline is insufficiently weighty in light of the serious misconduct and significant aggravating factors.

Having concluded that Respondent violated the rules, this matter is ripe for the determination of discipline. After reviewing the Committee's Report and recommendation for disbarment, Petitioner's recommendation for disbarment, and Respondent's argument for a lesser discipline, and after considering the nature and gravity of the misconduct as well as the presence of aggravating and mitigating factors, ***Office of Disciplinary Counsel v. Gwendolyn Harmon***, 72 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be disbarred from the practice of law.

Respondent's actions constitute egregious misconduct. While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and suggest disbarment when, as here, an attorney's lengthy and consistent practice of misappropriation of client funds, failure to comply with fiduciary obligations, unauthorized practice of law, dishonesty, neglect of clients' matters, and failure to respond to Petitioner's requests for information would likely pose a danger to the public if he continued to practice law. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 189-91 (Pa. 1983).

Having determined that Respondent misappropriated approximately $80,000.00 from his client, Ms. Majors, precedent supports disbarring Respondent based solely on his knowing misappropriation. *See* ***Office of Disciplinary Counsel v. Daniel J. Evans***, No. 152 DB 2000, 69 Pa. D. & C. 4th 265 (2003) (Evans, acting as both executor and attorney for an estate, misappropriated approximately $90,000.00 from the estate; Evans disbarred despite having no record of discipline, making restitution, and stipulating to many of the facts, including that he had used funds belonging to the estate); ***Office of Disciplinary Counsel v. Patricia M. Renfroe a/k/a Patty M. Renfro and Patty Michelle Renfroe***, No. 122 DB 2004 (D. Bd. Rpt. 8/30/2005) (S. Ct. Order 11/1/2005) (Renfroe disbarred for misappropriating over $155,000 from a client which was in the form of an unauthorized transfer; Renfroe had no record of discipline and the client was made financially whole but without Renfroe's assistance);

Office of Disciplinary Counsel v. Thomas Louie, No. 108 DB 2002 (D. Bd. Rpt. 10/10/2003) (S. Ct. Order 12/29/2003) (Louie disbarred for misappropriating over $108,000.00 from an estate while serving as attorney for the executors; no restitution and no record of discipline); ***Muha***, No. 121 DB 1999 (D. Bd. Rpt. 11/3/2000) (S. Ct. Order 3/23/2001) (Muha disbarred for taking $18,000 of a client's settlement funds; no record of discipline and no restitution).

Respondent's misconduct extends beyond his misappropriation. When evidence of his theft is viewed in conjunction with the additional evidence of Respondent's repeated use of funds from his trust account for his own purposes, dishonesty to his clients and others, his unauthorized practice of law while administratively suspended, his neglect of client matters, and his failure to respond to Petitioner's DB-7 letters, the need for severe sanction proves unavoidable. *See* ***Office of Disciplinary Counsel v. John Campbell***, 345 A.2d 616, 622 (Pa. 1975) ("Isolated instances of misconduct may be individually insufficient to support disbarment. However, a number of such instances, although unrelated, when considered together, can demonstrate complete disregard for professional standards that disbarment is necessitated.")

The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system. ***Office of Disciplinary Counsel v. Anthony C. Cappuccio***, 48 A.3d 1231, 1238-39 (Pa. 2012). The evidence produced by Petitioner convincingly proved that

Respondent is a clanger to the public and the profession itself. The Board is cognizant that disbarment is an extreme sanction which must be imposed only in the most egregious cases, because it represents a termination of the license to practice law without a promise of its restoration at any future time. ***Office of Disciplinary Counsel v. John J. Keller***, 506 A.2d 872, 879 (Pa. 1986). Disbarment is warranted to comply with the guiding decisions reviewed above.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Joseph Q. Mirarchi, be Disbarred from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD
OF THE SUPREME COURT
OF PENNSYLVANIA

By: /s/ Brian J. Cali
Brian J. Cali, Member

Date: May 21, 2018

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner v. JOSEPH Q. MIRARCHI Respondent	No. 56 DB 2016 Atty. Reg. No. 90137 (Philadelphia)

REPORT AND RECOMMENDATION OF HEARING COMMITTEE

FILED
12/20/2017
The Disciplinary Board of the Supreme Court of Pennsylvania

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[1] **REPORT AND RECOMMENDATION OF HEARING COMMITTEE**

I. SUMMARY OF THE CASE[1]

This matter is before the Hearing Committee ("Committee") on a Petition for Discipline ("the Petition") filed on November 4, 2016, which charged Respondent with having violated the following Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement: RPC 1.3(2 counts), RPC 1.4(a)(3)(2 counts), RPC 1.4(a)(4), RPC 1.4(b)(2 counts), RPC 1.4(c), RPC 1.15(b)(2 counts), RPC 1.15(c)[effective 9/20/08], RPC 1.15(c)[effective 2/28/15], RPC 1.15(c)(2)[effective 9/20/08], RPC 1.15(c)(2)[effective

[1] The Summary of the case is taken directly from the Petitioner's brief insofar as the Respondent has acknowledged the accuracy of the summary, stating in Respondent's brief: "We acknowledge the accuracy of the procedural history set forth at pages 1 through 8 [the Statement of the Case] of Petitioner's brief."

2/28/15], RPC 1.15(e)(3 counts), RPC 1.15(h), RPC 1.16(a)(3), RPC 1.16(d)(3 counts), RPC 5.5(a), RPC 7.1, RPC 8.1(a), RPC 8.4(a), RPC 8.4(c)(4 counts), RPC 8.4(d)(2 counts), Pa.R.D.E. 203(b)(7)(3 counts), and Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(a), 217(b), 217(c)(1), 217(c)(2), 217(d)(2), 217(e)(1), 217(j)(3), 217(j)(4)(ii), 217(j)(4)(iv), 217(j)(4)(v), 217(j)(4)(vi), 217(j)(4)(vii), 217(j)(4)(ix), 219(d)(1)(iii), 219(d)(1)(viii), and 219(d)(3).

The Petition alleged in Charge I that Respondent: failed to maintain inviolate fiduciary funds he was holding in the old IOLTA account on behalf of clients and third parties (RPC 1.15(b)); misappropriated fiduciary funds (RPC 1.15(e) and RPC 8.4(c)); commingled Respondent's personal funds with fiduciary funds that were held in the old IOLTA account (RPC 1.15(b)); deposited funds that belonged to Respondent into the old IOLTA account (RPC 1.15(h)); failed to maintain certain required records relating to an IOLTA account (RPC 1.15(c)[effective 9/20/08], RPC 1.15(c)[effective 2/28/15], RPC 1.15(c)(2)[effective 9/20/08], and RPC 1.15(c)(2)[effective 2/28/15]); failed to identify an IOLTA account on a PA Attorney's [2] Annual Fee Form (Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 219(d)(1)(iii)[superseded effective 2/28/15]); and failed, without good cause, to respond to a DB-7A letter (Pa.R.D.E. 203(b)(7)).

The Petition alleged in Charge II that Respondent: misappropriated approximately $80,000.00 in settlement funds that belonged to Ms. Elizabeth Majors (RPC 1.15(b), RPC 1.15(e), and RPC 8.4(c)); and failed

to comply with Ms. Majors' request that Respondent provide Ms. Majors with a copy of her legal file for a personal injury case (RPC 1.16(d)).

The Petition alleged in Charge III that Respondent: engaged in the unauthorized practice of law and continued to maintain an office for the practice of law after he was administratively suspended for failing to satisfy continuing legal education requirements (RPC 5.5(a), RPC 8.4(c), RPC 8.4(d), and Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(j)(3), 217(j)(4)(ii), 217(j)(4)(iv), 217(j)(4)(v), 217(j)(4)(vi), 217(j)(4)(vii), and 217(j)(4)(ix)); failed to promptly notify his clients, the courts, and opposing counsel of his administrative suspension (Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(a), 217(b), 217(c)(1), and 217(c)(2)); used letterhead, business cards, and a professional website profile that made it appear that he was eligible to practice law (RPC 7.1, RPC 8.4(c), and Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(d)(2) and 217(j)(4)(iv)); failed to timely file a verified Statement of Compliance with the Disciplinary Board Secretary (Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(e)(1)); made misrepresentations on a form he filed with the Attorney Registration Office when he sought to be reinstated (RPC 8.1(a) and RPC 8.4(c)); and failed, without good cause, to respond to a DB-7 letter (Pa.R.D.E. 203(b)(7)).

The Petition alleged in Charge IV that Respondent failed to: file an appellate brief on behalf of Ms. Linda Sacchetti and appear for a preliminary hearing in a criminal case filed against Ms. Sacchetti (RPC 1.3); advise Ms. Sacchetti as to the status of Ms. Sacchetti's

appellate case (RPC 1.4(a)(3)); respond to Ms. Sacchetti's written and telephonic inquiries [3] concerning the appellate case (RPC 1.4(a)(4)); refund the fees that he received to represent Ms. Sacchetti (RPC 1.15(e) and RPC 1.16(d)); withdraw his appearance in the appellate case after he was discharged (RPC 1.16(a)(3)); comply with two Orders issued by the Superior Court of Pennsylvania (RPC 8.4(d)); and respond to a DB-7 letter, without having good cause (Pa.R.D.E. 203(b)(7)).

The Petition alleged in Charge V that Respondent: failed to appear for an arbitration hearing for a lawsuit that Respondent filed on behalf of Mr. Joseph Gargano (RPC 1.3); failed to advise Mr. Gargano about the date, time, and location of the arbitration hearing (RPC 1.4(a)(3)); misrepresented to Mr. Gargano that Respondent would have the lawsuit reopened (RPC 8.4(c)); failed to advise Mr. Gargano about the actual status of the lawsuit (RPC 1.4(b)); failed to return to Mr. Gargano the original documents that Respondent had received from Mr. Gargano (RPC 1.16(d)); failed to advise the Attorney Registration Office within 30 days after Respondent ceased maintaining professional liability insurance that he no longer maintained such insurance (Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 219(d)(3)); and allowed the Disciplinary Board to continue to misinform the public that Respondent maintained professional liability insurance when that was no longer the case (RPC 1.4(c), RPC 8.4(a), RPC 8.4(c), and Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 219(d)(1)(viii)).

Respondent filed an answer to the Petition on November 29, 2016. By Reference for Disciplinary

Hearing dated December 30, 2016, the Committee was appointed.

At the January 18, 2017 pre-hearing conference, the Chair, with the agreement of the parties, established February 9, 2017 as the deadline for: the exchange of proposed exhibits; Respondent's counsel to advise Petitioner as to Respondent's position on Petitioner's proposed joint stipulations as to facts, law, and exhibits; Respondent's counsel to advise Petitioner if [4] Respondent would be presenting mitigation evidence in the form of psychiatric testimony (*see Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989)("*Braun* mitigation")); and Respondent's counsel to provide Petitioner with the names of Respondent's witnesses. With the concurrence of the parties, the Chair also directed that: if Respondent decided to present psychiatric testimony, a second hearing would be scheduled and Respondent would be required to provide Petitioner with the expert report and treatment notes three weeks prior to that second hearing; and Petitioner could circulate to the Committee any agreed-upon stipulations and exhibits a week before the hearing.

At Respondent's request, and without objection by Petitioner, the Chair continued the February 23, 2017 disciplinary hearing to March 10, 2017. Due to scheduling issues, the Disciplinary Board Chair granted a continuance of the hearing date beyond the fifteen-day limit set forth in D.Bd. Rules § 89.7. The disciplinary hearing was continued for two days of hearing: March 27, 2017, and April 10, 2017.

Under cover of letter dated March 24, 2017, Petitioner provided the Committee with the following documents that are part of the record of the within matter: the Joint Stipulations of Fact, Law, and Exhibits ("the Joint Stipulations"); and Petitioner's Exhibits (ODC-1 through ODC-117).

A hearing was held on March 27, 2017. Petitioner presented the testimony of four witnesses and introduced twenty-two additional exhibits (ODC-118 through ODC-139). Before recessing, the Committee established April 3, 2017 as the deadline for the parties to: exchange names of witnesses; to identify whether the witnesses are character or fact witnesses; and exchange any additional proposed exhibits.

[5] The Committee and the parties reconvened on April 10, 2017. Petitioner introduced a revised version of Exhibit ODC-1. Also, Petitioner requested that the Committee: preclude Respondent from presenting any expert testimony because a report had not been provided to Petitioner; and limit Respondent to calling as character or fact witnesses those witnesses who had appeared to testify at that listing. The Committee tabled Petitioner's request to the close of the hearing. Respondent called eleven witnesses; all of those offered general character testimony and several also offered non-character testimony. The Committee ruled that Respondent could call two specific additional witnesses when the hearing reconvened and that Respondent must provide Petitioner with an expert report and treatment notes two weeks prior to the next scheduled hearing date.

The disciplinary hearing was continued for three additional days of hearing: June 27, 28, and 29, 2017.

The Committee and the parties reconvened on June 27, 2017. At the outset, Respondent's counsel requested permission to obtain an amended expert report and to have the matter listed for an additional hearing date in the future to present psychiatric expert testimony in order to attempt to establish *Braun* mitigation. Petitioner opposed Respondent's request to offer psychiatric expert testimony at a future date, arguing that Respondent had failed to timely provide Petitioner with an expert report and the documents referenced in that report. The Committee deliberated and denied Respondent's request. Respondent called one witness who offered character and non-character testimony. Respondent was called to testify and while testifying on direct, requested a break. A brief recess was taken and following the recess, Respondent's counsel informed the Committee that Respondent was ill and unable to continue. The Committee recessed and directed Respondent's counsel to inform Petitioner by 1:30 p.m. if [6] Respondent was capable of testifying, in which case the hearing would resume; if Respondent was incapable of testifying, the hearing would resume the following day at 9:30 a.m. Before a recess was taken, Petitioner provided the Committee with Exhibits ODC-140 through ODC-173. Petitioner was subsequently advised that Respondent was incapable of testifying and the hearing concluded for the day.

On June 28, 2017, the hearing resumed. Petitioner called a rebuttal witness. Respondent presented two

more witnesses who offered character and non-character testimony. Respondent resumed testifying on direct. The hearing concluded on that day while Respondent was under cross-examination.

On June 29, 2017, the hearing reconvened, at which time Respondent finished testifying and introduced one exhibit (R-1). Petitioner introduced previously-provided Exhibits ODC-140 through ODC-173, and Exhibit ODC-174. Throughout this Report and Recommendation, the notes of testimony from the five days of hearings, March 27, 2017, April 10, 2017, June 27, 2017, June 28, 2017, and June 29, 2017, will be cited respectively as N.T., N.T.II, N.T.III, N.T.IV, and N.T.V. The Joint Stipulations will be cited as "S-___".

II. FINDINGS OF FACT

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement. (S-1)

[7] 2. Respondent, Joseph Q. Mirarchi, was born in 1967, was admitted to practice law in Pennsylvania on December 10, 2002, has a

public access address at 1717 Arch Street, Suite 3640, Philadelphia, PA 19103, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. (S-2)

A. CHARGE I: The ODC Matter

3. At all times relevant hereto, Respondent maintained an IOLTA account for holding fiduciary funds with TD Bank, account number xx-xxx8736 ("the old IOLTA account"). (S-3)

4. At all times relevant hereto, Respondent maintained an operating account for the private practice of law with TD Bank, account number xxx-xxx8728 ("the operating account"). (S-8)

a) INSTANCES OF MISAPPROPRIATION OF FUNDS HELD IN THE OLD IOLTA ACCOUNT THAT WERE OWED TO CLIENTS AND THIRD PARTIES

5. By letter dated February 3, 2011, sent by Joseph Longo, Esquire, to Respondent, Mr. Longo confirmed that they had spoken and referred a personal injury case involving Ms. Diane Vanmeter to Respondent. (N.T.IV 304-305; ODC-153)

6. By letter dated October 4, 2011, sent by Mr. Longo to Respondent, Mr. Longo confirmed

that they had spoken about Ms. Vanmeter's personal injury case and the information that Respondent had provided to Mr. Longo about that matter. (N.T.IV 305; ODC-154)

[8] 7. On November 30, 2011, Respondent deposited a $15,000.00 settlement check relating to Diane Vanmeter and Daniel Vanmeter's personal injury case into the old IOLTA account.

a. In connection with that personal injury case, Respondent owed a referral fee of $1,665.00 to Joseph Longo, Esquire.

b. Respondent failed to pay Mr. Longo a referral fee when Respondent received the $15,000.00 settlement check. (N.T.IV 305-306; ODC-1, 3; S-10)

8. On January 5, 2012, the old IOLTA account balance was $3.83. (S-9)

9. As of January 5, 2012, the amount of funds that Respondent was required to hold in trust in the old IOLTA account on behalf of Mr. Longo was no less than $1,665.00, which was the amount of the referral fee that Respondent owed to Mr. Longo. (S-11)

10. As of January 5, 2012, the balance in the old IOLTA account was $1,661.17 below the amount of funds that Respondent was required to hold in trust on behalf of Mr. Longo. (ODC-1; S-12)

11. Mr. Longo did not authorize Respondent to use any funds belonging to Mr. Longo. (S-13).

12. Respondent knowingly misappropriated $1,661.17 of funds belonging to Mr. Longo.

13. On February 28, 2012, Respondent deposited a $15,000.00 settlement check relating to Augustine Matticola's personal injury case into the old IOLTA account.

    a. In connection with that personal injury case, Respondent owed a referral fee of $1,569.09 to Mr. Longo. (ODC-1, 4; S-14)

[9] b. Respondent failed to pay Mr. Longo a referral fee when Respondent received the $15,000.00 settlement check. (N.T.IV 308-309; ODC-1, 4; S-14)

14. On March 20, 2012, Respondent deposited a $15,000.00 settlement check relating to Anne E. Loisch's personal injury case into the old IOLTA account.

    a. In connection with that personal injury case, Respondent owed Ms. Loisch the sum of $7,991.16. (ODC-1, 5; S-15)

15. Respondent immediately took his $6,000.00 fee from the settlement proceeds for Ms. Loisch's personal injury case. (N.T.IV 311-312, 316; ODC-1, 6)

16. Although Respondent knew when he took his fee that Ms. Loisch was entitled to $7,991.16 from her settlement proceeds, Respondent failed to promptly distribute any funds to her. (N.T.IV 312, 316-317; ODC-1, 9)

17. As of March 20, 2012, the amount of funds that Respondent was required to hold in

trust in the IOLTA account on behalf of Mr. Longo and Ms. Loisch was no less than $11,225.25, which were the amounts of the two referral fees that Respondent owed to Mr. Longo and Ms. Loisch's share of the proceeds from the settlement of her personal injury case. (S-16)

18. Commencing on April 23, 2012, and continuing through July 25, 2012, the balance in the old IOLTA account was below the amount of funds that Respondent was required to hold in trust on behalf of Mr. Longo and Ms. Loisch; the deficit ranged from $3,579.65 (6/4/12) to $11,202.88 (7/13/12). (N.T.IV 313; ODC-1; S-16-18)

19. Ms. Loisch did not authorize Respondent to use any funds belonging to her. (S-19)

[10] 20. Between May 2012 and July 2012, Mr. Longo called Respondent and left messages with Respondent's assistant because Mr. Longo had not received payment of the referral fees that Mr. Longo was owed in the matters involving Ms. Vanmeter and Mr. Matticola; Respondent failed to return Mr. Longo's messages. (N.T.IV 306-308; ODC-155)

21. Respondent knew from Mr. Longo's letters and telephone messages that he owed referral fees to Mr. Longo, yet Respondent failed to make payment of the referral fees to Mr. Longo.

22. Based on Respondent's withdrawals from, transfers to and from, and checks written on, the old IOLTA account during the period of January 1, 2012 through March 22, 2013, it is evident that Respondent was continuously aware of the balance in the old IOLTA account and was taking care to ensure that he did not become overdrawn on that account. (N.T.IV 317-323, ODC-1)

23. Respondent knowingly misappropriated $10,593.50 of funds belonging to Mr. Longo and Ms. Loisch, which funds Respondent used to:

    a. honor check number 509, in the amount of $9,237.86, made payable to Respondent's client, Augustine Matticola, which represented her share of settlement proceeds and which cleared the old IOLTA account on April 20, 2012;

    b. make several transfers of funds to the operating account between April 27 and May 10, 2012; and

    c. make withdrawals to have monies for Respondent's own personal use. (ODC-1, 7; S-10-20)

[11] 24. By letter dated July 16, 2012, sent by Mr. Longo to Respondent, Mr. Longo:

    a. noted that Respondent had agreed to pay referral fees to Mr. Longo for the matters involving Ms. Vanmeter and Mr. Matticola, that "both matters had been

resolved for some time now," and that he had not been paid any referral fees;

b. stated that he had "called [Respondent] for the past two (2) months to discuss these matters, and left several messages with [Respondent's] assistant, but to date, have not received a returned call"; and

c. advised that he was "making one (1) last effort to contact [Respondent] prior to taking legal action against [Respondent]." (N.T.IV 306-308; ODC-155)

25. After Respondent received Mr. Longo's July 16, 2012 letter, and more than seven months after depositing the Vanmeter funds and more than four months after depositing the Matticola funds, Respondent issued two separate checks to Mr. Longo, drawn on the old IOLTA account, in payment of the referral fees that Respondent owed to Mr. Longo. (N.T.IV 306-311; ODC-8; S-21-22)

26. On September 11, 2012, almost six months after Respondent received and used Ms. Loisch's settlement funds, Ms. Loisch received her share of the settlement proceeds from Respondent. (ODC-9; S-23)

27. On July 16, 2012, Respondent deposited into the old IOLTA account a $5,000.00 first party benefits check that he received on behalf of Justin Swanson, a minor. (N.T.IV 327; ODC-10; S-24)

28. Under 75 Pa.C.S.A. § 1798(a), an attorney is prohibited from charging and collecting a contingent fee for any services provided in connection with obtaining first party benefits on behalf of a client. (ODC-11; S-25)

[12] 29. Respondent was familiar with 75 Pa.C.S.A. § 1798(a) because he had performed legal work in the areas of first party insurance benefits and personal injury law. (N.T.IV 50-51)

30. The proceeds from the $5,000.00 first party benefits check that Respondent received on behalf of Justin Swanson could be used either to satisfy Justin Swanson's medical bills or, absent any unpaid medical bills, to compensate Justin Swanson. (S-26)

31. Between July 16, 2012, and April 12, 2013, Respondent did not make payments to either Justin Swanson's medical providers or Justin Swanson from funds drawn from the old IOLTA account. (S-27)

32. At the hearing, Respondent claimed that he believed that the $5,000.00 first party benefits check was actually a third party benefits check (despite the front of that check stating it was issued to satisfy a healthcare lien) and that the proceeds from that check could be apportioned between him and Justin Swanson. (N.T.IV 328-329; ODC-10)

33. Respondent knew that in connection with Justin Swanson's personal injury case, Respondent had to file a petition for minor's

compromise and obtain court approval of that petition before any settlement he negotiated could be consummated; and any proceeds from that settlement could be distributed, including distribution for attorney's fees. (N.T.IV 329-330)

34. On July 20, 2012, the balance in the old IOLTA account was $2,377.10. (ODC-1; S-28)

[13] 35. Between July 17, 2012, and July 20, 2012, Respondent used $2,622.90 of the $5,000.00 he was entrusted to hold in the old IOLTA account on behalf of either Justin Swanson or his medical providers by making:

a. withdrawals to have monies for Respondent's own personal use; and

b. electronic payments of Respondent's telephone bills. (N.T.IV 331; ODC-12; S-29)

36. On April 12, 2013, Respondent closed the old IOLTA account and had the remaining balance of $4.83 transferred to a new IOLTA account. (ODC-1; S-30-31)

37. As of April 12, 2013, the balance in the old IOLTA account was $4,995.17 below the amount of funds that Respondent was required to hold in trust on behalf of either Justin Swanson's medical providers or Justin Swanson. (ODC-1; S-32)

38. Respondent was not authorized to use any funds belonging to Justin Swanson. (S-33-34)

39. Respondent knowingly misappropriated $4,995.17 of funds belonging to either Justin Swanson's medical providers or Justin Swanson. (N.T.IV 337, 359-360)

40. On August 2, 2012, Respondent deposited a $7,250.00 settlement check relating to Theresa Ingargiola Tooley's personal injury case into the old IOLTA account.

41. In connection with that personal injury case, Respondent owed Ms. Tooley the sum of $3,077.18. (N.T.IV 354; ODC-14-15; S-35)

42. On November 14, 2012, Respondent deposited a $12,500.00 settlement check relating to Ms. Tooley and her husband, James Tooley's personal injury case into the old IOLTA account. (ODC-1)

43. In connection with that personal injury case, Respondent owed Mr. and Ms. Tooley the sum of $5,714.05. (N.T.IV 353; ODC-17-18; S-37)

[14] 44. After Respondent received the two settlement checks for Mr. and Ms. Tooley's personal injury cases, he immediately took his fees from those settlement proceeds. (N.T.IV 338-339, 344-348; ODC-1, 15, 156-157)

45. Although Respondent knew when he took his fees that Mr. and Ms. Tooley were entitled to their shares of the settlement proceeds from their personal injury cases, Respondent failed to promptly distribute any funds to Mr. and Ms. Tooley. (N.T.IV 339-340, 343, 350, 358-359; ODC-1, 15, 156-157)

46. Respondent also knew he had to use a portion of the settlement proceeds to satisfy Mr. and Ms. Tooley's medical providers' bills; however, Respondent failed to promptly distribute to those medical providers their shares from the settlement proceeds. (N.T.IV 343, 352-353; ODC-15, 18)

47. As of November 14, 2012, the amount of funds that Respondent was required to hold in trust in the old IOLTA account on behalf of Mr. and Ms. Tooley was no less than $8,791.23. (S-38)

48. As of November 14, 2012, the amount of funds that Respondent was required to hold in trust in the old IOLTA account on behalf of the Tooleys' medical providers was $3,914.52. (ODC-15, 18; PFOF 44)

49. Between December 24, 2012, and January 14, 2013, Respondent used $8,541.65 of the $8,791.23 he was entrusted to hold in the old IOLTA account on behalf of Mr. and Ms. Tooley by making:

    a. electronic debits to pay loans;

    b. several transfers of funds to Respondent's personal checking account; and

    c. a rental payment of $3,774.81 to The Arden Group by check number 530, which cleared the old IOLTA account on January 14, 2013. (ODC-1, 19; S-39-40)

[15] 50. As of January 18, 2013, the balance in the old IOLTA account was $8,700.65 below

the amount of funds that Respondent was required to hold in trust on behalf of Mr. and Ms. Tooley. (ODC-1, 19, S-41-42)

51. Mr. and Ms. Tooley did not authorize Respondent to use any funds belonging to them. (S-43)

52. Respondent knowingly misappropriated $8,700.65 of funds belonging to Mr. and Ms. Tooley.

53. Respondent knowingly misappropriated the funds he had been holding on behalf of Mr. and Ms. Tooley's medical providers.

54. Ms. Tooley received from Respondent check number 520, drawn on the old IOLTA account and dated September 16, 2012, in the amount of $3,077.18. (ODC-1; S-36)

55. This payment represented the proceeds that Ms. Tooley was owed in connection with the $7,250.00 settlement of her personal injury case. (S-36(a))

56. Ms. Tooley transacted check number 520 on February 25, 2013. (N.T.IV 358; ODC-16; S-36)

57. Mr. and Ms. Tooley received from Respondent a cashier's check in the amount of $5,714.05 on March 15, 2013. (S-44)

58. This payment represented the proceeds that Mr. and Ms. Tooley were owed in connection with the $12,500.00 settlement of their personal injury case. (N.T.IV 358-359; S-44)

59. On or about March 15, 2013, Respondent paid Mr. and Ms. Tooley's medical providers' bills. (N.T.IV 359)

60. Respondent had a pattern and practice of placing his clients' endorsements on the settlement checks that he received on behalf of his clients. (N.T.IV 332, 334)

[16] 61. Respondent claimed that the fee agreements he entered into with his clients authorized him to place his clients' endorsements on their settlement checks; however, Respondent's fee agreements did not explicitly or implicitly authorize him to endorse his clients' signatures on their settlement checks. (N.T.IV 332-337)

62. Respondent's misappropriation of fiduciary funds was facilitated by Respondent's practice of placing his clients' endorsements on their settlement checks without their authorization because Respondent's clients, such as Ms. Loisch, were ignorant as to when Respondent received their settlement proceeds and whether Respondent had failed to promptly distribute their proceeds. (*Id.*)

63. The finding that Respondent knowingly misappropriated funds belonging to Mr. Longo, Ms. Loisch, Justin Swanson, and Mr. and Ms. Tooley is supported by the evidence concerning Respondent's dire financial circumstances and need for money during this time period, as shown by: his testimony; his witnesses' testimony; his inability to pay for office staff; his non-payment of rent for several

office locations and his eviction from one office location; his inability to pay taxes owed to federal and state authorities; his borrowing of funds from Mr. Bozzacco; his borrowing of funds from LFG; his asking Ms. Majors for a $500.00 loan after misappropriating approximately $80,000.00 of her settlement funds; his text messages to clients; his failed business venture; and his having become overdrawn on his operating accounts on multiple occasions, which resulted in one of the operating accounts being closed for deficient funds. (N.T. 35; N.T.II 22, 28, 33-34, 61, 63-64, 140-141; N.T.IV 78-80, 85-86, 90-92, 94, 126-127, 147, 166-167, 190, 310; N.T.V 12-17, 205; ODC-55, 128, 114, 151, 163-164; PFOF 223-239).

[17] **b) INSTANCES OF COMMINGLING IN THE OLD IOLTA ACCOUNT**

64. Between June 1, 2012 and March 7, 2013, Respondent engaged in a pattern of commingling his personal funds with fiduciary funds belonging to clients and third parties that were held in the old IOLTA account; Respondent knew that he could not hold his funds in the same account that he held fiduciary funds belonging to clients and third parties. (N.T.IV 300-301; ODC-1, 20-23; S-45-46)

c) INSTANCES OF MAKING DEPOSITS OF NON-FIDUCIARY FUNDS INTO THE OLD IOLTA ACCOUNT

65. Between May 14, 2012 and March 5, 2013, Respondent engaged in a pattern of making deposits of non-fiduciary funds into the old IOLTA account. (ODC-1, 24-39; S-47-48)

d) FAILURE TO MAINTAIN RECORDS

66. Beginning no later than January 1, 2012, and continuing through April 12, 2013, Respondent failed to maintain complete records for the old IOLTA account, such as a check register or separately maintained ledger, which lists the payee, date and amount of each check, each withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction. (S-49)

e) FAILURE TO IDENTIFY IOLTA ACCOUNT

67. At all times relevant hereto, Respondent maintained an IOLTA account for holding fiduciary funds with TD Bank, account number xxx-xxx1330 ("the IOLTA account"). (N.T.IV 361-362; ODC-158; S-50)

[18] 68. On or before July 1, 2013, Respondent completed and filed the 2013-2014 PA Attorney's Annual Fee Form ("the Annual Fee Form"). (N.T.IV 360; ODC-40; S-51)

69. Respondent failed to identify the IOLTA account on the Annual Fee Form. (N.T.IV 361-362; S-53)

70. In submitting the Annual Fee Form, Respondent certified that:

    a. ". . . EACH TRUST ACCOUNT HAS BEEN IDENTIFIED AS SUCH TO THE ELIGIBLE INSTITUTION IN WHICH IT IS MAINTAINED"; and

    b. ". . . THE INFORMATION PROVIDED IS TRUE. IF ANY STATEMENT MADE ON THIS FORM IS FALSE, I REALIZE I AM SUBJECT TO DISCIPLINE BY THE SUPREME COURT." (S-54)

f) FAILURE TO RESPOND TO THE DB-7A LETTER

71. Respondent received a DB-7A Supplemental Request for Statement of Respondent's Position ("the DB-7A letter") dated August 8, 2016, in which ODC notified Respondent:

    a. of supplemental allegations relating to the complaint of ODC; and

    b. that the failure to respond to the DB-7A letter without good cause would be an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7). (ODC-41; S-55-57)

72. Respondent failed to:

    a. submit to ODC a response to the DB-7A letter; or

    b. present to ODC evidence that he had good cause for not responding to the DB-7A letter. (S-58)

B. CHARGE II: The Elizabeth Majors Matters

[19] a) THE $85,488.92 SETTLEMENT CHECK

73. On July 2, 2009, Mr. Aniello Joseph Leone ("decedent"), a Philadelphia resident, died testate. (S-60-61)

74. Ms. Elizabeth Majors was decedent's cousin. (S-62)

75. Sometime in and around January 2010, Respondent contacted Ms. Majors and advised her that: he had a copy of an executed Will dated February 15, 2006 that he had prepared on behalf of decedent; and the Will designated Ms. Majors to serve as Executrix and to receive a 50% share of decedent's estate.

    a. The Will provided that decedent's sister-in-law, Helen Tomasetta, would also receive a 50% share of decedent's estate and that decedent's friend, Mr. Roy Peffer, would receive $5,000.00 before Ms. Major and Ms. Tomasetta received their shares of decedent's estate. (S-63)

76. Ms. Majors retained Respondent to represent her in administering the decedent's estate. (S-64)

77. In or about January 26, 2010, Respondent filed on behalf of Ms. Majors with the Register of Wills for Philadelphia County ("the Register") a Petition for Citation to Show Cause Why a Photocopy of the Will of Aniello Joseph Leone Should Not be Admitted to Probate ("the Probate Petition"). (S-65)

78. Decedent's grandson, Mr. Jason Buck, decided to challenge the Probate Petition and retained Benjamin L. Jerner, Esquire. (S-66-68)

79. The Deputy Register granted the Probate Petition by Decree dated August 27, 2010. (S-69-70)

[20] 80. On August 31, 2010, the Register granted Letters Testamentary to Ms. Majors. (S-71)

81. Respondent and Ms. Majors opened an account for decedent's estate at Citizens Bank ("the estate account"); Respondent maintained the checkbook. (S-72-73)

82. In October 2010, Mr. Buck filed an appeal from the August 27, 2010 Decree with the Orphans' Court Division of the Court of Common Pleas of Philadelphia County ("the Will contest"). (ODC-42; S-74)

83. On August 21, 2011, Respondent filed with the Pennsylvania Department of Revenue an

inheritance tax return with respect to decedent's estate. (ODC-43; S-77)

84. According to the information contained in that inheritance tax return, Ms. Majors' share of the estate would have been a little over $240,000.00. (N.T.V 62-64; ODC-43)

85. Judge Herron, by Decree and Opinion dated February 8, 2012, sustained Mr. Buck's appeal from the August 27, 2010 Decree and set aside the Decree of probate and grant of letters testamentary to Ms. Majors. (ODC-44; S-75-76, 78)

86. After Ms. Majors' filed exceptions to the February 8, 2012 Decree and Opinion and Mr. Buck filed cross-exceptions, Judge Herron, by Decrees and Opinion dated May 7, 2012, *inter alia*:

    a. denied Ms. Major's exceptions;

    b. granted Mr. Buck's cross-exceptions;

    c. amended the February 8, 2012 Decree to state that the August 27, 2010 Decree of probate and grant of letters testamentary was vacated; and

    d. directed the Register to issue letters of administration to Mr. Buck. (ODC-45; S-79-80)

[21] 87. On June 8, 2012, Respondent filed on behalf of Ms. Majors a Notice of Appeal with the Superior Court of Pennsylvania ("the Majors appeal"). (ODC-46; S-81)

88. On June 15, 2012, Mr. Buck, Ms. Majors, Mr. Peffer, and Mr. Joseph Venezia, in his capacity as Personal Representative of the estate of Ms. Tomasetta, entered into a Settlement Agreement & Release ("the Settlement Agreement"). (ODC-47; S-82)

89. The Settlement Agreement provided that decedent's estate would pay, *inter alia*, Ms. Majors and the estate of Ms. Tomasetta $115,669.15, less any adjustments found to be necessary upon Mr. Buck's completion of the administration of decedent's estate, as specified in the Settlement Agreement. (ODC-47; S-83)

90. On July 2, 2012, Respondent filed a praecipe for discontinuance of the Majors appeal. (S-84)

91. Respondent provided to Mr. Jerner the legal file that Respondent maintained for decedent's estate, as well as the checkbook, checkbook register, and financial records related to the estate account. (S-85)

92. By August 4, 2011, Respondent had received fee payments totaling $35,439.25, in addition to reimbursement of Respondent's expenses, for representing Ms. Majors in her capacity as executrix of the estate and as a party in the will contest. (S-86).

    a. Respondent also paid Karen Deanna Williams a total of $6,290.00 for legal services that she had provided. (N.T.V 64-65; ODC-48; S-86)

93. On July 10, 2012, the Register issued Letters of Administration to Mr. Buck; thereafter, Mr. Jerner assisted Mr. Buck in administering decedent's estate. (S-87-89)

[22] 94. In August 2012, Ms. Majors' son died and Ms. Majors lacked the funds to pay for her son's funeral expenses. (N.T. 21-22; N.T.V 72; ODC-173)

95. Between August 2, 2012 and August 4, 2012, Respondent sent a series of email messages to Mr. Jerner in which Respondent, *inter alia*:

    a. requested on behalf of Ms. Majors an $8,500.00 advance of her share of the settlement proceeds to pay for her son's funeral because she "is on SSI and has not funds available for this emergency"; and

    b. described Ms. Majors as not being "computer literate." (N.T.V 71-72, 74; ODC-173)

96. Mr. Buck advanced Ms. Majors the $8,500.00 by sending her a check; Ms. Majors cashed the check and used the proceeds to pay for her son's funeral expenses. (N.T. 22-25; ODC-50-51, 119)

97. By letter dated May 21, 2013, sent via e-mail to Respondent and counsel for Mr. Venezia and Mr. Peffer, Mr. Jerner, *inter alia*:

    a. advised that Mr. Buck had prepared three checks, one of which was made

payable to Respondent and Ms. Majors, in the amount of $85,488.92;

b. explained that adjustments were made to the amounts to be paid to Ms. Majors, Mr. Peffer, and the estate of Ms. Tomasetta in accordance with the Settlement Agreement;

c. requested that Ms. Majors, Mr. Peffer, and Mr. Venezia sign the letter and that Respondent and counsel return the signed copies to Mr. Jerner; and

d. stated that upon receipt of the signed copies he would forward the checks. (ODC-50; S-90)

[23] 98. On May 23, 2013, Ms. Majors signed Mr. Jerner's May 21, 2013 letter and expected to receive her share of the settlement proceeds sometime thereafter. (N.T. 29-30, 58-59; ODC-51; S-91)

99. On May 28, 2013, Respondent arranged to pick up the $85,488.92 check ("the settlement check") from Mr. Jerner's office. (S-92)

100. The settlement check was dated May 20, 2013, and made payable to Respondent and Ms. Majors. (ODC-53; S-93)

101. On May 28, 2013, Respondent received an e-mail from Mr. Jerner in which he requested that Respondent not deposit the settlement check until May 30, 2013, because Mr. Buck had been advised by Wells Fargo that funds would not be available until that date to

honor the settlement check. (N.T.V 88-89; ODC-52; S-94)

102. Respondent advised Ms. Majors that he had received the settlement check and that she would receive her share of the proceeds from the settlement check after the settlement check had "cleared." (N.T. 31; S-95)

103. On May 28, 2013, Respondent sent an e-mail to Mr. Jerner in which Respondent:

    a. acknowledged receipt of the settlement check, and

    b. stated that Ms. Majors was "okay with holding the check until Thursday, being 5/30/13." (N.T.V 88-89; ODC-52; S-96)

104. Respondent informed Ms. Majors that he would be taking an additional fee of $6,000.00 from the settlement check, which in combination with the prior fee payments received by Respondent, compensated him fully for the time he had expended in representing her. (N.T. 31-32, 86; N.T.V 65-66)

105. Respondent endorsed the back of the settlement check. (N.T.V 82; ODC-53)

[24] 106. Respondent placed Ms. Majors' endorsement on the back of the settlement check. (N.T. 30; N.T.V 82; ODC-53)

107. Respondent failed to obtain Ms. Majors' authority and consent to endorse her name on the back of the settlement check. (N.T. 30, 79)

108. On May 31, 2013, Respondent deposited the settlement check into an IOLTA account that he maintained with TD Bank, account number xx-xxx0534 ("the 0534 account"). (ODC-53, 126; S-97)

109. Based on Respondent's statement to Ms. Majors that Respondent was taking an additional fee of $6,000.00 from the settlement check, Ms. Majors' share of the settlement check was $79,488.92. (N.T. 31; N.T.V 65; ODC-53)

110. Respondent failed to provide Ms. Majors with her share of the proceeds from the settlement check. (N.T. 32-33; ODC-126-128)

111. Respondent knowingly misappropriated to Respondent's own use $79,488.92 of settlement funds belonging to Ms. Majors; by December 9, 2013, Respondent had completely expended Ms. Majors' funds. (N.T. 132-139, 141; ODC-126-128; PFOF 83-84, 92-93, 96-105, 107-112, 123, 128-130)

112. On or about August 29, 2014, Respondent:

    a. obtained and presented to Ms. Majors a $7,343.90 Cashier's Check issued by Wells Fargo Bank, made payable to Ms. Majors;

    b. obtained a $2,653.10 Cashier's Check issued by Wells Fargo Bank, made payable to the City of Philadelphia, which listed "2620 S. Mildred," the street address for Ms. Majors' residence, on the "Memo" section of the Cashier's Check; and

[25] c. represented to Ms. Majors that the Cashier's Checks were a portion of Ms. Majors' "money from the estate." (N.T. 34-36; N.T.V 100-101; ODC-124-125; S-98)

113. Respondent obtained the two Cashier's Checks by borrowing funds from Respondent's sister, Nancy Mirarchi, and Respondent's brother, Eric Mirarchi. (N.T.IV 205, 213-214; N.T.V 101-104)

114. Respondent had not previously borrowed money from family members in order to "gift" a client a sum of money; Respondent did so on behalf of Ms. Majors to appease Ms. Majors, who had been asking Respondent for money from her settlement proceeds. (N.T. 34-36, 42, 63; N.T.V 101, 103-104)

115. From time to time over the course of 2014, 2015, and early 2016, Ms. Majors frequently asked Respondent for financial assistance either in person or by text message in order to pay her real estate taxes and bills, to purchase gifts for her daughter, and to have money for Christmas; on occasion, Respondent gave Ms. Majors money. (N.T. 33, 36-37, 41-42, 44-46, 63, 88; N.T.V 101, 105-108, 110-115, 129-132; ODC-55, 151;Findings of Fact 112-113)

116. Ms. Majors was asking Respondent for money because she knew he had received her settlement proceeds and she was seeking her money from the estate. (N.T. 36-37, 42, 63)

117. From time to time, Respondent would tell Ms. Majors that he would obtain the rest of the money that he owed her from his sister, Nancy Mirarchi. (N.T. 46-47; 127-128)

118. During Petitioner's investigation of the ODC matter, which principally involved a review of financial records pertaining to the old IOLTA account, Petitioner sent a [26] September 17, 2014 letter to Respondent in which Petitioner requested certain information and documents from Respondent. (N.T.V 117-118; ODC-156)

119. In the September 17, 2014 letter, Petitioner had requested certain information and documents that related to the 0534 account, in which Respondent had deposited the settlement check. (N.T.V 118-119; ODC-126, 156)

120. When Petitioner sent the September 17, 2014 letter to Respondent, Ms. Majors had yet to file a disciplinary complaint with Petitioner. (N.T. 81-83)

121. Respondent had Ms. Majors sign a document that falsely claimed that Ms. Majors had gifted to Respondent Ms. Majors' share of the proceeds from the settlement check, which document Respondent presented to Petitioner the day after Ms. Majors signed that document. (N.T.V 118-122; ODC-54, 156-157; Findings of Fact 118-120)

    a. Respondent had Ms. Majors sign that document to conceal his misappropriation of Ms. Majors' settlement proceeds

in the event Petitioner's investigation were to result in a request for financial records for the 0534 account.

122. Respondent carried out his scheme by calling Ms. Majors on February 11, 2015, and explaining to her that he was coming to her house to have her sign a document so that Respondent would not get into "trouble" with the "Bar Association." (N.T. 3839; N.T.V 119; ODC-54)

123. On February 11, 2015, Respondent appeared at Ms. Majors' residence with a one-page document titled "AFFIDAVIT" that he had prepared and wanted Ms. Majors to sign. (N.T. 39-40, 124-125; N.T.V 119, 128-129; ODC-54; S-99)

[27] 124. Ms. Kathleen Postiglione, Ms. Majors' first cousin, was present during Respondent's visit. (N.T.123-124, N.T.V 128-129)

125. When Respondent presented the AFFIDAVIT to Ms. Majors, he:

a. directed Ms. Majors to sign the AFFIDAVIT;

b. informed Ms. Majors he needed her to sign the AFFIDAVIT so that Respondent would not get into "trouble" with the "Bar Association";

c. did not review the contents of the AFFIDAVIT with Ms. Majors;

d. did not provide Ms. Majors with a copy of the AFFIDAVIT;

e. was in a hurry and did not give Ms. Majors an opportunity to review the AFFIDAVIT. (N.T. 39-41, 64-65, 67-68, 88, 123-126)

126. Paragraph 10 of the AFFIDAVIT represented that Ms. Majors "told [Respondent] to keep the settlement because he work[sic] so many hours and fought so hard that [Ms. Majors] thought he earned it." (ODC-54; S-100)

127. When Ms. Majors signed the AFFIDAVIT, she:

a. relied on the explanation that Respondent told her as to Respondent's reason for wanting Ms. Majors to sign the AFFIDAVIT;

b. was not acting on the advice of independent counsel;

c. was on medication after having been recently released from the hospital; and

d. was inattentive to what was contained in that document. (N.T. 40-41, 64-65, 67-68, 125-126, 129-130; S-101)

128. When Ms. Majors signed the AFFIDAVIT she was unaware that it stated that she had gifted her share of the settlement check to Respondent because:

a. she did not read that document;

[28] b. Respondent did not explain to her the contents of that document, specifically, paragraph 10;

c. Respondent told Ms. Majors that he needed her to sign that document so that he would not get into "trouble" with the "Bar Association"; and

d. Respondent held a position of trust with Ms. Majors as not only her lawyer, but her close friend. (N.T. 46-47, 50-52, 60-61, 88; N.T.IV 116-117, 122-123; Findings of Fact 122, 125, 127)

129. Respondent induced Ms. Majors to sign the AFFIDAVIT by abusing the trust she reposed in him due to Respondent's status as her lawyer and close friend. (N.T. 46-47, 50-52, 60-61; N.T.IV 116-117; 122-123)

130. Respondent knew when he requested that Ms. Majors sign the AFFIDAVIT that she was extremely reliant on his advice and guidance because she had a history of serious mental illness that required her to take medication and that had previously resulted in her being hospitalized. (N.T. 89-90; N.T.V 77-81)

131. Both the AFFIDAVIT and Respondent's February 12, 2015 answer to Petitioner's question 8 in the September 17, 2014 letter that dealt with the 0534 account omitted information concerning:

a. the amount of Ms. Majors' settlement proceeds that Ms. Majors purportedly gifted to Respondent; and

b. when Ms. Majors made the purported monetary gift to Respondent. (N.T.V 120-121, 123; ODC-54, 156-157)

132. Respondent's February 12, 2015 answer to Petitioner's question 8 in the September 17, 2014 letter did not disclose the amount of Ms. Majors' share of the settlement proceeds and misleadingly characterized Ms. Majors' approximately $80,000.00 [29] share of those proceeds as "a small percentage of the intended bequest" (N.T.V 124-126; ODC-156-157); Respondent's lack of disclosure was intended to influence Petitioner not to undertake further inquiries into the 0534 account.

133. In 2014, Respondent met with Ms. Postiglione at the residence she shares with Ms. Majors so that Respondent could discuss an employment issue with Ms. Postiglione. (N.T. 126-127; N.T.V 109)

134. Ms. Majors was present when Respondent came to meet with Ms. Postiglione. (N.T. 127; N.T.V. 109-110)

135. After Respondent finished his meeting with Ms. Postiglione, Respondent told Ms. Majors not to worry, that he was "going to get that money from [Respondent's] sister." (N.T. 127-128)

136. This Committee does not find credible Respondent's claim that shortly after Ms. Majors entered into the Settlement Agreement, she expressed to Respondent that she was unhappy with the amount of the settlement

and wanted Respondent to have her share of the settlement check because of the legal work that he had performed on her behalf because:

a. Ms. Majors testified that she had not told Respondent that she was gifting to him her share of the settlement check;

b. Ms. Majors has been unemployed since 2000 and has meager financial resources, in that for years she and her husband's sole sources of monthly income are monthly federal and state disability payments that total slightly over $1,000.00;

c. Ms. Majors needed to use an advanced portion of her settlement proceeds to pay for her son's funeral;

[30] d. after Ms. Majors had purportedly disclaimed any interest in the settlement proceeds, Respondent apprised Ms. Majors that he had received the settlement check, that she would receive her share of the proceeds when the settlement check had "cleared," and that Mr. Jerner had requested that Respondent wait until May 30, 2013, before depositing the settlement check;

e. after Respondent had received Ms. Majors' settlement proceeds, Ms. Majors was frequently asking Respondent for money, which Ms. Majors testified was

due to Respondent having received the settlement check;

f. Respondent provided intermittent financial assistance to Ms. Majors after he received and misappropriated her proceeds from the settlement check, having gone so far as to borrow $10,000.00 from his brother and sister to obtain two Cashier's Checks for the benefit of Ms. Majors;

g. Respondent took no action to memorialize Ms. Majors' purported monetary gift until Petitioner began making inquiries into the 0534 account as part of Petitioner's investigation of Respondent's manner of handling fiduciary funds;

h. Respondent testified that the approximately $40,000 he received for his work on the estate and for Ms. Majors in connection with the estate was fair compensation for his work (N.T.V 65-66)

i. Respondent acted inconsistently with a belief that Ms. Majors had gifted him her share of the settlement amount, allowing the money to remain in his IOLTA account, and using it over a period of months, rather than removing all of it from the account at one time (ODC-126); and

j. Ms. Majors filed a disciplinary complaint against Respondent with Petitioner after she contacted Mr. Jerner and

explained to him that she had not received her share of the proceeds from the settlement check. (N.T. 18-19, 24-28, 43, 59-60, [31] 82-83, 89; N.T.IV 119, 121; N.T.V 68-70, 75-77, 87-91, 100-104, 127-128, 130-131; ODC-50-55, ODC-104, 121-125, 173; S-95-96)

137. The finding that Respondent knowingly misappropriated Ms. Majors' proceeds from the settlement check is supported by the evidence concerning Respondent's dire financial circumstances and need for money.

b) THE OCTOBER 18, 2014 SLIP AND FALL ACCIDENT

138. Ms. Majors retained Respondent to represent her for any claims she had arising from a slip and fall accident that occurred on October 18, 2014. (ODC-56; S-106-108)

139. On February 6, 2016, Ms. Majors sent Respondent a text message and advised Respondent that he was discharged. (ODC-58; S-110)

140. Thereafter, Ms. Majors called Respondent to request that he provide her with a copy of the legal file that he maintained for her slip and fall case; Respondent failed to provide Ms. Majors with a copy of the legal file for her slip and fall case in response to her calls. (N.T. 43-44; S-114)

141. Ms. Majors retained Leonard P. Haberman, Esquire, to represent her in the slip and fall case. (S-111)

142. By letter dated September 2, 2016, which was sent by regular mail and drafted on the stationery of Mr. Haberman's law firm, Ms. Majors requested that Respondent release the legal file for her slip and fall case to Mr. Haberman. (ODC-59; S-112).

143. On September 9, 2016, Mr. Haberman filed a lawsuit on behalf of Ms. Majors ("the Majors lawsuit"). (ODC-60; S-113).

[32] 144. During the week of March 6, 2017, Respondent provided Mr. Haberman with the legal file for Ms. Majors' slip and fall case. (S-114)

C. CHARGE III: Administrative Suspension and Unauthorized Practice of Law

145. The Pennsylvania Continuing Legal Board ("the CLE Board") assigned Respondent to Compliance Group 3; therefore, Respondent has a deadline of December 31st to comply with the Pennsylvania Continuing Legal Education ("CLE") requirements. (S-116)

146. From September 2011 through September 2012, Respondent maintained an office for the practice of law at the North American Building, 121 S. Broad Street, Suite 1010, Philadelphia, PA 19107 ("the NAB address"). (N.T. 220; ODC-140-148)

147. Respondent received a September 30, 2011 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

    a. notified Respondent that he had yet to comply with the CLE requirements due by December 31, 2011; and

    b. informed Respondent that if he failed to complete the CLE requirements by the compliance deadline, he would be assessed a $100 late fee and he would be subject to having his law license administratively suspended. (N.T.IV 220-221; ODC-140)

148. Respondent received a February 24, 2012 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

    a. notified Respondent that he had failed to comply with the CLE requirements due by December 31, 2011;

    [33] b. advised Respondent that he had sixty days from the date of that notice to complete the CLE requirements and to pay any outstanding late fees and that Respondent's failure to do so would result "in the assessment of a second $100 late fee and [Respondent's] name being included on a noncompliant report to the Supreme Court of Pennsylvania." (N.T.IV 222-223; ODC-141)

149. Respondent received a May 30, 2012 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

    a. notified Respondent that the letter served as a second notification that he was non-compliant with the CLE requirements due on December 31, 2011;

    b. advised Respondent that if he failed to complete the CLE requirements and pay any outstanding late fees by 4:00 p.m. on June 29, 2012, Respondent's name would be included on a non-compliant report for submission to the Supreme Court of Pennsylvania; and

    c. informed Respondent that upon receipt of that non-compliant report, the Supreme Court of Pennsylvania would issue an Order to "administratively suspend [Respondent's] license to practice law in the Commonwealth of Pennsylvania and a third $100 late fee [would] be assessed." (N.T.IV 224-225; ODC-142)

150. By Order dated August 2, 2012 ("the 2012 Order"), the Supreme Court of Pennsylvania placed Respondent on administrative suspension for having failed to comply with the CLE requirements. (ODC-143)

[34] 151. By letter dated August 2, 2012, sent to Respondent by certified mail, return receipt

requested, at the NAB address, Suzanne E. Price, Attorney Registrar, *inter alia*:

a. enclosed a copy of the 2012 Order and one page of the attachment, which contained Respondent's name;

b. advised that Respondent was to be administratively suspended effective September 1, 2012, for having failed to comply with the CLE requirements by December 31, 2011;

c. enclosed a written guidance for administratively suspended lawyers, a copy of Pa.R.D.E. 217, and various forms for Respondent to use to comply with the 2012 Order; and

d. notified Respondent that in "order to resume active status, [Respondent] must comply with the PA.C.L.E. Board before a request for reinstatement to the Disciplinary Board will be considered." (N.T.IV 225-230; ODC-143-144)

152. Respondent failed to claim this letter when he was notified by the United States Postal Service that he had been sent correspondence via certified mail; however, Respondent received this letter when the Attorney Registration Office sent this letter to Respondent at the NAB address by first class mail on September 7, 2012. (N.T.IV 226-228; ODC-144)

153. Respondent filed a 2012-2013 PA Attorney Registration Form with the Attorney Registration Office. (N.T.IV 230-231; ODC-145)

154. Sometime after the effective date of the 2012 Order, Respondent complied with the CLE requirements and Ms. Price was notified of that fact by letter dated September 17, 2012, sent by the CLE Board; Respondent was copied on that letter. (N.T.IV 236-237; ODC-146)

[35] 155. By letter dated September 17, 2012, sent to, and received by, Respondent at the NAB address, Ms. Price, *inter alia*:

a. stated that the CLE Board had certified that Respondent had complied with the CLE requirements;

b. informed Respondent that he had to comply "with Rule 219(h) of the Pennsylvania Rules of Disciplinary Enforcement";

c. notified Respondent that to be reinstated, he had to submit the Attorney's Annual Fee Form and a Statement of Compliance, and payment of the current annual fee, the annual fee due if he had not been administratively suspended, any late payment penalty, and a reinstatement fee of $300.00; and

d. requested that Respondent submit payment of the $300.00 reinstatement fee and file the Statement of Compliance. (N.T.IV 237-242; ODC-147)

156. After Respondent received Ms. Price's September 17, 2012 letter, he paid the $300.00 reinstatement fee and filed a Statement of Compliance; Respondent was thereafter reinstated to active status. (N.T. 241-242; ODC-147-148)

157. Respondent knew from his experience with having been administratively suspended in 2012 that if he were administratively suspended in the future, he:

    a. had to cease and desist from the practice of law until he resumed active status; and

    b. had to comply with the CLE requirements, file certain paperwork with the Attorney Registration Office, and pay certain fees before he would be reinstated to active status. (N.T.IV 239-243)

[36] 158. Between October 2014 and early August 2015, Respondent had an office for the practice of law at 1806 S. Broad Street, Floor 1, Philadelphia, PA 19145 ("the law office address"). (S-117)

159. By letter dated October 3, 2014, with enclosure, mailed to Respondent at the law office address, the CLE Board, *inter alia*:

    a. notified Respondent that he had yet to complete the CLE requirements due by December 31, 2014; and

    b. informed Respondent that lawyers who failed to complete the CLE requirements

by the compliance deadline will be considered non-compliant, resulting in the assessment of a $100 late fee and subjecting Respondent's "law license to PA CLE Rule 111 related to administrative suspension." (ODC-61; S-118, 127)

160. By letter dated February 20, 2015, with enclosure, mailed to Respondent at the law office address, the CLE Board, *inter alia*:

    a. notified Respondent that he was non-compliant with the CLE requirements due by December 31, 2014; and

    b. advised Respondent that he had sixty days from the date of that notice to complete the CLE requirements and to pay any outstanding late fees and that Respondent's failure to do so would result "in the assessment of a second $100 late fee and [Respondent's] name being included on a non-compliant report to the Supreme Court of Pennsylvania." (ODC-62; S-119, 127)

161. By letter dated May 27, 2015, with enclosure, mailed to Respondent at the law office address, the CLE Board, *inter alia*:

    [37] a. notified Respondent that the letter served as a second notification that he was non-compliant with the CLE requirements due on December 31, 2014;

    b. advised Respondent that if he failed to complete the CLE requirements and pay any outstanding late fees by 4:00 p.m. on

June 26, 2015, Respondent's name would be included on a non-compliant report for submission to the Supreme Court of Pennsylvania; and

c. informed Respondent that upon receipt of that non-compliant report, the Supreme Court of Pennsylvania would issue an Order to "administratively suspend [Respondent's] license to practice law in the Commonwealth of Pennsylvania and a third $100 late fee [would] be assessed." (ODC-63; S-120, 127)

162. By Order dated July 15, 2015 ("the Order"), the Supreme Court of Pennsylvania placed Respondent on administrative suspension for having failed to comply with the CLE requirements. (ODC-64; S-121)

163. By letter dated July 15, 2015, sent to Respondent by certified mail, return receipt requested, at the law office address, Suzanne E. Price, Attorney Registrar:

a. enclosed a copy of the Order and one page of the attachment, which contained Respondent's name;

b. advised that Respondent was to be administratively suspended effective August 14, 2015, for having failed to comply with the CLE requirements by December 31, 2014;

c. enclosed a written guidance for administratively suspended lawyers, a copy of

Pa.R.D.E. 217, and various forms for Respondent to use to comply with the Order;

[38] d. advised that Respondent was required to comply with the enclosed Pennsylvania Rules of Disciplinary Enforcement if Respondent was administratively suspended; and

e. notified Respondent that in "order to resume active status, [Respondent] must comply with the PA.C.L.E. Board before a request for reinstatement to the Disciplinary Board will be considered." (N.T.IV 254, 256-25; ODC-65; S-122)

164. On July 27, 2015, Respondent signed the green return receipt card and accepted delivery of this letter.

a. The green return receipt card had typed on it the following: "CLE—Administrative Suspension." (N.T.IV 258-261; ODC-66; S-123)

165. Respondent reviewed Ms. Price's July 15, 2015 letter. (S-127)

166. By e-mail dated August 5, 2015, sent to Respondent at Respondent's e-mail account with AOL, Jason Ilgenfritz, Compliance Specialist with the CLE Board, *inter alia*:

a. notified Respondent that he was noncompliant with the CLE requirements due by December 31, 2014;

b. requested that Respondent access Respondent's "MYPACLE account at www.pacle.org to review [his] CLE status and identify steps [he could] take to achieve compliance"; and

c. advised Respondent that attorneys who remained non-compliant on August 12, 2015, would be subject to having "their Pennsylvania license being placed on administrative suspension." (N.T.IV 262-263; ODC-67; S-124-125)

[39] 167. Respondent received and reviewed this e-mail. (N.T.IV 262-263; N.T.V 234-235; S-126-127)

168. Respondent knew that as of August 14, 2015, he was administratively suspended, (N.T.II 150; N.T.IV 262-263; S-127)

169. Respondent knew that he was ineligible to practice law in Pennsylvania by virtue of:

a. the letters and e-mails that he received from the CLE Board;

b. Ms. Price's July 15, 2015 letter and enclosures;

c. the expiration of Respondent's Pennsylvania attorney's license on July 1, 2015; and

d. Respondent's failure to obtain a Pennsylvania attorney license after July 1, 2015. (N.T.IV 251-253; S-127)

170. Respondent violated Pa.R.D.E. 217(e), in that he did not timely file a verified Statement of Compliance (Form DB-25(a)) with the Disciplinary Board Secretary. (S-128).

171. On August 14, 2015, Respondent was counsel of record for the defendant in *Commonwealth of Pennsylvania v. William J. Janisheck*, MC-51-CR-0009263-2014, a criminal case that was pending in the Philadelphia Municipal Court ("the Janisheck criminal case"). (ODC-68; S-129)

172. Respondent failed to advise Mr. Janisheck that:

    a. he had been administratively suspended; and

    b. he could not represent Mr. Janisheck. (S-130)

173. Respondent failed to advise the judge and opposing counsel assigned to the Janisheck criminal case that Respondent had been administratively suspended. (S-131)

[40] 174. Respondent failed to withdraw from the Janisheck criminal case. (S-132)

175. In the Janisheck criminal case, Respondent engaged in the unauthorized practice of law by representing Mr. Janisheck at a September 11, 2015 bench trial before the Honorable William Austin Meehan. (N.T.IV 269-270; ODC-68; S-133)

176. On August 14, 2015, in the following civil cases that were pending in the Philadelphia

Court of Common Pleas, Respondent was counsel of record for:

a. the defendants in the case of Tarnbar Washington vs. Stephanie Mancini, et al., docket number 120203153;

b. the plaintiff in the case of Ercole Mirarchi vs. Richmond and Hevenor, Attorneys at Law, at al., docket number 150303429 ("the Mirarchi I case");

c. the plaintiff in the case of Ercole Mirarchi vs. Richmond and Hevenor, Attorneys at Law, at al., docket number 150303942 ("the Mirarchi II case"); and

d. the defendant, Tristate Property, LLC, in the case of *Dana O'Neill et al. vs. David L. Heckenberg, et al.*, docket number 150702250. (N.T.IV 270-271; ODC-69-72; S-134)

177. On August 14, 2015, Respondent was counsel of record for the appellee, Ercole Mirarchi, in an appellate case pending in the Superior Court of Pennsylvania, said case captioned *Richmond and Hevenor, Attorneys at Law v. Ercole Mirarchi*, docketed at 2102 EDA 2015. (ODC-73; S-135)

178. Respondent failed to advise Respondent's clients in the aforementioned civil and appellate cases that:

a. he had been administratively suspended; and

b. he could not represent them in their legal matters. (S-136)

[41] 179. Respondent failed to advise the judges and opposing counsel who participated in the aforementioned civil and appellate cases that he had been administratively suspended. (S-137)

180. Respondent failed to withdraw Respondent's representation of his clients in the aforementioned civil and appellate cases, (ODC-69-73; S-138)

181. In the Mirarchi I case, Respondent engaged in the unauthorized practice of law by filing a Reply to New Matter & Crossclaim on August 25, 2015. (N.T.IV 270-271; S-139)

182. Sometime in early August 2015, Respondent had moved his office to 2000 Market Street, Suite 2925, Philadelphia, PA 19103 ("the new law office address"). (S-140).

183. By letter dated August 28, 2015, Mr. Ilgenfritz certified to Ms. Price that "since the effective date of the Supreme Court's order on 8/14/2015," Respondent had complied with the CLE requirements. (ODC-74; S-141)

184. By letter dated August 28, 2015, sent to, and received by, Respondent via electronic submission, Mr. Ilgenfritz, *inter alia*:

a. enclosed a copy of the August 28, 2015 letter he sent to Ms. Price;

b. stated that the "Disciplinary Board has mailed out the necessary paperwork to

[Respondent] in order to remove the administrative suspension"; and

c. advised Respondent that upon "receipt of the form(s) and fee(s), the Disciplinary Board will authorize [Respondent's] reinstatement." (N.T.IV 273-275; ODC-75; S-142-143)

185. By letter dated August 28, 2015, sent to, and received by, Respondent at the new law office address, Ms. Price, *inter alia*:

[42] a. stated that the CLE Board had certified that Respondent had complied with the CLE requirements;

b. informed Respondent that he had to comply "with Rule 219(h) of the Pennsylvania Rules of Disciplinary Enforcement";

c. listed the procedure Respondent had to follow to be reinstated;

d. advised Respondent that her office's "records show that [Respondent had] not paid the current license fee"; and

e. requested that Respondent "submit a U.S. check, money order or cashier's check in the amount of $650.00 (payable to Attorney Registration)." (N.T.IV 276-279; ODC-76; S-144-145)

186. Between August 14, 2015, and September 15, 2015, Respondent continued to maintain an office for the practice of law and to hold himself out as eligible to practice law, through

the use of letterhead, business cards, and Respondent's LinkedIn profile. (N.T.II 150-153; N.T.IV 147, 153, 265-266; ODC-78; S-151)

187. On September 16, 2015, the Attorney Registration Office received from Respondent the 2015-2016 Status Change Form and a $650.00 payment. (ODC-117; S-146)

188. On September 16, 2015, the Attorney Registration Office received from Respondent a Statement of Compliance that was dated September 15, 2015. (ODC-77; S-147)

189. Respondent signed the Statement of Compliance and certified that "under the penalties provided by 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the foregoing statements are true and correct and contain no misrepresentations or omissions of material fact." (N.T.IV 279-280; ODC-77; S-149)

190. In the Statement of Compliance, Respondent misrepresented that he had:

[43] a. complied with the Order and the Pennsylvania Rules of Disciplinary Enforcement; and

b. "ceased and desisted from using all forms of communication that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania. . . ." (ODC-77; N.T.II 150-153; N.T.IV 281-284; S-148)

191. On September 16, 2015, Respondent was reinstated to active status in the Commonwealth of Pennsylvania. (S-150)

192. Respondent falsely testified at the hearing that while he was administratively suspended, he "did not work on any cases." (N.T.IV 147, 153, 266-267)

193. Based on Respondent's prior administrative suspension in 2012, and the correspondence he received from the CLE Board and the Attorney Registration Office in July, August, and September 2015, Respondent knew that to resume active status, he had to comply with the CLE requirements ***and*** file certain forms and pay certain fees.

194. Respondent knowingly engaged in the unauthorized practice of law and blatantly disregarded the Order.

195. Respondent received a DB-7 Request for Statement of Respondent's Position ("the DB-7 letter") dated February 4, 2016, in which ODC notified Respondent:

    a. of allegations relating to Respondent's unauthorized practice while administratively suspended, as set forth above, and The Joseph Gargano Matter (Charge V. infra); and

    b. that the failure to respond to the DB-7 letter without good cause would he an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7). (ODC-79; S-152-154)

[44] 196. Respondent failed to:

a. submit to ODC a response to the DB-7 letter; or

b. present to ODC evidence that he had good cause for not responding to the DB-7 letter. (S-155)

D. CHARGE IV: The Linda Sacchetti Matter

197. On December 6, 2008, Linda Sacchetti, a/k/a Kai Mui Yau, participated in a marriage ceremony with Mario Sacchetti ("decedent"), (S-160)

198. On June 22, 2011, Mario Sacchetti died; his will named a nephew, Charles Sacchetti, as executor. (S-157)

199. Linda Sacchetti and Charles Sacchetti became involved in a dispute over decedent's estate, at the conclusion of which the Orphan's Court declared, inter alia, that the purported marriage between Linda Sacchetti and decedent was null and void, and that all bequests made to Linda Sacchetti in decedent's will were to be treated as part of the residue of decedent's estate. (S-163)

200. Subsequently, Linda Sacchetti retained Respondent to prosecute an appeal from the Orphan's Court order, paying him $15,000.00. (S-166-170)

201. Respondent timely filed a notice of appeal, but on February 6, 2014, the Superior Court dismissed the appeal for Respondent's

failure to file a Docketing Statement. Upon Respondent's motion, the court reinstated the appeal, and permitted Respondent to file a Docketing Statement. (S-171-180)

202. After being granted a 30-day extension within which to file a brief for Ms. Sacchetti in the Superior Court, Respondent failed to file a brief. Upon Ms. Sacchetti's pro se motion for an extension of time, and Charles Sacchetti's motion [45] to dismiss the appeal, on November 14, 2014, the Superior Court ordered Respondent to either file a brief within 14 days or file a motion to withdraw as counsel. (S-187, 191-194, 205-213)

203. Respondent failed to comply with the Superior Court's order. (S-214-215)

204. By letter dated November 17, 2014, Ms. Sacchetti stated that she had learned that Respondent had failed to file a brief on her behalf, terminated Respondent's representation and requested a return of the retainer paid to him. Respondent failed to answer the letter, refunded [sic] any portion of the retainer, provide Ms. Sacchetti with her file, or withdraw his appearance. (S-216, 219)

205. On July 3, 2014, Ms. Sacchetti was arrested after Charles Sacchetti accused her of stealing decedent's personal property. (S-182)

206. Respondent agreed to represent Ms. Sacchetti in the criminal case for a fee of $2,000.00; he subsequently agreed to accept partial payment of $750.00, and the balance

over time, and entered his appearance. (S-184-186, 188, 190)

207. Respondent was granted continuances of the criminal case on two occasions, but took no other action in the case, and on November 18, 2014, was removed as counsel and replaced by appointed counsel. (S-220-222)

208. On June 26, 2014, ODC served Respondent with a DB-7 letter concerning allegations relating to Ms. Sacchetti's complaints about Respondent's representations of her. (S-229-230; ODC-106)

209. Ms. Sacchetti was born in China. (N.T. 94)

210. Ms. Sacchetti moved to Hong Kong when she was 21 and lived there from 1974 through 2000. (*Id.*)

[46] 211. Ms. Sacchetti grew up speaking Taiwanese and Mandarin, and began speaking Cantonese after she moved to Hong Kong. (*Id.*)

212. Ms. Sacchetti is not fluent in the English language in that she has a limited ability to speak the English language and to understand when spoken to in the English language. (N.T. 95, 97-100, 102-6, 112, 115; N.T.V 137-140, 156-162; ODC-89, 149)

213. Ms. Sacchetti used the assistance of others to draft checks to Respondent in payment of Respondent's fee, to communicate with Respondent, and to prepare motions and correspondence filed with the Superior Court of

Pennsylvania. (N.T. 97-100, 102-106, 119-120)

214. When Ms. Sacchetti met with Respondent on November 20, 2013, she was accompanied by an interpreter. (N.T. 98-99)

215. Ms. Sacchetti met with Respondent after she was arrested on July 3, 2014; Ms. Sacchetti's daughter attended this meeting and served as an interpreter. (N.T. 101, 119-120; S-182, 184-185; N.T.V 157-158)

216. The meeting between Respondent, Ms. Sacchetti, and Ms. Sacchetti's daughter lasted about one hour. (N.T. 101)

217. After Respondent exchanged emails with Ms. Sacchetti on October 16, 2014, Respondent ceased communicating with Ms. Sacchetti and he would no longer respond to Ms. Sacchetti's inquiries about the appeal and the criminal case. (N.T. 103-6; N.T.V 145-150; ODC-99, 102-104; S-202-204, 207-211, 216-217, 219)

218. Respondent failed to refund to Ms. Sacchetti the $750.00 that he had received to represent her in the criminal case. (N.T. 107; N.T.V 149)

[47] 219. During the period that Respondent represented Ms. Sacchetti in the appeal of the estate case, Ms. Sacchetti called Respondent from time to time to inquire about the status of that matter. (S-226)

220. Respondent failed to return the messages left for him by Ms. Sacchetti. (N.T. 107)

221. During the period that Respondent represented Ms. Sacchetti in the appeal of the estate case, Ms. Sacchetti went to Respondent's office from time to time to inquire about the status of that matter. (S-227)

222. On those occasions that Ms. Sacchetti went to Respondent's office, Respondent was not present. (N.T. 107-108)

223. Respondent had received the Sacchetti DB-7 letter and knew from his counsel that a response was due. (N.T.V 152-154; ODC-106, 150; S-229-230)

224. Respondent failed to:

    a. submit to ODC a response to the Sacchetti DB-7 letter; or

    b. present to ODC evidence that he had good cause for not responding to the DB-7 letter. (N.T.V 153-154)

E. CHARGE V: The Joseph Gargano Matter

225. On June 25, 2014, Respondent, having been retained by Joseph Gargano, filed a lawsuit on Mr. Gargano's behalf captioned *Joseph Gargano v. Index Realty, Inc., D.B.A. Le Castagne*, ("the Gargano lawsuit"), docketed at No. 3667, June Term 2016, in the Court of Common Pleas of Philadelphia County. (ODC-107)

226. The Gargano lawsuit was listed for an arbitration hearing on March 26, 2015, at the

Arbitration Center; neither Respondent nor Mr. Gargano appeared, and so the [48] Honorable Idee C. Fox approved a judgment of *non pros*, which was entered on the docket the following day. (ODC-107)

227. On March 29, 2015, Respondent sent a text message to Mr. Gargano stating, inter alia, that he had to file a motion to "fix a dismissal" of the Gargano lawsuit. (ODC-110)

228. Respondent did not file a petition to open the judgment of *non pros* of the Gargano lawsuit until May 19, 2016, more than a year after the *non pros* was entered; the motion was denied by the court. (ODC-107)

229. By letter dated August 14, 2015, Daniel Siegel, Esquire, informed Respondent that he was representing Mr. Gargano on a claim that Respondent had failed properly to represent Mr. Gargano in the Gargano lawsuit, requested that Respondent put his malpractice carrier on notice of the claim, and advised Respondent to preserve all items relating to the claim. (ODC-111)

230. On August 24, 2015, the defendants in the Gargano lawsuit filed an action against Respondent and Mr. Gargano, alleging a violation of the Dragonetti Act. (ODC-112)

231. On October 19, 2015, Mr. Gargano advised Respondent by text message that Mr. Siegel would represent Mr. Gargano on all matters, stated that he was aware that Respondent had refused to give Mr. Gargano his legal file,

and told Respondent to make Mr. Gargano's legal file available. (ODC-113)

232. The same day, Respondent answered Mr. Gargano's [sic] in a text message in which he refused to release the legal file unless he was reimbursed for his costs, and stated that he had told Mr. Gargano's father that he was preparing a petition to open the case. (ODC-113)

[49] 233. Mr. Gargano responded to Respondent's text message as follows: "LOL 7 months later to file a petition now I'm being sued for your mistake," to which Respondent texted, in part: "You can laugh all you want. If I don't fix it, you and they get nothing out of me. I'm broke." (ODC-114)

234. Despite additional requests by Mr. Siegel, Respondent failed to provide him or Mr. Gargano with the contents of Mr. Gargano's legal file, which included documents given by Mr. Gargano to Respondent. (ODC-115; N.T.IV 6-10)

235. In his 2014-2015 PA Attorney's Annual Fee Form and 2015-2016 Administrative Change in Status from Administrative Suspension Form, Respondent represented that he maintained professional liability insurance. (ODC-116-117)

236. Respondent received notice of the scheduled March 26, 2015 arbitration hearing. (ODC-167, ¶3, ODC-168, pp. 2, 4, 10)

237. Respondent failed to inform Mr. Gargano of the date, time, and location of the arbitration hearing. (ODC-167, ¶5, ODC-168, p. 11)

238. Mr. Gargano failed to appear for the March 26, 2015 arbitration hearing because he was unaware of the date, time, and location of the arbitration hearing. (ODC-167, ¶5, ODC-168, p. 11)

239. Respondent failed to take prompt action to have the judgment of *non pros* vacated and the Gargano lawsuit reinstituted. (N.T.V 172-174; ODC-167-168)

240. When Respondent sent Mr. Gargano an October 19, 2015 text message that stated that Respondent was "working on a Petition," Respondent made a misrepresentation to Mr. Gargano because Respondent was not preparing a petition at that time. (N.T.V 171-173; ODC-114, 167-168)

[50] 241. In May 2016, **fourteen months after** the Gargano lawsuit was dismissed, **and seven months after** Respondent claimed that he was "working on a Petition," Respondent filed in the Gargano lawsuit a Petition to Open the Judgment by Default ("the Petition to Open") in order to have the judgment of *non pros* vacated and the Gargano lawsuit reinstituted. (N.T.V 171-174; ODC-114, 167-168)

242. By Order dated June 14, 2016, Judge Fox:

a. denied the Petition to Open; and

b. stated that the Petition to Open failed "to provide a reasonable explanation for the fourteen (14) month delay in filing the Petition to Open the Non Pros" and "to state a reasonable excuse for Plaintiff's failure to attend the Arbitration and/or why a request for a continuance was not made." (ODC-169)

243. Respondent's mishandling of the Gargano lawsuit and failure to provide Mr. Siegel with the documents that Respondent received from Mr. Gargano prejudiced Mr. Gargano in that:

a. Mr. Gargano was unable to fully litigate his meritorious claims against the defendants in the Gargano lawsuit;

b. the manner in which the Gargano lawsuit was dismissed afforded defendants a basis to allege a violation of the Dragonetti Act by Mr. Gargano and Respondent;

c. Mr. Gargano had to retain and pay Mr. Siegel to represent him in the Index Realty lawsuit; and

d. when Mr. Siegel filed on behalf of Mr. Gargano a crossclaim asserting legal malpractice by Respondent, Mr. Siegel was unable to establish the extent of Mr. Gargano's damages, thereby precluding Mr. Gargano from [51] obtaining a recovery. (N.T.IV 8-12, 20-22; N.T.V 174-175;

ODC-112, 115, 167, ¶6, ODC-168, p. 11; S-233-238, 246, 251-253)

244. Respondent's October 19, 2015 text messages to Mr. Gargano indicated that Respondent did not maintain professional liability insurance. (ODC-114)

245. Respondent testified that in October 2015, he learned that he no longer had professional liability insurance. (N.T.IV 291)

246. Sometime before October 2015, Respondent ceased maintaining professional liability insurance because he was unable to pay for such insurance. (N.T.IV 291; N.T.V 164-165)

247. Respondent was unable to state when his professional liability insurance lapsed and for how long he was without such insurance. (N.T.IV 295-297; N.T.V 167-168, 170)

248. Respondent failed to notify the Attorney Registration Office within 30 days after he ceased maintaining professional liability insurance that he no longer maintained professional liability insurance. (N.T.V 169-170; S-254-258)

249. After Respondent ceased maintaining professional liability insurance, Respondent failed to inform;

    a. Respondent's new clients that he did not maintain professional liability insurance; and

b. Respondent's existing clients that his professional liability insurance had terminated. (N.T.V 170-171)

F. AGGRAVATING AND MITIGATING FACTORS

[52] 250. Respondent's inability to properly manage his professional and personal financial affairs establishes that Respondent is currently unfit to practice law and that his continued practice of law would be a danger to the public and the legal profession.

251. In March 2012, July 2012, and December 2015, the IRS filed three liens against Respondent in the amounts of $22,732.47, $10,527.68, and $10,753.72, respectively. (ODC-129-130, 132)

a. The IRS liens were based on Respondent having failed to pay federal taxes on behalf of Respondent's employees for the years 2008, 2011, 2012, and 2013. (N.T.V 52-55; ODC-129-130, 132)

b. In August 2012, Respondent had satisfied the IRS lien in the amount of $22,732.47; the other two IRS liens remain unsatisfied. (*Id.*)

252. In April 2013, the Commonwealth of Pennsylvania filed a lien against Respondent in the amount of $1,213.76 for non-payment of state taxes on behalf of Respondent's employees for the year 2011; this lien remains unsatisfied. (N.T.V 56-57; ODC-131)

253. In December 2015, a civil case was filed against Respondent in the Philadelphia Municipal Court by ADR Options, Inc. ("ADR"), in which ADR sought payment of its bill in the amount of $3,000.00 for having provided private arbitration services to Respondent. (N.T.V 60-61; ODC-138)

    a. On March 30, 2016, ADR obtained a default judgment against Respondent in the amount of $4,464.50. (Id.)

    b. On May 4, 2016, ADR took action to execute on the default judgment. (Id.)

    [53] c. On or about June 10, 2016, Respondent satisfied the default judgment. (*Id*.)

254. In August 2012, Respondent had filed a Chapter 11 bankruptcy petition on behalf of his incorporated solo law practice in the United States Bankruptcy Court for the Eastern District of Pennsylvania due to the debt that the law practice had accumulated (N.T.V 61-62, 205; ODC-139)

    a. At the request of the assigned United States Trustee, the bankruptcy case was dismissed without the entry of an order granting the bankruptcy petition. (ODC-139)

255. In August 2013, Lawyers Funding Group, LLC ("LFG") filed a lawsuit against Respondent and his law firm in the Philadelphia Court of Common Pleas ("the LFG lawsuit"). (N.T.V 31; ODC-136)

256. The Complaint in the LFG lawsuit alleged that Respondent had:

    a. breached two agreements that, in essence, resulted in LFG loaning Respondent the total sum of $20,000.00, which loan was secured by Respondent's anticipated fees in certain specified personal injury cases;

    b. failed to notify LFG that he had received attorney's fees in several of the personal injury cases; and

    c. failed to use those attorney's fee to [sic] satisfy Respondent's obligation to LFG, (N.T.V 10-11, 32, 34-37, 45, 209-210; ODC-136)

257. On January 23, 2012, Respondent and LFG entered into the first agreement ("the January 2012 agreement"), which involved LFG loaning Respondent $15,000.00. (N.T.V 9-10; ODC-1, ODC-136, Exhibit "A")

    [54] a. Respondent obtained the $15,000.00 because he was in need of money. (N.T.V 1—12, 20; ODC-1)

    b. Among Respondent's personal injury cases identified in the January 2012 agreement were one of the two lawsuits involving Ms. Tooley and the lawsuit involving Justin Swanson. (N.T.V 38-39; ODC-136, Exhibit "A")

    c. The January 2012 agreement also identified two personal injury cases that

Respondent was handling on behalf of Glenn Bozzacco, one lawsuit having been filed in May 2010 ("the 2010 Bozzacco lawsuit") and the second lawsuit having been filed in June 2011 ("the 2011 Bozzacco lawsuit"). (N.T.V 38-39; ODC-136, Exhibit "A" and "E")

258. On July 16, 2012, Respondent and LFG entered into the second agreement ("the July 2012 agreement"), which was treated as an amendment to the January 2012 agreement. (N.T.V 43-44; ODC-136, Exhibit "D")

    a. The July 2012 agreement documented LFG's loan to Respondent of an additional $5,000.00, secured by Respondent's anticipated fees in the same personal injury cases identified in the January 2012 agreement. (Id.)

    b. Respondent obtained the $5,000.00 loan because he was in need of money due Respondent's landlord having filed an eviction complaint against Respondent. (N.T.V 20, 45-46; ODC-136, Exhibit "F")

259. When Respondent received his attorney's fees for the personal injury case involving Ms. Tooley, Respondent: failed to notify LFG that he had received the settlement proceeds in that matter; and converted to his own use the attorney's fees that LFG was entitled to receive. (N.T.V 42, 46-47, 209-210; ODC-1, 136)

[55] 260. Respondent settled the 2010 Bozzacco lawsuit for the sum of $14,000.00 and the 2011 Bozzacco lawsuit for the sum of $15,000,00. (N.T.V 18-20; ODC-1, ODC-160-162)

261. Knowing that Respondent had financial problems, Mr. Bozzacco allowed Respondent to use Mr. Bozzacco's shares of the settlement proceeds. (N.T.II 22, 27-29, 33-36; N.T.V 18-20, 22)

262. On November 13, 2012, Respondent deposited into the old IOLTA account the $14,000.00 settlement check for the 2010 Bozzacco lawsuit and used all of the proceeds from that check for his own benefit. (N.T.V 18-20; ODC-1, 157)

263. On June 14, 2013, Respondent deposited into the IOLTA account the $15,000.00 settlement check for the 2011 Bozzacco lawsuit and used a substantial portion of the proceeds from that check for his own benefit. (N.T.V 20-22; ODC-158, 160)

264. In August 2013, Respondent used $20,000.00 of funds that he had misappropriated from Ms. Majors' share of the settlement check to repay Mr. Bozzacco the monies that he had borrowed from Mr. Bozzacco. (ODC-126-127, 158; N.T. 135-138; N.T.V 27-30)

a. In connection with the 2010 Bozzacco lawsuit, Respondent forewent his contingent fee and only deducted his costs, resulting in Mr. Bozzacco receiving a

check in the amount of $9,435.98 that was drawn on the IOLTA account. (N.T.V 42; ODC-161)

b. In connection with the 2011 Bozzacco lawsuit, Respondent reduced his contingent fee from 33.3% to 25% and deducted his costs, resulting in Mr. [56] Bozzacco receiving a check in the amount of $10,239.00 that was drawn on the IOLTA account. (N.T.V 42; ODC-162)

265. Respondent: failed to notify LFG that he had received the settlement proceeds for the 2010 Bozzacco lawsuit and the 2011 Bozzacco lawsuit; failed to obtain LFG's permission to forego on the one lawsuit, and to reduce on the second lawsuit, the attorney's fees that Respondent was entitled to receive for representing Mr. Bozzacco; and converted to his own use the fees that LFG was entitled to receive in connection with the settlement of the 2011 Bozzacco lawsuit. (N.T.V 42; ODC-1, 136)

266. On September 27, 2013, LFG obtained a default judgment against Respondent in the amount of $50,531.29. (N.T.V 34-35; ODC-136)

267. Respondent paid an agreed-upon compromised amount to satisfy the default judgment; Respondent entered into this agreement with LFG after LFG had taken action to execute on the default judgment and had scheduled a Sheriffs sale of

Respondent's property, (N.T.V 47-51; ODC-136, Exhibit "F," 165-166)

268. During the period that Respondent had misappropriated fiduciary funds belonging to his clients and third parties, Respondent's financial circumstances were dire as evidenced by: his testimony; his witnesses' testimony; his inability to pay for office staff; his nonpayment of rent for several office locations and his eviction from one office location; his inability to pay taxes owed to federal and state authorities; his borrowing of funds from Mr. Bozzacco; his borrowing of funds from LFG; his asking Ms. Majors for a $500.00 loan after misappropriating approximately $80,000.00 of her settlement funds; his text messages to clients; his failed business [57] venture; and his having become overdrawn on his operating accounts on multiple occasions, which resulted in one of the operating accounts being closed for deficient funds. (N.T. 35; N.T.II 22, 28, 33-34, 61, 63-64, 140-141; N.T.IV 78-80, 85-86, 90-92, 94, 126-127, 147, 166-167, 190, 310; N.T.V 12-17, 205; ODC-55, 114, 128, 151, 163-164)

269. Aside from the misconduct charged in the Petition, Respondent has engaged in other instances of dishonest and dilatory conduct that shows Respondent is currently unfit to practice law and poses a danger to the public.

270. In March 2015, Respondent filed in the Philadelphia Court of Common Pleas a legal malpractice lawsuit (referred to under Charge

III as "the Mirarchi I case," *supra*) on behalf of his brother, Ercole Mirarchi, and against Kenneth W. Richmond, Esquire, William E. Hevenor, Esquire, and Richmond and Hevenor, Attorneys at Law ("R&H firm"). (N.T.V 176; ODC-135)

271. In the Mirarchi I case, Respondent filed several Certificates of Merit as to Mr. Richmond, Mr. Hevenor, and the R&H firm, in which Respondent had certified the following:

272. [A]n appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. (N.T.V 177-178; ODC-135)

273. The Certificates of Merit filed by Respondent in the Mirarchi I case were false because Respondent had not obtained a written statement from an appropriate [58] licensed professional before filing the lawsuit. (N.T.V 181-190; ODC-70, 135, 170, 174; R-1)

274. During an October 5, 2016 hearing that was held in the Mirarchi I case on a Motion for Sanctions filed by Mr. Richmond, Respondent withdrew those counts in the Complaint that were based on a theory of legal malpractice. (N.T.V 189; ODC-70, 135, 170)

275. In August 2011, Respondent filed a lawsuit on behalf of Justin Swanson in the Philadelphia Court of Common Pleas. (N.T.V 192; ODC-171)

276. In connection with that lawsuit:

    a. the Honorable John W. Herron had issued an Order dated September 10, 2012, which dismissed a Petition for Leave to Compromise a Minor's Action that Respondent had filed and directed Respondent to refile a Petition that provided for immediate distribution of the sums due to Justin Swanson;

    b. Respondent failed to promptly comply with Judge Herron's Order; and

    c. the Honorable Marlene F. Lachman issued an Order dated May 1, 2014, which, *inter alia*, found that Respondent had failed to comply with Judge Herron's Order, determined that Respondent was solely responsible for a nineteen-month delay in resolving that lawsuit, and imposed a monetary sanction on Respondent. (N.T.V 193-195; ODC-171)

277. Respondent's hearing testimony was not credible, which clearly shows that he is a present danger to the public and the legal profession.

278. Respondent never made restitution to Ms. Majors.

[59] 279. Respondent failed to exhibit remorse for his misconduct because an expression of genuine remorse must be accompanied by an acknowledgment of wrongdoing; Petitioner was unwilling to fully admit his misconduct.

280. Respondent's character evidence was not weighty and compelling.

a. Ten witnesses who offered character testimony had no information regarding Respondent's admitted and alleged misconduct, while four other witnesses had incomplete information. (N.T. II 38-39, 48, 57, 64, 70-71, 79-80, 101-104, 134-135, 146-148, 172, 181-182, 199-200; N.T.III 43-44, 48-49; N.T.IV 32-36, 210)

281. Respondent has no record of discipline.

III. CONCLUSIONS OF LAW

A. CHARGE I: THE ODC Matter

282. Petitioner proved that Respondent violated RPC 1.15(b), RPC 1.15(c)[effective 9/20/08], RPC 1.15(c)[effective 2/28/15], RPC 1.15(c)(2)[effective 9/20/08], RPC 1.15(c)(2)[effective 2/28/15], RPC 1.15(e), RPC 1.15(h), RPC 8.4(c), Pa.R.D.E. 203(b)(3) via 219(d)(1)(iii), and Pa.R.D.E. 203(b)(7).

B. CHARGE II: The Elizabeth Majors Matters

283. Petitioner proved that Respondent violated RPC 1.15(b), RPC 1.15(e), RPC 1.16(d), and RPC 8.4(c).

C. CHARGE III: Administrative Suspension and Unauthorized Practice of Law

[60] 284. Petitioner proved that Respondent violated RPC 5.5(a), RPC 7.1, RPC 8.1(a), RPC 8.4(c), RPC 8.4(d), Pa.R.D.E. 203(h)(3) via Pa.R.D.E. 217(a), 217(b), 217(c)(1), 217(c)(2), 217(d)(2), 217(e)(1), 217(j)(3), 217(j)(4)(ii), 217(j)(4)(iv), 217(j)(4)(v), 217(j)(4)(vi), 217(j)(4)(vii), and 217(j)(4)(ix), and Pa.R.D.E. 203(b)(7).

D. CHARGE IV: The Linda Sacchetti Matter

285. Petitioner proved that Respondent violated RPC 1.3, RPC 1.4(a)(3), RPC 1.4(a)(4), RPC 1.4(b), RPC 1.15(e), RPC 1.16(a)(3), RPC 1.16(d), RPC 8.4(d), and Pa.R.D.E. 203(b)(7).

E. CHARGE V: The Joseph Gargano Matter

286. Petitioner proved that Respondent violated RPC 1.3, RPC 1.4(a)(3), RPC 1.4(b), RPC 1.4(c), RPC 1.16(d), RPC 8.4(a), RPC 8.4(c), and Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 219(d)(1)(viii) and 219(d)(3).

IV. DISCUSSION

We find that the ODC has met its burden of proof, by clear and convincing evidence, as to each of the charges asserted against Respondent, and this Committee finds that Respondent has violated the aforementioned Rules of Professional Conduct and Rules of Disciplinary Enforcement. The record in this case demonstrates the Respondent's lengthy and consistent pattern and practice of misappropriation of funds from clients and others, a repeated failure to safeguard funds left in trust, repeated disregard for the Rules of Professional Conduct, and multiple instances of dishonesty and misrepresentation on the part of Respondent in his interactions with clients and third parties.

[61] The purposes of the attorney disciplinary system include the protection of the public from unfit attorneys, preservation of the integrity of the Bar, and deterrence. *See Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 579, 506 A.2d 872, 875 (1986)(purpose of system of lawyer discipline is to protect public from unfit lawyers and to maintain integrity of legal system); *In re Iulo*, 564 Pa. 205, 766 A.2d 335 (2001) (another goal of the disciplinary system is deterrence).

Having determined that Respondent misappropriated approximately $80,000 in funds from his client, Ms. Majors, and further that Respondent repeatedly utilized funds from his trust account for his own purposes[2], it is clear from the case law that serious

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[2] Based on the care Respondent exercised to avoid overdrawing his trust account and his distressed financial condition, we

discipline is warranted. *See Office of Disciplinary Counsel v. Evans*, 69 Pa. D.&C.4th 265 (2003)(Evans, acting as both executor and attorney for an estate, misappropriated approximately $90,000.00 from the estate; Evans disbarred despite having no record of discipline, making restitution, and stipulating to many of the facts, including that he had used funds belonging to the estate); *Office of Disciplinary Counsel v. Patricia M. Renfroe a/k/a Patty M. Renfroe and Patty Michelle Renfroe*, No. 122 DB 2004 (D.Bd. Rpt. 8/30/05)(S.Ct. Order 11/1/05)(Renfroe disbarred for misappropriating over $155,000.00 from a client which was in the form of an unauthorized transfer that fell short of a theft; Renfroe had no record of record of [sic] discipline and the client was eventually made financially whole, but without Renfroe's assistance); *Office of Disciplinary Counsel v. Thomas Louie*, No. 108 DB 2002 (D.Bd. Rpt. [62] 10/10/03)(S.Ct. Order 12/29/03)(Louie disbarred

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have inferred that his use of funds from the trust account for his own purposes was knowing and intentional. Even if Respondent's professions of ignorance and neglect giving rise to these instances were believed, they would not excuse the misconduct. *See* ***Washington***, No. 132 DB 1995 (D.Bd. Rpt. 2/9/97)(S.Ct. Order 3/20/97) (Washington commingled and converted fiduciary funds belonging to a client and another individual, failed to make prompt distribution of funds to a client, and failed to identify on his attorney annual fee form the financial institution where he held fiduciary funds; Board found credible Washington's claim that he was a sloppy bookkeeper and was unaware of his obligation to maintain client funds separately); ***In re Anonymous (Harold E. Krauss)***, 27 Pa. D.&C.4th 202 (1994)(Krauss commingled and converted funds belonging to a client and failed to produce financial records requested pursuant to an investigatory hearing; Board stated that Krauss' self-assessment as a poor administrator might explain his behavior, but did not excuse his misconduct).

for misappropriating over $108,000.00 from an estate while serving as attorney for the executors; no restitution and no record of discipline); *Office of Disciplinary Counsel v. Anonymous (Ronald L. Muha)*, No. 121 DB 1999 (D.Bd. Rpt. 11/3/00)(S.Ct. Order 3/23/01)(Muha disbarred for taking $18,000.00 of a client's settlement funds, and, like Respondent, using the converted funds to address his many financial problems; no record of discipline and no restitution); *In re Anonymous (Robert Peter Flanagan)*, 49 Pa. D.&C.3d 605 (1987)(Flanagan disbarred for a single instance of converting $8,500.00 entrusted to him by his corporate client; no record of discipline and no restitution); *In the Matter of Marx S. Leopold*, 366 A.2d 227 (Pa. 1976)(Leopold disbarred for converting $5,500.00 held in an escrow account on behalf of a client; no record of discipline and no restitution); *Office of Disciplinary Counsel v. Picard Losier*, No. 256 DB 2010 (S.Ct. Order 1/3/2013) (Losier was disbarred on consent for misappropriating $86,400 from an estate and an insurance carrier, commingling and mishandling fiduciary funds, and failing to keep proper records of fiduciary funds).

When this evidence is viewed in combination with the additional evidence of Respondent's misrepresentations to clients and others, his unauthorized practice of law while under administrative suspension, his neglect of client matters (failure to file the Sacchetti brief and failure to notify his client and appear at the Garagano arbitration), and his failure to respond to the DB-7 letter and inability to demonstrate that he maintained liability insurance despite his representations

that he was insured, the need for serious discipline proves inescapable. *See Office of Disciplinary Counsel v. Campbell*, 345 A.2d 616, 622 (Pa. 1975)("Isolated instances of misconduct may be individually insufficient to support disbarment. However, a number of such instances, although unrelated, when considered [63] together, can demonstrate such complete disregard for professional standards that disbarment is necessitated.")

In addition to the violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement, the tax liens against Respondent and civil actions filed against him seeking repayment of debts demonstrate a degree of fiscal irresponsibility which serves as a further aggravating factor in the assessment of Respondent's conduct. *See Office of Disciplinary Counsel v. Anthony Dennis Jackson*, No. 145 DB 2007 (D.Bd. Rpt. at 15-16, 11/21/08)(S.Ct. Order 4/3/09)(Jackson was deemed "unable to effectively manage his personal affairs and professional matters" because of default judgments, unsatisfied judgments, and open liens entered against him; Board treated this as a less weighty aggravating factor); *Office of Disciplinary Counsel v. Steven Lawrence Sigal*, No. 14 DB 2006 (D.Bd. Rpt. at 11, 4/11/08)(S.Ct. Order 9/4/08)(Sigal's failure to pay his city, state, and federal taxes in a timely fashion was an aggravating factor).

Furthermore, Respondent fell far short of acknowledging the most serious of his disciplinary violations, and indeed, exhibited little understanding of what steps he must take to bring his conduct into

alignment with the requirements. When asked by his counsel what he has done to avoid repeating the sort of problems in practice he had faced in the past, Respondent stated that he had: fulfilled his continuing legal education requirements for the year in advance of his compliance date; taken CLE courses " . . . in trying to relate to clients better, negotiation skills and things like that[.];" obtained a new copy of the civil practice manual; applied early for the annual renewal of his Attorney's License; attempted to automate his bookkeeping system; and began to attend therapy sessions for anxiety. (N.T.IV 196-200) These steps simply do not address the misappropriation and failure to safeguard funds held in trust and the neglect of clients' interests proven by the evidence in this matter.

[64] Notably, Respondent's professed personal or business difficulties are neither a defense nor a mitigating factor. As observed by our Supreme Court:

> Concerning respondent's business or personal difficulties, we have stated:
>
> The office of an attorney does not permit the attorney's personal pecuniary embarrassments to be solved by unauthorized use of fiduciary funds. Retention of a client's money after demand therefore is ground for disbarment.
>
> *Griffith's Case*, 321 Pa. 64, 65, 184 A. 76 (1936).

Office of Disciplinary Counsel v. Lewis, 426 A.2d 1138, 1142 (Pa 1981).

Similarly, the character evidence presented by Respondent fails to overcome the substantial evidence of his misdeeds, and is simply unequal to the task of reducing the clear need for serious and substantial discipline. *See*, *e.g. Office of Disciplinary Counsel v. Passyn*, 644 A.2d 699, 705 (Pa. 1994)(" No amount of character testimony will overcome the fact that respondent lied to her clients, the lawyers fund for client security, and the court of common pleas.")

V. RECOMMENDATION

The Hearing Committee has taken into account that the primary function of the disciplinary system is to maintain the integrity of the legal system. The Respondent in this instance failed to justify his conduct in this matter and failed to offer any mitigating factors. In view of these [65] considerations, and for all of the reasons set forth above, the Hearing Committee unanimously recommends that Respondent be disbarred.

/s/ Steven J. Cooperstein
Hearing Committee Chair – Steven J. Cooperstein

/s/ David S. Senoff
Member – David ~~D.~~ S. Senoff

/s/ Mark W. Tanner
Member – Mark Tanner

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Misc. No. 19-8011

In re: Joseph Q. Mirarchi

Present: FISHER, Circuit Judge

1. Show-Cause Response Filed by Joseph Q. Mirarchi, Esq.

Respectfully.
Clerk

ORDER

After the Supreme Court of Pennsylvania disbarred Joseph Q. Mirarchi, Esq., this Court ordered Mr. Mirarchi to show cause why he should not be reciprocally disciplined by this Court. Mr. Mirarchi responded to the show-cause order on May 10, 2019, contesting the imposition of discipline.

The United States District Court for the Eastern District of Pennsylvania has also commenced reciprocal disciplinary proceedings against Mr. Mirarchi (E.D. Pa. no. 2:19-mc-00067). Mr. Mirarchi responded to those proceedings, and it appears the district court will hold a hearing in the near future.

In light of the ongoing district-court proceedings, the above-captioned case in this Court is STAYED. After the district court's disciplinary proceedings and any appeal therefrom have concluded, the Clerk

will lift this stay and require Mr. Mirarchi to file a supplemental show-cause response addressing the district court's decision. Cf. R.A.D.E. 6.1 & 6.3.

Mr. Mirarchi must notify the Clerk within ten days after the district-court proceedings are resolved. If he appeals from the district court's decision, he must also notify the Clerk within ten days after his appeal is resolved.

In his show-cause response, Mr. Mirarchi states that he is attempting to retain counsel but also cursorily requests appointment of counsel "[i]f appropriate." If Mr. Mirarchi wants this Court to appoint him counsel, he must file a separate motion explaining with particularity why that relief should be granted. See Fed. R. App. P. 27(a)(2)(A) (requiring motions to "state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it."). Because this Court is empowered to appoint counsel for "indigent attorney[s]," see R.A.D.E. 14, any such motion must be accompanied by an affidavit demonstrating Mr. Mirarchi's indigence. A form affidavit of poverty is available on the Court's website: http://www.ca3.uscourts.gov/legacyfiles/ifp_affidavit.pdf.

Mr. Mirarchi is reminded of his continuing obligation to advise new clients about these ongoing disciplinary proceedings. See R.A.D.E. 6.6 & 8.2.

By the Court,

s/ D. Michael Fisher
Chair, Standing Committee
on Attorney Discipline

Dated: May 29, 2019
cc: Joseph Q. Mirarchi, Esq.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Misc. No. 19-8011

In re: Joseph Q. Mirarchi, Esquire
(Supreme Court of Pennsylvania No. 2485
Disciplinary Docket No. 3 No. 56 DB 2016)

ORDER TO SHOW CAUSE

The Clerk of this Court received a copy of an order of the Supreme Court of Pennsylvania dated March 18, 2019, disbarring Joseph Q. Mirarchi, Esquire, from the practice of law in that Court. It is hereby ORDERED that Attorney Joseph Q. Mirarchi, Esquire show cause within thirty (30) days of the date of this order pursuant to Rules 6.1 and 8.1 of this Court's Rules of Attorney Disciplinary Enforcement why he should not be disbarred in this Court.

Upon receipt of this order to show cause, Attorney Joseph Q. Mirarchi, Esquire, must serve by mail or otherwise a copy of this order to show cause and a copy of the order of Supreme Court of Pennsylvania dated March 18, 2019, to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. See R.A.D.E. 6.6. Any response to this order to show cause must include a certification that the attorney has complied with the requirement that he serve a copy of the order to show cause and a copy of the order of the Supreme Court of Pennsylvania dated

March 18, 2019, to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. This certification must include a list of all the litigants notified and their addresses. A form certification is available on the Court's website at http://www.ca3.uscourts.gov/attorney-discipline-forms.

The Clerk of this Court will forward a certified copy of this order to Joseph Q. Mirarchi, Esquire, by email, provided an email address is on file, and by certified mail, return receipt requested, to his last known address, together with a copy of the order of the Supreme Court of Pennsylvania dated March 18, 2019. See R.A.D.E. 6.4. If no response to this order to show cause is received within thirty (30) days, the matter will be deemed an uncontested proceeding pursuant to R.A.D.E. 9.1. The Clerk will notify the Chair of the Standing Committee, who will enter an order imposing the same discipline as the order of the Supreme Court of Pennsylvania dated March 18, 2019.

This Court's Rules of Attorney Disciplinary Enforcement are available on the Court's website at: www.ca3.uscourts.gov.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: April 11, 2019

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF	:	**MISCELLANEOUS**
	:	
JOSEPH Q. MIRARCHI	:	**No. 19-67**
	:	

NOTICE

AND NOW, this 17th day of May, 2019, please take note that a **HEARING** in the above-captioned matter will be held on **August 6, 2019** at **10:00 a.m.** in Courtroom 14A, United States District Court, 601 Market Street, Philadelphia, PA 19106. You may have counsel represent you at the hearing.

ATTEST: or BY THE COURT:

BY: */s/ Richard C. Thieme*
Richard C. Thieme
Deputy Clerk

Paul S. Diamond, J.

cc: Honorable Edward G. Smith
Honorable Robert P. Kelly
Joseph Q. Mirarchi

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF:	**:**	**MISCELLANEOUS**
	:	
JOSEPH Q. MIRARCHI	**:**	**NO. 19-mc-0067**

ORDER

AND NOW, this 25th of April, 2019, it is hereby

ORDERED that this matter is referred to a committee of this court, to be chaired by Judge Paul S. Diamond, in order for the said committee to make a recommendation to the court on this matter.

BY THE COURT:

/s/ Juan R. Sanchez
JUAN R. SANCHEZ
Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF:	**:**	**MISCELLANEOUS**
	:	
JOSEPH Q. MIRARCHI	**:**	**NO. 19-mc-0067**

ORDER TO SHOW CAUSE

(Filed Mar. 22, 2019)

AND NOW, this 21st of March, 2019, it appearing that on March 18, 2019, respondent was **disbarred** from the practice of law by the Supreme Court of Pennsylvania, effective thirty (30) days from February 28, 2019, it is hereby

ORDERED that respondent file with this court, within thirty (30) days from the date of service of this Order, an answer informing this court of any claim by the respondent, predicated upon the grounds set forth in Local Rule of Civil Procedure 83.6 II D, that the imposition of identical discipline by this court would be unwarranted, and the reasons therefore.

FOR THE COURT:

/s/ Juan R. Sanchez
JUAN R. SANCHEZ
Chief Judge