

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1384 Disciplinary Docket No. 3
Petitioner :
 : No. 187 DB 2006
v. :
 : Attorney Registration No. 72174
DOUGLAS R. GOLDHABER, :
Respondent : (Dauphin County)

ORDER

PER CURIAM:

AND NOW, this 15th day of September, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 18, 2008, it is hereby

ORDERED that Douglas R. Goldhaber is suspended from the Bar of this Commonwealth for a period of three years, and he shall make restitution to his clients as follows:

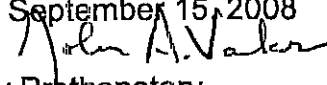
1. Carmen Marteen Grubb: (1) Interest at 10% per annum on a principal of \$20,392.96 from August 5, 2004 to December 10, 2004; (2) interest at 10% per annum on a principal of \$1,714.99 from December 10, 2004 to the time of restitution; and (3) the principal amount of \$1,714.99.

2. Rosanna Constantino-Lindsey: (1) Interest at 10% per annum on a principal of \$25,201.41 from November 15, 2004 to May 25, 2005; and (2) interest at 10% per annum on that unpaid interest to the time of restitution.

3. Donald Carson: (1) Interest at 10% per annum on a principal of \$6,143.03 from November 15, 2004 to May 19, 2005; and (2) interest at 10% per annum on that unpaid interest to the time of restitution.

4. Judith M. Menage, as Executrix of the Estate of Charles T. Brumbaugh, Deceased: (1) Interest at 10% per annum on a principal of \$5,000.00 from March 28, 2005 to the time of restitution; (2) interest at 10% per annum on a principal of \$52,000.00 from May 11, 2005 to the time of restitution; and (3) the principal amount of \$57,000.00.

It is further ORDERED that respondent shall comply with all the provisions of Rule 217, Pa.R.D.E. and shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy John A. Vaskov
As of: September 15, 2008
Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 187 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 72174
	:	
DOUGLAS R. GOLDHABER	:	
Respondent	:	(Dauphin County)

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

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

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

I. HISTORY OF PROCEEDINGS

On December 18, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Douglas R. Goldhaber, Respondent. The Petition contained seven separate charges, all arising out of Respondent's representation of various clients. Respondent filed an Answer to Petition for Discipline on January 8, 2007.

A disciplinary hearing was held on March 29, 2007, before a District III Hearing Committee comprised of Chair James T. Marnen, Esquire, and Members Gary D. Veshecco, Esquire, and Steven R. Wolf, Esquire. Respondent appeared pro se. Additional hearings were held on April 11, July 17 and July 18, 2007. Respondent was represented at these hearings by Joshua D. Lock, Esquire. Petitioner offered the testimony of ten witnesses. Respondent offered the testimony of eight witnesses and testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 8, 2008, finding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of three years with restitution to clients.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on March 26, 2008.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Suite 400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the

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 in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Douglas R. Goldhaber, was born in 1968 and was admitted to practice law in the Commonwealth in 1994. His attorney registration mailing address is 4311 N. Sixth Street, Harrisburg PA 17101. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline consisting of a Private Reprimand administered in 2007. The basis for the discipline was Respondent's conviction of driving under the influence of alcohol or controlled substance. Respondent was placed on probation, which he violated. A probation revocation proceeding was held which resulted in the probation being extended for one year. The probation is due to expire on or about April 28, 2008.

CHARGE I: THE GRUBB MATTER

4. On October 8, 2003, Respondent represented Carmen Marteen Grubb in the sale of real property, located in Clearville, Pennsylvania to Barry J. Price, for \$150,000.00.

5. The HUD-1 Statement, Line 1303, states that \$25,000.00 was to be held in escrow by Respondent on behalf of Ms. Grubb for a "Dept. of Rev. Bureau of Comp. Personal Tax Lien – Sales and Use." Respondent had been instructed by the Department

of Revenue to have Ms. Grubb establish a payment plan rather than making a lump sum payment. Respondent deposited the funds into his Trust Account and a payment plan was arranged.

6. On October 8, 2003, the date of the closing on the property, Respondent was entrusted with \$25,018.50 by Ms. Grubb.

7. On October 9, 2003, Respondent deposited into his First American Bank of Pennsylvania (now Susquehanna Bank) IOLTA Account, bearing account number 12314555 (IOLTA Account), on behalf of Ms. Grubb, a check drawn on First American Bank of Pennsylvania in the amount of \$120,000, made payable to Respondent as settlement agent and annotated "Barry J. Price."

8. On October 9, 2003, Respondent deposited into his IOLTA Account, on behalf of Ms. Grubb, a check drawn on the account captioned "Barry Price Logging," in the amount of \$11,718.80, made payable to Respondent and annotated "Closing Cost."

9. As of October 9, 2003, Respondent was entrusted with a total of \$131,718.80 in regard to the sale of Ms. Grubb's realty.

10. Between October 8, 2003, and October 14, 2003, Respondent made authorized disbursements of funds which had been entrusted to him by Ms. Grubb.

11. As of November 5, 2003, Respondent was still entrusted with a total of \$23,962.80 on behalf of Ms. Grubb.

12. Respondent disbursed \$5,000 to himself by check dated July 28, 2004 and drawn on Respondent's IOLTA Account, bearing check number 1413.

13. The \$5,000 disbursement was not made on behalf of Ms. Grubb, nor was Respondent authorized to disburse those funds to himself.

14. Although Respondent was still entrusted with \$23,962.80 on behalf of Ms. Grubb, the balance in Respondent's IOLTA Account on July 28, 2004, was \$19,064.77.

15. Respondent disbursed \$3,569.84 by check dated August 5, 2004 and drawn on Respondent's IOLTA Account, bearing check number 1414 on behalf of Ms. Grubb to the Pennsylvania Department of Revenue to satisfy the tax lien against Ms. Grubb.

16. On August 5, 2004, Respondent remained entrusted with \$20,392.96 on behalf of Ms. Grubb and there remained no other obligations for Respondent to pay on her behalf.

17. Respondent should have remitted the \$20,392.96 balance of entrusted funds to Ms. Grubb promptly, but he failed to do so.

18. Respondent disbursed \$550 to himself by check dated August 6, 2004 and drawn on Respondent's IOLTA Account, bearing check number 1416.

19. The \$550 disbursement was not made on behalf of Ms. Grubb, nor was Respondent authorized to disburse those funds to himself.

20. Respondent disbursed \$3,200 to himself by check dated August 13, 2004 and drawn on Respondent's IOLTA Account, bearing check number 1417.

21. The \$3,200 disbursement was not made on behalf of Ms. Grubb, nor was Respondent authorized to disburse those funds to himself.

22. Although Respondent was still entrusted with \$20,392.96 on behalf of Ms. Grubb, on August 16, 2004, the balance in Respondent's IOLTA Account was \$11,744.93.

23. Respondent disbursed \$5,000 to himself by check dated September 7, 2004 and drawn on Respondent's IOLTA Account, bearing check number 1418.

24. The \$5,000 disbursement was not made on behalf of Ms. Grubb, nor was Respondent authorized to disburse those funds to himself.

25. Respondent disbursed \$5,000 to himself by check dated September 22, 2004 and drawn on Respondent's IOLTA Account, bearing check number 1419.

26. The \$5,000 disbursement was not made on behalf of Ms. Grubb, nor was Respondent authorized to disburse those funds to himself.

27. Although Respondent was still entrusted with \$20,392.96 on behalf of Ms. Grubb, on September 22, 2004, the balance in Respondent's IOLTA Account was \$1,744.93.

28. On November 15, 2004, Respondent deposited \$31,344.44 into his IOLTA Account funds that had been entrusted to him by other clients (Rosanna

Constantino-Lindsey and Donald Carson) in matters unrelated to his representation of Ms. Grubb.

29. As a result of the November 15, 2004 deposit, the balance in Respondent's IOLTA Account, on November 24, 2004, was increased to \$28,089.37.

30. By check number 1420, dated December 10, 2004, drawn on Respondent's IOLTA Account in the amount of \$18,677.97 and made payable to C. Marteen Grubb, Respondent disbursed to Ms. Grubb a portion of the amount with which he was entrusted at the time of the closing on the sale of her realty.

31. Respondent was able to make that disbursement to Ms. Grubb only because of his November 15, 2004, deposit into this IOLTA Account of the funds entrusted to him on behalf of other clients.

32. Although Respondent was still entrusted with \$1,714.99 on behalf of Ms. Grubb, on April 28, 2005, the balance in Respondent's IOLTA Account was \$1.40.

33. The balance in Respondent's IOLTA Account fell to a low of \$1.40 in August 2005.

34. Respondent misappropriated the remaining entrusted balance belonging to Ms. Grubb.

35. Respondent is still entrusted with \$1,714.99 on behalf of Ms. Grubb because he has yet to remit the balance of the entrustment to her.

CHARGE II: THE LINDSEY MATTER

36. In 2004 Respondent represented Rosanna Constantino-Lindsey in a domestic relations matter.

37. In or about November 2004 Ms. Constantino-Lindsey and her husband sold jointly owned real property.

38. The net proceeds from the sale of real property totaled \$50,402.82, which was to be divided equally between Ms. Constantino-Lindsey and her husband.

39. Central PA Settlement Services, LLC issued a check to Respondent representing Ms. Constantino-Lindsey's portion of the proceeds from the sale of the realty. The check issued to Respondent by Central PA Settlement Services, LLC was an undated check, bearing check number 1095, and made payable to "Douglas R. Goldhaber Escrow Account" in the amount of \$25,201.41, and annotated "sale proceeds Rosanna Constantino-Lindsey."

40. Respondent was thereby entrusted with \$25,201.41 on behalf of Ms. Constantino-Lindsey.

41. On November 15, 2004, Respondent deposited the \$25,201.41 check into his IOLTA Account.

42. Respondent failed to promptly pay to Ms. Constantino-Lindsey the amount with which he was entrusted on her behalf.

43. Although Respondent was entrusted with \$25,201.41 on behalf of Ms. Constantino-Lindsey:

(a) On December 30, 2004, the balance in Respondent's IOLTA Account was only \$1,111.40.

(b) On February 15, 2005, the balance in Respondent's IOLTA Account was only \$361.40.

(c) On April 28, 2005, the balance in Respondent's IOLTA Account was only \$1.40.

44. Respondent misappropriated \$25,200.01 from Ms. Constantino-Lindsey.

45. On May 16, 2005, Respondent deposited into his First American Bank of Pennsylvania (now Susquehanna Bank) account, numbered 12314241, captioned "Law Office of Douglas R. Goldhaber" (Law Office Account), which was not a segregated account, \$52,000 entrusted to him by a client (Judith M. Menage) in a matter unrelated to his representation of Ms. Constantino-Lindsey.

46. By check number 6511, dated May 25, 2005, drawn on Respondent's Law Office Account in the amount of \$25,201.41 and made payable to Ms. Constantino-Lindsey, Respondent disbursed to her the amount she had entrusted to him.

47. Respondent was able to make that disbursement to Ms. Constantino-Lindsey only because of his deposit into his Law Office Account of the funds entrusted to him on behalf of another client.

CHARGE III: THE CARSON MATTER

48. Prior to August 2004 Respondent began his representation of Donald Carson in regard to a civil action Mr. Carson had filed against Eles Brothers, Inc., in Bedford County, Pennsylvania.

49. On or about August 19, 2004, an arbitration panel awarded Mr. Carson \$6,143.03.

50. Respondent received funds from CNA Insurance Company on behalf of Mr. Carson as a final settlement of all claims in regard to his civil action. The check from CNA Insurance Company was dated November 5, 2004, and made payable to "Douglas R. Goldhaber, Esq.," in the amount of \$6,143.03.

51. Respondent was thereby entrusted with \$6,143.03 on behalf of Mr. Carson.

52. On or about November 15, 2004, Respondent deposited the \$6,143.03 check into his IOLTA Account.

53. Respondent failed to promptly pay to Mr. Carson the amount with which he was entrusted on his behalf.

54. Although Respondent was entrusted with \$6,143.03 on behalf of Mr. Carson:

(a) On December 30, 2004, the balance in Respondent's IOLTA Account was only \$1,111.40.

(b) On February 15, 2005, the balance in Respondent's IOLTA Account was only \$361.40.

(c) On April 28, 2005, the balance in Respondent's IOLTA Account was only \$1.40.

55. Respondent misappropriated \$6,141.63 from Mr. Carson.

56. On May 16, 2005, Respondent deposited into his Law Office Account \$52,000 entrusted to him by a client (Judith M. Menage) in a matter unrelated to his representation of Mr. Carson.

57. By check number 6499, dated May 19, 2005, drawn on Respondent's Law Office Account in the amount of \$6,143.03 and made payable to Mr. Carson, Respondent disbursed to him the amount with which he had been entrusted on behalf of Mr. Carson.

58. Respondent was able to make that disbursement to Mr. Carson only because of his deposit into his Law Office Account of the funds entrusted to him on behalf of another client.

CHARGE IV: THE MENAGE MATTER

59. On December 24, 2004, Charles T. Brumbaugh died testate while a resident of Bedford County, Pennsylvania.

60. The Last Will and Testament of Mr. Brumbaugh provided, among other things, that his niece, Judith M. Menage, be appointed executrix of his estate.

61. On or about December 28, 2004, Ms. Menage and her daughter, Daniell Heinrich, met with Respondent at his office for a consultation about the Brumbaugh estate.

62. Ms. Menage retained Respondent to represent her in her capacity as personal representative of the estate on December 28, 2004.

63. On December 28, 2004, at Respondent's direction, Ms. Menage appeared at the office of the Bedford County Register of Wills to have Mr. Brumbaugh's Will probated. Ms. Menage filed a Petition for Grant of Letters and a Certificate of Grant of Letters was issued to her.

64. Ms. Menage met with Respondent, at his office, on March 8, 2005 concerning the Brumbaugh Estate.

65. Ms. Menage was told by Respondent's secretary that Respondent required a retainer of \$5,000.

66. On March 28, 2005, Ms. Menage paid Respondent \$5,000 by check drawn on the Estate Account and made payable to Respondent.

67. Respondent negotiated Ms. Menage's \$5,000 check on or about March 29, 2005.

68. On or about May 4, 2005, Kimberly Mentzer-Heptner, Respondent's secretary, contacted Ms. Menage to request a check in the amount of \$52,000 for payment of inheritance tax owed by the Brumbaugh Estate.

69. On or about May 4, 2005, Ms. Menage was advised by Respondent that the estimated amount of inheritance tax owed by the Brumbaugh Estate would be \$72,000 and that a discount would reduce the amount of inheritance tax owed to \$52,000.

70. On May 4, 2005 Respondent's secretary, at his direction, faxed a cover memo and two pages of a draft of an Inheritance Tax Return for the Brumbaugh Estate to Ms. Menage.

71. The two page draft of the Inheritance Tax Return faxed to Ms. Menage on May 4, 2005 was actually sent to her daughter, Daniell Heinrich, who delivered it to her mother.

72. The cover page for the fax sent to Ms. Menage on May 24, 2005 contained the address of Respondent's Everett, Pennsylvania office location and included the following language:

Message: Daniell [sic], enclosed please find a draft of the Inheritance Tax Return. Nieces and Nephews are considered Collateral heirs and are therefore subject to a 15% tax rate. Spouses, Lineal heirs (children and grandchildren) are subject to a lesser tax rate for which the heirs to the Estate of Charles Brumbaugh do not qualify. The draft estimates a tax liability of [sic] \$83,404.86. I need the updated account information to calculate exactly the tax liability. A discount can be obtained if the \$52,000 is paid immediately. This is a sufficient amount to lock the discount in place.

Please advise. If you wish to speak to me today, I am at my Bedford Office,
814-623-9889,[sic]

73. The draft of the partial Inheritance Tax Return for the Brumbaugh Estate sent to Ms. Menage on May 4, 2005 listed total gross assets for the Estate of \$571,282.16.

74. The draft of the partial Inheritance Tax Return for the Brumbaugh Estate sent to Ms. Menage on May 4, 2005 listed a net value of the Estate subject to tax of \$556,032.40.

75. The draft of the partial Inheritance Tax Return for the Brumbaugh Estate sent to Ms. Menage on May 4, 2005 listed a tax due of \$83,404.86.

76. At the request of Ms. Menage, a check dated May 11, 2005, was drawn on the investment account of the Brumbaugh Estate in the amount of \$52,000 and made payable to "Douglas Goldhaber Escrow Account/Re: Charles Brumbaugh Estate 8 E. Main Street, P.O. Box 373, Everett, PA 15537."

77. Respondent received the check and was thereby entrusted with \$52,000 on behalf of Ms. Menage and/or the Brumbaugh Estate.

78. On May 16, 2005, Respondent negotiated the \$52,000 check by deposit into his Law Office Account, rather than his Trust Account.

79. On May 31, 2005, the balance in Respondent's Law Office Account was only \$5,573.30, even though Respondent received and was entrusted with \$52,000 on behalf of Ms. Menage and/or the Brumbaugh Estate.

80. In June 2005, Ms. Menage contacted Respondent's office and scheduled an appointment to meet with him on June 21, 2005, to discuss the status of the Brumbaugh estate administration.

81. On June 21, 2005, Respondent's secretary contacted Ms. Menage and informed her that Respondent had to cancel the appointment. The appointment was rescheduled to June 23, 2005.

82. On June 23, 2005, Respondent's secretary called Ms. Menage and informed her that the re-scheduled appointment had been cancelled.

83. Although Respondent was still entrusted with \$52,000 on behalf of Ms. Menage and/or the Brumbaugh Estate, on June 30, 2005, the balance in Respondent's Law Office Account was \$463.25.

84. At or about the end of June 2005, Respondent's secretary sent Ms. Menage, at Respondent's request, another draft of the Inheritance Tax Return for the Brumbaugh Estate.

85. The draft of the Inheritance Tax Return sent to Ms. Menage at or about the end of June 2005 listed total gross assets for the Brumbaugh Estate of \$655,812.55.

86. The draft of the Inheritance Tax Return sent to Ms. Menage at or about the end of June 2005 listed a net value subject to tax of \$509,152.79.

87. The draft of the Inheritance Tax Return sent to Ms. Menage at or about the end of June 2005 listed a tax due of \$72,812.92 and total credits of \$52,000.00.

88. On Schedule H (Funeral Expenses and Administrative Costs) of that Inheritance Tax Return draft, Respondent listed, among other things, a personal representative's commission for Ms. Menage in the amount of \$65,581.25 and attorney fees in the amount of \$65,581.25.

89. Respondent failed to make a payment of all or any portion of the inheritance tax obligation due on the Brumbaugh Estate.

90. Respondent failed to file an Inheritance Tax Return for the Brumbaugh Estate.

91. By letter dated July 14, 2005, sent by certified mail, return receipt requested, Ms. Menage terminated the attorney-client relationship with Respondent and requested that Respondent prepare an itemized bill detailing the time he had spent providing services in the administration of the Brumbaugh Estate.

92. Thereafter, Respondent's secretary called Ms. Menage and left messages for her requesting that she contact Respondent.

93. Respondent did not provide Ms. Menage with an itemized bill for services rendered, failed to return the \$52,000 Ms. Menage entrusted to Respondent for the payment of inheritance tax, and failed to return the unused portion of the \$5,000 retainer that Ms. Menage had paid to him.

94. The disbursements that Respondent made from his Law Office Account after he deposited the \$52,000 were disbursements unrelated to his representation of Ms. Menage in her capacity as personal representative of the Brumbaugh Estate, and

Respondent was not authorized to make those disbursements from the \$52,000 entrustment.

95. By June 30, 2005, Respondent had misappropriated at least \$51,536.75 of the \$52,000.00 entrusted to him by Ms. Menage in regard to the Brumbaugh Estate.

96. It was the \$52,000 with which Respondent was entrusted by Ms. Menage, and which Respondent deposited into his Law Office Account, that enabled him to make the reimbursements to his other clients, Rosanna Constantino-Lindsey and Donald Carson, whose property he had failed to hold separate from his own.

97. Attorney John B. Koontz wrote a letter dated August 4, 2005 to Respondent. In this letter Attorney Koontz:

(a) informed Respondent that Ms. Menage retained Attorney Koontz to represent her in her capacity as the personal representative of the Brumbaugh Estate;

(b) advised Respondent that Ms. Menage had informed him of the July 14, 2005, letter she had sent to Respondent terminating the attorney-client relationship and requesting an itemized bill;

(c) advised Respondent that Ms. Menage had informed him that Respondent had not provided Ms. Menage with a written Fee Agreement and that she had provided checks to Respondent in the amounts of \$5,000 and \$52,000;

(d) suggested that Respondent draw a check to refund to Ms. Menage the sums she had provided to Respondent; and,

(e) asked Respondent when he could obtain from Respondent the file and a statement for Respondent's services rendered.

98. Attorney Koontz did not receive a reply from Respondent to the August 4, 2005 letter.

99. On August 8, 2005, Respondent was incarcerated pursuant to the sentence imposed upon him for his conviction of a second offense of Driving Under the Influence.

100. Attorney Koontz appeared at Respondent's office and asked Ms. Mentzer-Heptner whether Respondent had directed her to give the Brumbaugh Estate file to Attorney Koontz.

101. Ms. Mentzer-Heptner informed Attorney Koontz that she did not have permission to give him the file.

102. Respondent had specifically directed Ms. Mentzer-Heptner not to surrender the file to Attorney Koontz.

103. After several subsequent requests by Attorney Koontz, Respondent finally directed Ms. Mentzer-Heptner, during a telephone conversation he had with her from jail, to surrender the file to Attorney Koontz.

104. Ms. Mentzer-Heptner delivered the Brumbaugh Estate file to Attorney Koontz.

105. Although Respondent was incarcerated as of August 8, 2005, Ms. Mentzer-Heptner, with the knowledge and approval of Respondent, facilitated the referral of some of Respondent's clients and their files to Carol Rose, a Bedford County attorney, who agreed to assume responsibility for some of Respondent's clients.

106. While Respondent was incarcerated, some of his clients continued to appear at his office. Ms. Mentzer-Heptner accepted money from clients during that period of time and the funds were used to pay for, among other things, the filing fees of cases with the Prothonotary.

107. Since Ms. Mentzer-Heptner had not been paid for her work during June and July 2005, she cashed two \$100 checks received at Respondent's office from sheriff's sales and retained the proceeds for herself.

108. Respondent's law office finances from 1999 through 2005 were inadequate, in that the office payroll could not be met, utilities and rent frequently went unpaid.

109. Respondent was notified, by DB-7 Request for Statement of Respondent's Position dated August 17, 2005, that Ms. Menage had filed a complaint against him and he was informed of her allegations.

110. The allegations contained therein, among others, were that:

(a) Respondent had not communicated to Ms. Menage in writing the basis or rate of his fee, either before or within a reasonable period of time after he commenced his representation of her;

(b) Respondent had requested \$52,000 from Ms. Menage to pay the inheritance tax due; and,

(c) Respondent was entrusted with \$52,000 by Ms. Menage.

111. By letter dated September 25, 2005, Respondent provided Petitioner with his statement of position in response to the allegations of Ms. Menage.

112. In response to the allegation that Respondent had failed to communicate to Ms. Menage the basis or rate of his fee in writing, Respondent stated to Petitioner that he had entered into a written Fee Agreement with Ms. Menage for a fee of eight and one-half percent of the gross value of the estate assets.

113. In response to the allegation that Respondent had asked for \$52,000 to pay the inheritance tax due on the Brumbaugh Estate, Respondent denied that he made the \$52,000 request to obtain funds to satisfy the inheritance tax obligation.

114. In response to the allegation that Respondent was entrusted with \$52,000 by Ms. Menage, Respondent stated "the monies were for payment under the terms of the written Fee Agreement."

115. By letter to Respondent dated September 28, 2005, Petitioner requested that Respondent provide a photocopy of the purported written Fee Agreement.

116. Under cover of a letter from Respondent's counsel dated December 13, 2005, Respondent provided Petitioner with a photocopy of a letter he purportedly sent to Ms. Menage, dated December 28, 2004, which stated, among other things, that it set

forth the Fee Agreement between them concerning Respondent's representation of her in the Brumbaugh Estate, including a:

non-refundable retainer amount equal to Eight and One-Half Percent (8 1/2%) of the gross value of the Estate of Charles T. Brumbaugh. Five Thousand Dollars (\$5,000.00) is to be paid at the Time of the signing of this Agreement and will be credited towards the aforementioned non-refundable retainer amount equal to Eight And One-Half Percent (8 1/2%) of the value of the gross Estate.

117. The letter also states "[T]his Agreement shall become effective upon our receipt of the retainer and a countersigned copy of this letter."

118. The photocopy Respondent provided to Petitioner bears a signature for Respondent and Ms. Menage.

119. Petitioner subsequently requested from Respondent's counsel the original of what Respondent claimed was his written Fee Agreement with Ms. Menage.

120. Instead of an original document, Respondent provided Petitioner with another photocopy of the purported Fee Agreement.

121. Respondent cannot produce the original of the purported Agreement.

122. Attorney Koontz reviewed the Brumbaugh Estate file after he received it from Respondent's secretary and testified that the file did not contain either an original or a photocopy of the written Fee Agreement between Respondent and Ms. Menage.

123. Respondent located a photocopy of the written Fee Agreement in his Everett office in a stack of documents waiting to be filed.

CHARGE V: THE MOUSKOURIE MATTER

124. Gus S. Mouskourie consulted with Respondent on or about October 7, 2002, to discuss representation in the matter of his complaint in divorce that had been filed in Fulton County, Pennsylvania.

125. On October 10, 2002, Mr. Mouskourie paid Respondent \$450 in cash to retain his services, with \$164.50 of that amount constituting the filing fee for the divorce complaint.

126. Although Respondent had not regularly represented Mr. Mouskourie, he did not communicate to him in writing the basis or rate of his fee, either before or within a reasonable period of time after commencing the representation.

127. Respondent sent a complaint in divorce to the Fulton County Prothonotary's Office, along with a filing fee of \$164.50

128. The complaint was filed on October 15, 2002.

129. The parties' Affidavits of Consent and Waivers of Notice of Intention to Request Entry of a Divorce Decree Under Section 3301(c) were filed on February 5, 2003, along with a Praecipe to Transmit the Record.

130. Respondent was notified by Order of Court dated February 14, 2003 from the Fulton County Court of Common Pleas that his submissions were defective and he was given the opportunity to correct the defects in his filings.

131. On May 5, 2003, Respondent filed an Amended Notice to Defend and an Amended Praeipe to Transmit the Record.

132. Respondent was notified by Order of Court dated May 14, 2003 from the Fulton County Court of Common Pleas that his submissions were defective and he was given the opportunity to correct the defects in his filings.

133. On August 21, 2003, Respondent filed the second Amended Complaint in Divorce, an Amended Certificate of Service, and a second Amended Praeipe to Transmit the Record.

134. Respondent was notified by Order of Court dated September 15, 2003 from the Fulton County Court of Common Pleas that his submissions were defective and he was given the opportunity to correct the defects in his filings.

135. On October 27, 2003, Respondent filed a third Amended Complaint in Divorce.

136. A divorce decree was entered in Mr. Mouskourie's case on January 2, 2007.

137. Respondent failed to promptly carry out his contract of employment with Mr. Mouskourie.

CHARGE VI: THE MILLER MATTER

138. In December 2004 Respondent consulted with Bruce and Janet Miller, who were involved in a dispute with a building contractor, Jack Snyder T/D/B/A Snyder Enterprises.

139. In January 2005 the Millers again consulted with Respondent to discuss their problem.

140. In late January 2005 Respondent told the Millers that he had written a letter to Snyder on their behalf, but he had not received a response.

141. In March 2005 the Millers met with Respondent again, at which time he advised them to file a civil action against Snyder.

142. On May 2, 2005, Respondent requested \$500 from the Millers to cover the cost of filing and serving the civil complaint and his fee for drafting the complaint.

143. The Millers paid Respondent the \$500 he had requested by check dated May 2, 2005.

144. Respondent negotiated the Millers' check.

145. The Millers were told by Respondent that the \$500 was to be their entire expense, including Respondent's fee.

146. Although Respondent had not regularly represented the Millers, he failed to communicate to them in writing the basis or rate of his fee, either before or within a reasonable period of time after commencing the representation.

147. On or about June 7, 2005, Respondent filed a civil complaint against Jack Snyder, T/D/B/A Snyder Enterprises, on behalf of the Millers.

148. Respondent was transferred to inactive status pursuant to Rule 111(b), Pa.C.L.E., by Order of the Supreme Court of Pennsylvania dated July 26, 2005 effective thirty days from the date of the Order.

149. Respondent received notice of the Order of the Supreme Court dated 7/26/05.

150. Respondent failed to notify the Millers that he had been transferred to inactive status and that they should retain successor counsel to protect their legal interests.

CHARGE VII: THE CORLE MATTER

151. On or about January 20, 2005, Charles R. and Audrey J. Corle, consulted with Respondent about the possibility of dissolving the adoption decree that had been entered for their adopted daughter, Nicole Wright Corle.

152. Respondent requested from the Corles a retainer of \$650 to begin working on the matter.

153. By check dated January 21, 2005, the Corles paid Respondent's retainer, which was deposited into Respondent's Law Office Account on January 25, 2005.

154. Although Respondent had not regularly represented the Corles, he failed to communicate to them, in writing, the basis or rate of his fee, either before or within a reasonable period of time after commencing the representation.

155. Throughout the summer of 2005 the Corles called Respondent to inquire about the status of their legal matter.

156. Respondent's secretary informed the Corles that Respondent would be filing documents on their behalf and that he would be in contact with them.

157. Respondent failed to communicate with the Corles about their legal matter.

158. Respondent failed to take any action on behalf of the Corles.

159. Throughout the Summer of 2005 the Corles attempted to communicate with Respondent by leaving messages on his answering machine and with his secretary inquiring about the status of their legal matter.

160. Respondent failed to communicate with the Corles about their legal matter.

161. Respondent was transferred to inactive status pursuant to Rule 111(b), Pa.C.L.E., by Order of the Supreme Court of Pennsylvania dated July 26, 2005 effective thirty days from the date of the Order.

162. Respondent received notice of the Order of the Supreme Court dated 7/26/05.

163. Respondent failed to notify the Corles that he had been transferred to inactive status and that they should retain successor counsel to protect their legal interests.

164. Respondent failed to return to the Corles any portion of the \$650 advance payment of fee and/or costs that has not been earned by him.

165. The Corles filed a claim with the Pennsylvania Lawyers Fund for Client Security.

166. The Pennsylvania Lawyers Fund for Client Security approved the Corles' claim in the amount of \$650.

167. Respondent testified on his own behalf.

168. Respondent was a sole practitioner in Bedford County from December 1994 until August 2005. He relocated to Harrisburg in 2006.

169. Respondent has been arrested twice for driving under the influence of alcohol or controlled substance; on July 4, 2002, and on April 9, 2004.

170. The first arrest resulted in ARD. The second offense resulted in imprisonment of 90 days to five years minus one day. Respondent was incarcerated from August 9, 2005 to November 23, 2005.

171. Respondent has a history of alcohol use and abuse. He started drinking alcohol regularly in college and the frequency of his drinking increased when he moved to Bedford County.

172. Respondent drank to the point of passing out on numerous occasions, causing his first wife, Aimee Steed, to warn him to stop drinking.

173. Respondent's alcohol use became problematic in September 1999, after he and Ms. Steed separated. They were divorced in 2001, although they maintained contact with each other due to parenting obligations for their child. At that time Respondent was drinking alcohol in the office during the day and continued drinking in the

evening, either at the Elks Club or at home. He purposely did not schedule appointments after 1 p.m. because it interfered with his drinking of alcohol. Sometimes Respondent drank alcohol in the morning.

174. Ms. Steed noticed a deterioration in Respondent following their divorce. She observed an increase in the frequency of his blackouts, belligerent behavior, and a deterioration in his appearance and work habits.

175. Audra Fetters worked as a secretary for Respondent and was employed from September 1999 until the spring of 2004.

176. Ms. Fetters noticed that Respondent's drinking increased while she worked for him and the manner in which he handled his professional affairs deteriorated.

177. Respondent began a relationship with Bernadette Black following his separation from his first wife. They were married in March 2004.

178. Ms. Black noted a significant increase in Respondent's alcohol use beginning in about 2002.

179. Following his incarceration, Respondent ceased drinking alcohol, moved from Bedford County and started a law practice in Harrisburg.

180. Respondent participates in Alcoholics Anonymous and Lawyers Concerned for Lawyers on a weekly basis. He received treatment from Dr. Harvey H. Shapiro, a psychiatrist, and meets once a month with James Eash, an alcohol counselor.

181. Respondent acknowledged and accepted responsibility for his conduct and the impact his conduct has had upon his clients and his family.

182. Respondent admitted that he did not maintain proper management of his law office and accepts responsibility for the handling of his accounts.

183. Respondent offered the expert testimony of Harvey H. Shapiro, M.D.

184. Dr. Shapiro first met with Respondent in June of 2003. Dr. Shapiro made a diagnosis of alcohol abuse and dependence, based on his evaluation of Respondent.

185. Dr. Shapiro and Respondent met several more times prior to Respondent's incarceration, then resumed treatment in December 2005, following Respondent's incarceration.

186. Dr. Shapiro opined that Respondent's alcoholism was a causal factor in his client misconduct.

187. Dr. Shapiro has observed positive changes in Respondent's demeanor since his sobriety. Respondent was open and cooperative in dealing with his alcohol abuse issues.

188. Robert Wettstein, M.D., testified as an expert witness on behalf of Petitioner.

189. Dr. Wettstein's diagnosis of Respondent's alcohol dependence and his observations of Respondent's improvement correlate with Dr. Shapiro's diagnosis and observations.

III. CONCLUSIONS OF LAW

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

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

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

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

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

5. RPC 1.5(b) - When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

6. RPC 1.15(a) - (prior to April 2005) - A lawyer shall hold property of a client or third person that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

7. RPC 1.15(a) - (after April 2005) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

8. RPC 1.15(b) - (prior to April 2005) - (Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property 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 such property.

9. RPC 1.15(b) - (after April 2005) - Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. 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 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 such property.

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

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

12. Pa.R.D.E. 217(b) - A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is

pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney.

Respondent has shown by clear and convincing evidence that he suffers from a mental disorder which caused his misconduct in the Grubb, Lindsay, Carson, and Corle Matters. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline filed against Respondent charging him with professional misconduct in seven separate client matters. Respondent admitted the facts alleged in the Petition for Discipline and further admitted that he violated the Rules of Professional Conduct that are the subject of Charges I, II and III of the Petition for Discipline. He did not admit to violation of the Rules in regard to the remainder of the Charges and evidence was taken concerning these charges at the disciplinary hearing.

Pennsylvania law holds that "evidence is sufficient to prove ethical misconduct if a preponderance of that evidence establishes the charged violation and the proof is clear and satisfactory." Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (Pa. 1994). The ethical violations may be proven solely by circumstantial evidence. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Review of the record

demonstrates that Petitioner met its burden of proof that Respondent engaged in professional misconduct as to the allegations contained in Charges IV, V, VI, and VII.

The main matter of contention at the hearing was Charge IV of the Petition for Discipline. Judith Menage retained Respondent to represent her in her capacity as personal representative of her uncle's estate. Ms. Menage paid Respondent a \$5,000.00 retainer, and in addition forwarded to him the sum of \$52,000.00. The client contends that the \$52,000.00 was sent to Respondent for one purpose only: an entrustment for the payment of Pennsylvania inheritance tax due on the estate. While Respondent did some work on the estate, he did not file a return, nor pay any portion of the inheritance tax due. Respondent contends that the \$52,000.00 was received by him as a payment under the terms of a written fee agreement. However, no written fee agreement was produced to substantiate Respondent's statements. Ms. Menage's testimony on the existence of a written fee agreement was found by the Hearing Committee to be confusing and somewhat inconsistent, as was Respondent's testimony. The Committee ultimately concluded that as it could not make a determination as to the existence of a fee agreement, Petitioner did not meet its burden of proof on this issue. The record supports the Committee's finding on this matter.

However, the Committee was convinced that the \$52,000.00 payment made to Respondent by Ms. Menage was made solely for the purpose of paying the inheritance taxes. The incontrovertible evidence demonstrates that Ms. Menage received documentation from Respondent's office concerning the amount of inheritance tax that was

owed by the estate. Ms. Menage received several drafts of proposed inheritance tax returns from Respondent's office showing the amount of inheritance tax that would have to be paid by the estate. In reliance upon the documentation received from Respondent's office, Ms. Menage issued a check made payable to Respondent's escrow account. Respondent failed to introduce any evidence that would indicate that the \$52,000 payment was for a legal fee. Petitioner presented evidence that clearly established that Respondent used the \$52,000 received from Ms. Menage to pay sums due and owing to other clients. This was a misappropriation of the funds entrusted to him by Ms. Menage. Petitioner proved that Respondent violated RPC 1.15(a), 1.16(d) and 8.4(c).

Charge V contained allegations that Respondent did not communicate his fees in writing and failed to act with reasonable diligence and promptness. Respondent handled a divorce for Gus Mouskourie. Although the divorce was uncontested, it took Respondent approximately 4 ½ years to obtain a divorce decree for his client. Petitioner met its burden of proof that Respondent violated Rules of Professional Conduct 1.3 and 1.5(b). In Charge VI, Respondent was retained by Bruce and Janet Miller to handle a dispute with a building contractor. Respondent did not communicate his fee in writing. After filing a lawsuit against the contractor, Respondent was transferred to inactive status for failure to complete his Continuing Legal Education credits. Respondent failed to notify the Millers of his changed status. They subsequently retained new counsel and asked for a refund. Respondent did not return any of the fee. Petitioner proved that Respondent violated Rules of Professional Conduct 1.5(b), 1.16(d), and Pa.R.D.E. 217(b). In Charge

VII, Respondent represented Charles and Audrey Corle in an adoption matter. Again, he did not communicate in writing to his client the basis or rate of his fee. After receiving a retainer of \$650, Respondent failed to do any work on behalf of his clients. Petitioner proved that Respondent violated Rules of Professional Conduct 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.5(b), 1.16(d) and Pa.R.D.E. 217(b).

The next issue before this Board is to determine the sanction to be imposed upon Respondent. The appropriateness of a disciplinary sanction is based on the nature and gravity of the misconduct and the aggravating and mitigating factors present. In re Anonymous No. 85 DB 97, 44 Pa. D. & C. 4th 299 (1999). The Board finds that Respondent's misconduct in seven client matters was serious in nature, particularly his misappropriation of funds, and warrants suspension.

Respondent presented evidence in support of his contention that he suffered from alcoholism at the time of the misconduct and the alcoholism substantially caused the misconduct. The Supreme Court of Pennsylvania has held that a psychiatric disorder is an appropriate consideration as a mitigating factor in a disciplinary proceeding. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). The psychiatric disorder must be a causal factor in producing the professional misconduct. Alcohol abuse and dependency may be considered a mitigating factor, provided that the attorney establishes, by clear and convincing evidence, that alcoholism was a causal factor in the professional misconduct. Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997). For the reasons set forth below, the Board finds that Respondent presented persuasive and compelling

evidence that alcohol abuse and dependency were causal factors in his misconduct. The Board concludes that Respondent satisfied his burden of proof pursuant to Braun as to the misconduct in Charges I, II, III and VII of the Petition for Discipline.

Respondent testified on his own behalf. He chronicled the pattern and frequency of his alcohol use, describing an increase in use and frequency after he graduated from law school, married his first wife, and moved to Bedford County in 1994 to practice law as a sole practitioner. By the end of Respondent's marriage in 1999, he was suffering alcoholic blackouts several times a week. He drank from the afternoon through the night, and occasionally in the morning. The separation and divorce from his first wife exacerbated the problem, as Respondent drank to escape these problems. Respondent's relationship with his second wife was equally fraught with issues related to Respondent's alcohol use, which continued in unabated excess. Respondent was arrested for driving under the influence in 2002 and 2004 and was incarcerated from August 2005 to November 2005. It was at this time that Respondent stopped using alcohol. After his release from prison, Respondent remained sober and sought help by participating in Alcoholics Anonymous, Lawyers Concerned for Lawyers, and alcohol counseling with James Eash and Dr. Harvey Shapiro. Respondent continues to be abstinent from alcohol use.

Respondent offered the testimony of his current spouse, Bernadette Black, and his former spouse, Aimee Steed. This testimony is credible and supports Respondent's version of his increased problems with alcohol and his eventual sobriety and

treatment. Both Ms. Steed and Ms. Black noted that the more Respondent drank, the more belligerent he became. His appearance began to deteriorate and he was forgetful. Both Ms. Steed and Ms. Black described the positive changes in Respondent since his incarceration and sobriety.

Dr. Harvey Shapiro testified as an expert witness. He first evaluated Respondent in June of 2003 and concluded he engaged in excessive alcohol use, abuse and dependency. Dr. Shapiro made a causal connection between the alcoholism and the professional misconduct. Dr. Shapiro treated Respondent after his incarceration and found him to be a different person. Respondent was not arrogant and was able to admit that his conduct was wrong. Further, Respondent admitted that alcohol had ruined him. Dr. Shapiro described Respondent's current state as open and cooperative in dealing with his alcoholism.

Petitioner presented its own expert, Dr. Robert Wettstein. Dr. Wettstein performed an evaluation of Respondent and concluded that his alcohol abuse was a substantial cause of certain aspects of his misconduct. Dr. Wettstein found Respondent to be in full remission from the alcoholism.

The Supreme Court of Pennsylvania has imposed suspensions in attorney discipline cases even where the Braun standard was met, which underlines the premise that Braun does not excuse misconduct and the need for discipline. In the matter of Office of Disciplinary Counsel v. Lawrence T. Fotj, No. 89 DB 2001, No. 835 Disciplinary Docket No. 3 (Pa. July 24, 2003), the respondent engaged in misappropriation of funds by

depositing settlement funds of a client into his IOLTA account and subsequently removing the entire proceeds of the settlement for his own personal use. The respondent proved that he suffered from depression which caused his misconduct. The Board recommended and the Supreme Court imposed a three year suspension. In the matter of Office of Disciplinary Counsel v. Richard B. Moore, 158 DB 2003, 1071 Disciplinary Docket No. 3 (Pa. July 10, 2005), the respondent misappropriated funds by retaining the proceeds of the rental account in an estate and by causing checks to be issued to him at a real estate settlement and by the executrix. The respondent misappropriated about \$19,000. He eventually completed restitution. Respondent presented evidence of a mental disorder to mitigate his misconduct, but the Board concluded that he did not meet his burden of proof pursuant to Braun. The Board found that the respondent expressed remorse and presented credible testimony of good reputation in the community. The respondent had an unblemished disciplinary record over a period of 32 years of practice. These factors persuaded the Board and ultimately the Court, to impose a two year period of suspension.

Respondent engaged in seven separate instances of client misconduct, each of which contained numerous violations of the Rules of Professional Conduct, and the most egregious of which was his misappropriation of funds from an estate. Considering the gravity of the misconduct in light of Respondent's alcoholism, the Board is persuaded that a three year period of suspension is warranted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Douglas R. Goldhaber, be suspended from the practice of law for a period of three years and make restitution to his clients as follows:

1. Carmen Marteen Grubb: (1) Interest at 10% per annum on a principal of \$20,392.96 from August 5, 2004 to December 10, 2004; (2) interest at 10% per annum on a principal of \$1,714.99 from December 10, 2004 to the time of restitution; and (3) the principal amount of \$1,714.99.

2. Rosanna Constantino-Lindsey: (1) Interest at 10% per annum on a principal of \$25,201.41 from November 15, 2004 to May 25, 2005; and (2) interest at 10% per annum on that unpaid interest to the time of restitution.

3. Donald Carson: (1) Interest at 10% per annum on a principal of \$6,143.03 from November 15, 2004 to May 19, 2005; and (2) interest at 10% per annum on that unpaid interest to the time of restitution.

4. Judith M. Menage, as Executrix of the Estate of Charles T. Brumbaugh, Deceased: (1) Interest at 10% per annum on a principal of \$5,000.00 from March 28, 2005 to the time of restitution; (2) interest at 10% per annum on a principal of \$52,000.00 from May 11, 2005 to the time of restitution ; and (3) the principal amount of \$57,000.00.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Robert E. J. Curran, Board Member

Date: April 18, 2008

Board Members Newman, Storey and Cagnetti did not participate in the adjudication.

Board Member Saidis dissents and would recommend disbarment.