IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2317 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 125 DB 2013
	:	
	:	Attorney Registration No. 200894
v.	:	
	:	(Philadelphia County)
ROBERT CRAIG ATTIG,	:	
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 2nd day of December, 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 Robert Craig Attig is suspended on consent from the Bar of this Commonwealth for a period of one year. He shall comply with all provisions of Pa.R.D.E. 217.

A True Copy Patricia Nicola
As Of 12/2/2016

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 125 DB 2013
v.	:	
ROBERT CRAIG ATTIG, Respondent	:	Atty. Registration No. 200894 (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Gloria Randall Ammons, Disciplinary Counsel, and by Respondent, Robert Craig Attig, and Barbara S. Rosenberg, Esquire, Counsel for Respondent, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement (Pa.R.D.E.) 215(d) ("Joint Petition"), and respectfully represent that:

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

FILED
9/26/2016
The Disciplinary Board of the
Supreme Court of Pennsylvania

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Robert Craig Attig, was born in 1964, was admitted to practice law in the Commonwealth on July 6, 2010, maintains his office at 1528 Walnut Street, Suite 1401, Philadelphia, PA 19102, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. On April 28, 2016, Petitioner filed a Petition for Discipline against Respondent with the Secretary of the Disciplinary Board.

5. On July 12, 2016, Respondent filed his Answer to the Petition for Discipline.

SPECIFIC FACTUAL ADMISSIONS AND RULES OF PROFESSIONAL CONDUCT VIOLATED

6. Respondent stipulates that the following factual allegations contained within the Joint Petition are true and correct, and stipulates that he has violated the Rules of Professional Conduct set forth in ¶¶ 91 and 118, *infra*.

I. Misappropriation of Gift Funds; Failure to Maintain Records and Account for Gift Funds; and Misrepresentation.

7. Prior to their marriage, Respondent and Dawna Lee Attig (*nee* Maurtaugh) Attig had one child together, Morgan Sinclair Murtuagh, who was born on July 4, 1986.

a. Respondent and Ms. Attig separated prior to Morgan's birth.

8. In October 1990, Respondent consented to the adoption of Morgan by Ms. Attig's then husband, Jay Farrel Weiss.

9. On December 7, 1990, Morgan was adopted by Mr. Weiss.

10. In 1991, Ms. Attig and Mr. Weiss were divorced.

11. On May 16, 1992, Respondent and Ms. Attig were married in Cook County, Illinois.

12. On October 28, 1992, Respondent and Ms. Attig's second daughter, Berkeley Elizabeth Attig, was born.

13. On June 22, 1995, Respondent and Ms. Attig's son, Stanford James Attig, was born.

14. On September 11, 1995, Respondent, a resident of Illinois, filed a Petition for Dissolution of Marriage in Kane County, Illinois.

15. On September 26, 1995, Ms. Attig filed a Counter-Petition for Dissolution of Marriage.

16. In May 1996, Mr. Weiss filed a Petition for Termination of Parental Rights Based on Voluntary Relinquishment in regard to Morgan in Florida's Dade County Family Court.

17. On August 27, 1996, a Judgment for Dissolution of Marriage was entered on behalf of Respondent and Ms. Attig.

18. By Order dated November 7, 1996, Florida's Dade County Family Court granted Mr. Weiss's Petition for Termination of Parental Rights based on Voluntary Relinquishment.

19. In or around 1997, Respondent moved to Pennsylvania.

20. By Order filed on August 30, 1999, the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois ("the Illinois Circuit Court") ordered that Respondent:

a. pay $870 per month in child support for Berkeley and Stanford; and

b. pay $130 per month on the arrearage of $20,755.00.

21. On or about August 29, 2000, Respondent became aware that Margaret Sinclaire, a distant relative and resident of Bedford, New York, expressed, *inter alia*, her desire to give monetary gifts under The Uniform Gift to Minors Act ("UGMA") to Respondent's children—Morgan, Berkeley, and Stanford.

22. By letter dated September 2, 2000, to Ms. Sinclaire, Respondent, *inter alia*:

a. thanked Ms. Sinclaire for her generosity in regard to the gifted funds;

b. stated that he would be acting as the custodian of the funds being given to his children; and

c. provided the social security numbers for his children.

23. By letter dated September 8, 2000, to Ms. Sinclaire, Respondent, *inter alia:*

a. again informed Ms. Sinclaire that he would serve as custodian of the funds gifted to his children; and

b. requested that the checks be made payable "To Robert Craig Attig under the Uniform Gift to Minors Act for the benefit of (child's name and social security number)."

24. Under cover of a letter dated September 17, 2000, Ms. Sinclaire, *inter alia*, forwarded to Respondent the following checks ("the Sinclaire checks") dated September 14, 2000 and drawn on an account with Keybank National Association ("Keybank") in Mt. Kisco, New York:

a. check number 3896 in the amount of $10,000 and made payable to "Robert Craig Attig Custodian UGMA, FBO Morgan S. Attig";

b. check 3899 in the amount of $10,000 and made payable to "Robert C. Attig, Custodian UGMA FBO Berkeley E. Attig"; and

c. check number 3900 in the amount of $10,000 and made payable "Robert C. Attig, Custodian, UGMA FBO Stanford J. Attig."

25. At the time of his receipt of the checks, Respondent resided in Pennsylvania.

26. By letter dated September 29, 2000, Respondent, *inter alia*:

a. acknowledged receipt of the checks sent on behalf of his children; and

b. informed Ms. Sinclaire that he planned on investing a majority of the funds for his children's college educations.

27. The funds that Ms. Sinclaire transferred to Respondent through the Sinclaire checks were clearly earmarked as monetary gifts under the UGMA for the benefit of Morgan, Berkeley and Stanford.

28. Respondent did not promptly negotiate the Sinclaire checks.

29. New York's Uniform Transfer to Minors Act, Estate Powers & Trusts Law ("NY E.P.T.L.") §§ 7-6.1 to 7-6.26 ("UTMA") superseded New York's UGMA in 1996, and the New York UGMA was repealed in 1997 effective September 3, 1997; New York's UTMA, however, applies to a transfer of money, "paid or delivered ... to ... an adult other than the transferor" (NY E.P.T.L. § 7-6.9(a)(2)), that "purports to have been made under the New York Uniform Gifts to Minor [sic] Act" (NY E.P.T.L. § 7-6.23(a)), on or after January 1, 1997, "if at the time of the transfer, the transferor, the minor, or the

custodian is a resident of [New York] or the custodial property is located in [New York]" (NY E.P.T.L. § 7-6.2(a)).

30. By letter dated October 31, 2013, to Petitioner, Respondent argued, *inter alia*, that:

a. "A provision of the NY-UTMA provides that purported transfers made on or after January 1, 1997, under the NY-UGMA, are actually within the scope of the NY-UTMA. NY CLS EPTL § 7-6.23 (2011)";

b. "Because the Gifts were made under the guise of the NY-UGMA, and made on September 14, 2000, and April 1, 2001, both after January 1, 1997, they fall within the 'savings provision' of § 7-6.23, and thereby represent transfers subject to the provisions of the NY-UTMA. *Id.*";

c. "Transfers fall under the provision of the NY-UTMA when they are made at a time when the transferor is a resident of New York State, or the custodial property is located in New York State. NY CLS EPTL § 7-6.2(c)(2011)"; and

d. "As Mrs. Sinclaire was identified in her checks as maintaining a Post Office box in Bedford, New York, and the funds were drawn from a bank located in Mt. Kisco, New York,

the provisions of the NY-UTMA do apply to the Gifts. *Id.*"

31. Under New York's UTMA, NY E.P.T.L. § 7-6.12, Respondent was required to, *inter alia*:

a. "take control of custodial property," *id.* (a)(1);

b. "collect, hold, manage, invest, and reinvest custodial property," *id.* (a)(3);

c. "[A]t all times ... keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor," *id.* (d); and

d. "keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of fourteen years," *id.* (e).

32. Under NY E.P.T.L. § 7-6.20(a), Respondent was required, *inter alia*, to transfer the custodial property "in an appropriate manner" to Morgan, Berkeley and Stanford when they reached the age of twenty-one.

33. On or about January 10, 2001, Respondent opened a Datek (later called AmeritradeTD) online account, number 871456114, in the name of "Robert Craig Attig."

34. On or about January 10, 2001, Respondent deposited $309,995 of his personal funds into the Datek account.

35. On or about January 10, 2001, Respondent deposited the Sinclaire checks, which totaled $30,000 ("custodial funds"), into the Datek account.

36. Respondent commingled the custodial funds with his personal funds in such a manner that the custodial funds were not clearly identifiable as custodial property of the minors at that time or at any time in the future.

37. In or around 2001, Ms. Attig moved to Vermont with Morgan, Berkeley and Stanford.

38. In or around January 2001, Respondent moved from Pennsylvania and became a resident of Vermont.

39. Between January 2001 and April 1, 2001, Respondent used both his personal funds and custodial funds to buy and sell stock through Respondent's Datek account, suffering $12,960.16 in overall losses.

40. On April 1, 2001, the cash balance in the Datek account was $1,117.53.

41. In or around April 1, 2001, Ms. Sinclaire, *inter alia*, sent to Respondent the following checks dated April 1, 2001 and drawn on the Keybank account:

a. check number 4181 in the amount of $10,000 and made payable to "Robert C. Attig Custodian UGMA, FBO Morgan S. Attig";

b. check number 4182 in the amount of $10,000 and made payable to "Robert C. Attig, Custodian UGMA FBO Berkeley E. Attig"; and

c. check number 4183 in the amount of $10,000 and made payable "Robert C. Attig, Custodian, UGMA FBO Stanford J. Attig."

42. As stated above in § 30(b), *supra*, Respondent argued that the transfer of these checks was also subject to New York's UTMA.

43. By letter dated May 9, 2001, Respondent informed Ms. Sinclaire that, *inter alia:*

a. he lived in Vermont; and

b. he had invested a significant portion of previous checks in Xerox Corporation stock.

44. In or around May 2001, Respondent moved from Vermont and became a resident of Pennsylvania.

45. On or about June 13, 2001, Respondent deposited check numbers 4181, 4182, and 4183, which totaled $30,000 ("custodial funds"), into the Datek account.

a. The aforementioned checks were received by Respondent in April 2001 as monetary gifts

under the UGMA from Ms. Sinclaire for the benefit of Morgan, Berkeley and Stanford.

b. Respondent also deposited two checks in the amount of $10,000 each and made payable to Respondent, which Respondent had received from Ms. Sinclaire.

c. The total deposited into the Datek account was $50,000.

46. On June 18, 2001, the cash balance at the beginning of the day in the Datek account was $51,212.82.

47. On or about June 18, 2001, Respondent used the $50,000 deposit identified in ¶ 45(c), *supra*, to purchase 6,400 shares of Xerox stock at $7.93 per share, for a total purchase price of $50,772.

48. On June 28, 2001, Respondent liquidated some of the stock.

49. On July 13, 2001, Respondent used the proceeds from the liquidation of stocks to purchase a property located at 2000 W. Girard Avenue, Philadelphia, PA ("the Girard property") from Julian Skalski for $183,750.

a. The property was deeded to Respondent only.

50. By Order dated October 17, 2001, the Illinois Circuit Court determined that Respondent was the father of Morgan.

51. In November 2001, the Vermont Family Court of Washington County entered a Default Child Support Order against Respondent in accordance with the Illinois Circuit Court's August 30, 1999 Order (¶ 20, *supra*).

52. By Default Order dated December 3, 2001, the Illinois Circuit Court, *inter alia*:

a. found that Respondent had a duty to support Morgan as a natural father; and

b. ordered that Respondent pay an additional $10 per month for the support of Morgan in addition to the $870 in support Respondent paid for Berkeley and Stanford.

53. On January 28, 2002, Respondent transferred the Girard property to his mother, Mary Attig, for $1.

54. On January 28, 2002, Respondent obtained a power of attorney from his mother allowing Respondent to control her real estate transactions.

55. By October 30, 2002, Respondent had liquidated all of his stocks, and about $80,000 remained in the Datek account.

56. On October 30, 2002, Respondent drew a check in the amount of $80,000 from the Datek account, leaving a $0 balance in the account.

57. On November 5, 2002, Respondent used the check drawn from the Datek account and his mother's POA to open an account titled "Girard Rehab 1" at Equity Bank (later Susquehanna Bank).

58. Thereafter, Respondent made expenditures from the Girard Rehab 1 account ("Girard Rehab account") in the amount of $110,745.41, most or all of which expenditures were unrelated to the rehabilitation of the property.

59. By June 3, 2004, the balance in the Girard Rehab account was $5.61.

60. Respondent misappropriated the custodial funds for his own use.

61. On July 4, 2007, Morgan reached the age of twenty-one.

62. At that time or any time thereafter, Respondent failed to transfer to Morgan the custodial property given to Respondent as custodian on behalf of Morgan.

63. On July 6, 2010, Respondent was admitted to the Pennsylvania Bar, as alleged in ¶ 2, *supra*.

64. Upon being admitted to the Bar, Respondent failed to comply with his continuing duty under the UTMA, in that Respondent failed to make prompt distribution to Morgan of any of the custodial property that belonged to Morgan.

65. In January 2011, Ms. Attig, acting on behalf of Respondent's children, contacted Respondent via telephone to inquire about the status of the custodial property.

66. In response, Respondent:

a. stated that it was none of her concern; and

b. terminated the telephone conversation.

67. Thereafter, both Morgan and Berkeley attempted to discuss the custodial property with Respondent.

68. In response, Respondent either refused to discuss the custodial property or denied the existence of it.

69. In July 2011, Morgan, Berkeley and Ms. Attig on behalf of Stanford filed claims with the Pennsylvania Lawyers Fund for Client Security.

70. By certified letter dated December 12, 2011, to Respondent, which Respondent accepted on December 21, 2011, Morgan, *inter alia*:

a. stated that in September 2000 and April 2001, Respondent received two monetary gifts under the UGMA, each in the amount of $10,000 on her behalf;

b. stated that she has reached the age of majority;

c. stated that she has yet to receive an accounting or confirmation of the existence of the custodial property;

d. stated that she has attempted to discuss this matter with Respondent but that Respondent either refused to discuss it or denied the existence of the custodial property;

e. requested that Respondent produce and make available for inspection all books and financial records pertaining to the UGMA account established for her within ten days from the date of her letter; and

f. asked that Respondent send the requested records by mail within ten days.

71. By certified letter dated December 12, 2011, to Respondent, which Respondent accepted on December 21, 2011, Berkeley, *inter alia*:

a. stated that in September 2000 and April 2001, Respondent received two monetary gifts under the UGMA, each in the amount of $10,000 on behalf of her and her siblings;

b. stated that she has not only passed the age of fourteen but also reached the age of majority;

c. stated that she has yet to receive an accounting or confirmation of the existence of the custodial property;

d. stated that she attempted to discuss the custodial property with Respondent but that at

times Respondent denied the existence of the custodial property and at other times Respondent deflected the question to other matters;

e. requested that Respondent produce and make available for inspection all books and financial records pertaining to the UGMA account established for her within ten days from the date of her letter; and

f. asked that Respondent send the requested records by mail within ten days.

72. By certified letter dated December 12, 2011, to Respondent, which Respondent accepted on December 21, 2011, Ms. Attig, on behalf of Stanford, *inter alia*:

a. stated that in September 2000 and April 2001, Respondent received two monetary gifts under the UGMA, each in the amount of $10,000 on behalf of Stanford;

b. stated that Stanford reached the age of 14 on June 22, 2009;

c. stated that Stanford had yet to receive an accounting or confirmation of the existence of the custodial property;

d. stated that she attempted to discuss the custodial property with Respondent but Respondent refused to discuss it with her;

e. requested that Respondent produce and make available for inspection all books and financial records pertaining to the UGMA account for Stanford within ten days from the date of her letter; and

f. asked that Respondent send the requested records by mail within ten days.

73. By letters dated December 22, 2011, which was on attorney letterhead, to Morgan, Berkeley and Ms. Attig, Respondent, *inter alia*, represented that:

a. he was sure that they were aware of his position in regard to this matter from their communications with the Pennsylvania Lawyers Fund for Client Security; and

b. he would make every effort to promptly provide them with a satisfactory response in accordance with his various duties and obligations.

74. Thereafter, Respondent failed to forward an accounting of the funds and the requested financial documents to Morgan, Berkeley or Ms. Attig.

75. By letter dated January 12, 2012, which was on attorney letterhead and sent Morgan, Respondent stated, *inter alia*, that:

a. he had received $20,000 on Morgan's behalf from Margaret Sinclaire;

b. "A total of $72,757 was then paid to [Morgan's] mother for the use and benefit of [Morgan] and [her] siblings through August 2008 utilizing these funds";

c. although he believed that the foregoing payment extinguished any claim Morgan may have to the funds, he was willing to offer a payment of $6,000 to Morgan to settle all claims;

d. Morgan should please call him to "discuss this possibility"; and

e. the offer was being made without prejudice to his position that no further monies were due.

76. By letter dated January 12, 2012, which was on attorney letterhead and sent to Berkeley, Respondent stated, *inter alia*, that:

a. he had received $20,000 on behalf of Berkeley from Margaret Sinclaire;

b. "A total of $72,757 was then paid to [Berkeley's] mother for the use and benefit of

[Berkeley] and [her] siblings through August 2008 utilizing these funds";

c. although he believed that the foregoing payment extinguished any claim Berkeley may have to the funds, he was willing to offer a payment of $6,000 to Berkeley, which would be held by Respondent pursuant to Pennsylvania's Uniform Transfers to Minors Act until she reaches the age of 25; and

d. Berkeley should please call him to "discuss this possibility"; and

e. the offer was being made without prejudice to Respondent's position that no further monies were due.

77. By letter dated January 12, 2012, which was on attorney letterhead and sent to Ms. Attig, Respondent stated, *inter alia*, that:

a. he had received $20,000 on behalf of Stanford from Margaret Sinclaire;

b. "A total of $72,757 was then paid to [Ms. Attig] for the use and benefit of Stanford Attig, Berkeley Attig and Morgan Weiss through August 2008 utilizing these funds";

c. although he believed that the foregoing payment extinguished any claim Stanford may

have to the funds, Respondent was willing to consider offering a payment of $6,000 to Stanford, which would be held by Respondent pursuant to Pennsylvania's Uniform Transfers to Minors Act until Stanford reaches the age of 25;

d. Ms. Attig should please call him to "discuss this possibility"; and

e. the offer was being made without prejudice to Respondent's position that no further monies were due.

78. Respondent's statements in ¶¶ 75(b), 76(b), and 77(b) were false and/or misleading in that:

a. Respondent had not utilized the custodial funds to make payments to Ms. Attig for the "use and benefit of Stanford Attig, Berkeley Attig and Morgan Weiss through August 2008";

b. payment of custodial funds could not have been made "through August 2008" because the custodial funds were depleted by June 3, 2004 (¶¶ 59, 60, *supra*);

c. even if custodial funds were used to make payments (although they were not), such payments under New York law (NY E.P.T.L. 7-6.14(a)(1) & (c)), must be considered "in

addition to, not in substitution for, and do[] not affect any obligation of a person to support the minor." *Id.*

79. Again Respondent failed to forward an accounting—which showed the dates of receipt, the account(s) of deposit, and the dates and amounts of disbursements—and any of the financial documents requested by Morgan, Berkeley and Ms. Attig.

80. By letters to Respondent, dated January 21, 2012, Morgan, Berkeley and Ms. Attig again requested, *inter alia*, an accounting of the funds and financial documents.

81. By letters dated February 7, 2012, which were on attorney letterhead and sent to Morgan, Berkeley and Ms. Attig, Respondent, who continued to reside in Pennsylvania (see ¶ 44, *supra*), requested that they contact Respondent in order to schedule an "inspection appointment."

82. In February 2012, Morgan, Berkeley and Ms. Attig were situated in Vermont.

83. By letters to Respondent dated February 21, 2012, Morgan, Berkeley and Ms. Attig, *inter alia*,

a. stated that they declined Respondent's request to schedule an "inspection appointment" because it was intrusive, inefficient, uneconomical and unnecessary; and

b. requested that Respondent mail all previously requested information to them immediately.

84. Again Respondent failed to forward an accounting and any of the financial documents requested by Morgan, Berkeley and Ms. Attig.

85. On October 28, 2013, Berkeley turned twenty-one.

86. By check number 4972 dated October 28, 2013 and drawn on Respondent's mother's Citizens Bank account, Respondent's mother forwarded a check to Berkeley in the amount of $11,085.25.

a. The notation in the memo section stated "accord and satisfaction."

87. Respondent failed to deliver to Berkeley all custodial funds due and owing to her.

88. Berkeley declined to negotiate the check.

89. By check dated June 25, 2014, made payable to "OCS" (Vermont's Office of Child Support), and in the amount of $32,809.65, Respondent's mother paid the balance of the child support arrears in regard to Berkeley and Stanford.

90. Respondent did not "keep records of all transactions with respect to [the] custodial property," as required by NY E.P.T.L. § 7-6.12(e)(*see also* ¶ 31(d), *supra*); by letter dated April 29, 2014, to Petitioner, Respondent advised that he did not have all relevant records, including "a copy of the check

register for the Girard Rehab I account from 2002 to 2008. I have not maintained copies of any such item."

91. By his conduct as alleged in ¶¶ 7 through 90 above, Respondent has violated the following Rules of Professional Conduct:

a. 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;

b. Former RPC 1.15(c)[effective 9-20-08], which states, in pertinent part, that 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;

c. 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

d. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

II: Misrepresentations to Petitioner and Tribunal.

92. By Request for Statement of Respondent's Position ("DB-7") dated August 16, 2011, Petitioner put Respondent on notice of allegations of misconduct.

a. The DB-7 also requested, *inter alia*, that Respondent provide records of all transactions with respect to the custodial property from date of receipt to the present time, and for any account or investment vehicle into which the custodial funds were deposited as well as the tax returns for all income generated by the gift principal.

93. Respondent received the DB-7.

94. Paragraphs 11, 13 and 15 of the DB-7 alleged that Respondent failed to transfer the custodial property given to him as custodian on behalf of Morgan and Berkeley at the time they reached their respective majority or at any time thereafter.

95. By letter dated October 6, 2011, in response to the DB-7, Respondent stated:

a. in ¶¶ 11 and 13 that "prior to his admission to the bar, [he] utilized the custodial property for the benefit of Morgan Weiss as permitted by law"; and

b. in ¶ 15 that "prior to his admission to the bar, [he] utilized the custodial property for the benefit of Berkeley Attig as permitted by law."

96. Respondent statements in ¶¶ 11, 13, and 15 were misrepresentations for the reason set forth in ¶ 78(a) *supra*, and Respondent admitted two years later that his statements were not accurate (see ¶ 106, *infra*).

97. Respondent did not provide the financial documentation requested in the DB-7.

98. By DB-7A Request for Statement of Respondent's Position dated June 28, 2012, Petitioner served Respondent with additional allegations of misconduct and again requested

that Respondent provide the documentation requested in the DB-7.

99. Respondent received the DB-7A.

100. Respondent again failed to provide the requested information.

101. On July 25, 2013, Petitioner obtained the issuance of a subpoena directed to Respondent in which it was requested, *inter alia*, that Respondent provide to Petitioner records of all transactions with respect to the custodial property from date of receipt of the custodial property to the present time as well as tax returns for all income generated by the gift principal.

102. The return date for the subpoena was September 16, 2013.

103. On July 29, 2013, the subpoena was served upon Respondent through counsel.

104. Thereafter, by agreement of the parties, any challenge to the subpoena was due to be filed by September 4, 2013.

105. On September 3, 2013, Respondent through counsel filed a motion to quash the subpoena.

106. By letter dated September 25, 2013, to Petitioner, Respondent, through counsel and with attached Verification, stated that in regard to his response to the DB-7 that "his statements made in ¶¶ 11, 13, and 15, that 'prior to his

admission to the bar, Mr. Attig utilized the custodial property for the benefit of [each minor] as permitted by law' were, unintentionally, in error." (bracketed material in original).

107. During a September 27, 2013 hearing on Respondent's motion to quash Petitioner's subpoena, Respondent, through counsel, represented that at the time Respondent received the custodial funds from Ms. Sinclaire, Respondent had advised his ex-wife, Dawna Attig, that Respondent had received those funds.

108. Respondent's statement at the September 27, 2013 hearing was a misrepresentation in that Respondent had not advised Ms. Attig that he had received the funds at the time he received them or at any time thereafter.

109. Respondent, who was present at the September 27, 2013 hearing, failed to correct the misrepresentation at the hearing.

110. During the September 27, 2013 hearing, Respondent, through counsel, stated (at page 38 of the hearing transcript) that the custodial funds "were invested ultimately in a property which is not in [Respondent's] name currently."

111. Respondent's statement at the September 27, 2013 hearing was a misrepresentation in that some of the custodial funds deposited into the Girard Rehab account were used to cover Respondent's personal expenses.

112. Respondent did not correct the misrepresentation at the hearing.

113. By letter dated October 31, 2013, to Petitioner, Respondent stated that, *inter alia,* Respondent transferred the custodial funds to a new custodian who Respondent believed would ultimately preserve the "Gifts."

114. By letter dated April 29, 2014, to Petitioner, Respondent stated that, *inter alia:*

a. the Girard property, which had been purchased with funds that were originally a gift from his mother, was transferred to his mother to act as security to cover his obligations;

b. he acted as "signer" on the Girard Rehab account via a POA granted to him on January 28, 2002;

c. he was the only person writing checks on the Girard Rehab account per the POA;

d. he withdrew funds on the account for maintaining and repairing the Girard property as well as for living expenses;

e. he drew checks on the Girard Rehab account acting under his mother's POA;

f. the custodial funds "were not *directly* utilized for the benefit of the children";

g. since 2002, the funds from the "Gifts" have been "held, managed, invested and re-invested" by his mother;

h. from January 2004 through August 2008, his mother made payments to the State of Vermont Office of Child Support ("OCS") "for the benefit of the children";

i. by the time Morgan turned 18 on July 4, 2004, his mother had paid OCS a total of $11,085.25; and

j. his mother revoked the POA in 2007.

115. Respondent's statement in ¶ 113 was false, misleading and contradictory in that:

a. Respondent never relinquished custody and control over the custodial funds and at all times Respondent was the only one who was exercising custody and control over the funds; and

b. Respondent was the only person writing checks on the Girard Rehab account.

116. Respondent's statement in ¶ 114(g) is a misrepresentation in that the custodial funds were depleted by June 2004.

117. Respondent's statements in ¶¶ 114(h) and (i) are false in that neither Respondent nor Respondent's mother made any payments to OCS on behalf of Morgan.

118. By his conduct as alleged in ¶¶ 92 through 117 above, Respondent has violated the following Rules of Professional Conduct:

a. RPC 8.1(a), which states that a lawyer is subject to discipline if the lawyer has made a materially false statement in, or if the lawyer has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar or any disciplinary matter; and

e. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

119. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of one year.

120. Respondent hereby consents to that discipline being imposed upon him. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline, including the

mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

121. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;

b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's consent to receiving a suspension of one year;

c. Respondent has agreed to make restitution by forwarding to his children, Morgan Attig a/k/a Morgan Weiss, Berkeley Attig and Stanford Attig, checks in the amount of $20,000 each, and has already done so; and

d. Respondent has no prior disciplinary history.

122. Although there is no *per se* rule for discipline in conversion cases, a suspension of one year is within the range of discipline imposed on attorneys who have engaged in the intentional misappropriation of entrusted family or minor's funds.

In re Anonymous No. 15 DB 80, 20 Pa. D.&C.4th 331 (1990), the respondent deposited into a separate attorney trust account and later misappropriated for his personal use $1,950

of $3,000 recovered in a personal injury action on behalf of a minor client. The respondent was slow in returning the money and only made restitution after being confronted with the prospect of being reported to the Disciplinary Board if restitution was not paid. The respondent in ***In re Anonymous No. 15 DB 80*** had no prior discipline and expressed remorse. That respondent was suspended for one year. Like the respondent in ***In re Anonymous No. 15 DB 80***, Respondent Attig does not have any prior discipline and has expressed remorse in that he has agreed to enter into a consent discipline agreement. In addition, Respondent Attig, albeit after disciplinary proceeding were initiated, has made restitution by paying $20,000 to each of his three children.

In ***Office of Disciplinary Counsel v. Fred Joseph Lagattuta***, No. 17 DB 2001 (D.Bd. Rpt. 12/27/2002), 821 A.2d 1202 (Pa. 2003), the respondent misappropriated approximately $86,000 of his parents' estate funds while serving as executor of both estates, pledged certain estate assets as collateral for a personal loan in the amount of $8,000, repeatedly failed and refused to account for an estimated $175,000 in cash found in a safe deposit box jointly held by his parents, and engaged in neglect in three other matters. Unlike Respondent Attig, Respondent Lagattuta had a history of discipline in the nature of a suspension of one year and one day. Respondent Lagattuta showed no remorse for his misconduct in that he was defiant

and evasive at the disciplinary hearing. Respondent Lagattuta was disbarred. Unlike Respondent Lagattuta, Respondent Attig has shown remorse and has cooperated with Disciplinary Counsel in that he has agreed to enter into consent discipline.

In ***Office of Disciplinary Counsel v. William B. Kiesewetter, Jr.***, 889 A.2d 47 (Pa. 2005), the respondent's parents, who were owners of family assets with a principal value exceeding $2.4 million, transferred those assets to their three children—respondent and his two sisters—intending to create immediate irrevocable gifts. The respondent misappropriated those assets to his own use and also transferred "large amounts" of the family's assets into three accounts created for the respondent's three nephews pursuant to Pennsylvania's Uniform Gifts to Minors Act ("UGMA"). A federal court jury found that the respondent violated his fiduciary duty to his sisters and also breached his custodial duty to his nephews with respect to the UGMA accounts, thereby unjustly enriching himself, and assessed the respondent's total liability at $3,626,322, which included $500,000 in punitive damages. The respondent, who had no record of discipline and who had made no voluntary restitution on the civil judgment, was disbarred. In the present matter, the amount of the misappropriation was significantly less and Respondent Attig has voluntarily made restitution to his children. In addition, Respondent Attig's desire to enter

into consent discipline also shows his willingness to cooperate with ODC.

Therefore, based on the above analysis, a suspension of one year would be appropriate.

WHEREFORE, Petitioner and Respondent respectfully request that:

a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent be suspended for one year.

b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition, and that all expenses be paid by

Respondent before the imposition of discipline under Pa.R.D.E. 215(g).

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By _____
Gloria Randall Ammons
Disciplinary Counsel

By _____
Barbara S. Rosenberg, Esquire
Counsel for Respondent

By _____
Robert Craig Attig
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 125 DB 2013
v.	:	
ROBERT CRAIG ATTIG, Respondent	:	Atty. Registration No. 200894 (Philadelphia)

VERIFICATION

The statements contained in the foregoing Joint Petition In Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E., are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

9/26/16
Date

Gloria Randall Ammons
Disciplinary Counsel

9/25/16
Date

Barbara S. Rosenberg, Esquire
Counsel for Respondent

9/19/2016
Date

Robert Craig Attig
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 125 DB 2013
v.	:	
ROBERT CRAIG ATTIG, Respondent	:	Atty. Registration No. 200894 (Philadelphia)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

Respondent, Robert Craig Attig, hereby states that he consents to the imposition of a suspension of one year, as jointly recommended by the Petitioner and Respondent in the Joint Petition in Support of Discipline on Consent, and further states that:

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

2. He is aware that there is presently pending a proceeding at No. 125 DB 2013 involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

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

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

Robert Craig Attig
Respondent

Sworn to and subscribed
before me this 19th
day of September 2016.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
THERESA I. KOTARBA, Notary Public
City of Philadelphia, Phila. County
My Commission Expires July 8, 2018