

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2275 Disciplinary Docket No. 3
: :
Petitioner : No. 164 DB 2014
: :
v. : Attorney Registration No. 42470
: :
TERRY ELIZABETH SILVA, : (Delaware County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 14th day of July, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, Terry Elizabeth Silva is suspended from the Bar of the Commonwealth for a period of three years, and she shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 7/14/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 164 DB 2014
Petitioner	:	
v.	:	Attorney Registration No. 42470
TERRY ELIZABETH SILVA	:	
Respondent	:	(Delaware County)

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

By Petition for Discipline filed October 24, 2014, Office of Disciplinary Counsel charged Terry Elizabeth Silva, Respondent, with violations of the Rules of Professional Conduct arising from allegations of misconduct involving failure to communicate, commingling of client funds, failure to account for settlement funds, failure to maintain required records, conversion of funds and dishonest conduct. Respondent filed an Answer to Petition on December 9, 2014.

A disciplinary hearing was held on July 16 and September 2, 2015, before a District II Hearing Committee comprised of Chair Marcel L. Groen, Esquire and Members Maureen M. McBride, Esquire and Robert R. Hart, Esquire. Petitioner presented two witnesses and introduced Exhibits ODC-1 through ODC-34 and P-1 through P-4 into evidence. Respondent appeared *pro se*. She presented the testimony of two witnesses and testified on her own behalf. She introduced Exhibits R-A through R-J and R-1 through R-43 into evidence. The record was held open for Respondent to submit documentation regarding the withdrawal of funds from her operating account. By letter dated October 2, 2015, Respondent provided such information.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on March 2, 2016. The Committee concluded that Respondent's conduct constituted professional misconduct and recommended that she be suspended from the practice of law for one year and one day.

Petitioner filed a Brief on Exceptions on March 11, 2016.

Respondent filed a Brief on Exceptions on March 22, 2016 and requested oral argument before the Disciplinary Board. Respondent filed an Amended Brief on March 28, 2016.

Petitioner filed a Brief Opposing Exceptions on April 8, 2016.

Oral argument was held before a three-member panel of the Board on April 13, 2016.

This matter was adjudicated by the Disciplinary Board at the meeting on April 21, 2016.

On May 4, 2016, Respondent filed a Motion to Hold Open Record.

Petitioner filed a Response to Motion on May 16, 2016.

By Order dated May 16, 2016, the Board denied Respondent's Motion.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106 is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any 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.

2. Respondent is Terry Elizabeth Silva. She was born in 1960 and was admitted to practice law in the Commonwealth of Pennsylvania in 1984. Her attorney registration address is 15A W. 10th Street, Marcus Hook, Delaware County, Pennsylvania 19061. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a record of prior discipline in Pennsylvania consisting of an Informal Admonition administered on January 16, 2014. The underlying misconduct involved her failure to file an ERISA action in federal court and her failure to pursue her client's action over a five-year time frame. Respondent failed to communicate with her client and keep him informed of the status of his case.

4. In late December 2007, Delores Squadrito ("Mom") was injured when she slipped and fell during a shopping trip at a Wal-Mart store located in

Boothwyn, Pennsylvania. Mrs. Squadrito was 82 years of age at that time. Petition ¶ 4, Answer ¶ 4.

5. Jim Squadrito ("Jim") is Mom's son. He decided to contact Respondent about Mom's accident. Jim has known Respondent since the late 1990s and had utilized Respondent's legal services when he, his wife Kathy Squadrito ("Kathy") or any of the day care facilities (collectively referred to as the "School") he operated needed an attorney. Respondent handled some matters on a contingent fee basis and other matters on an hourly basis, but Respondent did not reduce any of the oral agreements to writing at or about the time of the representation. Petition ¶¶ 5, 6, 7; Answer ¶¶ 5, 6, 7; July 16, 2015, N.T. 69-72, 95-96, 112-115, 117-129, 145-146, 236.

6. On February 5, 2008, Respondent met with Jim and Mom about Mom's potential claim against Wal-Mart. At that time, Mom and Respondent entered into a contingent fee agreement whereby Respondent would receive 33 and 1/3% from any recovery plus reimbursement of expenses incurred in the representation. The contingent fee did not address who was responsible for paying any Medicare lien in the event of a settlement or other recovery. Jim was present for all meetings with Respondent and Mom. Petition ¶ 9; Answer ¶ 9; July 16, 2015, N.T. 160-161; September 2, 2015, N.T. 15; ODC-2 at Exhibit 2.

7. In 2009, Respondent filed Mom's personal injury case against Wal-Mart in the Court of Common Pleas of Delaware County. Petition 10; Answer 10. The case was moved to federal court in the Eastern District of Pennsylvania in February 2010. Petition ¶11; Answer ¶ 11.

8. After February 18, 2010, and before the settlement conference on September 24, 2010, any time Respondent would meet with Mom for any reason, the

meetings were held at the School. Jim attended the meetings with Mom. Kathy was present for portions of some of the meetings. Petition ¶ 14; Answer ¶ 14; July 16, 2015, N.T. 54, 84, 160-161.

9. A settlement conference took place on September 24, 2010 and was attended by the attorneys, their clients and persons with settlement authority. Petition ¶¶ 12, 13; Answer ¶¶ 12, 13.

10. On September 24, 2010, Jim stayed with Mom during the settlement conference. United States Magistrate Judge Lynne A. Sitarski met with Respondent, defense counsel and the adjuster who accompanied Wal-Mart's attorney. The parties agreed to settle the case for a single payment of \$65,000 to Mom in exchange for a full Release and Settlement Agreement, which was executed at the settlement conference. Petition ¶ 16; Answer ¶ 16; July 16, 2015, N.T. 21; ODC-1 at Exhibit 4.

11. The settlement check was made payable to Mom and Respondent. Upon receiving the settlement check, Respondent provided a Power of Attorney via email to Jim and/or Kathy for Mom to sign authorizing Respondent to deposit the check into an attorney account. Petition ¶¶ 18, 20; Answer ¶¶ 18, 20.

12. After receiving the executed Power of Attorney, Respondent's secretary, Clara Sheppard, deposited the check into Respondent's operating account on October 15, 2010. Petition ¶ 22; Answer ¶ 22; September 2, 2015, N.T. 24; ODC-27.

13. Respondent claimed the operating account was the proper account to use when an attorney expected to make a quick distribution as she believed was the situation with the Wal-Mart settlement. Respondent claimed she expected distribution would happen quickly and while the check was in the process of clearing her operating

account, she would calculate the amount of advanced costs and address the Medicare lien. Petition ¶¶ 21, 23; Answer ¶¶ 21, 23; ODC-27.

14. Respondent did not explain to Mom, Jim or Kathy that the settlement funds would not be deposited into the law firm's IOLTA, claiming that Clara allegedly had spoken with the Squadritos about this issue and notified Jim and/or Kathy when the check for Mom's distribution would be available for pick up at the office in Marcus Hook. Respondent believes that the Squadritos waived their concern about the funds not being held in an IOLTA because the check to Mom was accepted and drawn on Respondent's operating account. Petition ¶ 24; Answer ¶ 24; September 2, 2015, N.T. 117.

15. Kathy went to the law firm on November 11, 2010 to pick up a partial distribution check of \$21,700.00 for Mom. Respondent did not meet with Kathy. Instead, an employee brought the check to Kathy. July 16, 2015, N.T. 82.

16. Respondent did not include any note, schedule of distribution, transmittal letter or any other explanation to account for how she calculated \$21,700.00 as the partial payment due and owing to Mom. (July 16, 2015, N.T. 167) Kathy and Jim did not receive any written communication from Respondent after November 11, 2010. July 16, 2015, N.T. 52, 56; September 2, 2015, N.T. 117; ODC-5.

17. Respondent admits that her original understanding regarding how Mom's settlement was to be distributed was for her to take a one-third fee, determine her advanced costs and provide one-third of the settlement to the Squadritos after the Wal-Mart settlement check had cleared. Respondent did not appear to understand that Mom was the only Squadrito family member who should have received settlement

funds, not Jim and/or Kathy. Petition ¶ 28; Answer ¶ 28, July 16, 2015, N.T. 57, 93, 105, 106; ODC-2; ODC-4; ODC-5; ODC-15.

18. Respondent did not know the amount of the Medicare lien when she received the settlement check from Wal-Mart's attorney on or about October 15, 2010. Nevertheless, Respondent understood that she was required to hold one-third of the recovery under the Medicare lien law. (September 2, 2015, N.T. 30, 31, 78, 95, 96) After receiving the settlement check, Respondent claims she or Clara was verbally told by a Medicare representative that the lien ranged from \$590 to \$780. Respondent presented no evidence to substantiate this range. Petition ¶¶ 25, 28; Answer ¶¶ 25, 28. ODC-2 at Exhibit 1.

19. After improperly depositing the settlement check into the operating account on October 15, 2010, Respondent's operating account balance was \$65,107.96. Petition ¶ 29; Answer ¶ 29; ODC-27.

20. After depositing the settlement check and before making a partial distribution to Mom, Respondent used the settlement proceeds to start paying her one-third fee and costs. Once the check cleared, Respondent issued seven checks made payable to "Cash" for a total of \$9,350.00. September 2, 2015, N.T. 132-133; ODC-27; Answer 32-35.

21. According to the contingent fee agreement with Mom, Respondent was entitled to receive a fee of 33 and 1/3% of \$65,000 and reimbursement of advanced costs. Despite the unambiguous language of the contingent fee agreement, Respondent testified that she is entitled to more. September 2, 2015, N.T. 113.

22. Respondent claims Jim was a client in Mom's personal injury case because he intended to use the Wal-Mart proceeds to pay Respondent for work she

had done for Jim, Kathy and/or the School. Petition ¶ 30; Answer ¶¶ 30, 32-35; September 2, 2015, N.T. 58-61, 112, 113.

23. There is no documentation that Jim and/or Kathy were clients in Mom's personal injury case. For example, the civil complaint does not list Jim and Kathy as plaintiffs and does not assert any causes of action on their behalf. Similarly, they are not signatories to the settlement agreement and release with Wal-Mart. Mom is the only client. September 2, 2015, N.T. 147, 179; See, ODC Exhibits in general.

24. There is no documentation from Mom consenting to Respondent keeping the balance of Mom's settlement proceeds in the amount of \$19,283.12 for any reason. September 2, 2015, N.T. 114-116.

25. On October 31, 2010, Respondent's operating account balance was \$54,235.89. Petition ¶ 33; Answer ¶ 33.

26. On November 11, 2010, Respondent issued check number 1136 from the law firm's operating account to Mom for the sum of \$21,700.00. The memo portion of this check contains the notation "part. (partial) settlement." ODC-27.

27. In November 2010, Respondent used her operating account to pay expenses that were unrelated to Mom's case and issued ten checks made payable to "Cash." These checks total \$12,600.00. Petition ¶ 39; Answer ¶ 39; ODC-27.

28. On November 16, 2010, Respondent's bank honored check number 1136 issued to Mom for \$21,700.00, leaving a balance of \$25,659.03 in the operating account. Petition ¶40; Answer 40; ODC-27.

29. On November 29, 2010, Respondent withdrew \$21,000.00 from the operating account, leaving a balance of \$1,852.69, thereby converting a substantial portion of Mom's funds. Petition ¶ 41; Answer ¶ 41; ODC-27.

30. Respondent claims she is not sure why she withdrew this sum other than to pay taxes. Based upon Respondent's letter dated October 2, 2015, the \$21,000.00 was transferred to an account for Cafee, Inc., a real estate owner/management company for taxes due by December 30, 2010. The eight checks total \$13,967.18. These checks and the withdrawals made on January 4, 2011, for \$8,100.00 total \$22,067.18.

31. After deducting Respondent's fee of \$21,645.00, and without proof of the costs Respondent advanced on Mom's behalf, approximately \$21,655.00 should have been held inviolate until the Medicare lien was paid, the costs determined and the balance distributed to Mom.

32. For the period December 2010 through May 31, 2013, Respondent's operating account balance was always less than \$21,655. ODC-27.

33. Respondent had some, but not all, of the banking records requested by Petitioner when it issued a DB-7 letter on April 29, 2013. September 2, 2015, N.T. 161; ODC-26; ODC-27; ODC-28; ODC-29.

34. At the disciplinary hearing, Respondent provided two unauthenticated documents, entitled "List of Costs" and "General Release" in order to explain her conversion, arguing that Mom agreed Respondent could keep the converted funds to satisfy outstanding fees owed by Jim, Kathy and the School. Respondent did not provide these documents to the other purportedly released parties, Jim, Kathy and the School. Jim never saw the documents until after he filed a claim against Respondent with the Lawyers Fund for Client Security in March 2013. September 2, 2015, N.T. 180-182; ODC-2.

35. In June 2011, Jim contacted Respondent about the rest of Mom's settlement money after learning from a physical therapist at Mom's assisted living facility that the physical therapy company would not treat Mom because the Medicare lien had not been paid. July 16, 2015, N.T. 175.

36. When Jim contacted Respondent, she refused to provide any information about the settlement to Medicare purportedly because she believed that Medicare would want the full amount she promised to hold. July 16, 2015, N.T. 176-177; September 2, 2015, N.T. 30, 178.

37. Other than one telephone conversation with Respondent in 2011, in which Jim requested that the lien be paid, he never received a return call in response to any of the messages he left for Respondent from 2011 through 2013. Jim did not receive responses to the letters he wrote to Respondent in 2012 and 2013. July 16, 2015, N.T. 178, 185; ODC-1 at Exhibit 6; ODC-15.

38. Because Jim did not know the lien amount or how to find out the information, he contacted his local Congressman, whose office provided Jim with the name of the Medicare/CMS representative, Mr. Kerr, and his contact information. Jim spoke with Mr. Kerr in order to find out the lien amount and if the lien could be compromised. Mr. Kerr provided a letter to Jim detailing the amount of the lien. July 16, 2015, N.T. 179-180.

39. On November 26, 2012, Jim wrote to Respondent about his telephone conversation with Mr. Kerr and enclosed a copy of the letter he received from Medicare/CMS. Jim sent the letter to Respondent certified mail, return receipt requested. When it was returned as "unclaimed," Jim re-sent the letter to Respondent by facsimile, which she received. July 16, 2015, N.T. 186; ODC-15.

40. Respondent did not contact Jim after receiving his letter of November 26, 2012. Jim submitted a claim to the Pennsylvania Lawyers Fund for Client Security ("Fund") on behalf of Mom and filed a complaint with the Disciplinary Board. July 16, 2015, N.T. 193-194; ODC-1.

41. In November 2012, Jim understood that the lien was \$763.96, significantly less than the one-third Respondent explained she was required to hold for Medicare. July 16, 2015, N.T. 187, 191-193, 196, 197, 198, 284.

42. By letter dated September 29, 2014, the Fund advised that it would award the sum of \$18,813.39 to Mom. This decision was made after the Fund received Respondent's opposition to the claim and Jim's statement that the General Release and List of Costs were documents that he had never seen until they were provided to Jim by the Fund. Respondent filed a last-minute request for reconsideration, claiming that Jim is the "beneficial owner" of the Wal-Mart settlement. (ODC-7) Nevertheless, the Fund issued payment to Mom in January 2015. July 16, 2015, N.T. 198-202, 204; ODC-1, ODC-2; ODC-3a, ODC-4; ODC-5; ODC-10; ODC-11.

43. While the claim was still pending with the Fund, on May 2, 2013, Jim wrote to Respondent, as POA for Mom, terminating her authority to act on Mom's behalf, including negotiating the lien. The letter was returned to Jim marked "unclaimed." (ODC-12) Jim successfully faxed the letter to Respondent. ODC-13.

44. On June 25, 2013, Respondent submitted a check to Medicare/CMS for \$511.85 noting it to be full payment of the Medicare lien. ODC-16.

45. Respondent refused to make any additional payments to Medicare. (ODC-17)

46. By check dated March 7, 2015, Jim paid the remaining principal of \$727.81. July 16, 2015, N.T. 218; ODC-22.

47. From the middle of 2008 until January 2009, Kathy worked two days a week for Respondent at Respondent's Marcus Hook office. Kathy's duties for Respondent's law firm were limited to: checking voicemail messages; calling Respondent's bank to verify law firm account balances in order to find out which deposits had been made and which deposits had cleared before Kathy could prepare a summary of this information for Respondent; opening and dating the mail and preparing checks for Respondent's review and signature. (July 16, 2015, N.T. 46-49) Preparation of legal documents, including correspondence, was done by Respondent's legal secretary, Clara Sheppard, who worked in the Philadelphia office. (July 16, 2015, N.T. 54-55) Kathy's other duties involved Kira Management, a real estate management company, which collected rent payments for residential and commercial properties Respondent owned.

48. Kathy did not review or see any bills for Respondent's law firm clients, including the School or Jim. July 16, 2015, N.T. 49-50; 105-106.

49. Contrary to Respondent's suggestion, Kathy never discussed bills owed to Respondent or saw them because Jim paid their personal bills and the School's bills. Kathy was aware of emails Respondent sent in 2009 to Kathy's email address, but intended for Jim, demanding payment for Respondent's fees for handling the *Moran* litigation. July 16, 2015, N.T. 52-53, 55; ODC-30.

50. The *Moran* litigation is one of the matters Respondent handled for the School for which she claims her fee was satisfied *vis-à-vis* the General Release.

51. Respondent simultaneously represented Jim and Kathy in the preparation and sale of real property to Daniel V. Moran. Respondent handled the real estate agreement for all parties. She also represented the School when it wanted to sell one of the Montessori schools to a yet-to-be-formed corporation, D.V. Moran, Inc. July 16, 2015, N.T. 119-122.

52. Respondent met with Jim and Mr. Moran on one occasion about her willingness to form D.V. Moran, Inc. and perform other work so that the sale could be consummated. Mr. Moran did not agree to hire Respondent. Respondent orally advised Mr. Moran and Jim that if the buyer defaulted under the confession of judgment note, Respondent would represent the School. July 16, 2015, N.T. 122-125.

53. On February 6, 2008, Respondent filed a procedurally improper confession of judgment action captioned *James Squadrito Montessori School v. D.V. Moran, Inc. and Daniel Vincent Moran*. (ODC-30). Defense counsel and Respondent disagreed that Respondent had a conflict of interest. When the case did not settle and Respondent refused to withdraw as counsel, the Honorable Edward J. Zetusky, Jr., issued an Order dated November 12, 2008, precluding Respondent from representing the School due to a conflict. (ODC-32) The School retained new counsel, who concluded the case. (July 16, 2015, N.T. 130-131) Despite the preclusion Order, Respondent claims she expected the School to pay her \$30,100.00, even though she did not have a written contingent fee agreement.

54. In 2013, Jim still believed that the School had to pay Respondent her contingent fee of \$30,100.00 in the *Moran* litigation. Jim maintained a spreadsheet of the fees and costs in the litigation and recorded his periodic payments to Respondent for expenses and her fee. (July 16, 2015, N.T. 137-139) The school made most of

these payments, without an invoice or bill from Respondent, after the preclusion Order and after the General Release. Respondent had no legal justification to accept two payments of \$1,000.00 from the School after the date of the General Release. July 16, 2015, N.T. 282, 284, 287, 288; ODC-34.

55. Even though Respondent contends she was entitled to use the balance of Mom's settlement funds to pay debts allegedly owed by Jim, Kathy and/or the School, Respondent never informed Jim that she was not entitled to receive her full fee for the *Moran* litigation. ODC-34.

56. On July 16, 2015, the first day of the disciplinary hearing, Mom was 87 years old, lived in an assisted care facility and lived on a fixed income. July 16, 2015, N.T. 206, 219.

57. Petitioner's witnesses were reliable and credible.

58. Respondent's testimony was not credible that she believed she was entitled to use the balance of Mom's settlement funds to pay the debts of others or that she believed Jim was a client in the Wal-Mart case.

59. Respondent's actions deprived Mom of the use of her settlement money for nearly five years, until the Fund paid the claim. ODC-11.

60. Respondent does not appreciate the impact of her actions upon Mom and the Squadrito family.

61. Respondent has not accepted responsibility for her actions and has not demonstrated genuine remorse.

III. CONCLUSIONS OF LAW

By her conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client.

2. RPC 1.4(a)(1) – A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules.

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

4. 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.

5. RPC 1.15(c) - 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.

6. RPC 1.15(e) – Except as stated in the Rules 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.

7. RPC 1.15(f) – When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or

property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.

8. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.

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

IV. DISCUSSION

Disciplinary proceedings against Respondent commenced by way of a Petition for Discipline filed on October 24, 2014. The Petition charged Respondent with violating multiple Rules of Professional Conduct. Respondent filed an Answer on December 9, 2014, in which she denied engaging in misconduct. Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent’s actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441, 444 (Pa. 2000).

The background of this matter is a slip and fall case wherein Respondent represented Delores Squadrito (“Mom”) in a personal injury matter against Wal-Mart. After securing a settlement, Respondent improperly deposited the \$65,000.00 check into her operating account, instead of her IOLTA account. Respondent failed to issue checks in connection with the settlement for Respondent’s one-third contingency fee, advanced costs of \$2,307.76, the Medicare lien of \$763.90, or the balance of approximately \$40,283.27 to her client. The only time Respondent issued a check

against the Wal-Mart funds was on November 11, 2010, when she issued a check to Mom for \$21,700.00, which she described as a "partial distribution." Respondent did not provide to Mom any documentation for Mom to review and sign concerning the partial distribution or the remaining Wal-Mart settlement proceeds.

In June 2011, Jim learned from Mom's assisted living facility that the Medicare lien was outstanding. Jim and Kathy telephoned Respondent repeatedly about paying the lien and releasing the balance of the funds to Mom. Jim also sent letters to Respondent, which went unanswered. This went on for approximately two years, after which time Jim filed a claim with the Pennsylvania Lawyers Fund for Client Security on Mom's behalf and a complaint with Office of Disciplinary Counsel. Respondent contested the Fund claim, alleging that she had a charging lien on the settlement funds because Jim was also a client in the Wal-Mart case. Respondent relied on a List of Costs and a General Release when she defended Mom's claim before the Fund, documents which were questionable and which had never been provided by Respondent to Mom or Jim and Kathy. The first time Jim saw these documents was after he filed the claim with the Fund. The Fund approved the claim for \$18,813.39 and denied Respondent's request for reconsideration.

Respondent denies any wrongdoing. She claims she spoke with Mom about using the \$19,283.12 to pay debts allegedly owed by Jim, Kathy and/or the School. Respondent places blame on Mom, her elderly client, for not relaying information to Jim and Kathy and for not sharing the List of Costs and General Release, documents Respondent insists were provided to Mom in 2010; and blames Jim, Kathy and the School for not paying bills in a more timely fashion. Inexplicably and in contravention of all evidence, Respondent asserts that Jim was also her client in the

Wal-Mart case, thus she had every right to assert a charging lien against the settlement funds for outstanding balances. Respondent does not point to any documents to support her claim that Jim was a client or that Mom authorized Respondent to apply any portion of Mom's settlement funds to pay for debts purportedly owed by others. There is no evidence to support Respondent's version of her use of Mom's settlement funds.

Our review of the extensive record leads the Board to conclude that Respondent engaged in professional misconduct. The record is replete with instances to sustain the violations of RPC 1.1, 1.4(a) (1), 1.4(a)(4), 1.15(b), 1.15(c), 1.15(e), 1.15(f), 8.4(b) and 8.4(c).

Having concluded that Respondent violated the Rules, this matter is ripe for the determination of discipline. Petitioner seeks disbarment. Respondent denies any wrongdoing and has not put forth an explicit recommendation for discipline. The Hearing Committee recommended a suspension of one year and one day.

After reviewing the parties' recommendations as well as the Committee's Report and recommendation, and after considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be suspended from the practice of law for a period of three years.

Respondent's actions constitute serious misconduct. While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of a lengthy suspension, when, as here, an attorney's conversion of funds represents a breach of trust and would likely pose a danger to the public if she continued to practice

law. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983), *Office of Disciplinary Counsel v. Monsour*, 701 A.2d 556, 558 (Pa. 1997).

Although each of the following precedents could be distinguished from Respondent's matter for one or more reasons, these precedents provide some insight into the appropriate length of suspension. "As is often the case with attorney disciplinary matters, there is no case precedent that is precisely on all fours..." *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d, 1231, 1240 (Pa. 2012).

In *Office of Disciplinary Counsel v. Daniel F. Zeigler*, 1143 D.D. No. 3 (Pa. 2006), Zeigler commingled estate funds in his operating account consistent with his office practice and despite having an IOLTA account. Zeigler used \$14,000.00 or one-half of the funds he was required to hold inviolate for his personal use. The Supreme Court suspended Zeigler for three years. In *Office of Disciplinary Counsel v. Patricia L. Datsko*, 1501 D.D. No. 3 (Pa. 2009), Datsko was suspended for three years following her mishandling of client funds and other misconduct, including improper use of her IOLTA account. In *Office of Disciplinary Counsel v. John T. Olshock*, 862 D.D. No. 3 (Pa. 2003), the Supreme Court suspended Olshock for three years for misappropriating \$22,093.00 from an estate. In mitigation, Olshock had no prior history of discipline, made prompt restitution in full and expressed remorse.

The attorney in *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), was suspended for three years for being out of trust in the amount of \$26,516.08 over the course of three years, by commingling trust funds with her own funds, using client funds to pay personal bills, and utilizing entrusted funds of a client to pay prior clients whose funds had been improperly used. Harmon's discipline was aggravated by her failure to appear at the disciplinary hearing. In the recent matter

of *Office of Disciplinary Counsel v. Barry Paul Ginsburg*, 2204 D. D. No. 3 (Pa. 2015), Ginsberg knowingly paid for hundreds of personal expenses out of his IOLTA, using it as a personal account for approximately one year and nine months. He made an untimely distribution of settlement funds to a client, caused many overdrafts in his IOLTA and deposited his own money into his IOLTA to make his clients, including a minor, whole. Ginsberg did not have permission to use client funds. Ginsberg was suspended for a period of three years.

No mitigating factors are present in this case. We do, however, find Respondent's lack of remorse and her failure to understand her actions and appreciate their impact to be aggravating factors. Throughout these proceedings, Respondent continued to claim that she did nothing wrong. Respondent's Informal Admonition administered in 2014 is also an aggravating factor.

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. Keller*, 506 A.2d 872, 875 (Pa. 1986). The evidence produced by Petitioner convincingly proved that Respondent is a danger to the public and the profession. Although Petitioner urges disbarment for Respondent, in light of the guiding decisions reviewed above, we are persuaded that a suspension of three years is warranted and appropriate to call attention to Respondent's unethical actions.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Terry Elizabeth Silva, be Suspended from the practice of law for a period of three years.

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: 
David E. Schwager, Vice-Chair

Date: 5/24/16

Board Member Cordisco did not participate in the adjudication.