IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 1844 Disciplinary Docket No. 3
	:	No. 105 DB 2010
v.	:	
	:	Attorney Registration No. 94368
MATTHEW ALBERT KERANKO, Respondent	:	(Washington County)

ORDER

PER CURIAM:

AND NOW, this 5th day of September, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 23, 2012, the Petition for Review and responses thereto, the request for oral argument is denied and it is hereby

ORDERED that Matthew Albert Keranko is suspended from the Bar of this Commonwealth for a period of three years 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 Patricia Nicola
As Of 9/5/2012

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 105 DB 2010
v.	:	Attorney Registration No. 94368
MATTHEW ALBERT KERANKO Respondent	:	(Washington County)

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

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

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

I. HISTORY OF PROCEEDINGS

On April 26, 2011, Office of Disciplinary Counsel filed a Petition for Discipline against Matthew Albert Keranko. The Petition charged Respondent with violations of the Rules of Professional Conduct in two matters. Respondent filed an Answer to Petition on June 2, 2011.

A disciplinary hearing was held on September 9, 2011 before a District IV Hearing Committee comprised of Chair Evan E. Adair, Esquire, and Members Henry M. Casale, Esquire, and Lisa Ann Zemba, Esquire. Respondent was represented by James

R. Jeffries, Jr., Esquire. The parties presented a joint stipulation. Petitioner introduced into evidence exhibits and called four witnesses. Respondent called one witness and testified on his own behalf. The record was kept open to allow Respondent to provide additional financial information.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 23, 2012, concluding that Respondent violated the Rules as contained in the Petition for Discipline, and recommending that he be suspended for a period of three years.

Respondent filed a Brief on Exceptions on February 13, 2012 and requested oral argument before the Board.

Petitioner filed a Brief Opposing Exceptions on February 28, 2012.

Oral argument was held before a three-member panel of the Disciplinary Board on March 15, 2012. Respondent's lawyer appeared but Respondent was not present.

This matter was adjudicated by the Disciplinary Board at the meeting on March 21, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, PA 17106-2458, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney

admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Matthew Albert Keranko. He was born in 1974 and was admitted to practice law in the Commonwealth of Pennsylvania in 2005. His attorney registration mailing address is 30 S. Main Street, Suite 102, Washington PA 15301. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a history of discipline consisting of an Informal Admonition administered in 2007 for violations of Rules of Professional Conduct 1.5(b) and 1.16(d).

Rattenni Matter

4. On or about September 16, 2008, Respondent met with John Rattenni about representing Mr. Rattenni in attempting to resolve certain federal tax obligations.

5. With his letter dated September 25, 2008, Respondent provided Mr. Rattenni with a Fee Agreement and a Power of Attorney document which required Mr. Rattenni's signature.

6. Terms of the representation as provided in the Fee Agreement included an hourly rate of $175 and Respondent's minimum fee of $5,000 for undertaking the matter.

7. On or about September 29, 2008, Mr. Rattenni signed and returned the Fee Agreement to Respondent, forwarded to him a check in the amount of $1,250 as a partial payment of Respondent's minimum fee and returned the signed Power of Attorney document.

8. On November 5, 2008, Respondent and his client met with David Kubick of the Internal Revenue Service (IRS) regarding Mr. Rattenni's tax matter.

9. In this meeting, it was discussed that Mr. and Mrs. Rattenni would sell some properties in order to satisfy the federal income tax obligation and that closing on a parcel then under contract would be facilitated in order to obtain funds to meet part of the tax obligations.

10. Mr. Rattenni agreed to sell various real estate parcels owned by him and his wife to pay down the federal tax obligations that he owed and to have the net proceeds from the sale of the parcels paid directly to the Department of Treasury for that purpose. The contemplated transactions involved one or more subdivisions to create parcels from larger parcels of land.

11. By his Invoice No. 1062, dated December 29, 2008, Respondent credited Mr. Rattenni with a payment of $1,250 toward the minimum fee of $5,000.

12. On or about April 24, 2009, a closing was held on a real estate parcel located on South Cowan Road, Carnegie, Pennsylvania 16106, that the Rattennis has agreed to sell to Joseph and Lisa Baker.

13. Respondent conducted the closing for the transfer of this property.

14. The HUD-1 settlement statement for the South Cowan Road property was prepared either by Respondent or at Respondent's direction.

15. The HUD-1 settlement statement indicated that:

(a) The sale and purchase price was $55,000;

(b) Sellers and buyers shared equally in payment of a fee for a title search or abstract;

(c) Respondent was paid a document preparation fee of $110.00 which was shared equally by the sellers and the buyers;

(d) Respondent was paid attorney's fees of $750 by both the sellers and the buyers;

(e) Disbursements on behalf of sellers were made to pay against an existing mortgage obligation and satisfy two assessments to Collier Township Municipal Authority, 2006-2008 property taxes and payoff of a State tax lien;

(f) Net proceeds to sellers were in the sum of $19,906.60;

(g) No disbursement was made as to the Rattennis' federal income tax obligation(s).

16. A representative of the lender receiving the payment shown on line 504 of the HUD-1 attended the closing as the payment was a portion of the loan's balance made to secure a release of the lien for the mortgage from this parcel. Respondent negotiated terms of the release.

17. Mr. and Mrs. Rattenni did not receive any portion of the $19,906.60 identified as net proceeds to sellers on line 603 of the HUD-1. These funds were retained in Respondent's IOLTA account.

18. No representative of the IRS attended the closing. Respondent did not expect a representative of the IRS to attend the closing and did not discuss with Mr. Kubick of the IRS what might be required to release the income tax lien from the parcel being sold to the Bakers.

19. Mr. Rattenni understood that that $19,906.60 shown on the HUD-1 Statement as being paid to sellers should have been reported as being payable to the U.S.

Treasury and requested that Respondent issue a revised HUD-1 statement. Respondent began preparation of a revised HUD-1 but never finished it.

20. On April 24, 2009, Respondent deposited into his Citizens Bank IOLTA Account a cashiers' check drawn in the amount of $56,902.50, issued to Respondent by the Bakers for the purchase of the Rattennis' property on South Cowan Road.

21. After accounting for Respondent's attorney's fees, document preparation charges and other miscellaneous costs totaling $1,704.93, Respondent was entrusted with $55,197.57 on behalf of the Rattennis, including the $19,906.60 to be forwarded to the Department of the Treasury.

22. By the following five checks drawn on his IOLTA account on the following dates, Respondent disbursed an aggregate sum of $22,966.32 from the proceeds on closing of the Rattennis' sale to the Bakers of the South Cowan Road property:

(a) Check No. 991, dated April 30, 2009, drawn in the amount of $11,071.96 and made payable to Charleroi Federal Savings Bank, annotated "Rattenni Payoff."

(b) Check No. 993, dated April 30, 2009, drawn in the amount of $750 and made payable to ReMax Select Realty, annotated "Rattenni-Bal of Cowan."

(c) Check No. 994, dated April 30, 2009, drawn in the amount of $700 and made payable to ReMax Select Realty, annotated "Seller and Buyer Adm. Fees - Rattenni."

(d) Check No. 108, dated May 7, 2009, drawn in the amount of $4,444.36 and made payable to Collier Twp. Municipal Authority, annotated "Rattenni-Sanitary Sewer Connection Lien."

(e) Check No. 113, dated May 15, 2009, drawn in the amount of $6,000 and made payable to Collier Twp. Municipal Authority, annotated "Rattenni-S. Cowan Sewage Escrow."

23. On May 29, 2009, the balance in Respondent's IOLTA Account was $26,005.16, an amount $6,226.09 less than the balance of his entrustment on behalf of the Rattennis and/or the U.S. Treasury.

24. Respondent's IOLTA account balance had been reduced by disbursements that were not made on behalf of the Rattennis and/or the Department of Treasury.

25. On June 9, 2009, Mr. Rattenni faxed to Respondent a memorandum, accompanied by a copy of the Conditional Commitment to Discharge provided by the IRS as to the property sold to the Bakers. In his memo, Mr. Rattenni expressed the opinion that the parties should conclude closing on the sale and purchase of the property.

26. Mr. Rattenni's June 9, 2009 memo faxed to Respondent also:

(a) Guessed that the reason Respondent did not record the deed was because he did not have the Conditional Commitment to Discharge;

(b) Told Respondent the IRS needed a copy of the deed, a copy of the revised settlement statement showing "the IRS" as the recipient of those funds, and a certified check payable to the Department of Treasury, all sent to Andy Avon at the address appearing on the IRS Conditional Commitment to Discharge;

(c) Stated that, upon receipt of the funds and documents, the IRS would send to Respondent the official discharges of lien documents; and

(d) Stated that Mr. Avon also needed the two Pennsylvania Department of Revenue liens paid via certified funds.

27. By the following four checks drawn on his IOLTA Account on the following dates, Respondent disbursed an aggregate sum of $11,157.65 from the proceeds on closing of sale and purchase of the South Cowan Road property:

(a) Check No. 117, dated May 27, 2009, drawn in the amount of $1,819.14 and made payable to Mr. Rattenni, annotated "Reimbursement of Surveyor's Fee."

(b) Check No. 119, dated June 10, 2009, drawn in the amount of $261.00 and made payable to Gregory Bevington, Esquire, annotated "Title Search and Certificate - Rattenni."

(c) Check No. 120, dated June 11, 2009, drawn in the amount of $6,838.19 and made payable to "Cash", annotated "Rattenni-State Lien GD08-019074."

(d) Check No. 121, dated June 11, 2009, drawn in the amount of $2,239.32 and made payable to "Cash", annotated "Rattenni - State Lien GD-08-01323."

28. There is no indication in the record that any action was taken with regard to the Conditional Commitment to Discharge.

29. As of June 26, 2009, Respondent was still entrusted with $21,073.60 on behalf of the Rattennis and/or the Department of Treasury.

30. On June 26, 2009, the balance in Respondent's IOLTA account was $14,573.03, which was $6,500.57 less than his entrustment on behalf of the Rattennis and/or the Department of Treasury.

31. Respondent's IOLTA account balance had been reduced by disbursements that were not made on behalf of the Rattennis and/or the Department of Treasury.

32. By fax dated July 9, 2009, Mr. Rattenni informed Respondent that:

(a) He had spoken to an IRS representative that day and had been informed that the release the IRS had sent on June 6, expired on July 6;

(b) This "mess" was now preventing him from closing on his other property;

(c) He "got beat up" by the Bakers because Respondent promised that he would call them with an explanation, but Respondent had not done so;

(d) He was very frustrated and felt it might be time to introduce another attorney to help him get his legal matter resolved.

33. By his letter dated July 14, 2009, Respondent informed Mr. Baker, among other things, that:

(a) It had come to his attention that Mr. Baker was upset with regard to the deed not having been recorded;

(b) Mr. Baker was the owner of the property in question and could assert all rights with regard to it;

(c) Respondent did not represent him, but his office had been diligent in its efforts to secure title insurance on the property Mr. Baker purchased, "thereby protecting your interest in not recording the Deed"; and

(d) All of the requisite liens had been paid off and all of the requested information and documentation provided in a timely manner to best serve Mr. Baker's needs.

34. At the time of his July 14, 2009, letter to Mr. Baker, Respondent had not forwarded to the Department of Treasury the $19,906.60 that he was required to pay for the proceeds of the sale of the Rattennis' property to the Bakers, nor did he provide to the IRS all of the required information and documentation regarding the sale of the Rattennis' property to the Bakers.

35. Respondent never asked the IRS what it required to release the income tax lien from the property sold by the Rattennis to the Bakers and did not know what the IRS might require.

36. When Respondent stated in his letter to Mr. Baker that all of the requisite liens had been paid off and all of the requested information and documentation was provided in a timely manner, Respondent knowingly made a false statement of material fact.

37. On July 31, 2009, the balance in Respondent's IOLTA account was $8,746.56, which was $12,327.04 less than his entrustment on behalf of the Rattennis and/or the Department of Treasury.

38. Respondent's IOLTA account balance had been reduced by disbursements that were not made on behalf of the Rattennis and/or the Department of Treasury.

39. By the following two checks drawn on Respondent's IOLTA account on August 4, 2009, Respondent disbursed a total of $1,167.00 from the proceeds of the closing on the sale of realty from the Rattennis to the Bakers:

(a) Check No. 125, drawn in the amount of $67 and payable to the Department of Real Estate, annotated "Recording Fee-Rattenni to Baker."

(b) Check No. 126, drawn in the amount of $1,100 and made payable to the Department of Real Estate, annotated "Transfer Taxes - Rattenni to Baker."

40. As of August 31, 2009, Respondent's total entrustment on behalf of the Rattennis and/or the Department of Treasury was $19,906.60.

41. On August 31, 2009, the balance in Respondent's IOLTA account was $6,173.48, which was $13,733.12 less than his entrustment on behalf of the Rattennis and/or the Department of Treasury.

42. Respondent's IOLTA account balance had been reduced by disbursements that were not made on behalf of the Rattennis and/or the Department of Treasury.

43. Mr. Rattenni did not authorize Respondent to utilize the $19,906.60 retained from proceeds of the Rattenni-Baker closing for purposes other than securing a release of the tax lien from the property sold to the Bakers. No written agreement or authorization allowing use of these funds for other purposes exists.

44. By Invoice No. 2397 dated September 25, 2009, Respondent billed Mr. Rattenni for services rendered in the month of April 2009. The invoice charged $437.50 for preparation of a HUD settlement statement on April 22, 2009 and $175 for Respondent's attendance at the April 23, 2009 closing on sale of the Rattennis' property to the Bakers.

45. Respondent had been paid for these services on the HUD-1 statement.

46. Respondent's September 25, 2009 invoice charged the Rattennis $612.50 more than he was entitled to receive for services rendered in connection with the closing.

47. The fourth page of Respondent's September 25, 2009 invoice advised that the following sums had been paid to Respondent from the funds retained by Respondent at the Rattenni-Baker closing as follows:

(a) On June 24, 2009, payment of the $3,750 retainer fee balance; and

(b) On September 25, 2009, payment of the invoice's total amount of $4,743.90.

48. Respondent did not have the authorization of either the Rattennis or the IRS to deduct $4,743.90 from the $19,906.60 portion of the total amount with which he had been entrusted on April 26, 2009.

49. By letter dated November 23, 2009 sent to Respondent by certified mail, return receipt requested, Mr. Rattenni informed Respondent that, among other things:

(a) As of that date, the Department of Treasury had not received funds from the closing that took place on April 26, 2009;

(b) The IRS maintained its lien position on that property and it appeared that Respondent did not provide the Bakers with clear title to the property;

(c) He provided Respondent with a Lien Discharge Certificate provided by the IRS which Respondent failed to act on;

(d) It had been more than six months since the closing and Respondent still had funds in his possession that were due the Department of Treasury;

(e) It was requested that Respondent should promptly forward a copy of the lien discharge certificate, a final HUD-1, a copy of the Baker deed and a certified check for $19,906.60, payable to the Department of Treasury, to Eugene Batdorf; and

(f) Respondent should copy Mr. Rattenni on all correspondence, as he intended to follow up with the IRS to ensure that the matter had been resolved.

50. Respondent did not reply to Mr. Rattenni's November 23, 2009 letter.

51. As of November 30, 2009, Respondent was still entrusted with $19,906.60 on behalf of the Rattennis and/or the Department of Treasury.

52. On November 30, 2009, the balance in Respondent's IOLTA account was $1,272.62, which was $18,633.98 less than his entrustment on behalf of the Rattennis and/or the Department of Treasury.

53. Respondent's IOLTA account balance had been reduced by disbursements that were not made on behalf of the Rattennis and/or the U.S. Treasury.

54. Respondent's IOLTA account balance continued to be less than his entrustment on behalf of the Rattennis and/or the Department of Treasury through at least February 17, 2010.

55. Even if it were assumed that Respondent could properly charge the escrowed funds to secure payment of the $3,750 balance due on the retainer owed by Mr. Rattenni, Respondent misappropriated at least $14,883.98 from the Rattennis and/or the Department of Treasury.

56. On or about December 3, 2009, Mr. Rattenni called Respondent's office and spoke with Respondent's secretary, Susan Fazzolari, regarding his letter dated November 23, 2009.

57. Ms. Fazzolari informed Mr. Rattenni that Respondent had received that letter and said she would have Respondent call Mr. Rattenni.

58. Respondent did not reply to Mr. Rattenni's November 23, 2009 letter.

59. By his January 26, 2010 Invoice No. 2957 sent to Mr. Rattenni, Respondent applied trust monies to his bill in the amount of $3,222.43.

60. Respondent did not have authorization of the Rattennis or the IRS to deduct $3,222.43 from the $19,906.60 with which he was entrusted.

61. By request for Respondent's position dated February 12, 2010, Petitioner informed Respondent of Mr. Rattenni's allegations against him.

62. By letter to Petitioner dated March 15, 2010, Respondent, through counsel, provided his statement of position in response to Petitioner's February 12, 2010 letter.

63. By Check No. 147 drawn upon Respondent's IOLTA account on March 15, 2010 in the amount of $19,906.60, made payable to the Department of Treasury and

annotated "Rattenni," Respondent disbursed the funds with which he was entrusted on behalf of the Rattennis and/or the Department of Treasury.

64. Respondent did not transmit his IOLTA account check payable to the U.S. Treasury to the IRS, nor did Respondent act to obtain a release of the income tax lien from the property which had been sold to the Bakers. Instead, Respondent submitted the check to Office of Disciplinary Counsel with his statement of position and Disciplinary Counsel sent the check to Mr. Rattenni.

65. The property sold by the Rattennis to the Bakers remained encumbered by at least the federal income tax lien as of the September 9, 2011 hearing in this matter.

66. In order to fund his IOLTA Account Check No. 147, Respondent used funds that he had earned as a fee and which had been part of a larger sum he deposited into his IOLTA account on behalf of another client in February 2010.

Model Cleaners/LaCarte, Stotka, Kratt/Colaianni Matters

67. In or about September 2005, Joseph LaCarte, on behalf of Model Cleaners, Uniforms & Apparel, LLC, retained Respondent to represent Model Cleaners in various civil matters.

68. A contingent fee agreement dated September 7, 2005, between Respondent and Mr. LaCarte provided that, among other things, Respondent's fee to collect monies owed to Model Cleaners would be 25 percent of any disbursement, plus $75 per hour for litigation, plus costs.

69. On June 5, 2007, Respondent filed or caused to be filed in the Court of Common Pleas of Washington County a Complaint in Arbitration on behalf of Model Cleaners against various defendants, including Tom & Jerry's Home Medical Service, LLC.

70. On April 25, 2008, an Award of Arbitrators in the amount of $10,199.45 was entered in favor of Model Cleaners.

71. On May 16, 2008, Tom & Jerry's filed an appeal from the Award of Arbitrators.

72. In September 2008, Respondent settled Model Cleaners' civil action against Tom & Jerry's for $5,750.

73. At the end of September 2009, Vincent J. Roskovensky, counsel for Tom & Jerry's, provided Respondent with a check drawn in the amount of $5,750. The check was endorsed over to Respondent by Mr. Roskovensky.

74. Respondent endorsed the $5,750 settlement check and also had Mr. LaCarte, on behalf of Model Cleaners, endorse the settlement check.

75. On October 2, 2009, Respondent deposited or caused the deposit of the check from Tom & Jerry's, into Respondent's Citizens Bank Personal Account, captioned "Matthew A. Keranko and Heather L. Keranko", which also contained Respondent's personal funds.

76. Respondent's personal account was not an IOLTA or other Trust account suitable for the deposit of entrusted funds.

77. As of October 2, 2009, Respondent was entrusted with $4,137.50 on behalf of Model Cleaners and/or Mr. LaCarte.

78. On October 2, 2009, the balance in Respondent's Citizens Bank Personal Account was $4,500.52.

79. On October 9, 2009, due to disbursements unrelated to Respondent's entrustment on behalf of Model Cleaners and/or Mr. LaCarte, Respondent's personal account balance was a negative $175.45.

80. Without regard to the failure to deposit said funds into his IOLTA account, Respondent as of October 9, 2009 had misappropriated at least $4,137.50 from Model Cleaners and/or Mr. LaCarte.

81. By letter mis-dated January 28, 2009 [2010], Respondent informed Mr. LaCarte that, pursuant to the settlement reached in the Model Cleaners matter for $5,750, Respondent enclosed check number 140, drawn on his IOLTA account in the sum of $4,137.45, and disbursed to Mr. LaCarte the funds with which he had been entrusted in that matter.

82. Respondent had not deposited into his IOLTA account the entrustment that he had received on behalf of Model Cleaners and/or Mr. LaCarte, such that he was able to draw the check in the amount of $4,137.50 on his IOLTA account only because of his unauthorized use of funds entrusted to him on behalf of other clients.

83. Respondent utilized funds received and held for the benefit of Mr. LaCarte and/or Model Cleaners for nearly four months before paying over to the client its share of the settlement.

84. On December 23, 2009, Respondent deposited or caused the deposit into his IOLTA account of a settlement check in the amount of $3,000 made payable to his client, Carol Stotka, and Respondent, from State Farm Mutual Automobile Insurance Company.

85. Respondent's fee in regard to the Stotka matter was $1,000.

86. Respondent was entrusted with $2,000 on behalf of Ms. Stotka.

87. On December 31, 2009, Respondent was entrusted with a total of $21,906.60, which consisted of the $19,906.60 entrustment for the Rattennis and/or the Department of Treasury, and the $2,000 on behalf of Ms. Stotka.

88. The balance in Respondent's IOLTA account on that date was $2,772.64, which was $19,133.96 less than his combined entrustments in the Rattenni and Stotka matters.

89. Respondent's IOLTA account balance had been reduced by disbursements that were not made on behalf of the Rattennis and/or the Department of Treasury, or Ms. Stotka.

90. On January 11, 2010, the balance in Respondent's IOLTA account was $1,472.40, which was $20,434.20 less than his combined entrustments in the Rattenni and Stotka matters.

91. Respondent's IOLTA Account balance had been reduced by disbursements that were not made on behalf of the Rattennis and/or the Department of Treasury, or Ms. Stotka.

92. By Check no. 1268, dated January 20, 2010, drawn on Citizens Bank account captioned "Keranko and Jeffries, Attys at Law" in the amount of $2,000, made payable to Ms. Stotka and annotated "settlement," Respondent disbursed to Ms. Stotka the funds with which he had been entrusted on her behalf.

93. Respondent retained Ms. Stotka's share of the settlement recovery for nearly one month before remitting payment to her.

94. On February 1, 2010, Respondent deposited or caused the deposit of a check dated January 13, 2010, drawn in the amount of $14,000, made payable to "Keranko & Jeffries LLC, Dorothy Kratt & Lawrence Colaianni" from National Interstate Insurance Company into his IOLTA account.

95. By Check no. 143 in the amount of $2,100 drawn on his IOLTA account on February 17, 2010 and made payable to Dennis Popojas for legal fees due to

Mr. Popojas, and annotated "Dorothy Kratt-Fees," Respondent disbursed funds in regard to the Kratt/Colaianni matter.

96. As of February 17, 2010, Respondent was entrusted with a total of $31,806.62, which consisted of a $19,906.60 entrustment in the Rattenni matter and an $11,900.02 entrustment on behalf of Ms. Kratt and Mr. Colaianni.

97. On February 17, 2010, the balance in Respondent's IOLTA account was $10,484.92, which was $21,321.70 less than his combined entrustments in the Rattenni and Kratt/Colaianni matters.

98. Respondent's IOLTA account balance had been reduced by disbursement unrelated to the Rattenni and/or the Kratt/Colaianni matters.

99. By Check no. 142 drawn on February 16, 2010 upon Respondent's IOLTA account and made payable to Dorothy Kratt and Lawrence Colaianni in the amount of $11,900, Respondent disbursed to Ms. Kratt and Mr. Colaianni the remaining funds with which he was entrusted.

100. Respondent was able to disburse those funds to Ms. Kratt and Mr. Colaianni only because a check he had received on behalf of another client, John Lesjak, cleared his account on February 18, 2010.

101. Respondent has not provided ledgers or like records regarding transactions in his IOLTA account and it appears from proceedings by Petitioner to compel production that Respondent has not maintained such records.

102. At docket number 2006-9457 in the Washington County Court of Common Pleas, a judgment was entered against Respondent for the $15,536.81 unpaid balance on a promissory note for the payment of tuition.

103. A default judgment was entered against Respondent in the sum of $597.42 in the matter of *Roth v. Keranko* at Docket No. CV-0000259-08 in Magisterial District No. 27-1-01.

III. CONCLUSIONS OF LAW

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

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

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

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

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

IV. DISCUSSION

This matter is before the Disciplinary Board upon a Petition for Discipline charging Respondent with violations of Rules of Professional Conduct in two matters. Respondent answered the Petition and entered into a stipulation of facts which substantially follow the allegations set forth in the Petition. Respondent stipulated to the authenticity and admissibility of Petitioner Exhibits 1-38. Petitioner offered in its case in chief the testimony of several witnesses; Respondent testified on his own behalf and called one additional witness. Evidence is sufficient to prove ethical misconduct if a preponderance of the evidence establishes the charged violations and the proof is clear and satisfactory. Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (Pa. 1994).

Respondent undertook the representation of John Rattenni and his wife to resolve various lien claims of the Internal Revenue Service for unpaid federal income taxes. The Rattennis intended to sell real estate to generate funds which would satisfy the tax liens. Respondent was aware of this plan, as he and his client met with IRS agent David Kubick regarding Mr. Rattenni's tax matter. It was determined that a closing on a parcel on South Cowan Road in Carnegie then under contact with the Bakers would be facilitated in order to obtain funds to meet part of the tax obligations.

On April 24, 2009, a closing was held on the South Cowan Road property. Respondent conducted the closing and prepared the HUD-1 settlement statement. After several authorized disbursements related to the real estate transaction, Respondent was

left with an entrustment of $19,906.60 on behalf of the Rattennis and/or the Department of Treasury as of August 13, 2009. No payment was made to the Department of Treasury as to the delinquent federal income tax lien. Respondent failed to take any action which might have prompted a release of the federal income tax lien from the property sold by the Rattennis to the Bakers. All or part of the $19,906.60 likely would have been disbursed to the Department of Treasury had Respondent attended to the task of securing a release of that lien.

Mr. Rattenni communicated with Respondent on a number of occasions regarding his concerns as to Respondent's failure to address the tax lien. Mr. Rattenni specifically requested Respondent to communicate with the Bakers as to why the deed had not been recorded. Respondent failed to respond to Mr. Rattenni's fax dated July 9, 2009, failed to respond to the letter dated November 23, 2009, and failed to communicate with Mr. Rattenni after his telephone call on or about December 3, 2009. Respondent did write to the Bakers by letter of July 14, 2009, therein misrepresenting that "all of the requisite liens had been paid off." There is no evidence that Respondent communicated with the IRS after the closing to address the lien.

After the involvement of Petitioner in this matter, Respondent disbursed funds in the amount of $19,906.60 by submitting the check to Petitioner in March of 2010. Petitioner then sent the check to Mr. Rattenni. The property sold by the Rattennis to the Bakers remained encumbered by at least the federal tax lien as of the September 9, 2011 disciplinary hearing.

Respondent's defense with regard to the Rattenni entrustment is that the net proceeds of the real estate transaction were not entrusted funds and Mr. Rattenni owed Respondent legal fees and costs in excess of that $19,906.60 sum. As to Respondent's

first argument, the settlement statement prepared by Respondent identified the $19,906.60 as net proceeds payable to sellers. The proceeds were clearly not disbursed to sellers and were retained by Respondent as entrusted funds. The purpose of the funds was to address the IRS tax lien. Nevertheless, Respondent proceeded to bill against the funds.

Respondent and Mr. Rattenni entered into a written fee and retainer agreement on September 29, 2008. The fee agreement specified a "minimum fee" of $5,000. Mr. Rattenni paid $1,250 toward the minimum fee and acknowledged that he did not make additional fee payments. Respondent was free to bill Mr. Rattenni for the unpaid balance of the minimum fee and any additional fees that might be owed. Instead, Respondent proceeded to bill against the entrusted funds. Respondent had no authorization to pay fees to himself from the funds he retained at the Rattenni-Baker closing.

During the time that Respondent was entrusted with the $19,906.60 on behalf of the Rattennis and/or the Department of Treasury, he failed to maintain a sufficient balance in his IOLTA Account. Respondent's bank balance as of August 13, 2009 was only $8,672.40, well below the amount of the entrustment. The account continued to decline from August 2009 through the end of November 2009, when the balance in the IOLTA fell to $1,272.62. This decline resulted from Respondent's unauthorized conversion of client funds to his own use by means of unaccounted for withdrawals from the IOLTA Account.

The second set of charges in the Petition for Discipline deals with Respondent's mishandling of the fund of other clients. Respondent failed to hold and appropriately safeguard the funds of Joseph LaCarte, Carol Stotka, Dorothy Kratt and Lawrence Colaianni. Respondent deposited Mr. LaCarte's funds into his personal account

and disbursed funds to Mr. LaCarte from the IOLTA account. In the case of the other clients, although Respondent deposited the funds into the IOLTA account, he failed to maintain a sufficient balance to support the amounts. The evidence of record demonstrates that Respondent's IOLTA account and his personal account were out of trust from not later than the summer of 2009 until February 2010.

Respondent was admitted to the practice of law in 2005. On January 30, 2007, an Informal Admonition was imposed as a result of Respondent's failure to provide a written fee agreement and failure to refund the unused portion of the retainer in an immigration matter. Respondent undertook the representation of Mr. Rattenni in 2008 and engaged in the instant violations involving, most seriously, misappropriation of clients' funds. Respondent's rather short period of practicing law has been fraught with difficulties. However, instead of taking responsibility for his actions, Respondent has demonstrated no remorse and has offered no real indication that he will change the conduct of his practice of law.

The primary function of the lawyer disciplinary system is to determine the fitness of the lawyer to continue in that capacity, while protecting the courts and the public from persons unfit to practice law. Office of Disciplinary Counsel v. Campbell, 345 A.2d 616 (Pa. 1975).

The misappropriation of or the unauthorized dealings with client funds requires some form of public discipline due to the breach of trust involved. The Supreme Court has concluded that an attorney who converts fiduciary funds is considered a threat to future clients, and the public. Matter of Leopold, 366 A.2d 227 (Pa. 1976). The level of public discipline in such cases depends upon the aggravating and mitigating factors. In re Anonymous No. 124 DB 1997, 47 Pa. D. & C. 4th 338 (1998). Relevant case law

establishes that appropriate discipline in cases involving misappropriation of entrusted funds generally ranges from a short suspension to disbarment. Office of Disciplinary Counsel v. Marvin F. Galfand, No. 25 DB 2004, 1083 Disciplinary Docket No. 3 (Pa. Feb. 7, 2006). After reviewing a number of representative cases, the Board concludes that Respondent's misconduct falls within the range of cases that resulted in suspension for a period of three years.

In the matter of Office of Disciplinary Counsel v. Weaver, No. 56 DB 2004, 74 Pa. D. & C. 4th 439 (2005), Ms. Weaver was entrusted with $30,000, which she deposited into her escrow account and agreed to hold in trust on behalf of a client. The client subsequently requested the return of the funds, less any legal fees that had been incurred. Ms. Weaver failed to comply with the client's request and, during the time that Ms. Weaver was to have held the client's funds, her escrow account balance fell below the aggregate amount with which she had been entrusted by clients and third parties. Ms. Weaver had issued checks from her escrow account, made payable to herself, even when the balances in her escrow account were below the entrustment levels. Ms. Weaver violated Rule of Professional Conduct 1.3, 1.4(a) and 1.4(b), 1.15(a), (b) and (c), 8.4(b) and 8.4(c). In consideration of her failure to surrender her client's funds, her two previous informal admonitions, and her failure to appear at the disciplinary hearing the Board recommended a three years suspension, which the Court imposed.

Office of Disciplinary Counsel v. Olshock, No. 28 DB 2002 involved Mr. Olshock's representation of another attorney as the personal representative of a decedent estate for a fee of $16,500. After issuing estate account checks to himself for that amount, he subsequently issued additional checks totaling $22,093, payable to himself or "cash," that were unrelated to estate expenses, without the executor's authorization. Mr. Olshock

made prompt restitution prior to Disciplinary Counsel's investigation, acknowledged his misconduct and was very remorseful. Mr. Olshock was suspended for a period of three years.

Office of Disciplinary Counsel v. Lisa Anne Welkey, No. 132 DB 2009, 1718 Disciplinary Docket No. 3 (Pa. July 20, 2011) involved Ms. Welkey's misuse of funds belonging to a decedent's estate, failure to properly communicate with the client, failure to maintain costs in escrow and failure to account to a client for settlement proceeds with which she was entrusted. Ms. Welkey not only failed to account to her clients, but was out of trust due to misuse of funds, including funds she was to have held for payment to the Department of Public Welfare. While Ms. Welkey presented mitigating factors pertaining to her personal life that the Board considered, ultimately it was found that her misconduct reflected her serious failure to recognize her obligations to her clients and third parties. Ms. Welkey was suspended for a period of three years.

In contrast to these cases, Respondent urges consideration of the decision in Office of Disciplinary Counsel v. Yates, 908 A.2d 868 (Pa. 2006), in which Mr. Yates was found to have improperly disbursed over $40,000 held in escrow and failed to file a timely complaint on a client's behalf. Mr. Yates had practiced law for over 20 years with no prior discipline and the escrow disbursements were made at the request of his former client, who was one of the spouses for whose benefit the funds had been escrowed. Mr. Yates was suspended for three months, subject to probation and other conditions. Therein, the Board recognized that the funds had been disbursed out of concern for the former client, and not for Mr. Yates' financial benefit. This case is distinguishable from the instant matter and does not persuade us that a lesser discipline is warranted in this matter.

Using the above cited cases as guidance, and considering the totality of the facts and circumstance unique to this matter, the Board recommends that Respondent be suspended for a period of three years.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Matthew Albert Keranko, be Suspended from the practice of law for a period of three years.

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: _____
Stephan K. Todd, Board Member

Date: April 23, 2012

Board Members Buchholz and Bevilacqua did not participate in the adjudication.