

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2825 Disciplinary Docket No. 3
: :
Petitioner : No. 101 DB 2020
v. : :
: Attorney Registration No. 37250
MICHAEL ERIC GREENBERG, : :
: (Bucks County)
Respondent :

ORDER

PER CURIAM

AND NOW, this 23rd day of November 2021, upon consideration of the Report and Recommendations of the Disciplinary Board, Michael Eric Greenberg is suspended from the Bar of this Commonwealth for a period of two years. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 11/23/2021

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 101 DB 2020
	:	
v.	:	Attorney Registration No. 37250
	:	
MICHAEL ERIC GREENBERG, Respondent	:	(Bucks County)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on July 2, 2020, Petitioner, Office of Disciplinary Counsel, charged Respondent, Michael Eric Greenberg, with violations of Pennsylvania Rules of Professional Conduct 1.1, 1.3, 1.15(b), 1.15(c)(4), 1.15(d), 1.15(e), 1.15(h), 3.2, 8.4(c) and 8.4(d). Respondent filed an Answer to Petition on August 14, 2020.

Following a prehearing conference on September 25, 2020, a District II Hearing Committee (“Committee”) held a disciplinary hearing on October 27, 2020.

Petitioner offered into evidence, without objection, exhibits ODC-1 through ODC-39 and offered the testimony of two witnesses. Respondent testified on his own behalf and presented no other witnesses. Respondent offered into evidence, without objection, exhibits R-1 through R-76.

Petitioner filed a post-hearing brief on November 24, 2020 and requested that the Committee recommend to the Board that Respondent be suspended for a period of three years. Respondent filed a post-hearing brief on January 11, 2021 and requested that the Committee recommend to the Board that Respondent be suspended for a period of one year or less.

By Report filed on March 24, 2021, the Committee concluded that Respondent violated the Pennsylvania Rules of Professional Conduct. A majority of the Committee recommended a one year suspension. The dissenting member recommended a ten month period of suspension.

Petitioner filed a Brief on Exceptions on April 7, 2021 and requested that the Board reject the Committee's recommendation and instead recommend to the Court that Respondent be suspended for a period of three years. On April 27, 2021, Respondent filed an Answer to Office of Disciplinary Counsel's Brief on Exceptions and requested that the Board adopt the Committee's findings and recommendations.

The Board adjudicated this matter at the meeting on July 23, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106 is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any 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.

2. Respondent is Michael Eric Greenberg, born in 1958 and admitted to practice law in the Commonwealth in 1982. He maintains his office at 1503 Brookfield Road, Yardley, Bucks County, Pennsylvania 19067. Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Pennsylvania.

3. Respondent has no record of prior discipline.

4. The parties entered into Stipulations. ODC-1.

5. From December 2011 through September 2015, Respondent worked with Kane & Silverman, P.C. (hereinafter "Kane & Silverman"), initially as an independent contractor and then a salaried employee. Stipulations ("Stip.") 4; N.T. 62-63.

6. Respondent's employment at Kane & Silverman was terminated in September 2015. N.T. 64-65.

7. Prior to working with Kane & Silverman, Respondent was employed by Fox Greenberg, P.C. (hereinafter "Fox Greenberg") until 2009, and thereafter,

from the beginning of 2010 to December 2011, was a sole practitioner. Stip. 5; N.T. 73.

Ivorie Lawson

8. In September of 2007, Ivorie Lawson and her minor children were involved in a motor vehicle accident. Stip. 6.

9. On September 17, 2007, Ms. Lawson, on her own behalf and on behalf of her children, entered into Contingent Fee Agreements with Fox Greenberg, pursuant to which Fox Greenberg would pursue a personal injury action on their behalves in exchange for "33 and 1/3% of whatever gross sum may be recovered from said claim whether by suit, settlement, or in any other manner." Stip. 7.

10. On September 11, 2009, Respondent filed, on behalf of Ms. Lawson and her minor children, a Praecipe for Writ of Summons in the Court of Common Pleas of Philadelphia County against Daisy Nealy, Robert Parker and Emma Parker. Stip. 8.

11. On February 14, 2010, Respondent filed a Complaint. Stip. 9.

12. On or before August 30, 2012, Respondent settled Ms. Lawson's matter for twenty-three thousand dollars (\$23,000.00). Fifteen thousand dollars (\$15,000.00) of this settlement was allocated to Ms. Lawson. The remaining eight thousand dollars (\$8,000.00) was allocated to her children. Stip. 10.

13. By letter to Respondent dated September 4, 2012, attorney Kelly Czajka, who represented Daisy Nealy said:

This will confirm that the above-captioned matter has been amicably resolved for \$15,000.00 to Plaintiff Ivorie Lawson; \$3,000.00 to [S. E.] *[sic]*,

a minor; \$3,000 to [S. E.], a minor; \$1,000.00 to [J. *[sic]* L.], a minor; and \$1,000.00 to [J.*[sic]* L.], a minor in full and final settlement of this matter inclusive of any outstanding medical bills. Enclosed please find a Release for each of your clients' signatures. Kindly have same executed and returned to this office promptly so that we may forward to you the settlement draft(s). Please also complete the enclosed W9 form and return that with your clients' releases. We understand that a Minor's Compromise will have to be filed on behalf of [S. E.], [S. E.], [J. *[sic]* L.] and [J. *[sic]* L.] and that you will likely hold each of their Releases until the settlement is approved by the Court. Please keep us updated on the progress of the Minor's Compromises. Also we would appreciate your executing and returning the enclosed Order to Settle, Discontinue and End, which we will hold until we have forwarded you the settlement draft(s). Stip. 11.

14. Ms. Czajka's September 4, 2012 letter was mailed to Respondent at Kane & Silverman's address. Stip. 12.

15. Respondent failed to respond to Ms. Czajka's September 4, 2012 letter. Stip. 13.

16. By letter to Respondent dated October 10, 2012, Ms. Czajka requested that Respondent "[p]lease advise as to the status of the executed closing documents and the various minor's compromises which will need to be filed." Stip. 14.

17. Ms. Czajka's October 10, 2012 letter was mailed to Respondent at Kane & Silverman's address. Stip. 15.

18. Respondent failed to respond to Ms. Czajka's October 10, 2012 letter. Stip. 16.

19. By letter to Respondent dated November 2, 2012, Ms. Czajka again requested that Respondent "[p]lease advise as to the status of the executed closing documents and the various minor's compromises which will need to be filed." Stip. 17.

20. Ms. Czajka's November 2, 2012 letter was mailed to Respondent at Kane & Silverman's address. Stip. 18.

21. Respondent failed to respond to Ms. Czajka's November 2, 2012 letter. Stip. 19.

22. By letter to Respondent dated July 15, 2013, Ms. Czajka again requested that Respondent "[p]lease advise as to the status of the executed closing documents and the various minor's compromises which will need to be filed." Stip. 20.

23. Ms. Czajka's July 15, 2013 letter was mailed to Respondent at Kane & Silverman's address. Stip. 21.

24. Respondent failed to respond to Ms. Czajka's July 15, 2013 letter. Stip. 22.

25. By letter to Respondent dated September 4, 2013, Ms. Czajka again requested that Respondent "[p]lease advise as to the status of the executed closing documents and the various minor's compromises which will need to be filed." Stip. 23.

26. Ms. Czajka's September 4, 2013 letter was mailed to Respondent at Kane & Silverman's address. Stip. 24.

27. Respondent failed to respond to Ms. Czajka's September 4, 2013 letter. Stip. 25.

28. By letter to Respondent dated November 14, 2013, Ms. Czajka again requested that Respondent "[p]lease advise as to the status of the executed closing documents and the various minor's compromises which will need to be filed." Stip. 26.

29. Ms. Czajka's November 14, 2013 letter was mailed to Respondent at Kane & Silverman's address. Stip. 27.

30. Respondent failed to respond to Ms. Czajka's November 14, 2013 letter. Stip. 28.

31. By letter to Respondent dated December 11, 2013, Ms. Czajka said:

This matter has come up on diary, again. We settled these cases in September of 2012! Please advise as to the status of the executed closing documents and the various minor's compromises which will need to be filed. I have written to you on many, many occasions without a single response. Thank you for your prompt attention to this matter. Stip. 29.

32. Ms. Czajka's December 11, 2013 letter was mailed to Respondent at Kane & Silverman's address. Stip. 30.

33. Respondent failed to respond to Ms. Czajka's December 11, 2013 letter. Stip. 31.

34. By letter to Respondent dated February 6, 2014, Ms. Czajka said:

This matter has come up on diary, again. **We settled these cases in September of 2012!** Please advise as to the status of the executed closing documents and the various minor's compromises which will need to be filed. I have written to you on many, many occasions without a single response. I have not heard from you or anyone at your firm since these cases have settled. **I deserve the courtesy of a response.**

(emphasis in original). Stip. 32.

35. Ms. Czajka's February 6, 2014 letter was mailed to Respondent at Kane & Silverman's address. Stip. 33.

36. Respondent failed to respond to Ms. Czajka's February 6, 2014 letter. Stip. 34.

37. On July 2, 2015, attorney Jay Edelstein, Ms. Czajka's associate, filed a Motion to Enforce Settlement. Stip. 35.

38. On July 27, 2015, Respondent filed an Answer to the Motion to Enforce Settlement asserting, *inter alia*, that “[c]ounsel is in the process of verifying that there is no additional underinsured motorist coverage that is applicable to this claim and is seeking consent to settle from the primary underinsured motorist carrier, Geico.”

a. This answer listed Respondent’s mailing address, phone number and email address as those associated with Kane & Silverman. Stip. 36.

39. By Order dated August 12, 2015, the Court granted the Motion to Enforce Settlement. Stip. 37.

40. On September 10, 2015, Respondent filed a Petition for Leave to Settle or Compromise Minor’s Action.

a. This petition listed Respondent’s mailing address, phone number and email address as those associated with Kane & Silverman. Stip. 38.

41. By Order dated October 21, 2015, the petition was taken under advisement for sixty (60) days in order to permit Respondent to submit a letter from the Department of Human Services indicating the amount of any outstanding claims it had against the settlement proceeds and separate proposed orders for each minor incorporating the amount of any outstanding claims by the Department of Human Services. Stip. 39.

42. By Order dated December 22, 2015, Respondent was given an additional sixty (60) days to comply with this Order. Stip. 40.

43. On January 4, 2016, Safe Auto Insurance Company issued a check in the amount of fifteen thousand dollars (\$15,000.00) made payable to "Ivorie Lawson Individually and his/her attorney Michael E Green [sic]." Stip. 41.

44. By Order dated February 29, 2016, Respondent was again given an additional sixty (60) days to comply with the Order. Stip. 42.

45. Respondent failed to submit the documentation he was directed to submit in the Order. Stip. 43.

46. By Order dated May 26, 2016, the Petition for Leave to Settle or Compromise Minor's Action was dismissed without prejudice. Stip. 44.

47. On June 9, 2016, Respondent deposited the check set forth in paragraph 43 above into an IOLTA he maintained at Firstrust Bank, account number ending in 9317 (hereinafter the "IOLTA"). Stip. 45.

48. Respondent failed to inform Kane & Silverman of his receipt of these funds. Stip. 46.

49. Respondent failed to distribute any portion of these funds to Kane & Silverman. Stip. 47.

50. By letter to Respondent dated February 8, 2019, Disciplinary Counsel requested Respondent's Statement of Position regarding, *inter alia*, his failure to distribute any funds to Ms. Lawson or her children.

a. This letter directed Respondent to produce copies of the records associated with any account in which he deposited funds belonging to Ms. Lawson, including periodic statements, cancelled checks, deposited items, check registers, separately maintained

ledgers, individual client ledgers and monthly reconciliations. Stip. 48.

51. By letter to Disciplinary Counsel dated April 18, 2019, Respondent, through counsel, provided his Statement of Position. Stip. 49.

52. Respondent claimed in his April 18, 2019 Statement of Position that, *inter alia*:

a. he had not distributed any portion of the settlement funds to Ms. Lawson because he had not yet resolved liens held by the Department of Public Welfare; and

b. he was “notifying the clients that they should hire other counsel to determine whether any liens exist and to complete the process of settling and distributing their funds.” Stip. 50.

53. Respondent produced with his April 18, 2019 Statement of Position copies of periodic statements associated with the IOLTA for the period of January 2016 through February 2019. Stip. 51.

54. Respondent advised that the one hundred seventy-two thousand three hundred twenty-two dollars and nineteen cents (\$172,322.19) he was maintaining in the IOLTA represented “primarily some medical liens that have not yet been fully resolved and fees that must be divided by [his] prior firm, Kane & Silverman, and [him].” Stip. 52.

55. Respondent failed to produce with his April 18, 2019 Statement of Position copies of any deposited items, cancelled checks, check registers, separately maintained ledgers or monthly reconciliations. Stip. 53.

56. By letter to Disciplinary Counsel dated May 6, 2019, Respondent, through counsel, produced a copy of the check register associated with the IOLTA. Stip. 54.

57. In or about August 2019, Respondent relinquished his case file for Ms. Lawson's matter and released the settlement funds to successor counsel. Stip. 55.

58. Ms. Lawson testified at the disciplinary hearing that successor counsel distributed the funds to her within a month of taking over the case. N.T. 17.

Denise Pesta

59. On May 27, 1998, Respondent deposited into the IOLTA a settlement check he received on behalf of Denise Pesta in the amount of two hundred seventy-three thousand five hundred dollars (\$273,500.00). Stip. 56.

60. Respondent distributed two hundred seventy-two thousand three hundred and thirty dollars (\$272,330.00) of these funds.

a. Respondent distributed ninety-nine thousand six hundred eighty-seven dollars and thirty cents (\$99,687.30) to Ms. Pesta. Stip. 57.

61. Respondent has failed to distribute the remaining one thousand one hundred and seventy dollars (\$1,170.00). Stip. 58.

Irene Visco

62. On April 28, 1999, Respondent deposited into the IOLTA a settlement check he received on behalf of Irene Visco in the amount of two hundred and fifty thousand dollars (\$250,000.00). Stip. 59.

63. Respondent distributed two hundred twenty-nine thousand four hundred one dollars and nineteen cents (\$229,401.19) of these funds.

a. Respondent distributed one hundred forty-five thousand eight hundred ninety-two dollars and fifty-one cents (\$145,892.51) to Ms. Visco. Stip. 60.

64. Respondent has failed to distribute the remaining twenty thousand five hundred ninety-eight dollars and eighty-one cents (\$20,598.81). Stip. 61.

George Fox, Jr.

65. On March 9, 2006, Respondent deposited into the IOLTA a settlement check he received on behalf of George Fox, Jr., in the amount of three thousand dollars (\$3,000.00). Stip. 62.

66. Respondent failed to distribute any portion of these funds. Stip. 63.

Etta Feldman

67. On December 6, 2007, Respondent deposited into the IOLTA a settlement check he received on behalf of Etta Feldman in the amount of one hundred thousand dollars (\$100,000.00). Stip. 64.

68. Respondent distributed seventy-eight thousand one hundred eighty-three dollars and sixty-nine cents (\$78,183.69) of these funds.

a. Respondent distributed forty thousand seven hundred one dollars and eighty-two cents (\$40,701.82) to Ms. Feldman. Stip. 65.

69. Respondent failed to distribute the remaining twenty-one thousand eight hundred sixteen dollars and thirty-one cents (\$21,816.31). Stip. 66.

Judy Ward

70. On December 4, 2009, Respondent deposited into the IOLTA a settlement check he received on behalf of Judy Ward in the amount of two hundred and seventy thousand dollars (\$270,000.00). Stip. 67.

71. Respondent distributed two hundred and sixty-eight thousand dollars (\$268,000.00) of these funds.

a. Respondent distributed one hundred sixty-seven thousand fifteen dollars and ninety-seven cents (\$167,015.97) to Ms. Ward. Stip. 68.

72. Respondent has failed to distribute the remaining two thousand dollars (\$2,000.00). Stip. 69.

Luigi Cusano and Angelina Cusano

73. On November 15, 2007, Fox Greenberg entered into Contingent Fee Agreements with Luigi Cusano and Angelina Cusano, pursuant to which Fox Greenberg would pursue a personal injury action on their behalves in exchange for "33 and 1/3% of whatever gross sum may be recovered from said claim whether by suit, settlement, or in any other manner." Stip. 70.

74. On November 4, 2011, Respondent filed, on behalf of Luigi Cusano and Angelina Cusano, a Praecipe for Writ of Summons against State Farm Mutual Automobile Insurance Company in the Court of Common Pleas of Philadelphia County. Stip. 71.

75. On February 8, 2012, Respondent filed a Complaint on behalf of the Cusanos. Stip. 72.

76. In or about September 2013, Respondent settled the Cusano matter for fifty thousand dollars (\$50,000.00).

a. Respondent also settled related claims on behalf of Maria Penta and Joseph Penta for two thousand dollars (\$2,000.00) and on behalf of Maria Baron Cusano and Frank Baron for two thousand dollars (\$2,000.00). Stip. 73.

77. By letter to Respondent dated September 17, 2013, attorney Jordan D. Koko, who represented State Farm Mutual Automobile Insurance Company:

- a. confirmed this settlement; and
- b. advised, *inter alia*, that “[t]his settlement is premised on the representation by Plaintiffs that there are no Medicare/Medicaid liens, Pennsylvania Department of Public Welfare liens, health insurer liens, or any other liens being asserted against the proceeds of this settlement.” Stip. 74.

78. Luigi Cusano’s portion of the settlement proceeds was subject to a Medicare lien in the amount of one thousand eight hundred twenty-five dollars and seventeen cents (\$1,825.17). Stip. 75.

79. Angelina Cusano’s portion of the settlement proceeds was subject to a Medicare lien in the amount of three thousand seven hundred sixty-seven dollars and ninety-seven cents (\$3,767.97). Stip. 76.

80. In July 2014, Respondent received fifty-four thousand dollars (\$54,000.00) on behalf of Luigi Cusano, Angelina Cusano, Maria Penta, Joseph Penta, Maria Baron Cusano and Frank Baron. Stip. 77.

81. Respondent failed to inform Kane & Silverman of his receipt of these funds. Stip. 78.

82. By letter to U.S. Bank Lock Box Services dated August 11, 2014, Respondent, *inter alia*, enclosed a check in the amount of three thousand seven hundred sixty-seven dollars and ninety-seven cents (\$3,767.97) "in full settlement of the money owed to Medicare as a result of the accident involving [Respondent's] client, [Angelina Cusano], Claim No. 2014138051A." Stip. 79.

83. Respondent sent this letter on Kane & Silverman letterhead. Stip. 80.

84. By letter to U.S. Dept. of the Treasury - FMS dated August 21, 2014, Respondent, *inter alia*, enclosed a check in the amount of one thousand eight hundred twenty-five dollars and seventeen cents (\$1,825.17) "in full settlement of the money owed to Medicare as a result of the accident involving [Respondent's] client, [Luigi Cusano], Claim No. 2014210539A." Stip. 81.

85. Respondent sent this letter on Kane & Silverman letterhead. Stip. 82.

86. The letters referenced above were drafted by Kim Everly, a member of Kane & Silverman's staff. Stip. 83.

87. Respondent distributed fifty-two thousand seventy-one dollars and fifty-six cents (\$52,071.56) of the settlement funds.

a. Respondent distributed fourteen thousand one hundred ninety-eight dollars and seventy-six cents (\$14,198.76) to Luigi Cusano.

b. Respondent distributed twelve thousand two hundred fifty-five dollars and ninety-six cents (\$12,255.96) to Angelina Cusano. Stip. 84.

88. Respondent failed to distribute the remaining one thousand nine hundred twenty-eight dollars and forty-four cents (\$1,928.44). Stip. 85.

89. Respondent has failed to distribute any portion of the settlement funds to Kane & Silverman. Stip. 86.

George Fox and Lauren Fox

90. In or about July of 2012, George Fox and Lauren Fox engaged Respondent and Kane & Silverman to represent them in a personal injury action. Stip. 87.

91. Respondent handled the Fox matter. Stip. 88.

92. In or about April 2016, Respondent settled the Fox matter for one hundred and seventy-five thousand dollars (\$175,000.00). Stip. 89.

93. By email to Howard Silverman dated April 11, 2016, Respondent offered "to hold the attorney's fee obtained on [George Fox]'s case in [his] escrow account pending a final decision/resolution/agreement on how the attorney's fee will be split between [Mr. Silverman] and [Respondent]."

a. Mr. Silverman agreed to this arrangement. Stip. 90.

94. On April 12, 2016, Geico General Insurance Company issued a check in the amount of one hundred and seventy-five thousand dollars (\$175,000.00) to "[George Fox] and [Lauren Fox] and their attorney, Michael E Greenberg Esq." Stip. 91.

95. On April 26, 2016, Respondent deposited this check into the IOLTA. Stip. 92.

96. Respondent distributed ninety-five thousand seven hundred fifty-three dollars and fifty cents (\$95,753.50) to George Fox and Lauren Fox. Stip. 93.

97. Respondent has failed to distribute at least fifty-nine thousand two hundred forty-six dollars and fifty cents (\$59,246.50). Stip. 94.

98. Respondent has failed to distribute any portion of these funds to Kane & Silverman. Stip. 95.

Estate of Loretta Waite

99. On September 12, 2006, Fox Greenberg entered into a Contingent Fee Agreement with Loretta Waite, pursuant to which Fox Greenberg would “prosecute a claim for personal injuries and/or property damage” in exchange for “33 and 1/3% of whatever gross sum may be recovered from said claim whether by suit, settlement, or in any other manner.” Stip. 96.

100. Ms. Waite passed away in October of 2013. Stip. 97.

101. On May 20, 2016, State Farm Mutual Automobile Insurance Company issued a check in the amount of fifteen thousand dollars (\$15,000.00) to “[R.W.] & [W.W.], as Executors of the Estate of [Loretta Waite] & Michael E. Greenberg, Esq., her attorney.” Stip. 98.

102. On January 12, 2017, Respondent deposited this check into the IOLTA. Stip. 99.

103. Respondent failed to inform Kane & Silverman of his receipt of these funds. Stip. 100.

104. On January 31, 2017, Respondent issued a check to “[R.W.] and [W.W.], Executors-Estate of [Loretta Waite],” drawn against the IOLTA in the amount of nine thousand two hundred twenty-five dollars and fifty-eight cents (\$9,225.58). Stip. 101.

105. Respondent has failed to distribute the remaining five thousand seven hundred seventy-four dollars and forty-two cents (\$5,774.42). Stip. 102.

106. Respondent has failed to distribute any portion of these funds to Kane & Silverman. Stip. 103.

Rena Rosenthal and Howard Rosenthal

107. On January 22, 2013, Rena Rosenthal signed a Contingency Fee Agreement with Respondent and Kane & Silverman pursuant to which Kane & Silverman would “prosecute a claim for personal injuries and/or related damages arising out of an action which occurred on 12-07-2012,” in exchange for “**Thirty-three and 1/3** percent (**33 1/3** %) of the gross sum secured” (emphasis in original). Stip. 104.

108. On February 8, 2019, Glatfelter Claims Management, Inc., issued a check in the amount of five thousand dollars (\$5,000.00) to “[Rena Rosenthal] & [Howard Rosenthal] and Michael E. Breenberg [*sic*], Esquire.” Stip. 105.

109. On February 15, 2019, Community Association Underwriters of America, Inc., issued a check in the amount of twenty-five thousand dollars (\$25,000.00) to “[Rena Rosenthal] and [Howard Rosenthal] and Michael E. Greenberg, Esq.” Stip. 106.

110. On March 11, 2019, Respondent deposited these checks into the IOLTA. Stip. 107.

111. Respondent distributed eighteen thousand nine hundred twenty-eight dollars and forty cents (\$18,928.40) to the Rosenthals. Stip. 108.

112. Respondent has failed to distribute the remaining eleven thousand seventy-one dollars and sixty cents (\$11,071.60). Stip. 109.

113. Respondent has failed to distribute any portion of these funds to Kane & Silverman. Stip. 110.

Mitchell Kahn

114. Mitchell Kahn engaged Kane & Silverman to represent him in a personal injury action regarding injuries he sustained in January 2011. Stip. 111.

115. Respondent handled Mr. Kahn's matter. Stip. 112.

116. On February 14, 2019, Metropolitan Casualty Insurance Company issued a check in the amount of thirty thousand dollars (\$30,000.00) to "[Mitchell Kahn] and his attorney Michael Greenberg." Stip. 113.

117. On March 26, 2019, Respondent deposited this check into the IOLTA. Stip. 114.

118. Respondent distributed twenty-two thousand three hundred ninety-four dollars and forty-four cents (\$22,394.44) to Mr. Kahn. Stip. 115.

119. Respondent failed to distribute the remaining seven thousand six hundred five dollars and fifty-six cents (\$7,605.56). Stip. 116.

120. Respondent has failed to distribute any portion of these funds to Kane & Silverman. Stip. 117.

Louis DiMichele and Tina DiMichele

121. On January 19, 2007, Fox Greenberg entered into a Contingent Fee Agreement with Louis DiMichele pursuant to which Fox Greenberg would "prosecute a claim for personal injuries and/or property damage against [J.D.]" in exchange for "33 and 1/3% of whatever gross sum may be recovered from said claim whether by suit, settlement, or in any other manner." Stip. 118.

122. On December 22, 2008, Respondent filed, on behalf of the DiMicheles, a Praecipe for Writ of Summons against J.D. in the Court of Common Pleas of Philadelphia County. Stip. 119.

123. On April 28, 2009, Respondent filed a Complaint on behalf of the DiMicheles. Stip. 120.

124. Respondent failed to advise Kane & Silverman that he represented the DiMicheles. Stip. 121.

125. In or about August of 2013, Respondent settled the DiMichele matter for three thousand five hundred dollars (\$3,500.00). Stip. 122.

126. Respondent has failed to distribute any portion of these funds to Kane & Silverman. Stip. 123.

Alina Dukat and Vlad Dukat

127. On July 27, 2010, Fox Greenberg entered into a Contingent Fee Agreement with Alina Dukat pursuant to which Fox Greenberg would “prosecute a claim for personal injuries and/or property damage against All Parties” in exchange for “33 and 1/3% of whatever gross sum may be recovered from said claim whether by suit, settlement, or in any other manner.” Stip. 124.

128. Respondent failed to advise Kane & Silverman that he represented Alina Dukat and Vlad Dukat. Stip. 125.

129. On July 23, 2012, Respondent filed, on behalf of the Dukats, a Praecipe for Writ of Summons against M.P., E.P. and R.P. in the Court of Common Pleas of Philadelphia County. Stip. 126.

130. On October 8, 2012, Respondent filed a Complaint on behalf of the Dukats. Stip. 127.

131. In or about May 2015, Respondent settled the Dukat matter for three thousand dollars (\$3,000.00). Stip. 128.

132. Respondent has failed to distribute any portion of these funds to Kane & Silverman. Stip. 129.

Additional Findings

133. By letter to Respondent dated August 30, 2019, Disciplinary Counsel requested Respondent's Supplemental Statement of Position regarding, *inter alia*, his failure to promptly and completely distribute Rule 1.15 Funds in several of the client matters set forth *supra*.

a. This letter directed Respondent to produce, *inter alia*, "copies of all monthly reconciliations made or attempted regarding the IOLTA for the period of February 2019 through and including the present." Stip. 130.

134. On October 29, 2019, Respondent, through counsel, provided his Supplemental Statement of Position. Stip. 131.

135. Respondent claimed in his October 29, 2019 Supplemental Statement of Position that, *inter alia*:

a. the funds that he failed to promptly and completely distribute regarding (1) the Estate of Loretta Waite, (2) Rena Rosenthal and Howard Rosenthal, (3) Mitchell Kahn and (4) George Fox and Lauren Fox" relate to a dispute with a law firm with which [he] had been affiliated";

b. the funds that he failed to promptly and completely distribute regarding (1) Irene Visco and (2) Etta Feldman "relate to [] disputed and unresolved Medicare lien[s]";

c. the funds that he failed to promptly and completely distribute regarding Denise Pesta "relate[] to a payment to a company named

Alpha Psychological Services. Despite [Respondent's] efforts to pay the company, [he] was unsuccessful and will refund the account balance to the client";

d. the funds that he failed to promptly and completely distribute regarding (1) Judy Ward and (2) Luigi Cusano and Angelina Cusano represent undistributed attorney costs; and

e. he had not been preparing monthly reconciliations. Stip. 132.

136. Respondent failed to produce any monthly reconciliations with his October 29, 2019 Supplemental Statement of Position. Stip. 133.

137. By letter to Respondent dated January 17, 2020, Disciplinary Counsel, *inter alia*, requested copies of any cancelled checks whereby Respondent had distributed any of the Rule 1.15 Funds referenced in the August 30, 2019 letter and again requested copies of any monthly reconciliations Respondent had attempted regarding the IOLTA. Stip. 134.

138. By letter to Disciplinary Counsel dated February 10, 2020, Respondent, through counsel, provided "bank reconciliations from February 2019 to December 2019." Stip. 135.

139. These documents do not list the sum of any individual client ledgers. Stip. 136.

140. These documents do not reconcile the sum of any individual client ledgers to the balance listed in the relevant periodic statement. Stip. 137.

141. In the February 10, 2020 letter referenced in paragraph 135 *supra*, Respondent, through counsel, advised, *inter alia*, that:

a. he “has been unable to locate and continue[s] to try to locate [Denise Pesta]”; and

b. “[c]osts have not been distributed” regarding (1) Judy Ward or (2) Luigi Cusano and Angelina Cusano. Stip. 138.

142. By letter to Respondent dated February 28, 2020, Disciplinary Counsel requested Respondent’s Supplemental Statement of Position. Stip. 139.

143. On May 12, 2020, Respondent, through counsel, provided his Supplemental Statement of Position. Stip. 140.

144. In his May 12, 2020 Supplemental Statement of Position, Respondent maintained, *inter alia*, that:

a. Kane & Silverman “was not entitled to a fee” in connection with (1) Ms. Lawson, (2) the Estate of Loretta Waite, (3) Luigi Cusano and Angelina Cusano, (4) Louis DiMichele and Tina DiMichele and (5) Alina Dukat and Vlad Dukat; and

b. there is uncertainty regarding what portion of the legal fee he and Kane & Silverman are entitled to in connection with (1) Rena Rosenthal and Howard Rosenthal, (2) Mitchell Kahn and (3) George Fox and Lauren Fox. Stip. 141.

145. Respondent is actively using an IOLTA he maintains at Firstrust Bank to hold the following Rule 1.15 Funds:

a. one thousand one hundred and seventy dollars (\$1,170.00) that he received on behalf of Denise Pesta in May 1998, ODC-1 at ¶¶ 56-58; ODC-21A; N.T. at 81-82;

- b. twenty thousand five hundred ninety-eight dollars and eighty-one cents (\$20,598.81) that he received on behalf of Irene Visco in April 1999, ODC-1 at ¶¶ 59-61; ODC-22A; N.T. at 87;
- c. three thousand dollars (\$3,000.00) that he received on behalf of George Fox, Jr., in March 2006, ODC-1 at ¶¶ 62-63; ODC-23; N.T. at 87 (“Q. George Fox, Jr., you received a settlement in the amount of \$3,000 on behalf of George Fox, Jr., in March 2006, is that correct? A. Yes. A. And you distributed none of those funds? A. Correct.”);
- d. twenty-one thousand eight hundred sixteen dollars and thirty-one cents (\$21,816.31) that he received on behalf of Etta Feldman in December 2007, ODC-1 at ¶¶ 64-66; ODC-24A;
- e. two thousand dollars (\$2,000.00) that he received on behalf of Judy Ward in December 2009, ODC-1 at ¶¶ 67-69; ODC-25A;
- f. one thousand nine hundred twenty-eight dollars and forty-four cents (\$1,928.44) that he received on behalf of Luigi Cusano, Angelina Cusano, Maria Penta, Joseph Penta, Maria Baron Cusano and Frank Baron in July 2014, ODC-1 at ¶¶ 73, 77, 85; ODC-26D;
- g. fifty-nine thousand two hundred forty-six dollars and fifty cents (\$59,246.50) that he received on behalf of George and Lauren Fox in April 2016, ODC-1 at ¶¶ 91-94; ODC-27B;
- h. five thousand seven hundred seventy-four dollars and forty-two cents (\$5,774.42) that he received on behalf of the Estate of Loretta Waite in May 2016, ODC-1 at ¶¶ 98-99, 102; ODC-28B;

i. eleven thousand seventy-one dollars and sixty cents (\$11,071.60) that he received on behalf of Rena and Howard Rosenthal in February 2019, ODC-1 at ¶¶ 105-109; ODC-29B; and

j. seven thousand six hundred five dollars and fifty-six cents (\$7,605.56) that he received on behalf of Mitchell Kahn in February 2019, ODC-1 at ¶¶ 113-116.

146. Respondent introduced no evidence or testimony regarding any efforts he has made to pay out the funds owed to clients or third persons.

147. The testimony of Ivorie Lawson and Howard Silverman was credible.

148. Respondent credibly testified on his own behalf.

149. Respondent admitted that he “dropped the ball” on the Ivorie Lawson matter and did not get it resolved. N.T. 74.

150. Respondent took responsibility for failing to resolve the Cusano and Feldman matters. He explained that there were unresolved Medicare liens and the funds were still in escrow. N.T. 73.

151. Respondent testified that he was before the Committee:

because I had, you know, one case with Mr. [sic] Lawson that did not get timely and properly handled by me. There are still, you know, the lien issues that were not timely and properly handled by me. There are, you know, some other minor escrow things that we have discovered that, you know, are also part of the stipulation that are left that have not been resolved. So I understand why I’m here I take responsibility for not properly handling those matters ethically to it by way of a stipulation. And this is complete embarrassment to me with that these matters were not properly handled and I take responsibility for them.

N.T. 80.

152. With regard to Respondent's employment at Kane & Silverman, Respondent testified that there were various matters that pre-existed his employment with the firm and that they belonged to him and he owed no duty to share fees as related to those matters. N.T. 65-67; R-063.

153. Mr. Silverman testified that there was no agreement for division of fees for old cases. N.T. 42.

154. Respondent testified that he and Mr. Silverman came to an agreement on cases that were generated after Respondent became an employee where Respondent was entitled to 50 percent of the fee on those cases. N.T. 69.

155. Respondent acknowledged that he owes the firm money, but does not agree that it is a 50/50 split. Respondent testified there is still money in his escrow account on cases that were opened for incidents that happened after he started working at Kane & Silverman as an employee and resolved after Respondent left employment. These cases are: Lauren and George Fox, Rena and Howard Rosenthal, and Mitchell Kahn. Respondent further testified that the fees in their entirety are in the escrow account and need to be resolved, and that he provided status reports from time to time to the firm employees. N.T. 74-76, 95-96; Stip. 87, 104, 111.

156. Respondent is still practicing "a little bit" and not doing much at the present time due to medical issues. N.T. 62, 77.

157. In 2009, Respondent developed a massive tumor in his neck, which affected his vocal cords and ability to use his tongue on his left side. Respondent's ability to talk for long periods of time was impacted and he could longer try cases.

N.T. 65, 72. Respondent stopped practicing law for a period of time in order to undergo extensive speech and swallowing therapy. N.T. 72.

158. Respondent testified that he is dealing with a new, recently diagnosed tumor in his neck. N.T. 78.

159. Respondent did not introduce evidence to support a contention under *Office of Disciplinary Counsel v. Seymour H. Braun*, 553 A.2d 894 (Pa. 1989) that his health problems caused his misconduct.

160. Respondent cooperated with Petitioner by entering into an extensive Stipulation of facts.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. 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.
4. RPC 1.15(c)(4) – A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which

Fiduciary Funds are held pursuant to Rule 1.15(i): (4) a regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing.

5. RPC 1.15(d) – Upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law.
6. RPC 1.15(e) – Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive.
7. RPC 1.15(h) – A lawyer shall not deposit the lawyer’s own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.
8. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.
9. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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

IV. DISCUSSION

In this matter, the Board considers the Committee's majority recommendation to suspend Respondent for a period of one year to address his neglect of a client matter and fiduciary misconduct related to his failure to promptly distribute Rule 1.15 Funds. The dissenting member recommended a ten month period of suspension. Petitioner takes exception to the Committee's recommendation and contends the Committee erred in concluding that Respondent's misconduct warranted a sanction that does not require him to petition for reinstatement. Petitioner advocates for a suspension of three years. Respondent requests that the Board adopt the Committee's recommended discipline.

Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). From the evidence adduced at the hearing, sufficient factual support exists to establish by clear and satisfactory evidence that Respondent violated all of the Pennsylvania Rules of Professional Conduct charged in the Petition for Discipline and committed professional misconduct for which discipline must be imposed. Upon this record and for the following reasons, we recommend that Respondent be suspended for a period of two years.

The record demonstrates that Respondent committed gross incompetence and neglect in the Lawson matter over a period of seven years. After entering into a

written settlement in August 2012 on behalf of Ms. Lawson and her minor children in a suit for damages arising out of an automobile accident, Respondent took virtually no action to obtain for his client and her minor children the compensation to which they were entitled. In one 18-month period, Respondent ignored eight letters from defense counsel seeking to finalize settlement and failed to have Ms. Lawson execute the necessary closing documents. During the representation, Respondent filed a defective Petition for Leave to Settle or Compromise Minor's Action in that he failed to set forth the amount of actual or potential liens of the Department of Human Services and failed to include corrected proposed orders for each of the minor children. After being granted three 60-day extensions to do so and continued failings, the court dismissed the petition.

From the time of the settlement until Respondent withdrew from the matter in August 2019 having failed to distribute the funds to Ms. Lawson, seven years had elapsed. Respondent's withdrawal occurred after Petitioner contacted him and requested his position in the matter. After taking over the case, successor counsel promptly delivered the funds to Ms. Lawson, taking the much needed action that Respondent was unable or unwilling to effectuate.

In addition to the misconduct in the Lawson matter, the record demonstrates that Respondent engaged in pervasive fiduciary misconduct spanning two decades and failed to maintain the proper records required under RPC 1.15(c). In numerous matters, Respondent negotiated settlements, received payouts and consistently failed to promptly distribute entrusted funds to clients or third persons. This misconduct extends back to 1998, with five of the matters more than ten years old: Pesta (1998 - \$1,170); Visco (1999 - \$20,598.81); Fox, Jr. (2006 - \$3,000); Feldman (2007 - \$21,816.31); Ward (2009 -

\$2,000). The amount Respondent failed to distribute totals approximately \$134,211.64, with at least \$48,585.12 withheld for more than a decade.

Respondent offered as a rationale for his failure to promptly distribute the funds Medicare and Department of Public Welfare liens or alternatively that the funds are the subject of a dispute with the Kane & Silverman law firm and include attorney's fees owed to Respondent. As did the Committee, we reject Respondent's explanations for his failure to comply with his professional duties. That the funds were subject to liens or at the center of a dispute with a former law firm does not alleviate Respondent's duty to resolve the matters and distribute the funds. The fact remains that Respondent's IOLTA improperly holds funds from as far back as 22 years ago that have never been distributed to those entitled to receive the funds. The record is devoid of any evidence to establish that Respondent took a single action in furtherance of his duties under the conduct rules to resolve these matters and distribute any portion of the funds. Troublingly, this inaction continued even after Respondent was put on notice of Petitioner's investigation in 2019. As of the date of the disciplinary hearing, Respondent's rules violations continued unabated and the monies continued to languish in his IOLTA due to his unwillingness to take action.

In mitigation, Respondent offered that he has practiced law in the Commonwealth since 1982 and has no record of prior discipline. Respondent accepted responsibility for his misconduct and admitted that he did not properly handle the Lawson case and the IOLTA matters. Respondent demonstrated acceptance of responsibility by cooperating with Petitioner and stipulating to the facts. In addition, Respondent testified to serious and disabling health issues he experienced in 2009, which caused Respondent to leave the practice of law for a time.

In reviewing the proffered mitigation, we make the following observations. Respondent's blemish-free disciplinary record for more than 40 years is properly accorded mitigation value; however, it must be weighed in the context of Respondent's long-standing fiduciary misconduct extending back to 1998. As to Respondent's testimony regarding his serious physical health problems, we find such testimony to be credible and candid; however, Respondent made no assertion and produced no evidence that such problems caused his misconduct.

In aggravation, Respondent wholly failed to produce evidence that he made any attempt to distribute the funds, even in the face of a disciplinary investigation, or that he has the slightest intent to do so, as he failed to offer any evidence of a concrete plan to accomplish the distribution.

Respondent's systematic fiduciary misconduct, incomprehensible failure to take remedial action, and severe neglect of the Lawson personal injury matter demonstrate that Respondent is not fit to practice law. It is important to emphasize that Respondent has not been charged with misappropriating any of the funds at issue for his own use. The funds remain in the IOLTA. Nevertheless, Respondent's failure to promptly distribute the funds has deprived the parties entitled to them of their use.

Upon review of the Committee's report and majority recommendation, we respectfully disagree with the conclusion that Respondent's serious misconduct warrants a one year period of suspension, which would enable Respondent to forego the reinstatement process upon completion of the term of suspension. Under the circumstances of the instant matter, where Respondent actively used his IOLTA to withhold \$134,211.64 in RPC 1.15 funds from clients and third parties over the course of

two decades and continues to do so, Respondent must be required to demonstrate resolution of his years-long fiduciary misconduct and fitness to practice law.

It is well-established that in evaluating professional discipline, each case must be decided on the totality of its particular facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186 (Pa. 1983). In order to “strive for consistency so that similar misconduct is not punished in radically different ways,” ***Office of Disciplinary Counsel v. Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012) (quoting ***Lucarini***, 472 A.2d at 190), the Board is guided by precedent for the purpose of measuring “the respondent’s conduct against other similar transgressions.”

An examination of prior matters reveals that although there is no single case that shares the same facts as the instant matter, generally, an attorney’s mishandling of fiduciary funds in multiple matters, dereliction of recordkeeping responsibilities, and grossly deficient representation in a client matter warrant at least a one year and one day period of suspension.

In the recent matter of ***Office of Disciplinary Counsel v. Valerie Andrine Hibbert***, No. 215 DB 2019 (D. Bd. Rpt. 2/17/2021) (S. Ct. Order 4/27/2021), the Court suspended Hibbert for one year and one day for incompetence and neglect in three client matters and nonconformance to financial recordkeeping and accounting required by the rules, which included holding \$10,000 in escrow in a real estate matter and failing to distribute the funds, or any portion thereof, for over a decade. Similar to the instant Respondent, Hibbert continued to hold the funds and failed to disburse them even after she was notified of Petitioner’s investigation into her conduct. Hibbert, like Respondent, had no history of discipline. In comparing these matters, we find that Respondent’s

fiduciary misconduct is more serious and long-standing than that in *Hibbert* and warrants more severe discipline.

In support of a three year period of suspension, Petitioner cites matters that involve misappropriation of entrusted funds. See, *Office of Disciplinary Counsel v. Joan Gaughan Atlas*, No. 171 DB 2001 (D. Bd. Rpt. 3/24/2004) (S. Ct. Order 6/29/2004) (three year suspension for misappropriation of \$35,000 to which employer-law firm was entitled, misrepresentations, false certifications on attorney registration forms); *Office of Disciplinary Counsel v. Steven Robert Grayson*, No. 95 DB 2007 (S. Ct. Order 3/20/2008) (consent discipline) (two year suspension on consent for conversion of “over \$35,000 in fees and costs” to which his employer-law firm was entitled over a period of 33 months and in connection with twelve separate client matters; Grayson fully reimbursed the funds and consented to a lengthy suspension). As noted earlier, the conduct at issue in the instant case is not the conversion of entrusted funds to an attorney’s personal use. However, it is useful to consider the quantum of discipline imposed in misappropriation matters in order to make an informed recommendation in the instant matter.

An attorney’s misappropriation of entrusted funds to his or her own use is egregious misconduct for which the Court has not hesitated to impose disbarment or a lengthy suspension, as the cited cases highlight. Recently, in the matter of *Office of Disciplinary Counsel v. David Charles Agresti*, No. 68 DB 2020 (D. Bd. Rpt. 5/21/2021) (S. Ct. Order 7/21/2021), the Court imposed a three year suspension on an attorney who failed to properly safeguard the funds of three clients and misappropriated approximately \$46,000 from one client, which funds the attorney used to pay school tuition and purchase a boat. The record further established that Agresti failed to maintain

an IOLTA account and used a single account for both professional and personal matters. In comparing these matters, we find that Respondent's misconduct is less serious than that in **Agresti**, as Respondent did not misuse the funds in his IOLTA to benefit himself.

The primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct. **Office of Disciplinary Counsel v. Akim Czmus**, 889 A.2d 1197, 1204 (Pa. 2005). Viewing Respondent's misconduct in the range of sanctions meted out in the cited cases, we conclude that the totality of the facts and circumstances of this matter warrant a suspension for two years, which discipline is consistent and appropriate to address Respondent's serious misconduct and fulfill the important goals of our system of attorney discipline.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Michael Eric Greenberg, be Suspended for two years from the practice of law in this Commonwealth.

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: 
Gretchen A. Mundorff, Member

Date: 9/8/2021