

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2190 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 75 DB 2015
	:	
v.	:	Attorney Registration No. 62923
	:	
MARK B. PEDUTO,	:	(Allegheny County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 24th day of February, 2017, 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 Mark B. Peduto is suspended on consent from the Bar of this Commonwealth for a period of three years, retroactive to July 16, 2015. He shall comply with all provisions of Pa.R.D.E. 217.

Respondent shall pay the costs incurred by the Disciplinary Board in the investigation and prosecution of this matter.

A True Copy Patricia Nicola
As Of 2/24/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2190 Disciplinary Docket No. 3

Petitioner : No. 75 DB 2015

v.

MARK B. PEDUTO,

: Attorney Registration No. 62923

Respondent : (Allegheny County)

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

OFFICE OF DISCIPLINARY COUNSEL

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CHIEF DISCIPLINARY COUNSEL

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Disciplinary Counsel
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and

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Mark B. Peduto
Respondent
2361 Highland Avenue
Allison Park, PA 15101
(412) 486-3262

FILED

11/30/2016

The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2190 Disciplinary Docket No. 3

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MARK B. PEDUTO,

: Attorney Registration No. 62923

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Cory John Cirelli, Disciplinary Counsel, and Respondent, Mark B. Peduto, and Craig E. Simpson, Esquire, Counsel for Respondent, file this Joint Petition In Support Of Discipline On Consent Under Rule 215(d), Pa.R.D.E. and respectfully represent as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P. O. Box 62485, Harrisburg, Pennsylvania 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), 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 brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Mark B. Peduto, was born in 1966. He was admitted to the bar of the Courts of Commonwealth of Pennsylvania on December 16, 1991.

3. Respondent's attorney registration mailing address is 2361 Highland Avenue, Allison Park, PA 15101.

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

5. By Order of the Supreme Court of Pennsylvania dated July 16, 2015, Respondent was placed on emergency temporary suspension until further definitive action of the Supreme Court, pursuant to Rule 208(f)(5), Pa.R.D.E., and ordered to comply with Rule 217, Pa.R.D.E.

6. Respondent has not been reinstated to active status by the Supreme Court.

7. Respondent's Affidavit stating his consent to the recommended discipline is attached as Exhibit A.

**SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED**

8. On May 18, 2011, Virginia Gail Ganster died testate while a resident of Allegheny County, owning both real and personal property. Under the terms of decedent's Will, her sister, Nancy Coopey, and niece, Gail Jarosz Coopey, were appointed as "Joint Executors" of the decedent Estate (the Estate).

9. On or about July 11, 2011, Nancy Coopey and Gail Coopey entered a written fee agreement with Respondent for representation in the administration of the Estate to be billed at \$320 per hour for in-court time, and \$260 per hour for out-of-court time, plus expenses.

10. Respondent did not issue billing invoices to the executors.

11. On or about July 11, 2011, Respondent was entrusted with a retainer of \$3,000, which he deposited into his American Eagle Land Development business checking account #623275150 (American Eagle account), held at Citizen's Bank, which is not an IOLTA or other trust account.

12. Respondent failed to hold the advance payment of fee and expenses separate from his own property, although he had not earned it.

13. By check dated August 30, 2011, drawn on the Ganster PNC Estate Account #1038066392 (PNC Estate Account 6392), Respondent deposited \$17,000 of estate assets into his First Commonwealth Bank IOLTA #0350298006 (IOLTA 8006) and, as a result, his IOLTA 8006 balance increased to \$20,491.99.

14. By check dated December 15, 2011, drawn on the PNC Estate Account 6392, Respondent deposited \$14,400 into his IOLTA 8006, which increased the account balance to \$24,068.04.

15. By check dated February 1, 2012, drawn on the PNC Estate Account 6392, Respondent deposited \$5,000 into his IOLTA 8006.

16. As of that date Respondent was entrusted with \$17,854.32 in his IOLTA 8006 on behalf of the Ganster Estate, but his bank balance in that account was only \$5,613.75 due to unauthorized disbursements to "cash" and payees that were not for the benefit of the Estate, leaving Respondent out of trust in the amount of \$12,240.57.

17. Respondent deposited a First National Bank official check dated April 4, 2012, drawn in the amount of \$7,431.18, into his IOLTA 8006 from the funds that had been in decedent's checking account held at First National Bank.

18. The amount with which Respondent was then entrusted in his IOLTA 8006 on behalf of the Ganster Estate was \$25,099.99, but his bank balance in that account was only \$8,381.22. On April 4, 2012, Respondent was out of trust in the amount of \$16,718.77.

19. On or about August 22, 2012, Respondent filed an Inheritance Tax Return on behalf of the Estate noting total gross assets in the amount of \$200,420 and tax due and owing in the amount of \$23,277. Schedule H – Administrative Costs states that Respondent was to receive a fee for services rendered in the amount of \$6,000.

20. By Notice of Inheritance Tax Appraisalment, Allowance or Disallowance of Deductions, and Assessment of Tax dated November 26, 2012, the Inheritance Tax Return filed on behalf of the Estate was accepted as filed, and it was noted that the total tax due and owing was \$23,843.89, which included interest and penalties in the amount of \$566.89.

21. Respondent failed to make a payment on behalf of the Estate toward the \$23,843.89 inheritance tax that was due.

22. On or about July 5, 2013, an Inheritance Tax lien was filed in the Allegheny County Court of Common Pleas at GD 13-12670 in the amount of \$24,222.73 against the Estate.

23. On July 8, 2013, the Estate's real property located at 104 Anderson Place, Glenshaw, PA 15116, was sold for consideration of \$100,000.

24. The HUD-1 settlement statement noted that \$8,000 was disbursed for various settlement charges and inheritance tax was escrowed with the settlement agent, Sherrard, German, and Kelly, PC, in the amount of \$24,000 received from the proceeds of the sale of the realty.

25. On July 8, 2013, a First Commonwealth Bank Estate Account No. 7300555948, captioned Estate of Virginia Gail Ganster, Nancy L. Coopey or Gail L. Coopey Executors (First Commonwealth Estate Account 5948), was opened with a deposit of \$68,059.90 from the proceeds of the sale of the Estate's real property.

26. Nancy L. Coopey, Gail L. Coopey, and/or Respondent, had signatory authority over First Commonwealth Estate Account 5948.

27. On July 11, 2013, Respondent filed a Supplemental Inheritance Tax Return for a revised sale price of the realty based upon the contract sales price of \$100,000, noting tax due in the amount of \$16,951.

28. On or about July 11, 2013, the closing agent made a payment of inheritance tax in the amount of \$17,657.

29. Check number 0000, dated August 7, 2013, was drawn on the First Commonwealth Estate Account 5948, made payable to Peduto & Associates in the amount of \$56,256.87, annotated "Partial Will Disb," and was negotiated by deposit into Respondent's IOLTA Account #7300556029 (IOLTA 6029), less \$700 cash that was deducted from the deposit.

30. The \$700 in cash was not disbursed to or on behalf of the Ganster Estate.

31. As of August 7, 2013, Respondent was entrusted with a total of \$80,808.21, consisting of the \$24,551.34 he should have maintained in his IOLTA 8006 and the \$56,256.87 in his IOLTA 6029.

32. As of August 7, 2013, Respondent was out-of-trust in regard to the Ganster Estate assets in the amount of \$22,480.52.

33. As of August 7, 2013, the balance in the First Commonwealth Estate Account 5948 had dropped from \$68,059.00 to \$11,803.03 and the personal representatives thereafter took control of the First Commonwealth Estate Account 5948 balance.

34. By Notice of Inheritance Tax Record Adjustment dated September 13, 2013, the valuation of the real estate was refused because the sale had occurred 15 months after decedent's death and "it is too long after death for the sales price to be a good indication of market value at the time of death."

35. By Notice of Inheritance Tax Appraisal, Allowance, or Disallowance of Deductions and Assessment of Tax dated September 16, 2013:

(a) The tax return was marked "changed," and it was forwarded to the Post-Assessment Review Unit due to the "reduction to Schedule A";

(b) Additional debts in the amount of \$9,865 were accepted;

(c) The balance of tax due, plus interest and penalties, amounted to \$5,253; and,

(d) An appeal date of November 15, 2013 was set.

36. On October 10, 2013, Respondent made an inheritance tax payment on behalf of the Estate of \$5,253.

37. An Inheritance Tax Statement of Account dated October 21, 2013, noted that a total of \$21,962.05 in tax payments had been credited to the Estate with a balance due of \$16.83.

38. A balance of \$3.17 remains due before the inheritance tax lien, as filed in the Allegheny County Court of Common Pleas at GD 13-12670, can be marked satisfied.

39. Respondent failed to take action to clear the lien.

40. Although Respondent failed to complete his contract of employment with the personal representatives, it is apparent that he provided services to the Estate for which he was entitled to compensation. Based upon the executors' agreement with the

\$6,000 counsel fee set forth in Schedule H - Administrative Costs of the inheritance tax return, Respondent is herein credited with that amount as his fee for services rendered.

41. On October 30, 2013, Respondent closed IOLTA 8006 and withdrew the balance of \$8.18. At that point, Respondent was still entrusted with \$24,551.34 and was out of trust as to that entire amount.

42. On January 28, 2014, two checks were deposited in the First Commonwealth Estate Account 5948:

(a) Check No. 14175, made payable to the Estate, drawn in the amount of \$6,500 on the IOLTA of Sherrard, German and Kelly, PC, dated October 18, 2013, annotated "11547-0457 Release inheritance tax escrow-Ganster/Lar"; and,

(b) Check No. 047764, made payable to Charles A. Ganster, drawn in the amount of \$50.69 on the account of Hampton Shaler Water Authority.

43. On April 2, 2014, a Notice of Failure to File Rule 6.12 Status Report, addressed to Respondent at 1412 Mt. Royal Boulevard, Glenshaw, PA 15116, was returned to Orphan's Court as "unclaimed."

44. Respondent failed to make a final payment of the inheritance tax due to clear the lien, finalize the Estate administration, or account for the \$56,256.87 disbursed from the First Commonwealth Estate Account 5948 which he had deposited into his IOLTA 8006.

45. Respondent transferred funds belonging to the Ganster Estate on the following dates, from the following sources, in the following amounts, and deposited them into the following accounts:

<u>Date</u>	<u>Source</u>	<u>Amount</u>	<u>Deposit Account</u>
8/30/11	PNC Estate Acct. 6392	\$17,000.00	IOLTA No. 8006
12/15/11	PNC Estate Acct. 6392	\$14,400.00	IOLTA No. 8006
2/01/12	PNC Estate Acct. 6392	\$5,000.00	IOLTA No. 8006
4/04/12	Decedent's FNB Acct.	\$7,431.18	IOLTA No. 8006
7/08/13	Sale of Decedent's Realty	\$68,059.90	First C/W Est. Acct. 5948
8/07/13	First C/W Est. Acct. 5948	\$56,256.87	IOLTA No. 6029
1/28/14	Sherrard German Kelley PC	\$6,500.00	First C/W Est. Acct. 5948
1/28/14	Charles Ganster	\$50.69	First C/W Est. Acct. 5948

46. Respondent made **authorized** disbursements on behalf of the Ganster Estate on the following dates, from the following accounts, in the following amounts, to the following payees:

<u>Date</u>	<u>Source</u>	<u>Amount</u>	<u>Payee</u>
7/25/11	IOLTA No. 8006	\$174.00	Department of Court Records
8/01/11	IOLTA No. 8006	\$45.00	Suburban Gazette
8/01/11	IOLTA No. 8006	\$97.00	Pittsburgh Legal Journal
8/24/11	IOLTA No. 8006	\$3.00	Pittsburgh Legal Journal
9/30/11	IOLTA No. 8006	\$282.81	Verizon
10/06/11	IOLTA No. 8006	\$161.00	Peoples Gas
10/07/11	IOLTA No. 8006	\$6,411.20	Bock Funeral Home
10/07/11	IOLTA No. 8006	\$89.75	Shaler Township
11/08/11	IOLTA No. 8006	\$272.42	Verizon
11/08/11	IOLTA No. 8006	\$487.07	Duquesne Light

12/12/11	IOLTA No. 8006	\$121.01	Verizon
12/15/11	IOLTA No. 8006	\$67.83	Duquesne Light
12/15/11	IOLTA No. 8006	\$43.66	Allied Waste
12/15/11	IOLTA No. 8006	\$31.24	Allegheny Medical Practice
12/20/11	IOLTA No. 8006	\$2,307.95	Lee Coopey
12/20/11	IOLTA No. 8006	\$4,077.00	Nancy Coopey
12/22/11	IOLTA No. 8006	\$3,545.93	Shaler Tax Collector
1/06/12	IOLTA No. 8006	\$122.32	Allied Waste
1/06/12	IOLTA No. 8006	\$92.84	Shaler Water & Sewer
1/06/12	IOLTA No. 8006	\$112.65	Verizon
1/27/12	IOLTA No. 8006	\$62.78	Duquesne Light
1/27/12	IOLTA No. 8006	\$102.73	Peoples Natural Gas
7/27/12	IOLTA No. 8006	\$120.73	Verizon
7/27/12	IOLTA No. 8006	\$85.20	Hampton-Shaler Water Authority
7/27/12	IOLTA No. 8006	\$33.95	Peoples Natural Gas
8/30/12	IOLTA No. 8006	\$108.11	Duquesne Light
8/30/12	IOLTA No. 8006	\$43.66	Republic Services
7/15/13	IOLTA No. 8006	\$157.00	Register of Wills
10/09/13	IOLTA No. 6029	\$5,253.00	Register of Wills

47. Respondent made **unauthorized** disbursements of Ganster Estate funds on the following dates, from the following accounts, in the following amounts, to the following payees:

<u>Date</u>	<u>Source</u>	<u>Amount</u>	<u>Payee</u>
8/24/11	IOLTA No. 8006	\$1,674.00	Respondent (deposit to "American Eagle" Acct.)
8/30/11	PNC Est. Acct. 6392	\$17,000.00	IOLTA No. 8006
12/15/11	PNC Est. Acct. 6392	\$14,400.00	IOLTA No. 8006

12/15/11	IOLTA No. 8006	\$3,425.00	"Cash"
2/01/12	PNC Est. Acct. 6392	\$5,000.00	IOLTA No. 8006
3/14/12	IOLTA No. 8006	\$350.00	"Cash" (Memo: "American Eagle Land Development")
4/03/12	IOLTA No. 8006	\$75.00	"Cash"
4/10/12	IOLTA No. 8006	\$1,700.00	"Cash"
4/11/12	FNB Official Ck.	\$7,431.18	IOLTA No. 8006
5/18/12 to 7/27/12	IOLTA No. 8006	\$276.80	USPS (postage)
8/07/13	First CW Est. Acct.	\$700.00	Cash out at deposit of ck. to IOLTA No. 6029
8/14/13	IOLTA No. 6029	\$700.00	"SM Expense"
10/30/13	IOLTA No. 6029	\$452.00	"SM Expense"
1/10/14	IOLTA No. 6029	\$3,100.00	"Cash"

48. There are multiple additional disbursements from Respondent's IOLTAs involving checks made payable to "cash" for which there is no documentary support that the expenditures of entrusted funds were for the benefit of the Estate or any other client of Respondent.

49. Respondent had insufficient funds in his IOLTA 8006 and, after he closed that account, in his IOLTA 6029, on several dates, including the following:

IOLTA No. 8006

<u>Date</u>	<u>Ganster Estate Entrustment Total</u>	<u>Bank Balance</u>	<u>Amt. Out-of-Trust</u>
12/30/11	\$13,182.13	\$2,462.37	\$10,719.76
2/29/12	\$17,688.81	\$332.57	\$17,356.24
5/31/12	\$25,099.99	\$159.87	\$24,940.12
8/31/12	\$24,708.34	\$6,838.88	\$17,869.46

11/30/12	\$24,708.34	\$2,381.39	\$22,326.95
3/31/13	\$24,708.34	\$4,061.37	\$20,646.97
6/30/13	\$24,708.34	\$3,422.00	\$21,286.34
9/30/13	\$24,551.34	\$8.18	\$24,543.16

IOLTA No. 6029

<u>Date</u>	<u>Ganster Estate Entrustment Total</u>	<u>Bank Balance</u>	<u>Amt. Out-of-Trust</u>
8/07/13	\$80,808.21	\$58,327.69	\$22,480.52
10/15/13	\$75,555.21	\$45,898.94	\$29,656.27
1/15/14	\$75,555.21	\$34,477.74	\$41,077.47
4/30/14	\$75,555.21	\$31,646.18	\$43,909.03
7/31/14	\$75,555.21	\$27,499.54	\$48,133.30
10/31/14	\$75,555.21	\$25,751.67	\$49,808.54
2/27/15	\$75,555.21	\$26,421.18	\$49,134.03

50. On April 17, 2015, Respondent deposited \$10,000 into his IOLTA 6029, which he claimed were fees owed to him by the Estate of Dolores Lesczynski, a matter unrelated to the Ganster Estate.

51. The \$10,000 deposit increased the account balance of Respondent's IOLTA 6029 to \$37,055.18, which was \$38,500.03 **below** the \$75,555.21 he was still entrusted with in that account on behalf of the Ganster Estate.

52. On April 23, 2015, Respondent deposited a Citizens Bank Cashier's Check drawn in the amount of \$15,000 into his IOLTA 6029.

53. The \$15,000 deposit increased the account balance to \$52,035.18, which was \$23,520.03 **below** the \$81,960.16 he was still entrusted with on behalf of the Ganster Estate in IOLTA 6029.

54. Initially, the source of the Citizen's Bank Cashier's Check drawn in the amount of \$15,000 could not be determined due to Respondent's failure to comply with ODC's request for information via a Rule 221(g), Pa.R.D.E., letter seeking records that Respondent is required to maintain pursuant to Rule of Professional Conduct 1.15(c).

55. Respondent later informed ODC that the source of the \$15,000 was a loan from his father.

56. Between July 2011 and April 2015 Respondent deposited into his IOLTAs 8006 and 6029 a total of \$100,088.05, with which he was entrusted on behalf of the Ganster Estate.

57. Respondent disbursed checks totaling approximately \$24,512.84 from those accounts on behalf of the Ganster Estate, leaving him entrusted with approximately \$75,575.21 in Estate assets which Respondent misappropriated from the Estate.

58. On April 27, 2015, Respondent withdrew \$49,851.87 from his IOLTA 6029 and purchased a cashier's check made payable to the Ganster Estate, whereby he sent a portion of the Estate's entrusted funds to ODC to be forwarded to the personal representatives of the Ganster Estate.

59. As of April 30, 2015, the amount of the Ganster Estate funds that remained in Respondent's IOLTA 6029 had dropped to \$2,148.31. Respondent was still entrusted with approximately \$25,723.34 on behalf of the Estate, leaving his IOLTA 6029 balance approximately \$23,575.03 short of the amount with which he was still entrusted.

60. Due to Respondent's failure to provide an accurate accounting of the Ganster Estate assets, ODC has been unable to determine the precise amount of money that he still owes the Estate. Based upon the available information, including the \$6,000 credit Respondent receives for his fee, he is still entrusted with approximately \$19,723.34 in funds on behalf of the Estate.

61. By Respondent's conduct as alleged in paragraphs 8 through 60, Respondent violated the following Rules:

(a) Rule of Professional Conduct 1.15(b) - A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

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

(c) Rule of Professional Conduct 1.15(c)(1)-(4) – **[effective 2-28-15]**, *Required records*. Complete records of the receipt, maintenance and disposition

of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter). A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l):

(1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks in whatever form, deposited items and records of electronic transactions; and

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

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

(4) A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement.

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

(e) Rule of Professional Conduct 1.15(i) – A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

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

(g) Rule of Professional Conduct 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

(h) Rule of Professional Conduct 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(i) Rule of Professional Conduct 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

(j) Rule 203(b)(3), Pa.R.D.E. – Wilful violation of any other provision of the Enforcement Rules shall be grounds for discipline.

(k) Rule 221(g)(1), Pa.R.D.E. - The records required to be maintained by Pa.R.P.C. 1.15 shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security and the Office of Disciplinary Counsel in a timely manner upon request or demand by either agency made pursuant to these Enforcement Rules, the Rules of the Board, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena. (1) Upon a request by Disciplinary Counsel under this subdivision (g), which request may take the form of a letter to the respondent-attorney briefly stating the basis for the request and identifying the type and scope of the records sought to be produced, a respondent-attorney must produce the records within ten business days after personal service of the

letter on the respondent-attorney or after the delivery of a copy of the letter to an employee, agent or other responsible person at the office of the respondent-attorney as determined by the address furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney pursuant to Enforcement Rule 219(d), but if the latter method of service is unavailable, within ten business days after the date of mailing a copy of the letter to the last registered address or addresses set forth on the statement.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of three years, retroactive to July 16, 2015, the date of the Supreme Court Order placing him on emergency temporary suspension.

Respondent hereby consents to the 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 and includes the mandatory acknowledgements contained in Rule 215(d)(1) - (4), Pa.R.D.E.

In support of Petitioner's and Respondent's joint recommendation, it is submitted that the following mitigating circumstances are present:

- Respondent admits to engaging in misconduct and violating the charged Rules of Professional Conduct.

- Respondent has cooperated with Petitioner, as evidenced by Respondent's admission herein and his consent to receiving a suspension of three years.
- Respondent is remorseful for his misconduct and understands he should be disciplined, as evidenced by his consent to receiving a suspension of three years.
- Respondent refunded \$49,851.87 to the Ganster Estate, which is a portion of the total amount that he was entrusted with on behalf of the Estate, although the reimbursement was made after Respondent became aware of Petitioner's investigation of his conduct.

The following aggravating circumstances are also present:

- Respondent has a prior history of discipline consisting of an Informal Admonition administered on June 11, 2013, at file number C4-11-694, for failing to hold all Rule 1.15 funds and property separate from his own property, in violation of Rule of Professional Conduct 1.15(b), and failing to place all qualified funds which were not fiduciary funds in an IOLTA when Respondent failed to place funds of a decedent estate that were earmarked for payment of inheritance tax into an IOLTA; instead, he placed them into his American Eagle account, which was not an IOLTA or other trust account, in violation of Rule of Professional Conduct 1.15(m).

- Respondent failed to timely comply with ODC's letter-request pursuant to Rule 221(g)(1), Pa.R.D.E., for Rule of Professional Conduct 1.15 records.
- Respondent is still entrusted with approximately \$19,723.34 that is the property of the Ganster Estate, and which he has not disbursed to the personal representatives or successor counsel.

Although a wide range of discipline has been imposed in Pennsylvania disciplinary cases for misappropriation of entrusted funds, the facts involved in the following cases are sufficiently similar to the facts of the instant matter to warrant the recommendation of a suspension for a period of three years, made retroactive to the date on which Respondent was placed on emergency temporary suspension.

In *Office of Disciplinary Counsel v. Barry Paul Ginsberg*, No. 34 DB 2015 (2015), the Disciplinary Board approved a joint petition for discipline on consent for a three-year suspension made retroactive to the date on which Ginsberg changed his registration status to "voluntary inactive," for his conduct in regard to multiple clients and his violations of Rules of Professional Conduct 1.3 (diligence), 1.15(b) and 1.15(h) (commingling), 1.15(e) (prompt delivery of property), 8.4(c) (conduct involving dishonesty) and 8.4(d) (conduct prejudicial to the administration of justice). Ginsberg was found to have deposited his own funds into his IOLTA and to have made several transactions involving payments of personal obligations from his IOLTA. Although the IOLTA did not always contain client funds, hundreds of transactions caused overdrafts

on that account which, in turn, brought his usage of the IOLTA to the attention of Pennsylvania Lawyers Fund for Client Security (PALFCS) and ODC.

When Ginsberg deposited funds of clients into his IOLTA, he also deposited his own funds into that account in order to shield them from the Internal Revenue Service. In another matter, Ginsberg failed to maintain an adequate balance to support entrustments that he held on behalf of his clients and was briefly out of trust in regard to one such client in the amount of \$10,187.75. Ginsberg's mitigating factors included his admission to violating the charged Rules of Professional Conduct, his cooperation with ODC by joining in the consent petition, his expression of remorse for his misconduct, an understanding of the need for discipline, and his lack of a record of discipline. The Disciplinary Board recommended, and the Supreme Court approved, Ginsberg's suspension on consent for a period of three years, made retroactive to the date he was placed on voluntary inactive status.

In *Office of Disciplinary Counsel v. Robert L. Federline*, Nos. 9 DB 2007 and 92 DB 2008 (2010), Federline joined with ODC in filing a discipline on consent petition which was denied by the Supreme Court. A disciplinary hearing was held, and Federline was found to have violated the Rules of Professional Conduct charged in the petition for discipline. The hearing committee recommended that he be suspended for his failure to comply with a subpoena obtained by ODC and that the temporary suspension that was in effect be dissolved. No exceptions were taken to the hearing committee's report and recommendation. The Board reviewed the matter, which involved Federline's overdrawing his IOLTA in regard to two separate estate matters. While representing beneficiaries of a decedent estate, Federline made some proper

distributions to his clients, but overdrew his IOLTA in the amount of \$14,250 while he was still entrusted with funds belonging to those clients.

Federline represented a client in a Will contest and on whose behalf he had received a Pennsylvania inheritance tax refund in the amount of \$4,059.43. Federline deposited the refund into his IOLTA, but was unable to make proper disbursement of those funds for the benefit of the estate due to the balance in his IOLTA being \$1,553.42 below the amount with which he was entrusted on behalf of the estate. Federline then deposited \$5,000 of his own money into his IOLTA, which was a transaction unrelated to any client. Federline reimbursed the PALFCS. He also presented evidence in an attempt to support a claim for mitigation of his misconduct based upon an assertion that he suffered from depression. Federline failed to satisfy the clear and convincing standard of proof for his assertion of *Braun* mitigation.

The Rules of Professional Conduct Federline violated included 1.15(a) (commingling [conduct occurring before September 20, 2008]), 1.15(b) (prompt delivery of property [conduct occurring before September 20, 2008]), 8.4(c) (conduct involving dishonesty), for his admitted misappropriation of approximately \$19,000 in entrusted funds and his failure to comply with a subpoena issued at the request of ODC. The Board noted that the hearing committee's recommendation for dissolution of the temporary suspension was not within the Board's authority and declined to act on that recommendation.

In addition to rejecting Federline's claim for *Braun* mitigation, the Board noted that he engaged in a serious breach of trust between himself and his clients, as well as

a "breach of the public trust in the legal profession in general." The Board recommended that Federline's failure to observe his fiduciary responsibility warranted a two-year suspension. The Supreme Court ordered that Federline be suspended for a period of three years, retroactive to the effective date of the court's order placing him on temporary suspension pursuant to Rule 208(f), Pa.R.D.E.

Office of Disciplinary Counsel v. Alan Kear, No. 10 DB 2004 (2005), involved charges of Rule violations pertaining to four separate matters in which he commingled client, personal, and estate funds, using deception, and improperly advanced funds to clients. Kear was found to have violated Rules 1.15(a) (commingling [conduct before September 20, 2008]), 1.15(b) (prompt delivery of property [conduct before September 20, 2008]), 1.8(e) (financial assistance to a client), and 8.4(c) (conduct involving dishonesty).

In one matter, Kear failed to hold settlement proceeds in a trust account on behalf his client and was out of trust in regard to that client in the amount of \$1,756.78. Kear used the client's funds to pay his own mortgage. He could only make good on the entrustment to that client upon receipt of a settlement check that he received in the course of the representation of another client. In another matter, Kear opened an estate account, but failed to file an inventory or accounting, or pay inheritance tax on behalf of the estate. He wrote several checks from that estate account made payable to himself and deposited two insurance proceeds checks that were property of the estate into his escrow account rather than the estate account. In a third client matter, which involved commencement of a civil action by Kear, the case was dismissed for failure of the parties to appear for an arbitration proceeding. Kear subsequently paid \$6,000 as a

"settlement" for his client in the civil action from assets that he was holding in an unrelated estate matter. In the fourth matter, Kear improperly provided financial support to a client by advancing funds before the settlement of the client's case.

Kear sought to prove that he was entitled to *Braun* mitigation, but he failed to meet his burden of proof by the clear and convincing standard. The only other consideration of mitigation was Kear's lack of a disciplinary history. The hearing committee in *Kear* recommended a three-year suspension. That recommendation was adopted by the Disciplinary Board. The Supreme Court affirmed and suspended Kear for a period of three years.

Office of Disciplinary Counsel v. John T. Olshock, No. 28 DB 2002 (2003) involved Olshock's theft of funds from an estate account. Olshock admitted that he took money in excess of fees to which he was entitled in violation of Rule of Professional 8.4(c) (conduct involving dishonesty). The hearing committee and the Board found that Olshock "made prompt restitution in full to the heirs of the estate. This was done prior to any intervention or investigation on the part of Office of Disciplinary Counsel." The Board also found that Olshock was remorseful and recognized that he had engaged in misconduct when he misappropriated \$18,000 belonging to the decedent estate. He offered no explanation for his misconduct. Olshock had no history of discipline, and produced testimony of his good reputation in the community, as well as favorable testimony of his ability as a lawyer. However, the Board found as an aggravating factor that Olshock had been a first Assistant District Attorney in Washington County at the time of the theft. The Board's recommendation for a three-year suspension was adopted by the Supreme Court.

WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Rule 215(e), and 215(g), Pa.R.D.E., the three-member panel of the Disciplinary Board review and approve the above Joint Petition In Support Of Discipline On Consent for the imposition of a three-year suspension from the bar of the courts of this Commonwealth, retroactive to July 16, 2015, the date on which he was placed on emergency temporary suspension.


Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

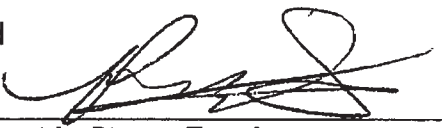
PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By _____
Cory John Cirelli
Disciplinary Counsel

and

By  _____
Mark B. Peduto
Respondent

and

By  _____
Robert L. Stasa, Esquire
Law Office of Craig Simpson
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2190 Disciplinary Docket No. 3

Petitioner : No. 75 DB 2015

v.

MARK B. PEDUTO,

: Attorney Registration No. 62923


Respondent : (Allegheny County)

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 my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

11/30/2016

Date



Cory John Cirelli
Disciplinary Counsel

11-30-2016

Date



Mark B. Peduto
Respondent

11-30-2016

Date



Robert L. Stasa, Esquire
Law Office of Craig Simpson
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2190 Disciplinary Docket No. 3

Petitioner : No. 75 DB 2015

v.

MARK B. PEDUTO,

: Attorney Registration No. 62923

Respondent : (Allegheny County)

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

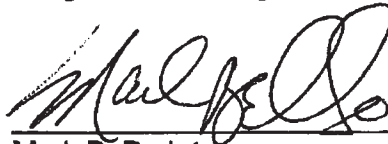
Respondent, Mark B. Peduto, hereby states that he consents to a three-year suspension, retroactive to July 16, 2015, the date of the Supreme Court Order placing him on emergency temporary suspension, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition 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; and 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 the imposition of discipline;

2. He is aware that there is a pending proceeding 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 matter pending against him is prosecuted, he could not successfully defend against the charges.



Mark B. Peduto
Respondent

Sworn to and subscribed
before me this 30th
day of November, 2016.



Darlene Marie Kunkle
Notary Public

