IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2361 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 5 DB 2017
	:	
v.	:	Attorney Registration No. 33015
	:	
HARRIS ROY ROSEN,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 6th day of July, 2020, upon consideration of the Report and Recommendations of the Disciplinary Board, Harris Roy Rosen is disbarred from the Bar of this Commonwealth, retroactive to March 16, 2017. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 07/06/2020

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 5 DB 2017
v.	:	Attorney Registration No. 33015
HARRIS ROY ROSEN Respondent	:	(Philadelphia)

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

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

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

I. HISTORY OF PROCEEDINGS

By Order dated March 16, 2017, the Supreme Court of Pennsylvania placed Respondent, Harris Roy Rosen, on temporary suspension until further action by the Court, pursuant to Rule 208(f), Pa.R.D.E. On December 11, 2018, Petitioner, Office of Disciplinary Counsel, filed a ten- count Petition for Discipline charging Respondent with multiple violations of the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement. Respondent was personally served on March 7, 2019, but did not file an Answer.

On April 17, 2019, the Board referred the Petition to a District I Hearing Committee (the "Committee"). Thereafter, a prehearing conference was scheduled for May 29, 2019, and a disciplinary hearing was scheduled for July 9, 2019. The Board Prothonotary mailed the hearing notices to Respondent via certified and regular mail addressed to Respondent's home address in Sag Harbor, New York, and to his last known local address in Philadelphia, Pennsylvania. Respondent signed the "green cards" addressed to his Sag Harbor address with respect to both hearing notices and had notice of the date and time of the hearing.

The prehearing conference was held on May 29, 2019. Respondent did not appear. The Committee Chair directed Petitioner to file a Motion to Deem All Factual Allegations in the Petition for Discipline as Admitted. That motion was filed on May 31, 2019, and a copy mailed certified and regular mail to Respondent. Respondent signed the "green card" at his Sag Harbor address. Respondent did not answer the motion. On June 27, 2019, the Committee Chair entered an order granting the motion.

The Committee conducted a disciplinary hearing on July 9, 2019. Petitioner introduced Exhibits ODC-1 through ODC-38 and presented the testimony of three witnesses. Respondent did not appear.

On August 29, 2019, Petitioner filed a brief to the Committee and recommended that Respondent be disbarred.

Respondent did not file a brief.

By Report dated November 15, 2019, the Committee concluded that Respondent violated the rules as charged in the Petition for Discipline and recommended that Respondent be disbarred retroactive to the date the Court entered the order of temporary suspension in this matter.

By letter of November 19, 2019, Petitioner advised that it would not submit any exceptions to the Committee's report but stated that it believed a prospective disbarment was warranted by the facts of the matter.

The Board adjudicated this matter at the meeting on January 16, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

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

2. Respondent is Harris Roy Rosen, born in 1954 and admitted to practice law in the Commonwealth of Pennsylvania in 1980. His registered mailing address is P.O. Box 1117, Sag Harbor, NY 11963. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in the Commonwealth.

4. On December 11, 2018, Petitioner filed a Petition for Discipline at No. 5 DB 2017 against Respondent.

5. On March 7, 2019, the Petition was personally served on Respondent with a Notice to Plead. ODC-2.

6. Respondent failed to file an Answer. The factual allegations contained in the Petition are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E.

7. Respondent received notice by certified and regular mail of the prehearing conference and disciplinary hearing. ODC-1.

8. Respondent did not appear at the prehearing conference on May 29, 2019 or the disciplinary hearing on July 9, 2019.

CHARGE I

9. In September 2010, Kimberly Jessup and her husband, William Martin, retained Respondent to represent them for injuries they suffered when a tree fell on them.

10. On August 16, 2012, Respondent filed a writ of summons in the Court of Common Pleas of Montgomery County on behalf of Ms. Jessup and Mr. Martin, case captioned ***Jessup and Martin v. Grace Building, Charles Breinig and Faith to Faith Ministry Church,*** No. 2012-22393.

11. On February 4, 2013, Respondent filed a civil complaint on behalf of Ms. Jessup and Mr. Martin in that matter.

12. In June 2015, Respondent settled part of the case on behalf of Ms. Jessup and Mr. Martin against Grace Building and Mr. Breinig as follows: $30,000 on behalf of Ms. Jessup and $12,500 on behalf of Mr. Martin.

13. On June 22, 2015, Ms. Jessup and Mr. Martin signed releases in regard to the settlement.

14. At that time, Respondent informed Ms. Jessup and Mr. Martin that they would receive their portion of the settlement by July 4, 2015.

15. On June 30, 2015, Respondent deposited two checks in the total amount of $42,500 into his Wells Fargo Bank account ending in 2855 {"account 2855").

16. Respondent failed to forward the checks to Ms. Jessup and Mr. Martin by July 4, 2015.

17. Beginning on July 6, 2015, Ms. Jessup telephoned Respondent on numerous occasions to obtain a status of the checks.

18. Respondent failed to return any of Ms. Jessup's telephone calls.

19. In the beginning of August 2015, Respondent returned Ms. Jessup's telephone calls, at which time Respondent falsely told her, *inter alia*, that: (a) Respondent would have to take Grace Building, Mr. Breinig and their insurance company, Farmers Insurance, to court to enforce the settlement; and (b) Respondent would get a court date in regard to their matter.

20. Ms. Jessup again telephoned Respondent on numerous occasions to obtain a status update.

21. Respondent again failed to return Ms. Jessup's telephone calls.

22. In early October 2015, Ms. Jessup telephoned Respondent, at which time Respondent did speak with her and Respondent falsely told Ms. Jessup, inter alia, that a court date was set for November 1, 2015. However, November 1, 2015 was a Sunday.

23. On November 2, 2015, Ms. Jessup telephoned Respondent and told Respondent that November 1, 2015 was a Sunday, at which time Respondent told her that the court date was not on November 1, 2015 but on November 15, 2015. However, November 15, 2015 was also a Sunday.

24. Thereafter, Ms. Jessup continued to telephone Respondent several times between November 16 and November 18, 2015.

25. On November 18, 2015, Respondent returned Ms. Jessup's telephone calls, at which time Respondent told her, inter alia, that the judge ordered that:

a. Farmers Insurance settle the case;

b. Mr. Breinig would send a check to Respondent that week and

c. if a check was not received by Respondent, a court date would be scheduled.

26. Thereafter, in response to Ms. Jessup's repeated telephone calls, on December 3, 2015, Respondent told Ms. Jessup that distribution of the settlement funds would be made the following week.

27. On December 4, 2015, Respondent telephoned Ms. Jessup and told her that:

a. Respondent had received a strange telephone call from the insurance company; and

b. Respondent was going to call the insurance company to make sure there were no liens against her.

28. On December 7, 2015, Ms. Jessup telephoned Respondent, at which time she left a voice mail message wherein she:

a. informed Respondent that she had contacted the insurance company and told Respondent what she had learned and

b. questioned Respondent as to why he had to wait one week for the insurance company to contact him; and

c. informed Respondent that she was going to contact the Disciplinary Board because she did not believe that she was being treated fairly by Respondent.

29. Respondent returned Ms. Jessup's telephone call within five minutes, at which time Respondent told her regardless of what the insurance company had told her, Respondent would give her a check by December 11, 2015.

30. On December 14, 2015;

a. Respondent's receptionist telephoned Ms. Jessup and informed her that the insurance company would fax Respondent "something" by Thursday, December 18, 2015;

b. Ms. Jessup requested to speak with Respondent; and

c. Respondent's receptionist told Ms. Jessup that Respondent was not in the office.

31. On December 21, 2015, Ms. Jessup and Mr. Martin met with Respondent at Respondent's office and signed statements of distribution which indicated that: (a) Ms. Jessup was entitled to receive $17,061.76 and (b) Mr. Martin was entitled to receive $6,267.60.

32. On December 21, 2015, Ms. Jessup and Mr. Martin also signed settlement releases in regard to Faith to Faith Ministry Church as follows: $11,500 on behalf of Ms. Jessup and $5,000 on behalf of Mr. Martin.

33. On December 21, 2015, Respondent deposited $22,000 from the Brownstein Trust Wells Fargo account ending in 6779 into account 2855.

34. On or about December 22, 2015, Respondent presented to Ms. Jessup a check dated December 22, 2015, which was drawn on Respondent's account 2855, and made payable to Ms. Jessup in the amount of $17,061.76.

35. Respondent was required to maintain any funds belonging to his clients in a Trust Account, as defined by RPC 1.15(a)(11).

36. Account 2855 was not a Trust account, as defined by Pa. RPC 1.15(a)(11).

37. On Respondent's 2015-2016 and 2016-2017 Pennsylvania Attorney's Annual Fee Form, Respondent did not identify account 2855 as an account in which Respondent held client or third party funds subject to Pa.R.P.C. 1.15.

38. Respondent also forwarded a check to Mr. Martin for his portion of the settlement.

39. The balance in account 2855 fell below the amounts that Respondent was required to hold inviolate for Ms. Jessup and Mr. Martin from July 15, 2015 through August 6, 2015; August 11, 2015 through November 11 2015; November 19, 2015 through December 4, 2015; and December 14, 2015 through December 18, 2015.

40. On or about December 22, 2015, Farmers Insurance Company forwarded to Respondent in regard to the settlement with Faith to Faith Ministry Church:

a. check no. 1611780517 made payable to "Kim Jessup & Law Offices of Harris R. Rosen PC" in the amount of $11,500; and

b. check no. 1611780535 made payable to "William Martin & Law Offices of Harris R. Rosen PC" in the amount of $5,000.

41. On or about December 24, 2015, Respondent forged Ms. Jessup and Mr. Martin's names on the checks and deposited the checks into his account 2855.

42. Respondent did not have Ms. Jessup or Mr. Martin's permission to endorse their names on the checks.

43. Between December 21, 2015 and February 16, 2016, Ms. Jessup repeatedly telephoned Respondent to obtain a status update regarding the distribution of the Faith to Faith settlement.

44. Respondent failed to return the telephone calls.

45. On January 5, 2016, Respondent filed a praecipe to discontinue.

46. On February 16, 2016, Respondent telephoned Ms. Jessup, at which time Respondent told her: (a) to call Respondent on February 22, 2016; and (b) that distribution would be made the week of February 22, 2016.

47. Thereafter, Ms. Jessup telephoned Respondent on February 22, 23, and 24, 2016, and each time she was informed that Respondent was in court.

48. On February 24, 2016, Respondent telephoned Ms. Jessup, at which time Respondent apologized for not returning her telephone calls and stated that Respondent would telephone her on February 25, 2016.

49. Respondent failed to contact Ms. Jessup on February 25, 2016.

50. On February 27, 2016, Respondent left a message on Ms. Jessup's voicemail in which he told Ms. Jessup and Mr. Martin to come to his office on Monday, February 29, 2016, to pick up their check.

51. On February 29, 2016, Ms. Jessup and Mr. Martin signed a statement of distribution in regard to the settlement with Faith to Faith Ministry Church, which indicated:

a. Kimberly Jessup $11,500;

b. William Martin $5,000;

c. Counsel fees $5,775, and

d. Balance to Kim Jessup: $10,725.

52. Thereafter, Respondent presented Ms. Jessup with a check dated February 29, 2016, which was drawn on Respondent's account 2855, and made payable to Ms. Jessup in the amount of $10,725.

53. The check also represented Mr. Martin's portion of the settlement.

54. Ms. Jessup deposited the check into her bank account.

55. On or about March 3, 2016, the check was returned for non-sufficient funds.

56. Ms. Jessup contacted Respondent and informed him that the check was returned.

57. On March 3, 2016, Respondent deposited $2,500 into Ms. Jessup's bank account.

58. Thereafter, between March 2016 and May 2016, Ms. Jessup repeatedly telephoned Respondent to inquire about the balance of the funds owed to her and Mr. Martin.

59. Respondent failed to return the telephone calls.

60. In May 2016, Respondent deposited the balance of the funds owed to Ms. Jessup and Mr. Martin into Ms. Jessup's bank account.

61. Between December 30, 2015 and May 2016, there were numerous occasions where Respondent's account 2855 fell below the amount that he was required to hold inviolate for Ms. Jessup and Mr. Martin.

62. This included a negative balance of $200.63 on January 12, 2016.

CHARGE II

63. Kenesha J. Kincy retained Respondent to represent her for injuries she sustained in a motor vehicle accident involving SEPTA.

64. On November 26, 2014, Respondent filed a civil action complaint in the Court of Common Pleas of Philadelphia County on behalf of Ms. Kincy in a case captioned ***Kincy v. SEPTA***, No. 141102990.

65. In October 2015, Respondent settled the case on behalf of Ms. Kincy in the amount of $4,000.

66. On October 19, 2015, Respondent filed a praecipe to settle discontinue and end.

67. On October 21, 2015, SEPTA issued a check to Respondent made payable to "Kenesha Kincy and Harris R. Rosen, Esquire" in the amount of $4,000.

68. On October 26, 2015, Respondent deposited into his account 2855 the $4,000 check that he received from SEPTA on behalf of Ms. Kincy.

69. In November 2015, Ms. Kincy met with Respondent in his office at which time she signed the settlement documents.

70. At that time, Respondent told Ms. Kincy that she should receive a check for her portion of the settlement proceeds in two weeks.

71. Thereafter, Respondent failed to forward a check to Ms. Kincy.

72. By letter dated February 3, 2016, to Respondent, Ms. Kincy:

a. stated that she made several attempts to contact Respondent via telephone regarding her settlement check;

b. stated that she had spoken with Respondent's assistant on "numerous occasions" who told Ms. Kincy that Respondent would be contacting her;

c. stated that Respondent did not respond to her; and

d. requested that Respondent contact her.

73. Respondent received Ms. Kincy's letter, but failed to respond.

74. Respondent failed to forward to Ms. Kincy her portion of the settlement.

75. In or around April 2016, Respondent forwarded to Ms. Kincy check number 5055 in the amount of $1,978.44 drawn on account 2855.

76. On May 16, 2016, check number 5055 cleared account 2855.

77. Between October 26, 2015 and April 28, 2016, the balance in Respondent's account 2855 fell below $1,978.44 on several occasions.

CHARGE III

78. On September 24, 2013, Ada Garcia retained Respondent to assist her in collecting funds she was entitled to receive as a beneficiary of the estate of her late son, Osvol Garcia, a/k/a Osuol Garcia.

79. Mr. Garcia was a school teacher, who died intestate in the State of New York on December 29, 2010.

80. At his death, Mr. Garcia had retirement and insurance funds in excess of $150,000.

81. On September 24, 2013, Ms. Garcia signed a fee agreement wherein she agreed that, *inter alia*:

a. the compensation for services Respondent rendered would be ten percent net of any amount received by her in her claim plus reimbursement for out-of-pocket-expenses; and

b. should Respondent represent her in appellate court, Respondent would be entitled to an additional five percent of any amount received by her plus reimbursement for out-of-pocket expenses.

82. In November 2013, Ms. Garcia retained the New York law firm of Satterlee, Stephens, Burke & Burke, LLP ("the Satterlee firm") to represent Mr. Garcia's estate.

83. In July 2014, the Satterlee firm filed a petition in the State of New York, Kings County Surrogate Court, for letters of administration on behalf of Mr. Garcia's estate wherein Ms. Garcia would be named as fiduciary.

84. On July 11, 2014, an estate was opened for Mr. Garcia and the Surrogate Court issued letters of appointment naming Ms. Garcia as fiduciary of her son's estate.

85. After Ms. Garcia was named fiduciary of her son's estate, the Teachers Retirement System of New York ("Teachers Retirement System") recognized Ms. Garcia as the appropriate party to receive Mr. Garcia's retirement and insurances funds.

86. On July 28, 2014, Respondent assisted Ms. Garcia in opening an estate account at Wells Fargo Bank, said account captioned "OSVOL GARCIA ESTATE ADA ROBINSON GARCIA PREP HARRIS R ROSEN PREP," ending in 3721 ("the estate account").

87. Respondent had the periodic statements of account mailed to his office at 123 S. Broad Street, Suite 2170, Philadelphia, PA 19109.

88. By letter dated July 30, 2014, to the Teachers Retirement System, Respondent requested, inter alia, that Mr. Garcia's account be liquidated and the proceeds be sent to Respondent's office.

89. By letter dated September 17, 2014, to Ms. Garcia, the Teachers Retirement System informed Ms. Garcia, inter alia, that the payment of the retirement and insurance funds was scheduled to be mailed at the end of September 2014.

90. Thereafter, in accordance with Respondent's July 30, 2014 request, the Teachers Retirement System forwarded to Ms. Garcia in care of Respondent three checks dated September 30, 2014 in the amounts of $105,846.47, $50,000, and $671.87, respectively, for a total payment of $156,518.34, which checks were made payable to "ADA GARCIA Adm. of Estate OSUOL GARCIA."

91. On or about September 29, 2014, Respondent:

a. forged or caused to be forged Ms. Garcia's signature on the back of the checks; and

b. deposited the checks into the estate account.

92. Respondent did not have Ms. Garcia's permission to sign the checks on her behalf.

93. Respondent was not the personal representative for Mr. Garcia's estate and Respondent did not have signatory authority for the estate account.

94. Between September 30, 2014 and August 31, 2015, Respondent misappropriated funds from the estate account by issuing checks made payable to himself by either signing the estate checks himself or by forging and/or causing to be forged Ms. Garcia's signature for a total amount of $156,350.

95. On August 31, 2015, the end-of-the-month balance for Mr. Garcia's estate account was $68.34.

96. On September 17, 2015, Ms. Garcia died.

97. In her Will dated July 30, 2014, Ms. Garcia named her grandson, Marcus Charles Davis, Jr., as her sole beneficiary and Executor of her Will.

98. On November 18, 2015, Wells Fargo Bank closed the estate account, which at the time had a $0 balance.

99. On or about December 1, 2015, Mr. Davis retained Respondent to:

a. represent Ms. Garcia's estate and

b. assist Mr. Davis in obtaining the funds that passed from Mr. Garcia's estate to Ms. Garcia.

100. Respondent failed to provide a fee agreement, although Respondent had not previously represented Mr. Davis.

101. Thereafter, throughout the representation, Mr. Davis on numerous occasions attempted to contact Respondent in regard to the status of the funds that should have passed from Mr. Garcia's estate to Ms. Garcia.

102. Respondent failed to respond to any of Mr. Davis's numerous inquiries.

103. As a result of Respondent's failure to communicate with Mr. Davis, on March 28, 2016, Mr. Davis retained Erik B. Jensen, Esquire, to determine why there was no distribution of the estate funds.

104. On March 30, 2016, Respondent filed for letters testamentary on behalf of Mr. Davis as Executor of Ms. Garcia's estate, which were granted by the Philadelphia Register of Wills.

105. In April 2016, Mr. Jensen spoke with Respondent in regard to the funds of Mr. Garcia's estate, at which time Respondent told Mr. Jensen that:

a. the funds were in escrow;

b. Respondent was waiting on paperwork to complete distributions; and

c. Respondent expected to have the matters resolved in the very near future.

106. Respondent's statements to Mr. Jensen were misrepresentations in that Mr. Garcia's estate funds had been completely depleted by November 18, 2015.

107. At some point during the representation of Mr. Davis, but after May 10, 2016, Respondent provided to Kathleen M. Citera, Esquire, a New York estate attorney, a Wells Fargo Bank monthly statement that was purportedly for the bank account of Mr. Garcia's estate, wherein:

a. the account number listed on the statement ended in 3219 ("account 3219"); and

b. the statement indicated that for the period of March 1, 2016 through March 31, 2016, the end of-the-month balance in the estate account was $156,628.31.

108. The bank statement was fraudulent and a forgery, and Respondent knew it was fraudulent and forged when Respondent forwarded it to Ms. Citera, in that:

a. account 3219 was Respondent's personal savings account;

b. that account was opened on May 10, 2016, and therefore account 3219 was not in existence in March 2016;

c. Respondent was the sole owner of account 3219; and

d. the estate funds of Decedent Osvol Garcia had been completely depleted by November 18, 2015.

109. On May 18, 2016, Mr. Davis happened to encounter Respondent on the street, at which time Respondent stated that there were problems with "the accounts" and Respondent was not prepared to discuss the matter with Mr. Davis.

110. Between May 24, 2016 and June 8, 2016, Mr. Jensen sent emails and/or hand-delivered letters to Respondent requesting the entire Osvol Garcia estate file, an accounting of the estate funds, and delivery of the estate funds.

111. Respondent received Mr. Jensen's emails and letters, but failed to respond.

112. Respondent failed to provide an accounting or forward the estate funds.

113. On June 10, 2016, Mr. Jensen filed a petition for a citation to file an accounting on behalf of Mr. Davis in Philadelphia County Orphans' Court, No. 704DE of

2016, wherein Mr. Jensen requested: (a) an accounting; and (b) removal of Respondent as the attorney for the Estate of Ada Garcia.

114. On June 26, 2016, the Honorable Matthew D. Carrafiello issued a Rule to Show Cause to Respondent as to why:

a. he should not be removed as the legal representative for the Estate of Ada Garcia;

b. should not immediately prepare and file an accounting of activities as legal representative; and

c. should not turn over all entrusted funds.

115. By letter dated July 20, 2016, to Respondent, Mr. Jensen informed Respondent that, inter alia:

a. he had subpoenaed and received the bank records for the estate account in regard to Osvol Garcia's estate;

b. the records showed that on September 29, 2014, Respondent deposited $156,518.34 into this account;

c. he had verified through Mr. Davis's family members that the signature that was purportedly Ms. Garcia's signature on all of the estate account checks made payable to Respondent were forged;

d. he had received all of the bank records and statements that Respondent had failed to turn over to him which showed that Respondent had depleted Mr. Garcia's estate account leaving only $68.68 as of September 2015;

e. Respondent had multiple changes in the signature cards; and

f. he had reported this matter to the appropriate authorities and urged Respondent to retain counsel.

116. On August 13, 2016, Respondent filed a Response to the Rule to Show Cause wherein Respondent stated that he was working on getting the requested information and requested that the petition for citation be dismissed.

117. A settlement conference in the Orphans' Court matter was scheduled for November 2, 2016.

118. Respondent failed to appear for the conference.

119. By Order dated November 7, 2016, Judge Carrafiello, inter alia:

a. found that the account at issue was secreted from its rightful owners, including Mr. Davis, by Respondent, and that Respondent made withdrawals from said account on various occasions for purposes known only to Respondent;

b. stated that pursuant to Respondent's response to the petition for citation, Respondent failed to make averments which specifically refuted the findings except to say that Respondent was "working on getting the requested information";

c. stated that since August 2016, when Respondent's response was filed, despite Respondent's averment that he was working on getting information, no further information had been forthcoming;

d. ordered and decreed that within 30 days of the court's Order Respondent "shall" fully account to the court by written submission filed under oath and of record, with copies to interested parties, a submission

filed under oath and of record, with copies to all interested parties, an account of all proceeds of the bank accounts, together with any other bank accounts into which the Garcia monies may have been transferred, together with itemization of all checks or withdrawals or disbursements made from said bank account;

e. ordered and decreed that Respondent immediately disgorge any monies from any funds that Respondent currently had or over which Respondent had possession; that any non-liquid assets which were the result of monies taken from the bank account be frozen; and that Respondent together with any and all other persons, were enjoined from the transfer until further order of the court; and

f. cautioned Respondent that if the accounting was not forthcoming, an attachment of Respondent's person would be issued for Respondent's failure to appear at the scheduled conference and Respondent's failure to comply with the decree.

120. Thereafter, Respondent failed to provide an accounting and failed to abide by Judge Carrafiello's Order.

121. The Pennsylvania Client Security Fund made payment to the Ada Garcia Estate of $41,518.34 on September 12, 2018 pursuant to Claim Number 2093-4-17. N.T. 104-105.

CHARGE IV

122. Rachel F. Reser retained Respondent to represent her in a claim for personal injuries resulting from a March 7, 2015 automobile accident.

123. Respondent had previously represented Ms. Reser in other matters, and was then representing her in a July 3, 2014 automobile accident involving a Coca-Cola vehicle.

124. In or around January 2016, Respondent settled Ms. Reser's claims arising from the March 7, 2015 accident in the amount of $12,500.

125. By letter dated January 19, 2016, Christopher Abbot of Erie Insurance Company ("Erie") forwarded to Respondent a check in the amount of $12,500 made payable to "Rosen & Rosen & Rachel Reser."

126. Ms. Reser received a copy of Erie's letter.

127. Thereafter, Ms. Reser telephoned Respondent on numerous occasions to ascertain when she would receive her portion of the settlement. Respondent failed to respond to Ms. Reser's telephone calls.

128. In or around March 2016, Respondent met with Ms. Reser, at which time Respondent:

a. presented her with check no. 1001 dated March 16, 2016, made payable to her in the amount of $6,000 and drawn on an account at Wells Fargo Bank, number ending in 8304, captioned "LAW OFFICES OF HARRIS R. ROSEN P," which account was not identified as an IOLTA account;

b. told her that the check represented her portion of the settlement; and

c. requested that Ms. Reser not cash the check right away, but "give it a couple of days" before cashing the check.

129. Thereafter Ms. Reser deposited the check into her Wells Fargo bank account.

130. On March 24, 2016, the check was returned for nonsufficient funds, which caused Ms. Reser's account to be overdrawn and Ms. Reser was charged an overdraft fee of $12.50.

131. Ms. Reser immediately telephoned Respondent, at which time Respondent told her that he needed a week because the bank froze his account because of "some check issues."

132. Thereafter, Respondent failed to forward the settlement proceeds to Ms. Reser.

133. By letter dated April 12, 2016, to Respondent, Ms. Reser:

a. stated that she had telephoned Respondent on numerous occasions and left messages on his voicemail and with his secretary;

b. Respondent failed to respond to her repeated messages;

c. requested that Respondent respond to her within five business days to schedule a time when she could retrieve her funds; and

d. stated that she would file a complaint with the Disciplinary Board if she did not hear from him within five days.

134. Respondent received Ms. Reser's letter, but failed to respond.

135. Respondent failed to forward the settlement proceeds to Ms. Reser.

136. Throughout the representation, Ms. Reser attempted to contact Respondent for a status update on her Coca-Cola matter.

137. Respondent failed to respond.

138. On June 30, 2016, Respondent filed a Praecipe to Issue Writ of Summons on behalf of Ms. Reser in the Court of Common Pleas of Philadelphia County.

139. An arbitration hearing was scheduled for April 4, 2017.

140. Respondent failed to advise Ms. Reser that he had filed the praecipe on her behalf.

141. On April 18, 2017, Respondent filed a Praecipe to Settle Discontinue and End the Coca-Cola matter.

142. On Respondent's 2016-2017 PA ATTORNEY'S ANNUAL FEE FORM, which was electronically filed and endorsed pursuant to Pa.R.D.E. 219(d)(5) on June 29, 2016, Respondent failed to identify Wells Fargo Bank Account no. ending in 8304 as an account in which Respondent held funds of a client subject to Pa.R.P.C. 1.15.

CHARGE V

143. In or around 2014, Respondent was retained by Edith Bowens to represent her for injuries she suffered in a May 31, 2014 accident.

144. In or around February 2016, Respondent settled Ms. Bowens' matter in the amount of $35,000.

145. On February 9, 2016, Ms. Bowens signed a release and settlement of claim form.

146. Thereafter, Liberty Mutual Insurance Company forwarded to Respondent a check in the amount of $35,000.

147. On February 16, 2016, Respondent deposited the check into his account 2855.

148. On March 9, 2016, Respondent gave Ms. Bowens a check made payable to her in the amount of $1,000.

149. At that time, Respondent failed to give Ms. Bowens a statement of distribution.

150. Thereafter, Ms. Bowens repeatedly telephoned Respondent to obtain a status of the settlement funds that she was entitled to receive.

151. Respondent failed to return Ms. Bowens' telephone calls.

152. Respondent failed to forward the settlement funds that Ms. Bowens was entitled to receive.

153. Thereafter, Laurence M. Cramer, Esquire, telephoned Respondent on behalf of Ms. Bowens in an attempt to obtain a status of the settlement funds.

154. Respondent failed to return Mr. Cramer's telephone call.

155. Between February 17, 2016 and February 28, 2017, the balance in Respondent's account 2855 was negative on several occasions.

156. Respondent failed to hold inviolate the funds that Ms. Bowens was entitled to receive.

157. The Pennsylvania Client Security Fund made payment to Edith Bowens of $22,333 on June 14, 2018, pursuant to Claim Number 2093-2-16. N.T. 104.

CHARGE VI

158. In or around October 2014, Tangala Allen retained Respondent to represent her for injuries she suffered in a September 29, 2014 motor vehicle accident.

159. On or about May 24, 2015, Ms. Allen retained the Law Offices of Michael T. van der Veen to represent her in regard to the September 29, 2014 motor vehicle accident.

160. By letter dated October 29, 2015, to Michael T. van der Veen, Esquire, Respondent:

a. wrote that Respondent had spoken with Ms. Allen's father, who informed Respondent that he wanted Mr. van der Veen to represent Ms. Allen in regard to her September 29, 2014 motor vehicle accident;

b. enclosed the contents of Respondent's file; and

c. confirmed that Respondent was entitled to a one-third referral fee on the fee that Mr. van der Veen would receive at the conclusion of the matter.

161. On or about July 21, 2016, Mr. van der Veen settled Ms. Allen's matter with USAA Insurance Company ("USAA") in the amount of $15,000.

162. On or about July 28, 2016, USAA mistakenly issued the settlement check to Respondent, which was payable to both Respondent and Ms. Allen.

163. Respondent forged Ms. Allen's signature without her permission.

164. On August 1, 2016, Respondent deposited the check into his account 2855.

165. On August 10, 2016, the balance in Respondent's account 2855 was $121.11.

166. On or about September 1, 2016, Respondent forwarded to Mr. van der Veen check no. 5158 in the amount of $11,836.67 drawn on Respondent's account 2855 and made payable to the "Law Offices of Michael T. van der Veen and Tangala Allen."

167. Respondent is required to maintain any funds belonging to his clients in a Trust Account, as defined by Pa. RPC 1.15(a)(11).

168. As referenced above, account 2855 was not a Trust account, as defined by Pa. RPC 1.15(a)(11).

169. On Respondent's 2016-2017 Pennsylvania Attorney's Annual Fee Form, Respondent had not identified account 2855 as an account that Respondent held client or third party funds subject to Pa. RPC 1.15.

170. Respondent also enclosed a proposed distribution with check no. 5158.

171. Thereafter, Mr. van der Veen attempted to contact Respondent via telephone to discuss the proposed distribution.

172. Respondent failed to return his telephone call.

173. On September 6, 2016, Respondent transferred $12,000 from account 2855 to Respondent's Wells Fargo account ending in 3180 ("account 3180").

174. On September 7, 2016, Mr. van der Veen deposited check no. 5158 into his escrow account.

175. On September 7, 2016, Respondent transferred $12,000 from his account 3180 to his account 2855.

176. On September 12, 2016, Mr. van der Veen made distribution of Ms. Allen's portion of the settlement proceeds to Ms. Allen.

177. On or about September 20, 2016, check no. 5158 was returned to Mr. van der Veen because of non-sufficient funds in Respondent's account.

178. Thereafter, Mr. van der Veen telephoned Respondent on numerous occasions.

179. Respondent failed to return any of Mr. van der Veen's telephone calls.

180. On September 26, 2016, Respondent deposited a check in the amount of $16,000 that Respondent had received from SEPTA on behalf of his client, Gina Hobbs, into account 2855.

181. On September 28, 2016, Respondent transferred $12,000 from account 2855 to account 3180, which left a balance of $232.28 in account 2855.

182. During the period between September 26, 2016 and September 28, 2016, Respondent did not make any disbursements on behalf of Ms. Hobbs.

183. On September 28, 2016, Respondent withdrew from account 3180 funds in the amount of $11,836.57.

184. In or around October 2016, Respondent had a certified check in the amount of $11,836.67 hand-delivered to Mr. van der Veen's office.

185. The certified check was deposited into Mr. van der Veen's account and cleared the account.

CHARGE VII

186. In or around 2014, Respondent was retained by JoAnn M. Malone to represent her for injuries she suffered in a May 11, 2014 accident.

187. In or around May 2016, Respondent settled Ms. Malone's matter in the amount of $20,000.

188. By letter dated May 5, 2016, to Ms. Malone, Respondent:

a. enclosed a Release for Ms. Malone to sign and return to Respondent;

b. stated that Respondent was preparing a bad faith/breach of contract claim against Erie Insurance Company;

c. requested that Ms. Malone make a list of all of her unpaid medicals bills; and

d. told her to telephone Respondent with any questions.

189. On May 11, 2016, Ms. Malone signed and returned the Release to Respondent.

190. Respondent received the signed Release.

191. Thereafter, Respondent failed to contact Ms. Malone to distribute her portion of settlement proceeds.

192. On July 5, 2016, Ms. Malone telephoned Respondent's office, at which time Respondent's secretary, Shawn, told Ms. Malone that:

a. Respondent was not available; and

b. Respondent would return Ms. Malone's telephone call.

193. Respondent failed to contact Ms. Malone.

194. On July 12, 2016, July 14, 2016, and July 18, 2016, Ms. Malone telephoned Respondent's office and either left a message on Respondent's voicemail or spoke with Shawn requesting that Respondent contact her regarding her portion of the settlement.

195. Respondent failed to return Ms. Malone's telephone calls.

196. By certified letter dated July 27, 2016, to Respondent, Ms. Malone: requested that:

a. Respondent forward $13,000 ($20,000 less 35% attorney's fee) upon receipt of her letter;

b. stated that for the past two months she telephoned Respondent but that Respondent failed to return her telephone calls; and

c. stated that if she did not receive the funds within five days from receipt of the letter, she would file a complaint with the Supreme Court of Pennsylvania.

197. On August 3, 2016, Respondent's agent signed for the certified letter.

198. On August 9, 2016, Shawn telephoned Ms. Malone, at which time Shawn told Ms. Malone that Respondent was sending a check for $13,000 by certified mail.

199. Thereafter, Ms. Malone did not receive a check.

200. On August 15, Ms. Malone telephoned Respondent's office and requested that Respondent contact her.

201. Respondent failed to return Ms. Malone's telephone call.

202. On August 24, 2016, Ms. Malone telephoned Respondent's office and requested the certified mail tracking number since she did not receive that certified mail containing the check.

203. In response, Respondent telephoned Ms. Malone that day and told her that the certified mail was not sent to her because he had the incorrect zip code on the certified mail and he would mail the check on August 25, 2016.

204. On August 26, 2016, Respondent forwarded to Ms. Malone:

a. a letter dated August 8, 2016;

b. check no. 5146, dated August 8, 2016 in the amount of $13,000 and made payable to Ms. Malone, which was drawn on Respondent's account 2855; and

c. a Statement of Distribution for her signature.

205. Respondent is required to maintain any funds belonging to Respondent's clients in a Trust Account, as defined by RPC 1.15(a)(11).

206. As noted previously, account 2855 is not a Trust account, as defined by RPC 1.15(a)(11).

207. On Respondent's 2016-2017 Pennsylvania Attorney's Annual Fee Form, Respondent had not identified account 2855 as an account in which Respondent held client or third party funds subject to RPC 1.15.

208. On August 29, 2016, Respondent telephoned Ms. Malone, at which time Respondent stated:

a. that Respondent's office had been burglarized;

b. that Respondent's business checks were stolen and being cashed at a check-cashing facility in Philadelphia;

c. requested that Ms. Malone hold the check that she had received from Respondent; and

d. told her that Respondent would get back in touch with her.

209. Thereafter, Respondent failed to contact Ms. Malone.

210. Respondent failed to forward to Ms. Malone a new check.

211. On September 9, 2016, Ms. Malone telephoned Respondent's office and left a message on Respondent's voicemail in which she stated that she would be depositing the check on September 8, 2016, and requested that Respondent contact her if there was a problem depositing the check.

212. Respondent failed to respond to Ms. Malone's message.

213. On September 8, 2016, Ms. Malone deposited the check.

214. On September 12, 2016, Ms. Malone, after checking her on-line banking statement, contacted her bank and learned that Respondent had placed a stop-payment on the check.

215. Ms. Malone was charged a $20 stop-payment fee.

216. On September 13, 2016, Ms. Malone telephoned Respondent's office and left a message on Respondent's voicemail regarding the stop-payment on the check.

217. Respondent failed to respond to Ms. Malone's message.

218. On September 19, 2016, Ms. Malone again left a voicemail message in which she informed Respondent that she wanted to come to Respondent's office to pick up the check.

219. Respondent failed to respond to Ms. Malone.

220. On September 20, 2016, Ms. Malone telephoned Respondent's the office and spoke with Shawn, who told Ms. Malone that Respondent "was working on getting another check."

221. At that time, Ms. Malone inquired as to whether she could come to office to pick-up the check since there were problems with the mail.

222. In response, Shawn told Ms. Malone that she:

a. did not have Respondent's schedule;

b. did not make Respondent's appointments, and therefore she could not make an appointment for Ms. Malone; and

c. would leave a message for Respondent to call Ms. Malone back in the afternoon.

223. Respondent failed to contact Ms. Malone.

224. Respondent failed to forward to Ms. Malone a new check.

225. On October 6, 2016, Ms. Malone visited Respondent's office building in an attempt to see Respondent regarding her check, at which time:

a. Ms. Malone was not permitted to go to Respondent's office without Respondent's authorization and;

b. the building guard tried without success to obtain Respondent's authorization by telephoning Respondent's office twice and calling Respondent's cell phone.

226. On October 17, 2016, Ms. Malone again telephoned Respondent and left a message requesting that Respondent contact her.

227. Respondent failed to respond.

228. Respondent failed to forward to Ms. Malone her portion of the settlement.

229. The Pennsylvania Client Security Fund made payment to JoAnn M. Malone of $13,000 on June 4, 2019, pursuant to Claim Number 2093-1-16. N.T. 104.

CHARGE VIII

230. Petitioner's DB-7 Letter for Respondent's Position and Request for Pa. R.P.C. 1.15(c) Required Records ("DB-7 Letter") dated November 29, 2017, was personally served on Respondent.

231. The DB-7 Letter requested pursuant to Pa.R.D.E. 221(g)(2) that Respondent produce within ten business days of receipt of the DB-7 Letter records that were required to be maintained under Pa. RPC 1.15(c)(1) and (c)(2).

232. On December 1, 2016, Respondent's counsel, James C. Schwartzman, Esquire, requested an extension to produce the requested records and to respond to the DB-7 Letter.

233. Respondent was required to provide the requested records on or before December 23, 2016, and submit a response to the DB-7 Letter on or before December 29, 2016.

234. Thereafter, Respondent failed to provide the requested records.

235. Respondent, without good cause, failed to respond to the DB-7 Letter, as required by Pa.R.D.E. 203(b)(7).

236. On January 6, 2017, after an inquiry by Disciplinary Counsel, Mr. Schwartzman advised Disciplinary Counsel that he no longer represented Respondent.

237. On January 11, 2017, Disciplinary Counsel filed a Petition for Issuance of a Rule to Show Cause why Respondent Should not be Temporarily Suspended ("RTSC").

238. A RTSC was issued on January 17, 2017, which was personally served on Respondent on January 20, 2017.

239. On January 26, 2017, Respondent filed a response to the RTSC.

240. After a February 14, 2017 hearing, Designated Board Member Andrew J. Trevelise filed a Report recommending that Respondent be placed on temporary suspension due to Respondent's failure to relinquish client records that he was required to maintain and produce under Pa.R.D.E. 221(g)(2) and D. Bd. Rules § 87.7(e).

241. By Order dated March 16, 2017, effective April 15, 2017, the Supreme Court of Pennsylvania temporarily suspended Respondent until further action by the Court and directed that Respondent "shall comply with the provisions of Pa.R.D.E. 217."

242. Thereafter, Respondent failed to timely comply with the provisions of Pa.R.D.E. 217.

CHARGE IX

243. On April 26, 2017, in the hallway outside Respondent's South Broad law office, Disciplinary Counsel informed Respondent that there had been reports that Respondent was continuing to practice law despite the March 16, 2017 Order.

244. At that time, Disciplinary Counsel informed Respondent that, *inter alia*: (a) he must cease and desist from the practice of law as per the March 16, 2017 Order; (b) he must send all of his clients notices advising them of his suspension; and (c) he must file a verified statement of compliance.

245. By letter dated April 27, 2017, which was served on Respondent, via certified mail, first class mail and hand delivery, Petitioner, *inter alia*: (a) confirmed the April 26, 2017 meeting with Respondent; (b) informed Respondent that if his appearance was entered in any case, he must immediately move in the court or agency for leave to withdraw; and (c) enclosed a copy of Pa.R.D.E. 217.

246. Respondent received Petitioner's April 27, 2017 letter.

247. On or about May 24, 2017, Petitioner became aware that after the effective date of the March 16, 2017 Order and the April 27, 2017 letter, Respondent had been in contact with his client, Frank Thorne, in regard to the distribution of settlement funds in the amount of $56,664.39 that were owed to Mr. Thorne.

248. In January 2017, an arbitration award in the amount of $99,795 was entered in favor of Mr. Thorne and against the City of Philadelphia.

249. In February 2017, the City of Philadelphia issued a check in the amount of $99,795 made payable to Respondent and Mr. Thorne.

250. On or about May 25, 2017, Respondent telephoned Mr. Thorne and requested that Mr. Thorne come to Respondent's office to pick up a check.

251. Upon Mr. Thorne's arrival at Respondent's office, Respondent gave Mr. Thorne a check in the amount of $56,664.39, which was post-dated May 29, 2017, drawn on a Republic Bank account number XXXXX34 and captioned "ROSEN AND ROSEN PC" {"Republic account").

252. Respondent requested that Mr. Thorne not deposit the check until Monday, May 29, 2017.

253. Respondent told Mr. Thorne that he had a new bank account and that the funds would not be available until Monday, May 29, 2017.

254. On May 30, 2017, Respondent's secretary telephoned Mr. Thorne and told Mr. Thorne:

a. not to deposit the check because the funds were not available; and

b. that Respondent would telephone Mr. Thorne in a few days.

255. Respondent failed to contact Mr. Thorne.

256. On June 9, 2017, Respondent transferred $52,537 into his Republic account.

257. Between June 9, 2017 and June 22, 2017, Respondent made disbursements for his own use from his Republic account in the amount of $52,252.67.

258. Respondent knowingly and intentionally misappropriated Mr. Thorne's funds.

259. After the disbursements, on June 22, 2017, the balance in Respondent's Republic account was $285.33.

260. The Pennsylvania Client Security Fund made payment to Frank Thorne of $58,340.39 on September 12, 2018, pursuant to Claim Number 2093-5-17. N.T. 105.

261. Respondent failed to advise Mr. Thorne that he had been placed on temporary suspension.

262. Mr. Thorne's testimony at the July 9, 2019 hearing corroborated the factual averments in the Petition for Discipline. N.T. 21-30.

263. In addition to the unauthorized practice of law as to Mr. Thorne after Respondent's suspension, during telephone calls with Taraneh Thompson, Esquire, on May 2, 2017 and May 18, 2017, Respondent attempted to negotiate a settlement on behalf of Randy Easley, in a Court of Common Pleas of Philadelphia civil matter.

264. On May 2, 2017, Respondent sent to Ms. Thompson discovery documents as well as Mr. Easley's response to interrogatories.

265. During the May 18, 2017 telephone call, Respondent and Ms. Thompson agreed to postpone a deposition, which had been scheduled for May 24, 2017.

266. Under Pa.R.D.E 217(j)(4), Respondent, as a formerly admitted attorney, was specifically prohibited from engaging in certain law-related activities, including the activity with respect to Mr. Thorne and the Easley matter.

267. On June 14, 2017, Petitioner filed a civil complaint in the Court of Common Pleas for Philadelphia County seeking, inter alia, that an order be entered enjoining Respondent from any further practice of law and unsupervised law-related activities.

268. On June 15, 2017, Petitioner filed a motion for a preliminary or special injunction.

269. The Court held a hearing on June 26, 2017 in regard to Petitioner's motion.

270. By Order dated June 26, 2017, the Court ordered, inter alia, that Respondent:

a. immediately cease and desist from the practice of law; comply with all provisions of Pa.R.D.E 217;

b. cease and desist from all client contact whether it be a former and/or present client; and

b. cease and desist from using the premises located at 123 S. Board Street, Suite 1030, Philadelphia, PA 19109, or any other location, to conduct any business or activity that constituted the practice of law.

271. The Court also ordered that nine of Respondent's bank accounts be frozen until further order of the Court.

272. On July 5, 2017, Respondent filed a Statement of Compliance with the Board.

CHARGE X

273. In October 2013, Edith Culbreath signed a Contingent Fee Agreement with Respondent in which Respondent would receive forty percent of any amount received from any settlement proceeds in regard to Ms. Culbreath's October 2013 accident.

274. In August 2015, Respondent received a check from State Farm Mutual Automobile Insurance Company in the amount of $22,500 and made payable to Edith Culbreath & Rosen & Rosen.

275. Ms. Culbreath was due approximately $13,500 from the settlement before expenses.

276. Respondent deposited the check into his account 2855.

277. Respondent did not forward to Ms. Culbreath her portion of the settlement.

278. Thereafter, Respondent's account 2855 fell below $13,500 on numerous occasions including a negative balance of $45.22 on October 13, 2016.

279. The Pennsylvania Client Security Fund made payment to Edith Culbreath of $22,500 on September 12, 2018, pursuant to Claim Number 2093-3-17. N.T. 105.

280. On September 26, 2016, Respondent deposited $16,000 into account 2855 from SEPTA on behalf of Gina Hobbs.

281 Thereafter, no funds were disbursed to Ms. Hobbs.

282. On January 19, 2017, there was a negative balance of $117.43 in account 2855.

283. The Pennsylvania Client Security Fund made payment to Gina Hobbs of $10,666.67 on December 19, 2018, pursuant to Claim Number 2093-6-17. N.T. 105.

284. On or about April 3, 2017, Respondent received a settlement check from State Farm Insurance Company in the amount of $7,560 on behalf of his client, James Nelson.

285. On May 11, 2017, Respondent issued check number 1001 in the amount of $4,716 to Mr. Nelson from his Republic account.

286. On May 5, 2017, the balance in Respondent's Republic account was $1.

287. On May 24, 2017, check number 1001 was returned due to insufficient funds.

288. Mr. Nelson had a claim pending with the Pennsylvania Client Security Fund as of the July 9, 2019 disciplinary hearing. N.T. 106.

ADDITIONAL FINDINGS

Payments on Claims Against Respondent

289. The Pennsylvania Client Security Fund made payment to Cornell Young of $95,200 on December 19, 2018, pursuant to Claim Number 2093-7-17. N.T. 105.

290. The Pennsylvania Client Security Fund made payment to Gladys Scott of $63,666.67 on December 19, 2018, pursuant to Claim Number 2093-8-17. N.T. 105.

291. The Pennsylvania Client Security Fund made payment to Susan Jacobsen of $2,400 on December 19, 2018, pursuant to Claim Number 2093-9-17. N.T. 105.

292. The Pennsylvania Client Security Fund made payment to Elaine P. Hodges of $20,829.56 on December 19, 2018, pursuant to Claim Number 2093-10-17. N.T. 105 and 106.

293. The Pennsylvania Client Security Fund made payment to Christina McClendon of $8,000 on December 19, 2018, pursuant to Claim Number 2093-11-17. N.T. 106.

294. The Pennsylvania Client Security Fund made payment to Denise Carter of $25,000 on March 7, 2019, pursuant to Claim Number 2093-12-17. N.T. 106.

295. The Pennsylvania Client Security Fund made payment to Alvin Dunlap, Jr. of $1,500 on March 7, 2019, pursuant to Claim Number 2093-13-17. N.T. 106.

Testimony of Diane Gottlieb

296. Diane Gottlieb, age 78, is Respondent's first cousin. (N.T. 31, 32-33)

297. Respondent is younger than Ms. Gottlieb and she has known him since he was an infant. N.T. 33; ODC-33.

298. Throughout the years, Respondent has provided a small number of legal services on behalf of Ms. Gottlieb to her satisfaction. N.T. 33-34

299. Ms. Gottlieb had no reason not to trust Respondent. N.T. 35.

300. After Ms. Gottlieb's brother, Martin Millmond, died in December 2010, she requested that Respondent assist her in the handling Mr. Millmond's estate. N.T. 35-36.

301. Ms. Gottlieb was Mr. Millmond's sole heir and executor of his estate. N.T. 36; ODC-33.

302. Respondent had previously handled the estate of Ms. Gottlieb's mother in 2004. ODC-33.

303. Within one week of Mr. Millmond's death, the estate's checking and savings accounts were opened at the Wells Fargo branch located in the lobby of Respondent's office building. N.T. 36-37; ODC-33.

304. At Respondent's direction, the checkbook was kept at Respondent's office. N.T. 36-37; ODC-33.

305. The majority of Mr. Millmond's estate consisted of three properties located in Philadelphia, PA. N.T. 37-40; ODC-33.

306. In January 2011, the first property sold for $431,595; after expenses the estate was entitled to receive $285,743.94. In December 2011, the second property sold for $149,000; after expenses, the estate was entitled to receive $50,447.94. In January 2013, the third property sold for $150,000; after expenses the estate was entitled to receive $88,788.94. N.T. 37-40; ODC-33.

307. Periodically, Ms. Gottlieb telephoned Respondent to inquire as to when the estate would be settled. N.T. 45-46; ODC-33.

308. In response to Ms. Gottlieb's inquiries, Respondent told her that he was either working on the matter or that the estate would be settled soon. N.T. 45-46; ODC-33.

309. In October 2014 and December 2014, Ms. Gottlieb received notices from the Pennsylvania Department of Revenue ("PDR") that an inheritance tax return had not been filed and that the inheritance tax in the amount of $51,188.70 was owed by the estate. N.T. 46; ODC-33

310. The estate's liability was later reduced to $33,333.60 after a valuation of one of the properties had been lowered. ODC-33.

311. To date, the inheritance tax has not been paid and penalties and interest are accruing. N.T. 72.

312. Throughout 2015, in response to Ms. Gottlieb's numerous inquiries as to why the inheritance tax had not been paid, Respondent repeatedly told her that:

a. sometime in January or February 2015, he had taken the inheritance tax return and a check in the amount of $51,188.70 to PDR's Philadelphia office;

b. the return was being reviewed by the Philadelphia office;

c. the return had been sent to Harrisburg; or

d. the check must have been lost.

N.T. 46-56; ODC-33.

313. Respondent sent Ms. Gottlieb a copy of a check that he had purportedly sent to PDR that had been signed but not dated. N.T. 46-56; ODC-33.

314. When Ms. Gottlieb inquired as to why the check was not dated, Respondent told her that the original check had been hand-stamped by PDR when he delivered it. N.T. 46-56; ODC-33.

315. In March 2016, Ms. Gottlieb received another tax liability notice from PDR for $37,870.97 at which time she telephoned Respondent. N.T. 46-56; ODC-33.

316. In response, Respondent:

a. initially told Ms. Gottlieb that he did not receive a copy of the notice;

b. a few days later he told her that he had just received the notice and that the $51,188.70 check had not been deducted from the estate bank account;

c. that PDR had lost the check;

d. stated that he or his secretary would deliver another check to PDR.

N.T. 46-56; ODC-33.

317. In June 2016, another tax liability notice was sent to Ms. Gottlieb, at which point she contacted Respondent. N.T. 46-56; ODC-33.

318. Respondent told Ms. Gottlieb that:

a. PDR must have "mislaid" the check; and

b. he would deliver a third to check to PDR.

N.T. 46-58; ODC-33.

319. Thereafter, Ms. Gottlieb contacted PDR and discovered that:

a. there was no record of PDR receiving the $51,188.70 check; and

b. Respondent had placed a stop-payment on both the second and third checks.

N.T. 46-56; ODC-33.

320. In December 2016, Ms. Gottlieb contacted at least three different Wells Fargo customer services departments at which time she discovered that Wells Fargo did not have any record of the estate bank accounts in their active system. N.T. 58-60; ODC-33.

321. Ms. Gottlieb learned that any account that had been closed for one year or more was placed in the archives and would not be accessible in Wells Fargo's active system. N.T. 58-60; ODC-33.

322. The estate bank accounts were closed in December 2015 or earlier. N.T. 58-60; ODC-33.

323. After closely examining the estate bank statements that Respondent had previously given to her, Ms. Gottlieb noticed inconsistencies of the fonts on the dates of the statements, uneven slants of some of the lines, and that the savings account number was listed at the top of the purported March 2016 checking account worksheet page. N.T. 58-66; ODC-33.

324. On January 4, 2017, Ms. Gottlieb telephoned Respondent and confronted him with the information that she had learned from Wells Fargo and PDR as well as what she discovered after she examined the bank statements. N.T. 58-66; ODC-33.

325. During that telephone conversation, Respondent:

a. admitted to Ms. Gottlieb that he had been lying to her;

b. stated that there were "people after him" and that he did not take telephone calls;

c. admitted that he had forged Ms. Gottlieb's signature on checks and had committed "bank fraud";

d. stated that he deserved to go to jail, but that he would never be able to endure it;

e. stated that he thought about committing suicide and making it look like an accident to ensure that his insurance would be protected, but he was afraid that he would not succeed and possibly end up an invalid;

f. stated that "I guess I didn't do a very good job" in regard to the doctoring of the estate bank statements; and

g. admitted after Ms. Gottlieb questioned him about whether there was any estate money left that "it's all gone."

N.T. 58-66; ODC-33.

326. Respondent misappropriated approximately $426,000 from the estate. N.T. 66; ODC-33.

327. Although Ms. Gottlieb never received any inheritance funds from the estate, she is still liable to Pennsylvania for the inheritance tax. N.T. 70-72.

328. When Ms. Gottlieb confronted Respondent about his misconduct, he did not apologize or show remorse, but was solely concerned about himself. N.T. 61-64.

329. Ms. Gottlieb submitted a claim to the Pennsylvania Client Security Fund; as of the date of the disciplinary hearing, no payment had been made. N.T. 106-107.

330. As of the July 9, 2019 hearing, the Pennsylvania Client Security Fund had paid a total of $300,954.63 for claims presented against Respondent. N.T. 107.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."):

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(a) – In pertinent part, a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;

6. 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;

7. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded;

8. RPC 1.15(c) – Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the lawyer-client 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 contingency fee matter). A lawyer shall maintain books and records for each Trust Account and for any other account;

9. RPC 1.15(e) – In pertinent part, 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;

10. RPC 1.15(l) – All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds;

11. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so;

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

13. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice;

14. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under

Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney's position, shall be grounds for discipline;

15. Pa.R.D.E. 217(e) – Within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement and serve a copy on Disciplinary Counsel;

16. Pa.R.D.E. 217(j)(4)(i) – In pertinent part, a formerly admitted attorney is specifically prohibited from performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm, organization or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of the disbarment or suspension;

17. Pa.R.D.E. 217(j)(4)(ii) – A formerly admitted attorney is specifically prohibited from performing any law-related services from an office that is not staffed by a supervising attorney on a full-time basis;

18. Pa.R.D.E 217 (j)(4)(iii) – A formerly admitted attorney is specifically prohibited from performing any law-related services for any client who in the past was represented by the formerly admitted attorney;

19. Pa.R.D.E. 217(j)(4)(iv) – A formerly admitted attorney is specifically prohibited from representing himself or herself as a lawyer or person of similar status;

20. Pa.R.D.E. 217(j)(v) – A formerly admitted attorney is specifically prohibited from having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3);

21. Pa.R.D.E. 217(j)(4)(k) – A formerly admitted attorney is specifically prohibited from receiving, disbursing or otherwise handling client funds.

22. Pa.R.D.E. 219(d)(1)(iii) – In pertinent part, an attorney is required to list the name of each Financial Institution within or outside this Commonwealth in which the attorney, from May 1 of the previous year to the date of the filing of the annual fee form, held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct;

23. Pa.R.D.E. 221(g) – The records required to be maintained by RPC 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.

IV. DISCUSSION

In this matter, the Board considers the recommendation to disbar Respondent. Petitioner brought multiple serious charges against Respondent contained in a ten-count Petition for Discipline. The nature of this matter arises from allegations of Respondent's ethical violations in seven client matters, some involving multiple clients; one charge related to Respondent's failure to produce records that he was required to maintain; one charge related to Respondent's unauthorized practice of law following his

temporary suspension; and a tenth charge related to Respondent's misappropriation of client funds in additional matters.

The Committee found that Respondent "is dishonest, untrustworthy and unfit to practice law. Respondent misappropriated funds from multiple clients, engaged in misrepresentations and deceit to cover up his thefts..." Hearing Committee Report 11/15/2019 at 58. The Committee unanimously recommended that Respondent be disbarred from the practice of law, retroactive to the date the Court temporarily suspended him from practice. Respondent did not appear at the disciplinary hearing and did not file exceptions to the Committee's conclusions and recommendation. Upon review of the record, we conclude that Respondent committed professional misconduct and we recommend that Respondent be disbarred.

Petitioner has the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730, 732 (Pa. 1981). Respondent was personally served with the Petition for Discipline, but failed to respond. Pursuant to Rule 208(b)(3), Pa.R.D.E., factual allegations in the Petition are deemed admitted if the answer is not timely filed. Upon review of the record, we conclude that Petitioner met its burden through the factual allegations, witness testimony, and exhibits. The facts of this matter are set forth below.

In 2010, Kimberly Jessup and her husband, William Martin, retained Respondent to represent them in connection with their claim for personal injuries against three defendants. In June 2015, Respondent negotiated a settlement on behalf of his clients against two of the defendants in the amounts of $30,000 and $12,500. Thereafter, Respondent failed to forward promptly to his clients their portion of the settlement. In

December 2015, Respondent presented checks, which were not drawn on his IOLTA account, to his clients in the amounts of $17,061.78 and $6, 267.60.

In December 2015, Ms. Jessup and Mr. Martin also signed settlement releases in regard to the third defendant in the amounts of $11,500 and $5,000. After Respondent received the settlement checks, he endorsed his clients' names on the backs of the settlement checks without their permission. Again, Respondent failed to forward promptly to his clients their portion of the settlement proceeds. In February 2016, Respondent presented Ms. Jessup with a non-IOLTA account check in the amount of $10,725, which also represented Mr. Martin's portion of the settlement. Ms. Jessup deposited the check into her bank account, but it was returned for insufficient funds. In March 2016, after being contacted by Ms. Jessup, Respondent deposited $2,500 into Ms. Jessup's bank account. In May 2016, Respondent deposited the balance of the funds owed to Ms. Jessup and Mr. Martin into Ms. Jessup's bank account.

Kenesha J. Kincy retained Respondent to represent her for personal injuries in a motor vehicle accident involving SEPTA. In October 2015, Respondent settled the case on behalf of his client in the amount of $4,000. Thereafter, SEPTA issued a check in the amount of $4,000 to Respondent. In April 2016, Respondent forwarded to his client a check drawn on a non-IOLTA account in the amount of $1,987.44, which cleared Respondent's account in May 2017. Between October 2015 and April 2016, there were several occasions where the balance in that account fell below the entrusted amount.

In September 2013, Ada Garcia retained Respondent to assist her in collecting funds she was entitled to receive as a beneficiary of the estate of her late son. In September 2014, Respondent received the estate funds via three separate checks in the total amount of $156,518.34. Thereafter, Respondent forged or caused to be forged

Ms. Garcia's signature on all of the checks and deposited the checks into the estate's bank account.

Between September 30, 2014 and August 31, 2015, Respondent misappropriated funds from the estate account by issuing checks made payable to himself by either signing the estate checks himself or by forging and/or causing to be forged Ms. Garcia's signature. On August 31, 2015, the end-of-the-month balance for the estate account was $68.68. By November 18, 2015, the funds in the Garcia estate account had been completely depleted.

Rachel Reser retained Respondent to represent her in her claim for personal injuries. In or around January 2016, Respondent settled Ms. Reser's claim in the amount of $12,500 and deposited the settlement check into his non-IOLTA bank account. Respondent failed to forward promptly to Ms. Reser her portion of the settlement proceeds until March 2016. At that time, Respondent requested that Ms. Reser not cash the check right away, but "give it a couple of days" before cashing the check. Thereafter, Ms. Reser deposited into her bank account the check, which was returned for non-sufficient funds and caused Ms. Reser's account to be overdrawn. Respondent failed to forward a new check to his client.

In or around 2014, Edith Bowens retained Respondent to represent her for injuries she suffered in an accident. In February 2016, Respondent settled Ms. Bowens' matter in the amount of $35,000 and Ms. Bowens signed a release and settlement of claim form. Respondent received a check in the amount of $35,000 from the insurance company and deposited the check into his non-IOLTA bank account. On March 9, 2016, Respondent distributed $1,000 to Ms. Bowens, but thereafter, he failed to forward to his client the remaining settlement proceeds that she was entitled to receive. On several

occasions between February 17, 2016 and February 28, 2017, Respondent's bank account had negative balances.

In October 2014, Tangala Allen retained Respondent to represent her for injuries she suffered in a motor vehicle accident. In May 2015, Ms. Allen retained the Law Offices of Michael T. van der Veen to represent her in regard to the accident. Respondent was entitled to a referral fee of one-third of any settlement. In July 2016, Mr. van der Veen settled Ms. Allen's matter in the amount of $15,000. Thereafter, the insurance company mistakenly forwarded the settlement check to Respondent, who signed Ms. Allen's name to the check without her permission and negotiated the check. In September 2016, Respondent forwarded to Mr. van der Veen a check in the amount of $11,836.67 from his non-IOLTA bank account. Mr. van der Veen deposited the check into his escrow account; however, the check was returned for insufficient funds. After repeated telephone calls from Mr. van der Veen, in or around October 2016, Respondent had a certified check hand-delivered to Mr. van der Veen's office.

In 2014, JoAnn Malone retained Respondent to represent her for injuries she suffered in an accident. In May 2016, Respondent settled Ms. Malone's matter in the amount of $20,000, and on May 11, 2016, Ms. Malone signed and returned the settlement release to Respondent. Thereafter, Respondent failed to contact Ms. Malone in order to distribute to her the portion of the settlement proceeds she was entitled to receive. Three months later, in August 2016, after Ms. Malone's repeated telephone calls, Respondent forwarded to her a check in the amount of $13,000 from his non-IOLTA bank account. However, Respondent told Ms. Malone that his office had been burglarized and that his business checks were stolen and being cashed at a check-cashing facility in Philadelphia, and requested that she hold the check and that he would contact her later. Respondent

failed to contact Ms. Malone and failed to forward to Ms. Malone a new check. In September 2016, Ms. Malone deposited the original check into her bank account. She learned that without informing her, Respondent had placed a stop-payment on the check. Respondent failed to replace the check and failed to respond to Ms. Malone's numerous inquiries.

In addition to the above matters, Respondent knowingly and intentionally misappropriated fiduciary funds in four other client matters. In the Culbreath, Hobbs, Nelson, and Thorne matters, Respondent failed to forward to his clients the portion of the funds they were entitled to receive

Through a DB-7 letter request, Petitioner directed Respondent to produce records he was required to maintain under RPC 1.15(c)(1) and (2). Respondent failed to produce the required records, and as a result, by Order dated March 16, 2017, effective April 15, 2017, the Court placed Respondent on temporary suspension until further action by the Court. Following his temporary suspension, Respondent engaged in the unauthorized practice of law in two matters, which resulted in the Philadelphia Court of Common Pleas ordering Respondent on June 26, 2017 to cease and desist from the practice of law and to comply with Rule 217, Pa.R.D.E. Thereafter, Respondent filed a compliance statement with the Board on July 5, 2017.

As set forth above, Respondent's egregious misconduct included many breaches of his fiduciary duties to clients. Between December 30, 2015 and May 2016, there were numerous occasions where Respondent's account fell below the amount that he was required to hold inviolate for Ms. Jessup and Mr. Martin, which included a negative balance. On several occasions between October 26, 2015 and April 28, 2016, the balance in Respondent's account fell below the amount he was required to hold on behalf

of Ms. Kincy. In the Garcia matter, the funds in the amount of $156,518.43 that Respondent received in September 2014 and was required to hold inviolate on behalf of the estate were completely depleted by November 18, 2015. In the Bowens matter, which settled for $35,000 in February 2016, the balance in Respondent's account was negative on several occasions between February 17, 2016 and February 28, 2017. Respondent engaged in a pattern of sending clients and third parties bad checks, which were returned for insufficient funds. He placed a stop-payment on a check and never forwarded a replacement check to the client. Most egregiously, in numerous matters, Respondent intentionally and knowingly converted client funds.

Respondent's flagrant misconduct is significantly exacerbated by certain circumstances of record in this matter. Respondent's conduct towards his cousin, Ms. Gottlieb, is particularly disturbing. Ms. Gottlieb testified credibly at the disciplinary hearing that she trusted Respondent to assist her in finalizing her brother's estate, which was worth $400,000. Respondent abused this trust by lying to Ms. Gottlieb for years and leading her to believe that he was working on the estate and that he had paid the inheritance tax. The ultimate outrage was Respondent's misappropriation of the estate's funds. Ms. Gottlieb's trust in Respondent due to their familial tie was sorely misplaced and did not shield her from his unethical behavior. Respondent treated Ms. Gottlieb as he did his other clients - with callous disregard and shocking dishonesty.

The victims of Respondent's misconduct turned to the Pennsylvania Lawyers Fund for Client Security for reimbursement of their stolen monies. At the time of the disciplinary hearing, the Fund had paid more than $300,000 in claims to make good Respondent's wrongdoing, with more claims pending. Respondent on his own has made no reimbursement or acknowledged his wrongdoing. His failure to participate in these

disciplinary proceedings exemplifies his lack of concern for his actions, and constitutes an aggravating factor. ***Office of Disciplinary Counsel v. Michael Christopher Gallo***, 121 DB 2017 (D. Bd. Rpt. 8/10/2018) (S. Ct. Order 11/2/2018). Respondent's sole mitigating factor is his lack of prior discipline since his admission in 1980. From that time until approximately 2014, Respondent practiced without a blemish on his record. Unfortunately, Respondent did not appear at the disciplinary hearing to provide any insight or explanation for the abdication of his professional standards during the time period of his misconduct.

Upon review of the facts and circumstances of this matter, and having concluded that Petitioner met its burden to prove Respondent's professional misconduct, this matter is ripe for the determination of discipline.

"The primary purpose of our system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system." ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986). In determining the appropriate discipline, the Board reviews precedent for the purpose of examining "the respondent's conduct against other similar transgressions." ***In re Anonymous No. 56 DB 1994 (Linda Gertrude Roback)***, 29 Pa. D. & C. 4th 398, 406 (1995). The Board is required to view each matter on the totality of the facts and circumstances, considering any aggravating and mitigating circumstances. ***In re Anonymous No. 35 DB 1988 (Melvin V. Richardson)***, 8 Pa. D. & C. 4th 344, 355 (1990).

Although there is no per se rule for discipline in this Commonwealth, disbarment is appropriate where an attorney knowingly and intentionally misappropriates fiduciary funds and engages in a pattern of deceit. *See*, ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186 (Pa. 1983); ***Office of Disciplinary Counsel v. John***

Keller, 506 A.2d 872 (Pa. 1986); Office ***of Disciplinary Counsel v. Robert Monsour***, 701 A.2d 556 (Pa. 1997); ***Office of Disciplinary Counsel v. Peter James Quigley***, 161 A.3d 800 (Pa. 2017).

The Court has disbarred attorneys for misappropriation and dishonesty in multiple client matters. In ***Office of Disciplinary Counsel v. Joseph P. Mirarchi***, 56 DB 2016 (D. Bd. Rpt. 5/21/2018) (S. Ct. Order 3/18/2019), Mirarchi, who had no prior discipline, knowingly and intentionally misappropriated funds belonging to five clients. Mirarchi also engaged in dishonesty, the unauthorized practice of law while on administrative suspension, neglect of client matters, and failure to respond to Office of Disciplinary Counsel's DB-7 request. In recommending disbarment, the Board found that Mirarchi was a danger to the public and to the profession.

Like Mirarchi, the instant Respondent knowingly and intentionally misappropriated funds from multiple clients, was dishonest, engaged in the unauthorized practice of law, and failed to respond to Petitioner's DB-7 letter, poses a danger to the public.

In ***Office of Disciplinary Counsel v. Willie Lee Nattiel, Jr.***, No. 125 DB 2012 (D. Bd. Rpt. 10/28/2014) (S. Ct. Order 1/29/2015), Nattiel, who had a history of private discipline, misappropriated clients' funds, engaged in repeated misrepresentations and deceit, and neglected and abandoned his clients in multiple client matters. Nattiel failed to answer the Petition for Discipline and failed to participate in the disciplinary proceedings. The Board concluded that disbarment was necessary as the evidence demonstrated Nattiel was dishonest, untrustworthy and unfit to practice law.

Like Nattiel, Respondent's misappropriations, dishonesty, and failure to participate in the disciplinary proceedings indicate that disbarment is necessary to protect the public.

The Court has ordered disbarment in matters that involve an attorney's egregious misconduct in a single client matter. In ***Office of Disciplinary Counsel v. Thomas Louie***, 108 DB 2002 (D. Bd. Rpt. 10/10/2003) (S. Ct. Order 12/29/2003), during a three year period of time, Louie engaged in neglect, deception, and misappropriation of fiduciary funds in the amount of $108,000 relative to one client. Louie, who had no prior discipline, failed to file an answer to the Petition for Discipline and failed to appear at the disciplinary hearing. Louie did not make any restitution to his client, leaving the Client Security Fund to pay the client's claim.

Similar to Louie, Respondent engaged in a pattern of misconduct that spanned years, and involved misappropriation and dishonest conduct, and, more egregiously than Louie, involved many more clients.

In the face of Respondent's cumulative acts of egregious and appalling misconduct and his disrespect toward the disciplinary authorities and the legal profession, we conclude that disbarment is warranted. Respondent failed his clients and his profession in a manner that breached his duty to conduct himself with high standards and poses a threat to any future client and the public. Disbarment reflects the seriousness of the misconduct and necessitate a showing of fitness to resume the practice of law, thereby safeguarding the interests of the public and the bar.

We further recommend, as did the Committee, that the disbarment be made retroactive to the date the Court placed Respondent on temporary suspension in this matter "until further action." Respondent has been on temporary suspension for three

years. Following his placement on temporary suspension in March 2017, twenty-one months passed before the Petition for Discipline was filed containing the instant charges. We bring this issue to the Court's attention as this matter has been pending for a substantial amount of time and it may appear somewhat punitive for Respondent to be temporarily suspended for three years in a matter, followed by disbarment in the same matter. However, we readily acknowledge that retroactivity of a sanction to the date of the temporary suspension is a matter of the Court's grace and within its sole discretion. Regardless of the starting point of the disbarment, as a disbarred attorney, Respondent will not be permitted to resume practice until reinstated by the Court, and based on the severity of Respondent's misconduct, that time is far in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Harris Roy Rosen, be Disbarred from the practice of law in this Commonwealth, retroactive to the date of the temporary suspension imposed by the Court on March 16, 2017.

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: /s/ James C. Haggerty
James C. Haggerty, Vice-Chair

Date: 4/7/20