

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2285 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 17 DB 2016
	:	
v.	:	Attorney Registration No. 56553
	:	
RONALD S. POLLACK	:	(Bucks County)
	:	
Respondent	:	
	:	
	:	
	:	

ORDER

PER CURIAM

AND NOW, this 10th day of August, 2016, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Ronald S. Pollack is suspended on consent from the Bar of this Commonwealth for a period of four years. The suspension is stayed in its entirety, and he is placed on probation for a period of four years, subject to the following conditions:

1. Respondent shall continue to prepare monthly three-way reconciliations for all IOLTA and other fiduciary accounts;
2. Respondent shall send those reconciliations to the Office of Disciplinary Counsel by the 20th day of the following month for the length of the probationary period;

3. Respondent shall select a CPA or other qualified professional, subject to the Office of Disciplinary Counsel's approval, to periodically review Respondent's three-way reconciliations and certify the same for accuracy;
4. Respondent shall maintain all of the required books and records provided by Pa.R.D.E. 221(e) in electronic form, which shall be securely backed up, and readily accessible to Respondent and to the Office of Disciplinary Counsel upon demand;
5. Respondent shall comply with any request by the Office of Disciplinary Counsel for back-up records supporting his reconciliations within twenty days of his receipt of a request for production, without the need for the Office of Disciplinary Counsel to issue a subpoena; and
6. Respondent shall enter into regular counseling with a qualified licensed professional and provide the Office of Disciplinary Counsel with proof of his continued compliance with the recommended treatment and/or medication, until the licensed professional determines that Respondent is not in need of further treatment.

A True Copy Patricia Nicola
As Of 8/10/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

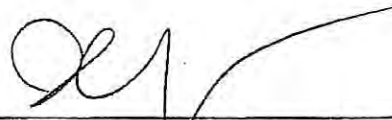
OFFICE OF DISCIPLINARY COUNSEL : No. 17 DB 2016
Petitioner :
v. : Attorney Registration No.56553
RONALD S. POLLACK :
Respondent : (Bucks County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members David E. Schwager, Brian John Cali and James C. Haggerty, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on June 10, 2016.

The Panel approves the Petition consenting to a four year suspension to be stayed in its entirety and a four year period probation to begin at the same time as the stayed suspension, subject to the conditions set forth in the Joint Petition and recommends to the Supreme Court of Pennsylvania that the attached Joint Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.



David E. Schwager, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 7/13/16

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 17 DB 2016
Petitioner :
 :
v. : Attorney Reg. No. 56553
 :
RONALD S. POLLACK, :
Respondent : (Bucks County)

JOINT PETITION IN SUPPORT
OF DISCIPLINE ON CONSENT
PURSUANT TO Pa. R.D.E. 215(d)

Petitioner, the Office of Disciplinary Counsel (hereinafter "ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Ramona Mariani, Disciplinary Counsel, and Ronald S. Pollack (hereinafter "Respondent"), by and through his counsel, George Parry, Esquire, respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa. R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested with the power and duty to investigate all matters involving alleged misconduct of an

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Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent, Ronald S. Pollack, was born on July 15, 1964, was admitted to practice law in the Commonwealth on November 22, 1989, and maintains his office at 210 E. Street Road, Feasterville, Bucks County, Pennsylvania 19053. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. This case involves the failure to appropriately record, document and hold fiduciary funds. There are no unpaid clients or lien-holders. The case originated, not as a client complaint, but as a result of an audit performed by the New Jersey Office of Attorney Ethics (the "NJ OAE"). The NJ OAE audit was prompted by an overdraft in Respondent's New Jersey IOLTA Account. NJ OAE's audit revealed that Respondent's Pennsylvania IOLTA was also out-of-trust, leading to the referral to ODC on May 7, 2012.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

Complaint File C2-12-572

4. NJ OAE reported to ODC that its audit determined that Respondent's Pennsylvania IOLTA trust account no. 1001084753

held in First Niagara Bank ("First Niagara IOLTA") was out-of-trust.

5. On receipt of the referral, ODC commenced an audit of Respondent's First Niagara IOLTA.

6. The initial audit encompassed the time period from May 1, 2010 through January 31, 2012.¹

7. On May 17, 2013, ODC sent the first Letter Seeking a Statement of Respondent's Position (hereinafter "DB-7 letter.") which included, among other things, a request for additional documents, as the preliminary audit performed by ODC demonstrated that Respondent had been substantially out-of-trust during various periods of time.²

8. Respondent engaged counsel who sought an extension of time in which to respond. ODC agreed to provide an additional forty day extension of time for response. By letter and attachments dated July 12, 2013, Respondent and counsel provided a preliminary response to ODC's DB-7.³

9. Respondent's letter did not deny that his First Niagara IOLTA was out-of-trust as calculated by ODC. Instead,

¹ This was the relevant time period identified by the NJ OAE audit, which was completed in or around February of 2012. Because Respondent practices primarily in Pennsylvania, the Pennsylvania IOLTA had significantly more transactions than did the New Jersey IOLTA.

² The letter sought records for 56 clients.

³ The letter did not include the records specifically sought in ODC's DB-7 letter.

Respondent attributed the situation to "inadvertent" errors made in connection with three client matters: (1) Bernie Schulman, a client to whom Respondent mistakenly over-distributed \$50,000.00; (2) Betty Ann DiGiacomo, a client for whom Respondent admitted he took fees of approximately \$100,000.00 twice; and (3) Karen Laing, a client for whom Respondent paid a \$2,940.00 expense from his First Niagara IOLTA rather than his New Jersey IOLTA. Respondent has consistently taken the position that these distributions were errors which he promptly corrected upon discovery.⁴

10. ODC's audit revealed that even accounting for those three client matters, Respondent's First Niagara IOLTA was periodically out-of-trust during the time period encompassed by the audit.

11. On July 29, 2013, ODC issued a subpoena in order to compel production of records previously requested but not supplied by Respondent.

12. On August 15, 2013, Respondent appeared at ODC's office and provided most, but not all, of the requested records.

⁴ Respondent has submitted a psychological report by Sol B. Barenbaum, Ph.D. in support of Respondent's contention that the errors are attributable to health and personal issues involving Respondent, his wife and other family members which adversely affected his memory and cognitive abilities during the relevant time frame. Dr. Barenbaum has not been subject to cross-examination, nor does ODC concede, even for the purpose of this Petition, the accuracy of all of his conclusions.

Respondent explained that many of the records were held in storage and he had yet to locate them. In certain instances Respondent could not produce one or more relevant document for a specific client, for example, either a fee agreement or a distribution sheet. In other instances, the client was not a personal injury client and so there was no distribution sheet.⁵

13. ODC completed a second audit on or around January of 2015.

14. The second audit encompassed the time period from December of 2011 through July of 2013.

15. ODC's second audit, like the first, revealed that Respondent's First Niagara IOLTA was often out-of-trust in varying amounts.

16. It is undisputed that the following transactions, which Respondent attributes to the following clients, contributed to his First Niagara IOLTA account being out-of-trust.

Bernie Schulman

17. On August 8, 2008, Mr. Schulman was struck while driving his motorcycle by a motor vehicle.

⁵ There were also instances where ODC could only identify a last name, and Respondent was unable to recall either the client or the circumstances of the representation. The difficulties of performing this type of audit are discussed in greater detail in the recommendation section of this memorandum.

18. On August 20, 2008, Mr. Schulman and his wife signed a Power of Attorney authorizing Respondent to act as their attorney in a claim for personal injuries "against any person, firm or corporation who may be responsible..." in return for a contingency fee of 33 & 1/3% of the gross recovery plus costs.

19. The first case settled for \$100,000.00 in March of 2009; on March 31, 2009, Respondent deposited a check for \$100,000.00 made payable to Mr. Schulman and the PollackSteinberg Firm to his First Niagara IOLTA.

20. On April 2, 2009, Respondent drew IOLTA check no. 1001 for \$33,333.33 payable to PollackSteinberg, marked, "Schulman.Bel-Fees," but made no immediate payment to Schulman.

21. Respondent explains that he made no distribution to Mr. Schulman at that time because there were outstanding liens which needed to be negotiated and resolved.

22. On or around December 21, 2009, Respondent prepared a Disbursement Sheet for Mr. Schulman based on a settlement amount of \$200,000.00 rather than the actual settlement amount of \$100,000.00.

23. Respondent provided ODC with a copy of the sheet which reflects the following:

\$66,666.66 fees to PollackSteinberg
648.12 Costs to PollackSteinberg
1,024.00 Escrowed for Healthcare Recoveries (Blue Cross)

10,901.29 Escrowed for Medicare
120,759.93 to Bernie & Ruth Schulman
\$200,000.00 Total

24. The Disbursement Sheet stated that Respondent would attempt to negotiate the Blue Cross and Medicare liens to a lower amount, after which he would reimburse the Schulmans the appropriate amount.

25. On or about December 21, 2009, based on the above calculations, Respondent drew IOLTA check No. 1041 for \$120,759.93 payable to Mr. Bernie & Mrs. Ruth Schulman.

26. On or about December 23, 2009, Respondent drew IOLTA check No. 1043 for \$7,232.20 payable to CMS (Medicare) and check No. 1042 for \$679.35 payable to Healthcare Recoveries.

27. On March 11, 2010, Respondent deposited into his First Niagara IOLTA cash from Bernie Schulman in the amount of \$6,649.61, which Respondent's check register describes as "client deposit for medicare lien repayment." Respondent explains that Medicare had provided an updated lien statement reflecting additional bills which needed to be resolved.

28. On March 19, 2010, using, at least in part, the funds provided by Mr. Schulman, along with the balance of the funds documented as monies held in trust to pay CMS and Healthcare

Recoveries, Respondent drew IOLTA check No. 1086 for \$10,663.35 payable to Medicare.

29. Therefore, prior to the second Schulman settlement, Respondent had over-disbursed funds attributable to Schulman in the total amount of \$66,018.55, as follows:

\$114,110.32	to Schulman (\$120,759.93 - 6,649.61)
7,232.20	to CMS (Medicare)
679.35	to Healthcare Recoveries
10,663.35	to Medicare
<u>33,333.33</u>	to PollackSteinberg
\$166,018.55	Total

30. Sometime prior to September 10, 2010, Respondent realized he had overpaid Mr. Schulman, so he asked Mr. Schulman to reimburse him, which Mr. Schulman did in stages.

31. On September 10, 2010, Respondent deposited into his First Niagara IOLTA a check from Mr. Schulman payable to Ronald S. Pollack, Esquire, for \$16,000.00. Respondent coded this deposit in his check register as "Schulman.Bel Schulman Partial Reimbursement for Overpayment."

32. On September 15, 2010, Respondent drew IOLTA check No. 1183 to PollackSteinberg for \$8,000.00 marked "Schulman.Bel Partial Fees Owed."

33. On September 15, 2010, Respondent drew IOLTA check No. 1184 to PollackSteinberg for \$8,000.00 marked "Schulman.Bel Partial Fees Owed."

34. Since Respondent had already taken his full fee (\$33,333.33 for a \$100,000.00 settlement) he was not entitled to additional fees at that time as the third party settlement funds had not been received.

35. Taking excess fees in Mr. Schulman's matter placed Respondent out of trust with other clients' funds.

36. On October 19, 2010, Mr. Schulman provided another reimbursement check payable to Respondent for \$17,334.00.

37. Respondent deposited that check directly to his operating account.

38. Depositing the Schulman reimbursement directly to his operating account rather than his IOLTA account ensured that Respondent remained out of trust with respect to other clients' funds. Respondent explains these transactions by stating that at the time he believed he had previously, personally reimbursed his IOLTA for the Schulman overpayment.

39. On April 26, 2011, Respondent deposited into his First Niagara IOLTA a check in the amount of \$50,000.00 from Ohio Casualty payable to Ronald S. Pollack and Bernie Schulman - that amount represented the 3rd party case settlement funds and was the second and final settlement in the Schulman personal injury case.

40. At this point, the following amounts had been received and disbursed as a result of Mr. Schulman's matter:

\$150,000.00	total settlement funds
80,776.32	to Mr. Schulman
66,667.33	to Respondent
<u>18,574.90</u>	third party liens
-16,018.55	Over-disbursed

41. According his fee agreement, Respondent was only entitled to a total fee of \$50,000.00. Therefore, as of April 26, 2011, Respondent needed to reimburse his First Niagara IOLTA the amount of the excess fee, which was \$16,667.33, less costs of \$648.12, for a total of \$16,019.21.

42. Instead, on May 2, 2011, Respondent removed the entire Ohio Casualty amount from the first Niagara IOLTA; the check includes the notation "Schulman Money Reimbursed for Payment toward Overpayment."

43. On April 20, 2012, Respondent returned the \$50,000.00 to his First Niagara IOLTA by depositing a \$50,000.00 Cashier's Check drawn on the PollackSteinberg General Account. Respondent states that he made this deposit upon discovering the overpayment.

44. On April 19, 2012, the day before Respondent transferred these funds, his First Niagara IOLTA held a balance

of \$134.43, despite the fact that he was supposed to be holding \$87,186.14 in trust for other clients.

45. Also on April 20, 2012, Respondent drew a \$74.46 Cashier's Check on his operating account to partially reimburse the over-distribution of Schulman funds.

46. On May 16, 2012, Respondent drew IOLTA check 1378 for \$648.12 payable to PollackSteinberg for Schulman costs.

47. On May 17, 2012, Respondent drew IOLTA check 1377 for \$666.67 payable to PollackSteinberg for his balance of Schulman's fees.

48. On May 29, 2012, Respondent deposited to the First Niagara IOLTA account an Official Check drawn on TD Bank for \$17,344.00 payable to PollackSteinberg, LLP representing reimbursement of the \$17,334.00 in Schulman funds that Respondent had deposited to the firm operating account on October 19, 2010. Respondent miscalculated the amount by \$10.00, depositing \$10.00 more into the IOLTA than necessary.

49. In sum, the \$150,010.00 deposited by Respondent for Mr. Schulman was ultimately distributed as follows:

\$ 80,776.32	to Mr. Schulman;
7,232.20	to CMS (Medicare)
679.35	to Healthcare Recoveries
10,663.35	to Medicare
49,925.54	Fees to PollackSteinberg
648.12	Costs to PollackSteinberg
<u>85.12</u>	attributable to Medicare

\$150,010.00 Total

50. The following acts performed by Respondent resulted in his First Niagara IOLTA Account being out-of-trust:

- a. the over-distribution to Mr. Schulman;
- b. the deposit of Mr. Schulman's reimbursement of \$16,000.00 to the firm's operating account; although Respondent ultimately became entitled to these funds on receipt of the second settlement, he deposited the funds six months before receiving the second settlement;
- c. the deposit of Mr. Schulman's reimbursement of \$17,334.00 directly into Respondent's operating account, even though Respondent had already taken his entire fee; these monies were repaid 588 days later; and
- d. the withdrawal of Mr. Schulman's Ohio Casualty settlement of \$50,000.00, which Respondent repaid 360 days later.

Betty Ann DiGiacomo

51. On March 19, 2005 Ms. DiGiacomo was involved in an accident at the Christian Life Center in Bensalem, PA.

52. On November 29, 2005, Respondent and Ms. DiGiacomo signed a Power of Attorney, which provided that Ms. DiGiacomo engaged Respondent to represent her in the matter in return for a contingent fee of 33 & 1/3% if the case was resolved pre-suit, or 40% if a suit was filed, plus costs.

53. On March 15, 2007, Respondent filed a Complaint in the Bucks County Court of Common Pleas captioned *Betty DiGiacomo v. Christian Life Center*, Case No. 2007-02079.

54. Ms. DiGiacomo's case ultimately settled for a total of \$525,000.00, which consisted of a \$375,000.00 lump sum payment and a \$150,000.00 structured settlement.

55. On May 8, 2009, Respondent deposited into his First Niagara IOLTA a GuideOne Insurance check for \$375,000.00 payable to Betty Ann DiGiacomo and Law Offices of Ronald Pollack.

56. Beginning on May 12 2009, Respondent began making disbursements from his First Niagara IOLTA against the DiGiacomo deposit to himself or his law firm for fees and costs, as follows:

\$100,000.00	to Pollack Steinberg on 5/12/09
25,000.00	to PollackSteinberg on 5/18/09
10,000.00	to PollackSteinberg on 5/27/09
10,000.00	to PollackSteinberg on 6/3/09
65,000.00	to PollackSteinberg on 6/5/09
10,000.00	to PollackSteinberg on 6/8/09
10,413.46	to Ronald S. Pollack, Esq. on 6/18/09
<u>6,012.69</u>	to PollackSteinberg on 6/18/09
\$236,426.15	Total

57. Respondent took his full fee for the entire settlement, \$210,000.00, plus costs, prior to making any other disbursement to the client, as there were liens and subrogation

issues that needed to be negotiated and finalized prior to making a net distribution to Ms. DiGiacomo.

58. The DiGiacomo fees taken by Respondent were deposited to his operating account; by July 9, 2009, Respondent spent the entire \$210,000.00 fee, primarily by repaying loans he had made to the law firm, paying employee payroll and benefits.

59. By June 24, 2010, the DiGiacomo funds deposited to Respondent's First Niagara IOLTA were fully disbursed as follows:

\$241,456.53	to PollackSteinberg or Respondent
103,910.18	to Ms. DiGiacomo
<u>29,633.29</u>	to third parties
\$375,000.00	Total

60. Thereafter, Respondent disbursed the following funds from his IOLTA designated as fees attributable to DiGiacomo, to his operating account, as follows:

\$ 15,000.00	to PollackSteinberg on 7/27/10
11,000.00	to PollackSteinberg on 8/22/10
9,000.00	to PollackSteinberg on 4/29/11
10,000.00	to PollackSteinberg on 5/9/11
35,000.00	to PollackSteinberg on 5/18/11; and
<u>25,000.00</u>	to PollackSteinberg on 5/27/11
\$105,000.00	Total

61. These withdrawals from Respondent's IOLTA placed him \$105,000.00 out-of-trust with respect to the entrusted funds of others.

62. Respondent continued removing the DiGiacomo funds, as reflected in paragraph 60, *supra*, causing a shortfall in his IOLTA due to the withdrawals which he attributed to Ms. DiGiacomo of \$105,000.00 by May of 2011. Respondent used these funds to make payroll and pay office expenses, which could not have been paid absent these deposits or deposits from another source.

63. On March 9, 2012 and March 29, 2012, Respondent transferred \$100,000.00 and \$5,000.00, respectively, from his operating account to his First Trust IOLTA to compensate for the DiGiacomo overpayment, but these transfers only occurred after the NJ OAE commenced its audit.

64. Respondent attributes the DiGiacomo overpayment to a coding error made by his office when removing the first \$100,000.00 fee payment on May 12, 2009. Respondent claims that Ms. DiGiacomo's name was misspelled on the computerized record/ledger. As a result, Respondent states that the first fee withdrawal was not reflected on the DiGiacomo ledger, which led him to later believe unpaid fees remained outstanding and due to PollackSteinberg in that case.

Karen Laing

65. Ms. Laing's case settled in 2010 for \$395,000.00; because this was a State of New Jersey personal injury case, all

settlement funds were deposited into Respondent's New Jersey IOLTA.

66. On September 22, 2010, Respondent paid an outstanding medical bill in the amount of \$2,940.00 on behalf of the client out of his First Niagara IOLTA, as compared to the New Jersey Trust account, where the funds were being held. No deposits had been made to the First Niagara IOLTA account to cover that bill.

67. Respondent corrected the Laing error after the commencement of ODC's audit.

Bruce Petaccio

68. On March 28, 2006 Bruce Petaccio was involved in an automobile accident causing personal injuries.

69. The defendant carried a policy with a limit of \$50,000.00, which was insufficient to compensate Mr. Petaccio for his serious injuries.

70. On November 15, 2007, Mr. Petaccio and his wife Caroline filed a Voluntary Petition in Bankruptcy in the Eastern District of Pennsylvania, Bankruptcy Court.

71. Respondent did not represent the Petaccios in the bankruptcy matter.

72. On November 19, 2007, the Bankruptcy Court appointed Bonnie B. Finkel, Esq. to serve as Interim Trustee of Debtors' estate.

73. On November 12, 2008, Bruce Petaccio signed a Power of Attorney authorizing Respondent to act as his attorney in a claim for personal injuries and consortium damages in return for 40% of the gross recovery plus costs.

74. The Power of Attorney was signed by Respondent, Bruce Petaccio and Bonnie Finkel, as Chapter 7 Bankruptcy Trustee.

75. On November 17, 2008, Ms. Finkel filed an Application of Trustee to Employ Ronald S. Pollack, Esquire, as Special Counsel, principally to consummate a settlement regarding the Petaccio accident, the proceeds of which would become bankruptcy assets. On January 7, 2009, Judge Frank granted the application to employ Respondent.

76. On October 27, 2009, Respondent deposited into his First Niagara IOLTA a settlement check for \$50,000.00 payable to Bruce Petaccio and PollackSteinberg, as his attorney, which represented the policy limits from the third party action against the driver who caused the collision. Respondent fully and correctly distributed that amount.

77. On January 23, 2012, Bruce and Caroline Petaccio signed a Settlement Agreement with Westfield Insurance Company for the sum of \$700,000.00.

78. On January 27, 2012, Respondent deposited a check from Westfield Insurance in the amount of \$700,000.00 payable to

Bruce S. Petaccio, Jr. and Caroline Petaccio; PollackSteinberg, LLP, into his First Niagara IOLTA.

79. On January 30, 2012, Respondent drew IOLTA check 1345 for \$280,000.00 payable to PollackSteinberg, LLP and deposited it to his operating account; the memo section of the check states Petaccio.BR1 Fees; that amount represented Respondent's 40% fee for the \$700,000.00 settlement. Prior to the deposit, Respondent's operating account was overdrawn. Respondent immediately began using the funds to make payroll and other office expenses.

80. On February 1, 2012, Bankruptcy Trustee Bonnie Finkel filed a Motion of Trustee for Approval of Settlement of Underinsured Motorist Claim and also filed an Application for Compensation with the Court to approve Respondent's fees and costs. In the Motion, Finkel advised the Court that the settlement greatly exceeded the amount of funds needed to make 100% distribution to all creditors, so she only needed \$400,000.00 from Respondent to make a full distribution.

81. Finkel also apprised Respondent that he should not have taken his fee prior to receiving Bankruptcy Court approval. Finkel apprised Respondent that he should wait for the Court to approve his fees and costs as well as the settlement, and that upon Court approval he would need to send her \$400,000.00 so

that she could make distribution to all creditors, including Respondent. The Court approved the Motion and Fee Application on February 28, 2012.

82. On February 7, 2012, Respondent drew a check for \$295,000.00 from his operating account to PollackSteinberg and deposited it to his First Niagara IOLTA; the memo section states "Petaccio.Br1 - Fees and Costs Reimbursement." As Respondent had withdrawn \$280,000.00 for fees, his deposit of \$295,000.00 was \$15,000.00 greater than what was originally withdrawn.

83. As it pertained to the redeposit of the fees withdrawn, because Respondent no longer had sufficient funds in his operating account he borrowed \$75,000.00 to ensure there were sufficient funds to allow for the repayment.

84. On or around March 2, 2012, Respondent drew check 1352 from his First Niagara IOLTA for \$400,000.00 payable to Bonnie Finkel, Chapter 7 Bankruptcy Trustee.

85. Finkel made 100% distribution to all Petaccio's creditors from these proceeds, including Respondent's fee of \$280,000.00 and reimbursement of expenses of \$17,214.24 by checks dated March 2, 2012.

86. Respondent deposited his fee into his operating account rather than the First Niagara IOLTA. Respondent used the Petaccio fee to make payroll, pay an American Express credit

card, repay the loan he had taken of \$75,000.00, repay the \$105,000.00 to his IOLTA previously attributed to DiGiacomo and give himself a \$30,000.00 draw.

87. By May 22, 2012, Respondent distributed the funds remaining in his IOLTA to the Petaccios and other creditors, and as of that date, the matter was fully distributed and concluded.

88. Thereafter, Respondent began transferring funds from his IOLTA to his operating account, which he attributed to Petaccio Fees in his check register; these additional "Petaccio fees" do not appear on the Petaccio distribution sheet ultimately provided to ODC. Respondent explains these transactions by stating that, since the fees received from the bankruptcy trustee had been deposited directly into the operating account, the client's case ledger, as it pertained to the IOLTA account, did not reflect that fees were paid to Respondent. Respondent further states that, when the account was reviewed, he believed that the fees were still owed and he did not realize the mistake and he did not recall that the check from the bankruptcy trustee had been deposited into the operating account as compared to the trust account.

89. The transfers occurred on the following dates, in the following amounts:

- a. \$ 3,000.00 on 7/18/12

b.	10,000.00	on 7/25/12
c.	4,000.00	on 7/30/12
d.	13,400.00	on 7/31/12
e.	3,250.00	on 8/8/12
f.	5,000.00	on 8/16/12
g.	14,000.00	on 8/17/12
h.	9,000.00	on 9/13/12
i.	2,500.00	on 9/24/12
j.	2,500.00	on 10/23/12
k.	1,000.00	on 2/15/13
l.	<u>250.00</u>	<u>on 2/15/13</u>
	\$67,900.00	Total

90. By taking Petaccio "fees" after the Petaccio funds had been fully distributed, Respondent's IOLTA account was out-of-trust with respect to the funds of other clients. Respondent used these funds to make payroll and pay office expenses which could not have been paid without these deposits or funds from another source.

91. Taking the Petaccio fees twice depleted the balance in the First Niagara IOLTA account to a low of \$1,433.91 as of February 15, 2013, which was \$98,615.17 short of ODC's calculation of the total required entrusted funds balance.

92. Respondent states that Petaccio was an anomaly, with regard to the involvement of the bankruptcy trustee and the various checks and deposits that had occurred as a result thereof, as he had not handled a case that went through bankruptcy court before. Further, he explains that the computerized ledger card for Petaccio was never updated to

reflect the fee taken, because it was deposited directly to his operating account.

Samuel & Jodie Rocco

93. On June 21, 2012, Respondent deposited a check from Cassat Risk Retention Group for \$57,847.00 payable to Jodie Rocco & Sam Rocco and their Attorney Ronald S. Pollack, Esquire.

94. Respondent then made the following transfers to his operating account, which Respondent's check register attributes to Rocco:

\$15,000.00 on 6/22/12
\$11,000.00 on 6/27/12
\$26,000.00 Total

95. This left \$31,847.00 on deposit in Respondent's IOLTA to pay costs of \$2,903.37, with the balance remaining of \$28,943.63.

96. However, there were no further disbursements of Rocco funds from the First Niagara IOLTA from the date Respondent received the check until the ending date for which ODC has Respondent's First Niagara IOLTA records, July of 2013.

97. During the time period of June 21, 2012 through July of 2013, Respondent was obligated to hold at least \$28,943.63 in the First Niagara IOLTA on behalf of the Roccas, yet Respondent's balance fell to a low of \$1,433.91 on June 1, 2013,

without any payments being made from the First Niagara Account to the Roccas.

98. Mr. Rocco faxed to ODC a copy of the distribution check he received from Respondent. The check is dated November 21, 2012, and is not drawn on Respondent's First Niagara IOLTA or his operating account, but rather a PNC IOLTA Account.

99. Respondent did not have sufficient funds in his First Niagara IOLTA to make the distribution to the Roccas on November 21, 2012.

100. Respondent did not disclose the existence of the second IOLTA contemporaneously on his Annual Attorney Registration Forms, nor did Respondent voluntarily disclose the existence of the second IOLTA to ODC during the course of the audit, taking the position that ODC did not ask him about the PNC IOLTA. Respondent maintains that the failure to include the PNC IOLTA on his annual attorney fee form was an oversight which he corrected upon notification from ODC.

101. There are no transfers of Rocco funds directly from the First Niagara IOLTA to the PNC IOLTA.

102. Respondent takes the position that the final disbursements in the Rocco case were accidentally disbursed from the PNC IOLTA account instead of the First Niagara IOLTA account Respondent states that, on March 13, 2013, after realizing that

monies were disbursed from the PNC IOLTA as compared to the First Niagara IOLTA, he deposited his own funds into the PNC IOLTA to ensure the balance was sufficient to make payments to his clients. Respondent also states that on the advice of Mr. Abo, an accountant he hired in 2015 to perform a forensic analysis of his trust accounts, he was entitled to "combine" bank balances in the two IOLTA accounts.

Marie Carsillo

103. PollackSteinberg represented Ms. Carsillo's minor daughter, Alexandria Farrell, in connection with a personal injury that occurred at the Central Bucks School District on April 3, 2006 and also represented Ms. Carsillo with a claim for medical and out-of-pocket expenses she paid in the matter.

104. On March 3, 2009, Ms. Carsillo signed a POA, agreeing that Respondent's firm would receive 25% of any recovery.

105. In or around November of 2011, the case settled for \$50,000.00 for Ms. Carsillo to pay medical expenses for her daughter and \$200,000.00 for Farrell's injuries, with the larger settlement subject to Court monitoring.

106. On November 7, 2011, Respondent deposited a check into his First Niagara IOLTA from School Claims Service for \$50,000.00 payable to PollackSteinberg, LLP. Respondent's check register attributes the deposit to Ms. Carsillo.

107. Respondent fully distributed the \$50,000.00 within two weeks as follows:

\$35,824.58	to Ms. Carsillo on 11/14/11
10,000.00	to PollackSteinberg on 11/16/11
<u>4,175.42</u>	to the operating account on 11/18/11.
\$50,000.00	total

108. These transactions ended the Carsillo matter.

109. Yet one month later, Respondent drew check No. 1107 for \$16,500.00 payable to PollackSteinberg LLP from his New Jersey IOLTA.

110. Respondent attributed this transaction to "Farrell" not Carsillo in his New Jersey IOLTA check register.

111. Because Respondent's New Jersey IOLTA held only \$14,144.03 at the time, the check caused an overdraft and precipitated the demand audit and the NJ OAE's investigation.

112. Respondent explained to the NJ OAE by letter dated April 23, 2012, that the check drawn on the New Jersey Trust Account was in error, as the case was a Pennsylvania case and the settlement funds had been deposited to the PA Trust Account; according to Respondent, his bookkeeper accidentally drew the \$16,500.00 fee from the New Jersey IOLTA when it should have been drawn from the Pennsylvania IOLTA.

113. Respondent also told the NJ OAE that he later reviewed the distribution of the Carsillo settlement and noticed that the

fee should have been reduced to \$12,500.00 per his agreement with Carsillo.

114. In his answer to ODC, Respondent claims that the Carsillo deposit was mistakenly coded to Farrell, but the disbursements were coded to Carsillo; therefore, "[t]he following month the bookkeeper saw the full settlement monies believed to be in the Farrell case of \$50,000.00 and believing that we were still owed fees wrote out a check for fees. She presented me with the check and as I was in the middle of multiple things, I not only did not realize the mistake, I did not realize that she had written the check from the [out-of-state] Trust account..."

115. When the Carsillo check was written on Respondent's New Jersey IOLTA, Respondent's Pennsylvania First Niagara IOLTA held only \$16,568.24.

116. While that amount was sufficient to honor the Carsillo distribution, it is far less than the amount ODC calculates Respondent should have been holding in the First Niagara IOLTA as of December 7, 2011.

Chantelle Harper

117. On June 16, 2010, Chantelle Harper was involved in a serious motor vehicle accident.

118. On August 18, 2010, Ms. Harper signed a Power of Attorney with Respondent authorizing Respondent to act as Ms. Harper's attorney in a claim for personal injuries for a contingency fee of 33 & 1/3% of the net recovery.

119. In or about December of 2011, the case settled with the Defendant's estate paying \$25,839.81, and the insurance carrier paying \$100,000.00, for a total of \$125,839.81.

120. Respondent made the following deposits into his IOLTA for Ms. Harper's case:

\$ 10,000.00	on 12/13/11	from the defendant's estate
15,839.81	on 12/13/11	from the defendant's estate
<u>100,000.00</u>	on 12/20/11	from Liberty Mutual
\$125,839.81	Total	

121. On December 15, 2011, Respondent transferred \$10,000.00 from the First Niagara IOLTA to his operating account, and recorded the transaction on his register as "partial fee" for the Harper case.

122. On December 30, 2011, Respondent transferred another \$10,000.00 from his First Niagara IOLTA to his operating account attributing the transfer to "fees" for the Harper case.

123. On January 8, 2012, Respondent transferred \$2,500.00 from his First Niagara IOLTA to his operating account, attributing the transaction to "partial fees" for the Harper case.

124. On March 22, 2012, Respondent provided a Disbursement sheet to Ms. Harper, which she signed, stating that settlement funds would be disbursed as follows:

\$ 41,755.13	to PollackSteinberg for Fees
574.41	to PollackSteinberg for Costs & Expenses
41,755.13	to Pa. Dept. of Welfare (lien)
2,000.00	retained by PollackSteinberg as "UIM claim costs retainer"
<u>39,755.14</u>	to Chantelle Harper
\$125,839.81	Total

125. In addition to the third party claim there was an ongoing underinsured motorist action against Ms. Harper's insurance carrier, Geico Insurance Company, and the \$2,000.00 represented UIM Claim Costs Retainer held in trust for the purpose of paying costs relative to that claim.

126. On March 23, 2012, Respondent drew a check in the amount of \$39,755.14 payable to Chantelle Harper.

127. As a result of the distributions against the Harper funds, \$63,584.67 remained undistributed.

128. The Department of Welfare asserted a lien in excess of \$100,000.00 against the Harper settlement. Respondent states that as a matter of law the PA Department of Public Welfare's right to subrogation or reimbursement is limited to no greater than fifty percent (50%) of the net settlement to which a plaintiff is entitled to receive. Accordingly, Respondent

acknowledges that he was required to hold at least \$41,755.13 in escrow until he resolved the issue of the DPW lien. However, Respondent explains that he was negotiating with the DPW in an effort to save additional sums for the benefit of Ms. Harper.

129. Respondent failed to hold that sum inviolate; instead, his First Niagara IOLTA balance fluctuated, with a low balance of \$1,433.91 on February 15, 2013, without any transfers directly from Respondent's First Niagara IOLTA to the PNC IOLTA attributable to the Harper case.

130. In August of 2015, Respondent resolved favorably the lien with the DPW, and paid the DPW \$20,000.00 in compromise and disbursed an additional \$20,818.63 to Ms. Harper, both from the PNC IOLTA.⁶

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131. On September 14, 2007, Joseph Courtney died as a result of a pedestrian/motor vehicle accident.

132. Mr. Courtney's sister, Frances Prushan, was appointed the Administratrix ad Prosequendum of Mr. Courtney's estate.

133. On or around September 28, 2007, Ms. Prushan engaged Respondent to represent the interests of the Estate in

⁶ By this date, all remaining funds from the First Niagara IOLTA had been transferred to the PNC IOLTA, per the suggestion of Mr. Abo, the forensic accountant hired by Respondent. The First Niagara IOLTA was then closed.

connection with a personal injury and wrongful death claim as a result of the accident.

134. Respondent provided Ms. Prushan with a written fee agreement that provided, among other things, that his fee for professional services would be 33 & 1/3% of the recovery if the matter were resolved prior to instituting suit or 40% of the recovery if suit had to be filed.

135. By letter dated February 26, 2008, Respondent wrote to American Independent Insurance Company ("American Independent"), the insurance company insuring the motorist defendant, and among other things, advised American Independent that Respondent represented the Courtney Estate and asked that all correspondence and inquiries be directed to Respondent's attention.

136. By letter dated April 9, 2008, Respondent wrote to Jenny Lynn Meister at American Independent.

137. Respondent's letter: (a) explained that he understood the defendant's policy limits were \$15,000.00/\$30,000.00; (b) asked for a certified copy of the declarations page of the policy and an affidavit of no other coverage; and (c) demanded the immediate payment of the policy limits in exchange for a release of any third party claim.

138. By letter dated May 1, 2008, Respondent wrote to Ms. Prushan and informed her that American Independent had agreed to tender the policy limits, and also explained that because Mr. Courtney was dead, Respondent would need court approval for settlement of the case.

139. By letter dated May 6, 2008, Ms. Prushan wrote to Respondent's assistant and provided a list of expenses Ms. Prushan and her sister incurred in connection with Mr. Courtney's death.

140. On July 6, 2012, Ms. Prushan personally met with Respondent to discuss the matter, as it remained unresolved.

141. By letter to Ms. Prushan dated July 6, 2012, Respondent: (a) asked her to obtain a written estimate for the cost of a grave stone for Mr. Courtney; (b) explained that the cost would help to reduce estate taxes, and (c) stated that Respondent would incorporate that information in the Petition he planned to file in Court to finalize the settlement.

142. On August 16, 2012, Respondent deposited a \$15,000.00 check from American Independent made payable to Respondent and the Estate of Joseph Courtney into his First Niagara IOLTA.

143. Ms. Prushan would testify that Respondent did not notify her about his receipt of the American Independent funds, nor did she receive a letter from American Independent notifying

her about any settlement; instead, she learned about the settlement only after calling American Independent on June 9, 2014. Respondent denies this and claims that he personally advised Ms. Prushan that the check had been received and that court approval needed to be obtained prior to disbursing the funds, although there is no correspondence to support this. He further contends that in accordance with 31 Pa. Code § 146.10, "Written Notice to Claimants of Payment of Claim in Third-Party Settlements," American Independent should have forwarded correspondence directly to Ms. Prushan advising her that they had sent the settlement check to her counsel, although that in no way excuses a lawyer's compliance with RPC 1.15(d) which requires lawyers to notify clients on the receipt of fiduciary funds.

144. On the same day that Respondent deposited the American Independent funds into his First Niagara IOLTA, he transferred \$5,000.00 from the IOLTA account into his operating account, and attributed that transfer to another client matter from which Respondent was owed fees.

145. On August 17, 2012, Respondent transferred \$14,000.00 from the First Niagara IOLTA to his operating account and attributed that transfer to another client matter from which Respondent was owed fees.

146. Respondent acknowledges that he could not make any disbursements of the Courtney settlement funds without first obtaining a Court Order approving the settlement.

147. However, by November 15, 2012, the balance in Respondent's First Niagara IOLTA had dropped to only \$2,683.91.⁷

148. Respondent failed to take any steps to conclude the matter or communicate with Ms. Prushan from August of 2012 until June of 2014.

149. By letter dated May 21, 2014, Ms. Prushan wrote to Respondent and inquired about the status of her matter.

150. On June 27, 2014, Respondent called Ms. Prushan and stated he would be sending her information about her case.

151. By May 28, 2015, Respondent completed the representation by filing all necessary documents with the Court, having another attorney prepare all required tax forms, and making final distribution to Ms. Prushan.

Respondent's Subsequent Remedial Steps to Address the Chronic Shortfalls noted in ODC's Audit.

⁷ By this time the PNC IOLTA had been opened. ODC does not agree with Respondent or Mr. Abo's claim that the two balances can be combined. This is particularly true in this instance because fiduciary funds were not transferred directly from one account to the other. If added together, the PNC balance might support an argument that Respondent held sufficient funds to pay Mrs. Prushan. However, it is ODC's position that the funds in the PNC IOLTA belonged to other clients.

152. At the conclusion of ODC's audit, on February 12, 2015 Respondent, his attorney and ODC met personally to discuss the chronic shortfalls in Respondent's IOLTA.

153. Respondent sought additional time prior to ODC's deciding whether to seek Respondent's suspension, as by then he had engaged Marty Abo, a forensic accountant, to conduct an independent review of Respondent's books and records.

154. Mr. Abo needed additional time to conduct his review due to the complexity of the matter and the fact that his engagement coincided with tax season.

155. Mr. Abo also raised the claim that the second PNC IOLTA would need to be considered in any audit in order to determine if Respondent was collectively out of trust considering all funds held.⁸

156. ODC provided Mr. Abo with sufficient time to conduct a second audit. While ODC's audit and Mr. Abo's do not agree in all aspects, nor is the methodology the same, Mr. Abo's audit, when completed in or around June of 2015, reflected a current shortfall of entrusted funds.

⁸ As noted, ODC does not agree with that proposition, since the second account holds other clients funds. Nonetheless, ODC recognizes that if sufficient funds existed in both accounts, regardless of whether those funds are characterized as uncollected fees or fiduciary funds, that fact could affect the nature of the case and the discipline sought, as the issue might be more accurately characterized as record keeping rather than conversion.

157. As a result, at Mr. Abo's suggestion Respondent deposited \$124,208.47 to his PNC IOLTA. Mr. Abo later determined that due to the effect of undistributed fees remaining in the account, Respondent's net deposit should have been \$75,977.71.

158. Also at Mr. Abo's suggestion, Respondent closed the First Niagara IOLTA, consolidating funds into the PNC IOLTA, and Respondent began performing three-way reconciliations, which he has voluntarily provided to ODC on a monthly basis.

159. Respondent implemented other suggestions of Mr. Abo, including ending the practice of taking partial fees, keeping a hand-written ledger card for each client along with the Quickbooks computer card, clearly documenting whether a case is Pennsylvania or New Jersey, personally monitoring the status of outstanding liens on a monthly basis, finalizing cases and distributing fees and costs once, promptly distributing fees to ensure no co-mingling, ensuring that client's names and cases are documented on all checks and making all disbursements by check rather than electronically or by counter withdrawals. Respondent has also formulated and produced to ODC formal policies and procedures relative to the handling of client funds, trust fund accounting and reconciliation and the disbursement of funds. The policies and procedures that have

been implemented do comply with the Rules of Professional Conduct as currently written, as they relate to the reconciliation, protection and distribution of client funds and trust monies, and trust fund accounting.

160. With respect to the PNC IOLTA, while ODC did not conduct an audit of that account, it is clear, even independent of Mr. Abo's findings, that Respondent was out-of-trust in the First Niagara IOLTA; for example, the PNC IOLTA was not opened until October 21, 2011, by which time Respondent was already out-of-trust in his First Niagara IOLTA in the amount of \$146,068.46.

161. Respondent does not dispute that his IOLTA account was out-of-trust. However, Respondent does vigorously dispute that any shortfall was either knowing or intentional. Many of Respondent's withdrawals correlated to his need to pay operating and other expenses. Respondent does not deny this. In fact, he acknowledges it, and states that when he needed additional funds he would periodically review the client ledger cards to determine whether outstanding fees were owed. Respondent points to evidence of loans he obtained during the course of the audit as evidence that he had access to funds and had no need to improperly use client funds. That issue would be contested if

the matter went to hearing, as ODC would argue that Respondent's conduct was either knowing, or in the alternative, reckless.

162. Nonetheless, ODC does concede that Respondent would offer the following evidence in mitigation, as discussed in detail below.

Respondent's Proposed Mitigation Evidence

163. Both a Petition for Discipline and Answer have been filed. Respondent's Answer not only details most of his proposed mitigation, but also includes supporting documentation. The mitigation includes serious health issues which arose for Respondent, his wife and various family members during the period of years for which ODC audited Respondent's accounts. Respondent describes a chaotic environment which lasted for years, during which he was caused to be physically absent from the office on multiple occasions, despite being responsible for a full-time practice and trial schedule.

164. In terms of his practice, Respondent is the managing partner of a small personal injury firm. The firm employed the two partners, Mr. Pollack and his partner Kevin B. Steinberg, Esquire and through most of the relevant times an associate attorney, as well as a few support staff.⁹ During the relevant

⁹ This partnership was formed on February 1, 2009. Mr. Steinberg primarily handles personal injury cases rather than malpractice claims, which at the time the partnership formed comprised the bulk of Mr. Pollack's case load.

period of time in question, the firm discharged associate attorneys, hired new associates and ultimately discharged them as well. Respondent is the primary trial lawyer, handles the firm finances and brings in a significant amount of the business. In addition, the firm employed Respondent's wife for a number of years as the bookkeeper, office manager and administrator and also Mrs. Pollack's father.

165. In 2001, Mrs. Pollack was injured in an automobile accident from which it was ultimately discovered that she suffered a spinal cord injury. She underwent her first spinal surgery in 2003. It was understood that additional surgery would eventually be necessary as she continued to have herniations and protrusions. In 2007 Mr. Pollack was seriously injured in an accident resulting in surgery, physical therapy and reduced work hours between February and July of that year. Toward the end of 2007 Mrs. Pollack's condition worsened, which resulted in Respondent having to work reduced hours.

166. Respondent relates that his work became significantly backlogged in 2008 due to recurring health issues suffered by both he and his wife. In April of 2008 Mrs. Pollack had spinal surgery in New York. The week before the surgery Mr. Pollack's associate attorney quit, stating he could no longer handle the volume of work due to Mr. Pollack's absence, leaving Mr. Pollack

a solo practitioner. Following her surgery Mrs. Pollack was immobilized for the next six weeks. The Pollacks have three children who were residing at home. During this period of time Respondent was unable to work regular hours. In July of 2008 Mr. Pollack required additional surgery for a recurring shoulder condition, causing him to miss more work.

167. By early 2009 Respondent had formed the partnership with Kevin Steinberg, Esquire. In addition, Mrs. Pollack recovered sufficiently to commence working for the firm. However, during the summer of 2009 her condition significantly deteriorated. At the same time, Mrs. Pollack's father, also a firm employee, was diagnosed with pancreatic cancer. This is the time period in which ODC's audit commenced. By September of 2009 Mrs. Pollack required major reconstructive neck surgery. Her father died while she and Respondent were in New York for her surgery. Respondent once again took a leave of absence, and did not return to work until mid-November of 2009. During the fall of 2009 Respondent developed chronic symptoms that led to a diagnosis of multiple gastrointestinal disorders.¹⁰ By December of 2009 Mrs. Pollack had developed hives all over her body for which she ultimately sought emergency medical attention. This resulted in Respondent taking yet another leave of absence from

¹⁰ These conditions require regular monitoring to ensure no advancement or change due to the suspected link to esophageal cancer.

the office until the New Year. The audit reveals that there were periods where the First Niagara IOLTA was short entrusted funds in 2009, but the shortfall was for relatively small amounts of money.

168. By January of 2010 Respondent was able to return to the office, although by that time his backlog of work resulted in his being listed for nineteen (19) trials. Mrs. Pollack's health continued to suffer and she worked short hours. Mrs. Pollack also developed severe depression and anxiety. By September of 2010 she took a leave of absence entirely from the office. Respondent was unable to find a suitable replacement for Mrs. Pollack as the firm bookkeeper until the end of November of 2011. The audit reveals that during the year 2010 the shortfall of entrusted funds grew steadily, this was also the time period during which the overpayment to client Bernie Schulman occurred and the DiGiacomo overpayments to PollackSteinberg occurred.

169. In early 2011 Respondent states he was beginning to get a handle on his caseload. However, in March of 2011 he was injured in a fall accident. As a result Respondent had surgery on his hand in April of 2011. Post-operative complications arose from the surgery complicating Respondent's recovery. During this period of time Mrs. Pollack's condition worsened

significantly. This caused Respondent to miss more time from the office, tending to his wife's needs and accompanying her through additional testing and, ultimately, more surgery in July of 2011. Between August 29, 2011 and mid-October 2011, Respondent was listed for five trials. That fall, Mrs. Pollack's treating physician declared her totally and permanently disabled, which in turn significantly worsened Mrs. Pollack's depression. Respondent's IOLTA balance continued to fluctuate during 2011, but he was generally out of trust due to, among other things, the Schulman overpayments and DiGiacomo double fee payments, both of which were not corrected until the Spring of 2012. In December of 2011, Respondent caused his NJ IOLTA to be overdrawn due to the Carsillo matter described at paragraph 103 to 116, precipitating the NJ OAE audit.

170. In the beginning of 2012, the Pollacks' youngest son began developing emotional and social behavioral issues. While the Pollacks attribute these changes in part to the constant, regular stress in the home, their son also received a neurodevelopmental diagnosis which has required regular treatment and therapy. Also in the beginning of 2012 Mr. Pollack was forced to attend to the needs of his elderly father. Irving Pollack suffered from a multitude of health conditions, both neurological and physical. Respondent held a power-of-

attorney for his father and managed his finances. The deterioration in Irving Pollack's condition forced Respondent to locate a new living arrangement for his father. Irving Pollack passed away in December, 2013. Mrs. Pollack's health continued to deteriorate during 2012. By the summer of 2012 she was losing function in her leg, and required yet another spine surgery on September 21, 2012. While the surgery went well, Mrs. Pollack developed post-surgical complications, including a MRSA infection. As a result of Mrs. Pollack's health conditions, On September 4, 2012, Respondent was forced to postpone an out-of-state trial and immediately return home. Respondent ultimately took a three-month leave of absence from work for the rest of 2012. The Petaccio double fee payments began in the summer of 2012 and ended in February of 2013. In November of 2012 ODC commenced its audit of Respondent's First Niagara IOLTA account.

171. In February of 2013, after his return to work, Respondent was hospitalized for a cardiac event. Respondent's treating physicians were extremely concerned and urged him to "take it easy." However, at that time Respondent was scheduled for five trials and five arbitrations through the end of March. Respondent was also scheduled for two medical negligence trials

in April of 2013 and several other trial listings through the summer of 2013.

172. Respondent states that the multitude of personal problems and health issues he faced during this period of time, along with the chronic short-staffing in his office, contributed to what he characterizes as errors and omissions in the appropriate accounting for funds in his IOLTA. Respondent argues that he was focused on maintaining his practice, including negotiating settlements and winning trials for his clients. As a result, he admittedly failed to perform three-way reconciliations or compare the balance of entrusted funds he was actually holding with the balance of funds he was required to hold. Respondent maintains that all clients received the monies to which they were rightfully entitled.

173. Respondent argues that he is not a danger to the public, as he is now in compliance with the Rules of Disciplinary Enforcement, appropriately maintains all books and records, performs monthly three-way reconciliations and is willing to adhere to any other conditions ODC may impose to ensure his continued compliance with the Rules.

174. Respondent recently underwent a psychological evaluation, as he recognizes that the stress of the past few years have impacted his mental health, memory, cognitive

abilities and concentration.¹¹ The Respondent submits in mitigation the psychologist's conclusions, stated to within a reasonable degree of psychological certainty, which do medically support that given the stress that Respondent was under throughout the relevant period of time, coupled with the multitude of tasks that he was required to perform throughout the time frame, that both his memory and actions were negatively affected.

175. Respondent has practiced law for over 26 years with no history of discipline.

176. Respondent substantially cooperated with ODC during the pendency of the lengthy investigation and audit.

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED

177. Respondent violated the following Rules of Professional Conduct:

A. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client (Prushan matter);

B. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter (Prushan matter);

¹¹ See footnote 4, above. Respondent furnished ODC with a copy of the report and its conclusions.

C. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information (Prushan matter);

D. RPC 1.15(b), which states that 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;

E. RPC 1.15(d), which states that upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment;

F. RPC 1.15(e), which states that 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; and

G. RPC 3.2, which states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

Respondent's misconduct is serious, and requires significant discipline. ODC and Respondent have agreed, considering all of the facts in this case, including the remedial action Respondent has taken and the significant mitigating evidence that Respondent will introduce, to discipline of a four (4) year license suspension, stayed in its entirety, with the imposition of probation along with additional ongoing conditions to ensure Respondent's complete compliance with his fiduciary obligations. Those conditions include the following:

- Respondent will continue to prepare monthly three way reconciliations.
- Respondent will send, throughout the probation period, these reconciliations to ODC by the 20th day of the following month.

- Respondent is to select a CPA or other qualified professional, subject to ODC's approval, who will periodically review Respondent's three-way reconciliations and certify the same for accuracy.
- Respondent is to maintain all of the required books and records provided for in Pa. R.D.E. 221(e) in **electronic** form, which shall be securely backed up, and readily accessible to Respondent and to ODC upon demand.
- Respondent agrees to comply with any request by ODC for back-up records supporting his reconciliations within twenty days of his receipt of a request for production, without the need for ODC to issue a subpoena.
- Respondent is to enter into regular counseling with a qualified licensed professional and will provide ODC with proof of his continued compliance with the recommended treatment/and or medication, until the licensed professional determines that Respondent is not in need of any further treatment.
- Any failure to meet these conditions without good cause shall be sufficient for ODC to file a petition to revoke the probation.

The proposed discipline is consistent with recent precedent. In *Office of Disciplinary Counsel v. Bernard*, 52 DB 2015 (2015) the Disciplinary Board administered a public reprimand accompanied by a one year probation on consent. Respondent in that case was out of trust in amounts ranging from -\$518.55 to -\$22,858.55 for April-May in 2010, and again in amounts ranging from -\$1,575.40 to -\$9,025.40 between August 16,

2010 and November 30, 2010. The text of the public reprimand, which is accessible on the Disciplinary Board website, notes that Respondent acknowledged that he was negligent and that the misappropriation was due to a lack of attention and/or bookkeeping errors. In addition, all clients were repaid. In mitigation, the Board noted that Respondent had practiced for forty years with no history of discipline. Respondent agreed to take the Bridge the Gap Course and take a CLE course in trust accounting and provide proof of the same to the Secretary to the Board.

Other cases have resulted in more discipline. However, most are distinguishable, as they involve additional misconduct and the respondent-attorneys did not possess the type of mitigation present here. For example, in *ODC v. Kwasny*, 188 DB 2012 (2014) the Court suspended Kwasny for five years. However, in addition to failing to properly maintain his IOLTA, Respondent-Kwasny practiced while on administrative suspension; submitted altered documents to the Client Security Fund, failed to cooperate with ODC and expressed no remorse or acceptance of responsibility. *See also ODC v. Kanuck*, 535 A.2d 69 (1987) (suspending attorney for five years who engaged in a seven-year pattern of repeatedly comingling funds, conversion of client funds, using one client's funds to pay off another, and in one

instance failure to render the legal services for which Respondent had been retained);

This matter has taken an inordinate length of time and some explanation is in order. The investigation and audit of this case occurred prior to the revisions to the Pennsylvania Rules of Disciplinary Enforcement that went into effect on February 28, 2015. Those revisions contain more specific requirements with respect to the maintenance, recording and calculation of entrusted funds than did previous iterations of the Rules.

For example, revised Rule 221(e)(2) requires attorneys to keep both a ledger for each account as well as a separate ledger for each client for non-segregated accounts like IOLTA accounts.¹² Rule 221(e)(3) requires attorneys to keep a regular trial balance of the individual trust ledger, as well as to prepare monthly three-way reconciliations for each fiduciary account, and to preserve for five years copies of those records and computation.¹³ Rule 221(g) has been substantially revised and provides for the production of such records within ten days and also expressly provides for the initiation of a temporary license suspension where records are not produced.

¹² The previous Rule expressly required only a ledger or check register.

¹³ There was no corollary or express requirement under the old version of the rule.

This case was particularly complicated as it involved a busy personal injury practice with multiple settlements, often involving statutory or other liens which delayed complete distribution. As a result, ODC's auditor input 2,446 separate transactions. The auditor reviewed records for 63 separate clients, and that does not encompass all of the clients whose funds were held in the IOLTAs.¹⁴ The auditor reconciled the balances each month to ensure that no transactions were missed. He reviewed every single check and deposited item to determine the payee, the depositor and the client and record this information. Where the register or other document was handwritten, the auditor needed to attempt to decipher the information contained therein and reconcile it with other records. Ultimately, the auditor interviewed specific clients and wrote to third party lien holders to obtain additional information. The auditor calculated entrusted funds for 68 different clients on an ongoing basis in order to determine when and in what amount Respondent's IOLTA was out-of-trust. Ultimately, the audit encompassed nearly five years and included a review of 4 separate bank accounts.

Aside from Mrs. Prushan, no client of Respondent's complained that they were not timely receiving their funds or

¹⁴ The records included transactions for 154 separate clients.

were not receiving the amounts to which they were entitled. The amounts paid to each client appear to be accurate. Nonetheless, Respondent failed to hold significant amounts of entrusted funds secure for long periods of time.

Respondent has consistently taken the position that his misconduct was neither knowing nor intentional. Rule 1.15 contains no scienter requirement. This is because the handling of fiduciary funds is a *fundamental* part of the lawyer's responsibility. The fiduciary funds rule is for the protection of the client and the public. Clearly from the client's perspective if funds are missing it's immaterial whether the conversion is negligent or intentional. While Respondent has maintained throughout this process that the misconduct was not intentional, he has shown remorse for the misconduct that occurred, has accepted responsibility for the misconduct and at the conclusion of the audit process took action to ensure that the misconduct would not happen again in the future.

Considering all of the facts and circumstances present here it is respectfully suggested that the recommended discipline sufficiently meets the goals of the disciplinary system. The sanction is consistent with both the misconduct and the specific mitigation in the case. Respondent offers persuasive evidence that he is not a current danger to the public. The imposition

of these conditions will ensure that the public is protected in the future.

WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:

- a. Approve this Petition; and
- b. File with the Supreme Court of Pennsylvania a recommendation that the Supreme Court enter an Order imposing a four year suspension, stayed in its entirety, accompanied by four years of probation, to begin at the same time as the stayed suspension and subject to the following conditions:

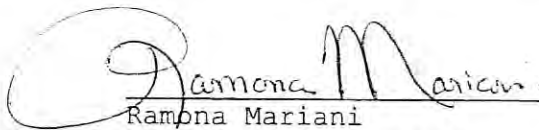
1. Respondent shall continue to prepare monthly three-way reconciliations for all IOLTA and other fiduciary accounts;
2. Respondent will send these reconciliations to ODC by the 20th day of the following month for the length of the probationary period;
3. Respondent is to select a CPA or other qualified professional, subject to ODC's approval, who will periodically review Respondent's three-way reconciliations and certify the same for accuracy;
4. Respondent is to maintain all of the required books and records provided for in Pa. R.D.E. 221€ in electronic form, which shall be securely backed up, and readily accessible to Respondent and to OC upon demand;
5. Respondent agrees to comply with any request by ODC for back-up records supporting his reconciliations within twenty days of his receipt of a request for production, without the need for ODC to issue a subpoena; and
6. Respondent is to enter into regular counseling with a qualified licensed professional and will provide ODC with proof of his continued compliance with the recommended

treatment/and or medication, until the licensed professional determines that Respond is not in need of further treatment.

Respectfully submitted


OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION,
Attorney Registration No. 20955
Chief Disciplinary Counsel

6/10/16
Date



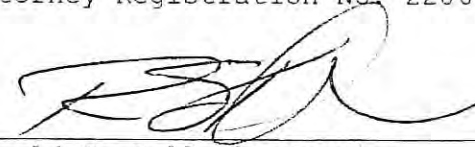
Ramona Mariani
Disciplinary Counsel
Attorney Registration No. 78466
Office of Disciplinary Counsel
District II Office
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

June 9 2016
Date



Lloyd George Parry, Esquire
Counsel for Respondent
Attorney Registration No. 2286

6/9/16
Date

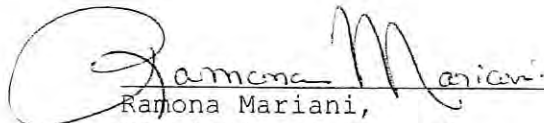


Ronald S. Pollack, Esquire
Respondent
Attorney Registration No. 56553

VERIFICATION

The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

6/10/16
DATE


Ramona Mariani,
Disciplinary Counsel

6/9/16
DATE


Ronald S. Pollack, Esquire
Respondent

June 9, 2016
DATE


Lloyd George Parry, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 17 DB 2016
Petitioner :
:
v. :
:
:
: Attorney Reg. No. 56553
RONALD S. POLLACK , :
Respondent : (Bucks County)

AFFIDAVIT

Ronald S. Pollack, Esquire ("Respondent") hereby tenders this affidavit in support of the Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d), and further states as follows:


1. He freely and voluntarily consents to the proposed discipline; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted and followed the advice of counsel in connection with the decision to consent to discipline.

2. He is aware that there is presently pending a proceeding involving allegations that he has been guilty of misconduct as set forth in the Petition.

3. He acknowledges that the material facts set forth in the Petition are true.

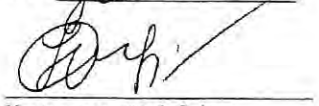
4. He consents because he knows that if charges continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

Signed this 9th day of June, 2016.



Ronald S. Pollack, Esq.
Attorney Registration No. 56553

Sworn to and subscribed
Before me this 9th day
of June, 2016.



Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Olga Nytko, Notary Public
Lower Southampton Twp., Bucks County
My Commission Expires Sept. 25, 2017
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 17 DB 2016
Petitioner :
:
: Attorney Reg. No. 56553
RONALD S. POLLACK, :
Respondent : (Bucks County)

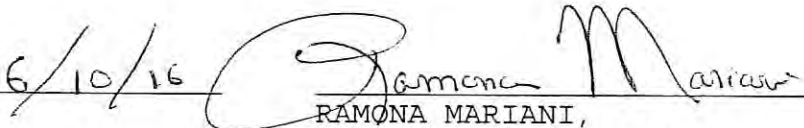
CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class and Overnight Mail, as follows:

Ronald S. Pollack
c/o Lloyd George Parry, Esquire
Davis, Parry & Tyler, P.C.
1525 Locust Street
Fourteenth Floor
Philadelphia, PA 19102-3732

Dated: 6/10/16


RAMONA MARIANI,
Disciplinary Counsel
Attorney Registration No. 78466
Office of Disciplinary Counsel
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Trooper, PA 19403
(610) 650-8210