

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 859, Disciplinary Docket No. 3  
Petitioner : Supreme Court  
: :  
: :  
v. : No. 81 DB 2003 – Disciplinary Board  
: :  
: Attorney Registration No. 44161  
LAWRENCE JAMES CASELLA, :  
Respondent : (Allegheny County)

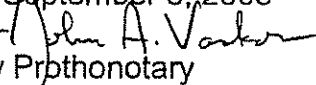
ORDER

PER CURIAM:

AND NOW, this 8<sup>th</sup> day of September, 2005, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated July 22, 2005, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Lawrence James Casella is suspended on consent from the Bar of this Commonwealth for a period of one year retroactive to September 22, 2003. and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy John A. Vaskov  
As of: September 8, 2005  
Attest:   
Deputy Prothonotary  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

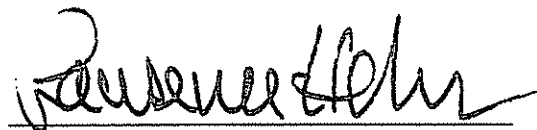
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RECOMMENDATION OF THREE-MEMBER PANEL  
OF THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Laurence H. Brown, C. Eugene McLaughlin and Robert E. J. Curran, has reviewed the joint Petition in Support of Discipline on Consent filed in the above-captioned matter on July 13, 2005.

The Panel approves the Petition consenting to a One Year Suspension retroactive to September 22, 2003, the date Respondent was placed on temporary suspension pursuant to Rule 208(f), Pa.R.D.E. and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

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



Laurence H. Brown, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: July 22, 2005



THE DISCIPLINARY BOARD  
OF THE  
SUPREME COURT OF PENNSYLVANIA

First Floor  
Two Lemoyne Drive  
Lemoyne, PA 17043-1226  
(717) 731-7073

July 22, 2005

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 859, Disciplinary Docket No. 3 Supreme Court
	:	
v.	:	No. 81 DB 2003 – Disciplinary Board
	:	
LAWRENCE JAMES CASELLA Respondent	:	Attorney Registration No. 53162 (Allegheny County)

**Expenses Incurred in the Investigation and Prosecution  
of the above-captioned proceedings\***

09-13-2000	Transcripts from Hearing held 8-18-2000	\$ 175.00
06-28-2004	Invoice from PNC Bank	60.01
12-13-2004	Appearance of Court Reporter at Prehearing held 12-10-2004	150.00
02-14-2005	Transcripts from Hearing held 1-14-2005	408.00
02-14-2005	Transcripts from Hearing held 1-27-2005	<u>590.00</u>
<b>TOTAL AMOUNT DUE</b>		<b><u>\$ 1,383.01</u></b>

**Make Check Payable to PA Disciplinary Board**  
**PAYMENT IS REQUIRED UPON RECEIPT OF ORDER**

\* Submitted pursuant to Rules 208(g), 215(i) of the Pa.R.D.E. and §93.111 of the Disciplinary Board Rules.

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 859, Disciplinary Docket  
: No. 3 – Supreme Court  
Petitioner :  
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: Board  
: :  
LAWRENCE JAMES CASELLA, : Attorney Registration No. 44161  
: :  
Respondent : (Allegheny County)

JOINT PETITION IN SUPPORT OF DISCIPLINE  
ON CONSENT PURSUANT TO 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, Lawrence James Casella, by Craig Evan Simpson, file this Joint Petition in Support of Discipline on Consent Pursuant to Rule 215(d), Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E.). The parties respectfully represent that:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary

**FILED**

**JUL 13 2005**

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

proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Lawrence James Casella, was admitted to practice law in the Commonwealth of Pennsylvania on November 6, 1985. His attorney registration address is 42 Shady Drive W, Pittsburgh, Allegheny County, Pennsylvania 15228, and, therefore, he is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Petitioner filed a Petition for Discipline against Respondent with the Secretary of the Disciplinary Board on September 15, 2004. On October 29, 2004 (pursuant to an extension of time to file an Answer to the Petition), Respondent filed his Answer to the Petition for Discipline.

4. The matter was referred to a Hearing Committee composed of David Allen Regoli, Matthew R. Wimer and Thomas S. Talarico. A prehearing conference was held on December 10, 2004. The disciplinary hearing commenced on January 14, 2005, and was concluded on January 27, 2005.

5. After hearing, the Committee announced its determination that there was sufficient evidence of a *prima facie* violation of at least one of the Rules of Professional Conduct alleged in the Petition for Discipline. The matter then proceeded to a hearing on the appropriate level of discipline, if any, to be imposed for Respondent's misconduct.

6. On June 14, 2005, the Hearing Committee filed with the Office of the Secretary of the Disciplinary Board its "Report of Hearing Committee," consisting, in pertinent part, of the Hearing Committee's Findings of Fact 1 through 58 (with appropriate references to the record), its Conclusions of Law that Respondent had violated Rules of Professional Conduct 1.15(d), 1.15(e), 8.[1](a) and 8.4(c), the Committee's discussion of the case and its recommendation that Respondent be suspended from the practice of law for a period of one year, retroactive to September 22, 2003, the date which the Supreme Court of Pennsylvania placed Respondent on temporary suspension pursuant to Rule 208(f), Pa.R.D.E., until further definitive action by the Court.

7. Although each party has the right to take exception to the Report of Hearing Committee, for purposes of this Petition the parties agree to accept the report and recommendation of the Hearing Committee.

8. The parties hereby incorporate by reference the "Report of Hearing Committee" (attached as Appendix A) for consideration of the specific facts to which Respondent admits, the specific Rules of Professional Conduct Respondent violated and the specific recommendation for discipline to which the parties consent.

9. This Petition is accompanied by the requisite Affidavit stating that Respondent consents to the recommended discipline and that:

- The consent is freely and voluntarily rendered; Respondent is not being subject to coercion or duress; Respondent is fully aware of

the implications of submitting the consent; and that Respondent has consulted counsel in connection with his decision to consent to discipline;

- Respondent is aware that there is presently pending a proceeding involving allegations that Respondent is guilty of misconduct as set forth in the Hearing Committee Report;
- Respondent acknowledges that the material facts set forth in the Hearing Committee Report are true; and,
- Respondent consents because Respondent cannot successfully defend against the charges prosecuted in the pending proceeding.

WHEREFORE, Petitioner and Respondent respectfully request that:

(a) Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., a three-member panel of the Disciplinary Board review and approve the above Joint Petition in Support of Discipline on Consent Pursuant to Rule 215(d), and file its recommendation with the Supreme Court of Pennsylvania and recommend that the Supreme Court:

(i) Suspend Respondent from the practice of law for a period of one year; and,


(ii) Make the suspension retroactive to September 22, 2003, the date which the Supreme Court ordered Respondent's temporary suspension from the practice of law pursuant to Rule 208(f), Pa.R.D.E.;

(b) Pursuant to Rule 215(i), the three-member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition of the granting of the Petition and that all expenses be paid by Respondent before the imposition of discipline pursuant to Rule 215(g), Pa.R.D.E.

Respectfully submitted,

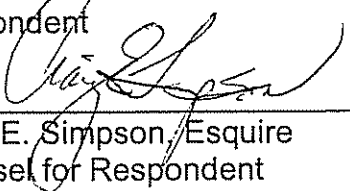
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

By   
Cory John Cifelli  
Disciplinary Counsel

and

Lawrence James Casella  
Respondent

By   
Craig E. Simpson, Esquire  
Counsel for Respondent



BEFORE THE DISCIPLINARY BOARD OF THE  
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OFFICE OF DISCIPLINARY COUNSEL, : No. 859, Disciplinary Docket  
: No. 3 – Supreme Court  
Petitioner :  
v. : No. 81 DB 2003 - Disciplinary  
: Board  
: :  
LAWRENCE JAMES CASELLA, : Attorney Registration No. 44161  
: :  
Respondent : (Allegheny County)

VERIFICATION

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

7/13/05

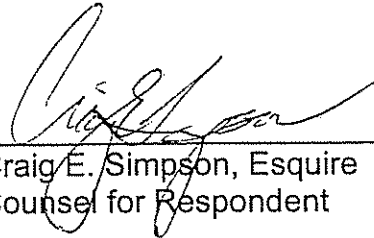
Date



Cory John Cirelli  
Disciplinary Counsel

7/13/05

Date



Craig E. Simpson, Esquire  
Counsel for Respondent

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Respondent : (Allegheny County)

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

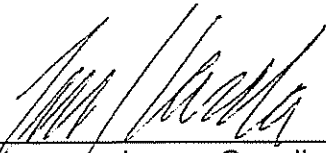
Respondent, Lawrence James Casella, hereby states that he consents to the imposition of a suspension from the practice of law for a period of one year, to be made retroactive to September 22, 2003, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent, in the Joint Petition in Support of Discipline on Consent pursuant to Rule 215(d), Pennsylvania Rules of Disciplinary Enforcement, and further states that:

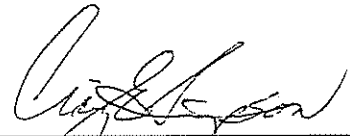
1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and, he has consulted with counsel in connection with the decision to consent to discipline;

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

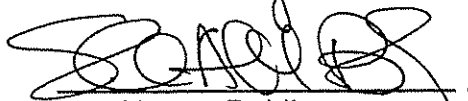
3. He acknowledges that the material facts set forth in the Joint Petition are true; and,

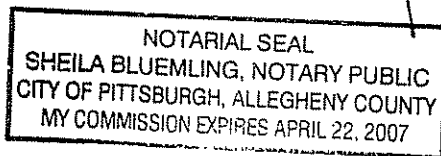
4. He consents because he knows that if the charges pending against him continue to be prosecuted in the pending proceeding he could not successfully defend against them.

  
\_\_\_\_\_  
Lawrence James Casella  
Respondent

  
\_\_\_\_\_  
Craig E. Simpson, Esquire  
Counsel for Respondent

Sworn to and subscribed  
before me this 13<sup>th</sup>  
day of July, 2005.

  
\_\_\_\_\_  
Notary Public



BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, )	No.: 81DB 2003
)	
Petitioner, )	
)	Attorney Registration No.: 44161
v. )	
)	
LAWRENCE JAMES CASELLA, )	Allegheny County
)	
Respondent. )	

REPORT OF HEARING COMMITTEE

I. STATEMENT OF THE CASE

On September 15, 2004, Office of Disciplinary counsel filed a petition for discipline against the respondent, Lawrence James Casella, alleging that he had failed to comply with IOLTA rules, that he had misrepresented his IOLTA status on his annual attorney registration forms and that he had failed to comply with the subpoena for the production of financial records concerning his escrow accounts. This conduct was alleged to have violated rules of professional conduct 1.15(d), 1.15(e), 8.1(a) and 8.4(c). Respondent accepted service of the petition on September 22, 2004. On October 29, 2004 (pursuant to an extension of time to file an answer), respondent filed his answer to the petition for discipline.

The matter was referred to a hearing committee consisting of David Allen Regoli, Matthew R. Wimer and Thomas S. Talarico. A pre-hearing conference was held on December 10, 2004. Hearings took place on January 14 and January 27, 2005.

During the hearing phase, the committee made a determination that there was sufficient evidence of a prima facie violation of at least one of the rules of professional conduct alleged in

the petition for discipline. The matter then proceeded to the level of discipline, if any, to be imposed.

## **II. RULINGS ON ADMISSION OF EVIDENCE**

There were no disputes concerning admission of evidence.

## **III. RULINGS ON PROCEDURAL MATTERS**

There were no disputes concerning procedural matters.

## **IV. FINDINGS OF FACT**

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Suite 3710, One Oxford Centre, Pittsburgh, PA, 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, Lawrence James Casella, Esquire, was born in 1956 and was admitted to the practice of law in the Commonwealth of Pennsylvania on November 6, 1985. His attorney registration address is 42 Shady Drive W., Pittsburgh, Allegheny County, PA 15228. (N.T. II 98-99).

3. By order of the Supreme Court of Pennsylvania dated September 22, 2003, Respondent was placed on temporary suspension pursuant to Rule 208(f) Pa. R.D.E. until further definitive action of the Court. (PE 36).

4. On Respondent's 1997-1998 PA attorney's annual fee form, dated June 4, 1997, Lawrence Casella documented that he maintained two escrow accounts at PNC Bank, account number 2207718 (hereinafter "7718") and account number 600919735 (hereinafter "9735"). He

checked the box IOLTA exempt as to both accounts and wrote in his own writing above the box the words "Applying For". He signed the certification and signature portion of the fee form, thereby stating that he was familiar with and in compliance with the rules of professional conduct concerning the handling of funds and other property of clients and the maintenance of IOLTA accounts. He furthermore certified that the information provided in the annual fee form was true and that if any statements were false, that he could be subject to discipline. (PE 1).

5. Accounts 7718 and 9735 were opened as non-interest bearing accounts and were not converted into IOLTA accounts.

6. On July 14, 1997, respondent wrote to the IOLTA Board requesting an exemption from the requirement of Rule of Professional Conduct 1.15(d) in regard to the PNC accounts. With respect to account 9735, he requested an exemption because the average collected balance was below the threshold amount for obtaining an exemption on the basis of the account balance. With respect to account 7718, he sought an exemption based on other compelling and necessitous factors pursuant to Rule of Professional Conduct 1.15(e)(ii). (PE II). The compelling and necessitous factors outlined with respect to account 7718 were based on respondent's views that requiring him to comply was both immoral and unconstitutional.

7. The compelling and necessitous factors detailed by respondent included:

- a. The IOLTA Board is a private entity taking money from private individuals and giving it to private entities;
- b. The IOLTA Board has a direct financial interest in the outcome of exemptions and, therefore, the IOLTA Board is not the proper forum for the consideration of exemptions;
- c. Pennsylvania Supreme Court in its capacity as disciplinary role maker has no jurisdiction over his client's property;
- d. IOLTA seizures are impermissible takings;

- e. The disclosure of information concerning his firm's bank accounts violates his rights against warrantless searches and seizures;
- f. The taking of his client's money violates his clients' first amendment rights because they are obligated to financially support private enterprises with the views of which they may not agree;
- g. That the taking of the money had the odor of being a secret tax;
- h. The IOLTA scheme requires him to breach his fiduciary obligations to his clients;
- i. Compliance with the IOLTA scheme requires him to act immorally; and
- j. His clients have no options but to participate in the program.

(PE 2).

8. In correspondence dated July 31, 1997, Gerald A. McHugh, Jr., Esquire, chairman of the IOLTA Board, replied to respondent's correspondence of July 14, 1997. Among other things, he noted that the request would be voted upon by the full board. (PE 3).

9. In correspondence dated September 29, 1997, Alfred J. Azen, executive director of the IOLTA Board, wrote to the respondent and his then law partner specifically granting the request for the exemption as to account number 9735 because the average collected balance was below the Board's established threshold of \$3,500. The request for an exemption on account number 7718 was denied. Mr. Azen did not directly address the compelling and necessitous factors outlined in respondent's July 14, 1997 letter, but simply stated that the Board determined that its standard exemption criteria applied to his situation. (PE 4).

10. Respondent wrote a letter to the IOLTA Board dated October 28, 1997 requesting reconsideration of the denial of the firm's request for exemption as to account number 7718. He, again, requested that the exemption be based upon compelling and necessitous factors as previously outlined. (PE 10).

11. In correspondence dated November 12, 1997, Alfred J. Azen, executive director of the IOLTA Board, advised respondent that the information he has submitted to the Board does not justify an exemption. (PE 6).

12. On December 2, 1997, respondent called Mr. Azen and questioned the legal status of the IOLTA Board. (N.T. II, 11). He then sent a letter to Mr. Azen on December 4, 1997 confirming the phone conference. (PE 7).

13. Respondent testified that he was awaiting further communication from the Board concerning his IOLTA exemption request. (N.T. II, 12).

14. From November 12, 1997 until the distribution of the 1998-1999 PA. attorney's annual fee form, the IOLTA Board did not communicate any further with respondent concerning his request for an exemption to PNC account 7718. Thus, the status of that account remained a denial of the exemption as set forth in the IOLTA Board's November 12, 1997 letter.

15. Respondent's 1998-1999 PA attorney's annual fee form contained pre-printed notations that account numbers 9735 and 7718 were IOLTA exempt. Respondent signed that form on June 14, 1998. With respect to this form, respondent made no notation concerning whether account number 7718 was indeed exempt. (PE 8).

16. In correspondence dated November 29, 1998, Alfred J. Azen, advised respondent that he indicated on his 1998-1999 annual fee form that accounts 9735 and 7718 were IOLTA exempt and that the boards records did not indicate an exemption having been issued for those accounts. (PE 9).

17. By letter dated December 14, 1998, respondent and his partner wrote to the IOLTA Board. Concerning account 9735, they indicated that they were expressly granted an exemption by the Board as the account falls under the monetary threshold. Concerning account



7718, they reminded the Board of the prior correspondence concerning their request for an exemption. This letter reiterated some of the positions set forth in prior correspondence and added additional factors in support of the exemption request. Finally, the letter pointed out that the license application for 1998-1999 showed both of the accounts as being exempt. (PE 10).

18. In correspondence dated January 11, 1999, Alfred J. Azen of the IOLTA Board wrote to respondent and his partner. He noted that the reasons supporting the exemption request were essentially the same as previously stated and that the prior request for an exemption had been denied. He furthermore stated that the IOLTA Board does not deem the reasons as compelling and necessitous factors. He advised respondent to comply with the rules immediately. (PE 11).

19. On January 18, 1999, respondent wrote to the IOLTA Board advising that his prior firm ceased doing business as of January 1, 1999. He indicated that he had opened an escrow account as a sole proprietor and will be sending in a request for an exemption. (PE 12).

20. In correspondence dated May 11, 1999, respondent wrote to the IOLTA Board noting that he had opened an escrow account at PNC Bank number 1005851853 (hereinafter "1853"). He requested an exemption from compliance with IOLTA regulations based upon compelling and necessitous factors. The letter emphasized that compliance with the regulations was deeply offensive to his religious beliefs. (PE 13).

21. Respondent's 1999-2000 PA attorney's annual fee form did not list any bank accounts. Respondent filled in information concerning account number 1853 and also added a new account, 0150274313 (hereinafter "4313"). He checked the box IOLTA exempt as to both accounts and to the right of that wrote in "Exemption Requested". He signed this form on May 24, 1999. In fact, this was the first time respondent had made a request for an exemption as to

account number 4313. He was correct that his request for an exemption on account 1853 was pending. (PE 14).

22. In correspondence dated July 16, 1999, the IOLTA Board wrote to respondent advising him that he had claimed an IOLTA exemption for account numbers 4313 and 1853 and that the records did not indicate that an exemption had been issued for those accounts. (PE 15).

23. On August 12, 1999, respondent wrote to Mr. Azen at the IOLTA Board indicating that in May of that year he had sent an exemption request for account 1853. He also advised that account number 4313 had not yet been opened at that time. He, again, requested that the Board grant exemptions for the accounts and reiterated his religious beliefs and the partiality of the Board in deciding exemption requests. (PE 16).

24. In correspondence dated September 24, 1999, Mr. Azen of the IOLTA Board wrote to respondent indicating that the Board's records did not indicate an exemption as to accounts 4313 and 1853. His correspondence made no mention of the exemption request in respondent's August 12, 1999 letter. (PE 17).

25. In correspondence dated September 27, 1999, respondent wrote to Mr. Azen at the IOLTA Board stating that this is the fourth time he has responded to the request for information concerning the exemption request for account numbers 4313 and 1853. He attached a copy of his August 12, 1999 correspondence and stated that he would not send any more. (PE 18).

26. On October 15, 1999, Mr. Azen wrote to respondent advising that his request for an exemption was considered by the Board when he was previously associated with attorney Earhart. He indicated that his objections to the IOLTA program had been noted but cannot serve as a basis for granting an exemption. (PE 19).

27. In correspondence dated October 20, 1999, respondent wrote to Mr. Azen at the IOLTA Board advising that the Board had sufficient information to decide his request for an exemption under the other necessitous and compelling factors standard. (PE 20).

28. In correspondence dated November 2, 1999, Mr. Azen wrote to respondent denying his request for an exemption.

29. Respondent wrote to Mr. Azen at the IOLTA Board on November 18, 1999 claiming that he was not provided with due process of law with respect to the decision. He concluded by saying "until such time as the Board complies with due process, I consider my request for exemption to be a pending matter." (PE 21).

30. On December 9, 1999, Mr. Azen sent a certified letter to the respondent telling him that the exemption request is "not pending and was unambiguously denied by me in my correspondence to you dated November 2, 1999." (PE 23).

31. On January 7, 2000, Mr. Casella wrote to Mr. Azen at the IOLTA Board noting that he had raised numerous serious issues and that the Board had not specifically responded to those issues. He furthermore quibbled with the phrase that the exemption request was "unambiguously denied by me." Mr. Casella stated that the exemption has to be granted or denied by the Board, not by Mr. Azen. He concluded by saying that he could not provide any more information in support of his request for an exemption because he has been denied a right to a hearing. (PE 24).

32. On February 7, 2000, Mr. Azen again sent certified mail to respondent in which he stated "the Committee has determined that your request for an exemption has been properly denied and that you are not in compliance with RPC 1.15." He advised that the Board would

refer this matter to disciplinary counsel if respondent did not provide evidence of his compliance by February 21, 2000. (PE 25).

33. Office of Disciplinary Counsel sent a Form DB-7 letter of allegations on April 4, 2000. The letter set forth in twenty-four separate paragraphs the history of Mr. Casella's dealings with the IOLTA Board with specific reference to documents exchanged between respondent and the Board. (RE F).

34. Mr. Casella did not respond to the Form DB-7 letter. (N.T. 2, 46).

35. On June 15, 2000, petitioner caused the issuance of subpoenas *duces tecum* to PNC Bank and Iron and Glass Bank for the records for the four bank accounts identified on respondent's annual fee forms for the years covering 1997 through 2000. (Including PNC account number 9735 for which an exemption had been granted). Petitioner also issued a subpoena to respondent for the same bank records plus checkbooks, checkbook stubs, client escrow account ledgers and other documents. (PE 27, 28, 29, 30).

36. On or about June 23, 2000, respondent filed a motion to quash subpoena. The motion stated, inter-alia, that the Board had stated that respondent's request for an exemption has been denied, but that respondent "disputed then and does dispute now that his exemption request was denied." Respondent furthermore stated, "Alfred Azen represented to movant that the Board had denied the movant's exemption request. This was as false then as it is now." He furthermore stated that his practice consisted of primarily real estate closings and that compliance with the subpoena would be unreasonably oppressive and burdensome. He alleged that the Office of Disciplinary counsel was continuing the religious persecution of the IOLTA Board by collaborating with the IOLTA Board. (RE A).

37. By letter dated June 26, 2000, Iron and Glass Bank reported to petitioner that no records existed. (PE 31).

38. ODC filed a response to the motion to quash subpoena and new matter on July 11, 2000. It was ODC's position that the only issue was the validity of the subpoenas and that Mr. Casella had not challenged their validity. ODC furthermore stated that the current investigation included not only whether Mr. Casella had been granted an exemption, but also his failure to remit interest on funds he held for others and his alleged misrepresentation on his annual attorney registration forms. (RE B).

39. By letter dated August 10, 2000, PNC Bank reported to ODC that it could not locate records for account number 7718 or 9735. (PE 32).

40. Argument on respondent's motion to quash subpoena was held before a designated hearing committee member pursuant to Rule 213(d)(1), Pa. R.D.E. (RE C).

41. The designated hearing committee member filed his determination on the motion to quash subpoena on March 19, 2001. The hearing committee member signed an order denying the motion to quash subpoena, the motion to compel production of documents and the motion to disqualify counsel. (PE 33).

42. On April 15, 2003, the Disciplinary Board of the Supreme Court of Pennsylvania entered an order requiring respondent to comply with the order of March 19, 2001 by responding within fifteen days to the subpoena *duces tecum*. (PE 34).

43. Respondent failed to comply with the Disciplinary Board's order. (PE 35).

44. The Disciplinary Board of the Supreme Court of Pennsylvania filed a petition for issuance of rule to show cause why respondent should not be suspended for failure to comply with the subpoena. (PE 35).

45. By order and rule to show cause dated June 11, 2003, the Disciplinary Board issued a rule upon respondent to show cause why he should not be placed on temporary suspension. (PE 35).

46. On July 23, 2003, the Disciplinary Board recommended to the Supreme Court that it should enter an order placing respondent on temporary suspension. (PE 53).

47. On September 22, 2003, the Supreme Court entered an order placing respondent on temporary suspension. (PE 36).

48. Respondent remains on suspension to this day.

49. The PA attorney's annual fee form in the financial data section requests information concerning the maintenance of funds held on behalf of a client or a third party subject to Rule 1.15 of the Pa Rules of Professional Conduct. The form contains three blocks to check. The first is IOLTA, the second is IOLTA exempt and the third is client-third party interest bearing. On respondent's 1997-1998 annual fee form, he checked the box IOLTA exempt, but above that wrote in the words "applying for". (PE I).

50. Petitioner introduced evidence from Jean Myers, operations manager at the IOLTA Board. She testified that extraneous remarks, such as the notation made by respondent that he was "applying for" IOLTA exemption, are not inputted into the IOLTA Board's data base. (NT 1, 40-41).

51. The only thing that was inputted was respondent's notation that his accounts were IOLTA exempt. (NT 1, 41).

52. The Pa attorney's annual fee form did not provide a section for an attorney who was applying for IOLTA exempt status to note that on his form.

53. There was no way for respondent to know that the IOLTA Board data base would take his "applying for" IOLTA exempt status as a statement on his behalf that his accounts were, in fact, IOLTA exempt.

54. Upon receipt of the IOLTA Board's September 29, 1997 correspondence (PE 4), respondent was aware that his request for an exemption as to account 7718 was denied. Respondent acknowledged that fact in his correspondence of October 28, 1997. (PE 5).

55. When respondent executed his 1998-1999 PA attorney's annual fee form on June 14, 1998, the form contained the pre-printed notation that account number 7718 was IOLTA exempt. Respondent testified that he thought that the IOLTA Board must have granted him exempt status despite the fact that all prior correspondence that he had received from the IOLTA Board showed that his request for an exemption for account 7718 was denied. Respondent's testimony is not credible and the committee finds that he knew that he was in violation of IOLTA rules at the time he executed the June 14, 1998 attorney's annual fee form. This is corroborated by respondent's December 14, 1998 correspondence to the Board. (PE 10).

56. Respondent entered into a new practice as a sole proprietor as of January 1, 1999. He opened a PNC account number 1853 for which he requested an exemption in May 1999. He subsequently opened the Iron and Glass Bank account number 4313 for which he requested an exemption. These requests were sent to the IOLTA Board on August 12, 1999. In correspondence dated November 2, 1999, the Board denied the exemption request. (PE 21). These two bank accounts remained in violation of IOLTA rules from that point forward.

57. Respondent did not cooperate with petitioner's investigation of his bank accounts and has not complied with the order to produce those documents.

58. Respondent has no prior history of discipline.

## V. CONCLUSIONS OF LAW

By his conduct as set forth above, respondent violated the following rules of professional conduct:

1. RPC 1.15(d)- Notwithstanding paragraphs (a), (b) and (c), and except as provided below in paragraph (e), a lawyer shall place all funds of a client or of a third person in an interest bearing account. All qualified funds received by the lawyer shall be placed in an Interest On Lawyer Trust Account in a depository institution approved by the Supreme Court of Pennsylvania. All other funds of a client or a third person received by the lawyer shall be placed in an interest bearing account for the benefit of the client or third person or in an other investment vehicle specifically agreed upon by the lawyer and the client or third party.

2. 1.15(e) - A lawyer shall be exempt from the provisions of paragraphs (d) only upon exemption requested and granted by the IOLTA Board.

3. 8.8(a) – A lawyer is subject to discipline if the lawyer has made a materially false statement in, or if the lawyer has deliberately failed to disclose a material fact requested in connection with, the lawyer’s application for admission to the Bar or any disciplinary matter.

4. 8.4(c)- It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

## VI. DISCUSSION

Petitioner has proved by clear and convincing evidence that respondent knowingly violated RPC 1.15(d) and 1.15(e) by failing to comply with IOLTA rules. Respondent had genuinely held beliefs that IOLTA rules were violative of constitutional principles and respondent’s own deeply held moral beliefs. Respondent recognized that if he wanted to practice



law, he would have to show compliance. Since his belief system would not allow him to comply, he engaged in a technical battle with the IOLTA Board concerning his exemption requests and the Board's denial of those requests. Included in this battle with the Board was the respondent certifying that his attorney annual fee form information was correct (1998-1999) when he knew that his request for exemption as to one of the accounts had been denied. This constitutes a violation of Rule 8.4(c). See *Office of Disciplinary Counsel v. Anonymous Attorney "A"*, 714 A.2d 402 (Pa. 1998) establishing that the mental state necessary to show a violation of this rule is greater than negligence and is met where the misrepresentation is knowingly made or where it is made with reckless ignorance of the truth or falsity thereof.

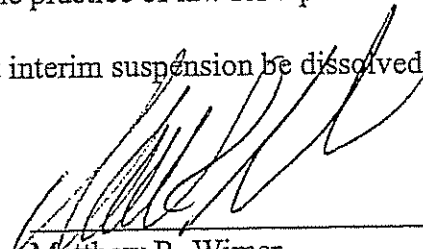
After the IOLTA Board made a referral to petitioner for an investigation of the respondent's refusal to comply with IOLTA rules, a subpoena was issued to obtain financial information. Respondent filed a motion to quash, which was denied, and respondent failed to respond to the subpoena after the denial. This led to the filing of a petition for rule to show cause why he should not be temporarily suspended, and ultimately resulted in respondent's temporary suspension from the practice of law. The order suspending him was dated September 22, 2003. Respondent's failure to comply with the subpoena constitutes a violation of RPC 8.1(a). *Office of Disciplinary Council v. William M. Gross*, 57 DB 2000, 58 DB 2000.

## **VII. RECOMMENDATION**

Office of Disciplinary Council argues that respondent's conduct shows a clear disdain for Supreme Court rules. It extends beyond non-compliance with the IOLTA rules to a misrepresentation on the 1998-1999 annual fee form and the failure to comply with a subpoena for bank records. ODC proposes a suspension of a year and a day.

Respondent argues that he has not violated any of the rules with which he has been charged. Alternatively, he argues that he should only be subjected to an informal admonition and that the committee should recommend the dissolution of the interim suspension against him.

Mr. Casella testified that if he were permitted to return to the practice of law, he would ensure that he was in compliance with IOLTA rules by either making sure that the amount of money in the trust accounts was below the level required for IOLTA status or by setting up separate interest bearing accounts where the amount of money exceeds the level of an IOLTA exemption. (NT 2, 106-109). Respondent's fight with the IOLTA Board was based upon deeply held religious convictions, much to respondent's own detriment. The respondent did not comply with IOLTA regulations and he did not comply with an order compelling him to produce bank records. This non-compliance, in the view of the Committee, was not based upon a disdain for Supreme Court rules, but rather on his belief that moral principles would not allow him to comply with those rules. He has not taken money from any client and he has promised that if he is reinstated to the practice of law that he will be IOLTA compliant. The Committee believes that respondent has been suspended from the practice of law for a long enough period of time for his violation of the aforesaid rules of professional misconduct. The Committee, therefore, recommends that respondent be suspended from the practice of law for a period of one year retroactive to September 22, 2003 and that current interim suspension be dissolved.

  
\_\_\_\_\_  
Matthew R. Wimer  
Member

  
\_\_\_\_\_  
David Allen Regoli  
Member

A handwritten signature in cursive script, appearing to read "Thomas S. Talarice". The signature is written in black ink and is positioned above a horizontal line.

Thomas S. Talarice

Member