

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. 2534 Disciplinary Docket No. 3  
:  
Petitioner : No. 120 DB 2016  
:  
v. : Attorney Registration No. 52696  
:  
ROBERT J. COLAIZZI, : (Allegheny County)  
:  
Respondent :

**ORDER**

**PER CURIAM**

**AND NOW**, this 4<sup>th</sup> day of January, 2019, upon consideration of the Report and Recommendations of the Disciplinary Board and Respondent's Petition for Review, Robert J. Colaizzi is suspended from the Bar of this Commonwealth for a period of one year and one day and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola  
As Of 01/04/2019

  
Attest:  
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 120 DB 2016
Petitioner	:	
	:	
v.	:	Attorney Registration No. 52696
	:	
ROBERT J. COLAIZZI	:	
Respondent	:	(Allegheny 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 September 25, 2017, Office of Disciplinary Counsel, Petitioner, charged Robert J. Colaizzi, Respondent, with violations of the Rules of Professional Conduct (“RPC”) arising out of allegations that he committed misconduct in six separate matters with respect to the mismanagement of IOLTA Account funds and the mismanagement of a nonlawyer employee. On November 13, 2017, Respondent filed an Answer to Petition.

Following a prehearing conference held on January 4, 2018, a disciplinary hearing was held on February 9, 2018, before a District IV Hearing Committee. Petitioner offered Administrative Exhibit 1, consisting of the parties' stipulations, and Petitioner's Exhibits 1 through 76, which were admitted into evidence. Petitioner did not call any witnesses. Respondent introduced the testimony of one witness and testified on his own behalf. Respondent did not offer any exhibits.

Petitioner filed a Brief to the Hearing Committee on March 22, 2018. Respondent filed a Brief to the Hearing Committee on May 15, 2018.

The Hearing Committee filed a Report on June 14, 2018, concluding that Respondent violated RPC 1.15(b), 1.15(d), 1.15(e), 5.3(a), 5.3(b), 5.3(c)(1), 5.3(c)(2), and 8.4(d), and recommending that Respondent be suspended for two years, with the suspension stayed in its entirety and probation for two years, subject to a practice monitor and conditions.

The parties did not take exception to the Hearing Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on July 20, 2018.

## II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave., P.O. Box 62485, Harrisburg, PA 17106-2485, 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 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 Robert J. Colaizzi, born in 1962 and admitted to practice law in the Commonwealth of Pennsylvania in 1988. Respondent's attorney registration address is 950 Greentree Rd., Suite 203, Pittsburgh, PA 15220. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior record of discipline and is on active status.

#### Regan Matter

4. In 2011, Respondent was retained by Rose Regan and Lois Phillips as co-executors of the Estate of John H. Strahsmeier ("Decedent"). Administrative Exhibit ("AE") 1.

5. Following the death of Decedent, Ms. Regan had withdrawn \$149,200.26 from an account she jointly held with Decedent. AE 1.

6. Subsequently, another co-executor, John T. Strahsmeier, demanded that Ms. Regan return the funds, but she refused to do so. AE 1.

7. The issue was litigated in the Court of Common Pleas of Allegheny County, Orphan's Court, and by orders dated July 25, 2011, and November 14, 2012, the Honorable Lawrence W. O'Toole directed Ms. Regan to return the money to Decedent's Estate. AE 1; PE 3; PE 4.

8. Following protracted appellate litigation and enforcement action, Ms. Regan forwarded to Respondent on November 23, 2012, a cashier's check made payable



to Respondent and Robert Amelio, Esquire, Mr. Strahsmeier's counsel, in the amount of \$40,000. AE 1.

9. At that time, Respondent's wife, Andrea Colaizzi (now Bonfili) ("Andrea"), a nonlawyer, worked as Respondent's law office manager. She deposited the proceeds of the \$40,000 into her personal Allegheny-Kiski Postal Federal Credit Union Account. AE 1.

10. Following further enforcement action, in December 2012, at Andrea's direction, Ms. Regan wired the additional sum of \$57,763.90 into Andrea's personal Allegheny-Kiski Postal Federal Credit Union Account. AE.1.

11. At a hearing before Judge O'Toole on December 27, 2012, Respondent represented to the court that the funds were being held in an account at First Niagara Bank. This statement was based upon information that Respondent received from Andrea, and not his own personal knowledge. AE 1.

12. Based upon that representation, Judge O'Toole ordered that by the next day, Respondent hand-deliver a cashier's check in the amount of \$97,763.90 to Mr. Amelio. AE 1.

13. Respondent did not deliver the check to Mr. Amelio. AE 1.

14. On December 28, 2012, Ms. Regan filed a Chapter 7 bankruptcy action at case number 12-359176-MER in the United States Bankruptcy Court for the District of Colorado. AE 1.

15. By order dated February 14, 2013, the United States Bankruptcy Court directed Respondent to turn over property he had received from Ms. Regan to the United States Bankruptcy Trustee, but Respondent failed to do so. AE 1; PE 7.

16. After being questioned in March 2013 by Ms. Regan's bankruptcy counsel, by letter dated March 18, 2013, Andrea submitted her resignation to Respondent and stated in part, that she had "diverted the funds wired by Ms. Regan, to [Andrea's] personal account," lied to Respondent and all parties involved, lied "at every turn to prevent the discovery of [her] deception" and had retained Attorney [Philip] DiLucente to represent her. AE 1; PE 10(a).

17. From the funds diverted by Andrea, a total of \$18,050.00 was paid, by cashier's checks, to Duquesne University and the University of Pittsburgh on behalf of the children of Respondent and Andrea. AE 1.

18. On March 20, 2013, Judge O'Toole issued a rule to show cause why Respondent should not be held in contempt. AE 1; PE 13.

19. A contempt hearing was held before Judge O'Toole on April 10, 2013:

a. Respondent testified that he had not been able to comply with the February 14, 2013 Order to deposit funds with the United States Bankruptcy Trustee because Andrea had already "misdirected" the funds. AE 1.

b. Respondent denied any knowledge of his wife's actions until her March 18, 2013 letter to him. PE -14.

c. Respondent argued that he was never entrusted with the funds since they were diverted by Andrea and he had no knowledge of the existence of the Allegheny-Kiski Postal Federal Credit Union account.

PE-14.

20. By Order dated April 10, 2013, Judge O'Toole found Respondent in contempt of court and sentenced him to a period of incarceration of six months in the Allegheny County Jail, with the purge condition that the \$97,763.90 be paid over to Mr. Amelio. AE 1; PE 15.

21. Respondent subsequently claimed to have the funds but was incarcerated for several days before he was able to purge himself of the contempt. AE 1.

22. To purge himself, Respondent obtained the money from: a loan by Andrea's father to Andrea; the income from his law practice; and the remaining funds in his law firm's Allegheny-Kiski Federal Credit Union account. AE 1.

23. Andrea was criminally charged, entered a plea of guilty and was sentenced to restitution and five years of probation. N.T. 52-53.

#### Pittsburgh Central Credit Union Matter

24. Respondent represented Pittsburgh Central Federal Credit Union ("Pittsburgh Central FCU") with regard to a Motion for Relief from Stay in a bankruptcy matter filed at case number 11-24443-BM in the United States Bankruptcy Court for the Western District of Pennsylvania and payment of delinquent taxes on a property in Indiana County, Pennsylvania, which belonged to the bankruptcy estate. AE 1.

25. In March 2013, Pittsburgh FCU advised Andrea that the taxes needed to be paid. PE 1.

26. While Respondent was handling the Regan estate matter, Andrea issued a check in the amount of \$12,853.39, drawn on Respondent's Northwest Savings Bank Account, made payable to the Indiana County Tax Claim Bureau and dated March



7, 2013, purportedly to pay delinquent taxes owed by some other clients of Respondent.  
AE 1.

27. Andrea issued the check from a closed account and the check was returned as unpaid by the Indiana County Tax Claims Bureau. AE 1.

28. On April 29, 2013, a month after her March 18, 2013 letter to Respondent admitting her improper monetary diversions and resigning her position at Respondent's law firm, Andrea instructed Pittsburgh Central FCU to issue a reimbursement check to Respondent's firm for \$12,853.39, which she picked up personally from Pittsburgh Central FCU and diverted to her own use. AE 1.

29. Andrea subsequently notified Pittsburgh Central FCU by email dated April 29, 2013, sent from Respondent's law firm email address, that Respondent's office had paid the Indiana County Tax Claim Bureau the sum of \$12,853.39. AE 1; PE 22.

30. By letter dated May 21, 2013, and by letter dated July 13, 2013, the Indiana County Tax Claim Bureau notified Respondent of the dishonored check. AE 1; PE 24; PE 25.

31. By letter dated September 16, 2013, a representative of Pittsburgh Central FCU wrote to Respondent's law firm with regard to the unpaid taxes. AE 1; PE 26.

32. On or about September 30, 2013, criminal charges were filed against Andrea in Indiana County and Office of Disciplinary Counsel sent a letter of inquiry to Respondent, dated November 21, 2013, in reference to the matter. AE 1; PE 20, PE-21.

33. In January 2014, Andrea paid the funds to the Indiana County Tax Claim Bureau, and the criminal charges against Andrea were withdrawn. AE 1.

34. On February 28, 2014, Respondent responded to the letter of inquiry and stated that he had closed all of his old accounts, that Andrea did not have access to any funds, and that Andrea was not allowed to distribute any monies. AE 1.

#### Tri-Valley Matters

35. In 2001, Respondent began representing Tri-Valley Service Federal Credit Union ("Tri-Valley"), and during the course of his representation, pursued claims on Tri-Valley's behalf in various bankruptcy matters. AE 1.

36. Andrea was the point person who dealt with Tri-Valley on various matters. N.T. 53-54.

37. In April 2008, Respondent filed a Proof of Claim on behalf of Tri-Valley in the amount of \$1,870.88 in regard to a bankruptcy matter involving one of Tri-Valley's client, Andrea Claybourne. AE 1.

38. On May 26, 2011 and July 26, 2011, the United States Bankruptcy Trustee issued checks in the amounts of \$1,347.03 and \$523.85 to Tri-Valley in care of Respondent's law firm in regard to Tri-Valley's claim against Ms. Claybourne. AE 1.

39. At that time, Respondent was entrusted with \$1,870.88 on behalf of Tri-Valley related to the Claybourne matter. AE 1.

40. Respondent failed to promptly pay the \$1,870.88 to Tri-Valley in the Claybourne matter. AE 1.

41. Andrea took the money and used it for personal use. N.T. 55.

42. In July 2012, subsequent to receiving a letter dated May 24, 2012 from Tri-Valley's new counsel, the McGrath Law Group, Respondent's law firm issued a check in the amount of \$1,870.88 on the law firm's Allegheny-Kiski Postal Federal Credit



Union Account with regard to the Claybourne matter which was returned due to insufficient funds. PE 1.

43. Subsequently, another check was issued that cleared the bank and Tri-Valley received the funds to which it was entitled in the Claybourne matter. AE 1.

44. In August 2007, Respondent filed claims on behalf of Tri-Valley in a bankruptcy matter involving Robert and Ona Jones. AE 1.

45. As of March 2012, Respondent was entrusted with funds totaling at least \$11,494.28 on behalf of Tri-Valley related to the Jones bankruptcy. AE 1.

46. Andrea intercepted checks intended for Tri-Valley and put them in the law firm account. N.T. 66.

47. In August 2012, Andrea issued two checks from Respondent's law firm's Allegheny-Kiski Postal Federal Credit Union account to Tri-Valley's new counsel with regard to the Jones matter. The first check was in the amount of \$6,000. The second check was in the amount of \$6,000.00 but was returned because of insufficient funds. AE 1.

48. In July 2013, Tri-Valley received payment in the Jones matter by a cashier's check for \$4,500.00 provided by Andrea. AE 1.

49. In early 2011, Tri-Valley retained Respondent to pursue a replevin action with regard to an automobile loan following default by Eugene and Brenda Hendrix. AE 1.

50. In April 2011, Respondent filed a civil complaint against the Hendrixes. AE 1.

51. Beginning in April 2011, the Hendrixes paid to Respondent a total of \$3,000 in entrusted funds which were to be remitted to Tri-Valley. AE 1.

52. Respondent failed to promptly pay those funds to Tri-Valley. AE 1.

53. Andrea deposited money orders that Mr. Hendrix sent to Respondent's law firm and kept the money, never letting Tri-Valley know that the money came in. N.T. 53.

54. In or about August 2012, McGrath Law Group on behalf of Tri-Valley received payment from Respondent for unearned fees in the amount of \$2,174.50. The check, dated August 31, 2012, and drawn on Respondent's law firm's Allegheny-Kiski Postal Federal Credit Union Account, was returned because of insufficient funds. AE 1.

55. In October 2013, following the filing of a complaint and civil action against Respondent and his law firm by McGrath Law Group on behalf of Tri-Valley, a consent judgment in the amount of \$5,174.50 (\$2,174.50 in unearned fees plus \$3,000.00 in entrusted funds) was entered against Respondent in connection with the Hendrix matter. AE 1.

56. That consent judgment against Respondent entered at case number AR-13-0003564 in the Court of Common Pleas of Allegheny County remains unsatisfied. AE 1.

#### Zebley Matter

57. Andrea performed paralegal services for Attorney James Jefferies, who was not associated with Respondent's law firm. AE 1.

58. In August 2013, Andrea diverted \$20,000 in entrusted funds made payable by Attorney Jefferies to Attorney Charles Zebley, Bankruptcy Trustee, related to a bankruptcy case. PE 1; PE 2.

59. Although the case was not Respondent's, Andrea placed the \$20,000.00 in diverted funds into Respondent's law firm's non-IOLTA Huntington National Bank Account. PE 1; PE2.

60. On September 17, 2013, the balance in Respondent's law firm's non-IOLTA Huntington National Bank Account was a negative \$143.53, which was \$20,000.00 below the entrustment on behalf of Attorney Zebley. AE 1.

61. On April 8, 2014, the \$20,000.00 in diverted funds was repaid by cashier's check from Respondent's law firm to the bankruptcy trustee. AE 1.

#### Phillips Matter

62. In July of 2013, Respondent commenced representation of Elaine Phillips in divorce and support matter in the Court of Common Pleas of Allegheny County. Ms. Phillips had been involved in an automobile accident, but was represented initially in the personal injury matter by Gary G. Ogg, Esquire. AE 1.

63. In September of 2013, Respondent began to represent Ms. Phillips in her personal injury claim and in December 2013, Respondent negotiated a settlement with the insurance carrier for \$50,000.00. AE 1.

64. Thereafter, a dispute arose between Ms. Philips and Mr. Ogg regarding Mr. Ogg's attorney's fees. AE 1.

65. In March of 2014, Respondent filed a civil action in the Court of Common Pleas of Allegheny County, on behalf of his law firm and Ms. Phillips against Mr. Ogg and his law firm. The case settled in May of 2014. AE 1.

66. By check dated March 25, 2014, Progressive Insurance had paid \$42,000.00 to Ms. Phillips, her husband and Respondent's law firm. Progressive also



distributed to Respondent a check made payable to Mr. Ogg's law firm for \$8,000.00. AE 1.

67. On April 10, 2014, the \$8,000.00 check payable to Mr. Ogg's law firm was deposited into Respondent's Huntington National Bank IOLTA Account and Respondent was entrusted with \$8,000.00 on behalf of Mr. Ogg. AE 1.

68. On April 14, 2014, the balance in Respondent's IOLTA Account was \$304.06, which was \$7,695.94 below Respondent's entrustment on behalf of Mr. Ogg. AE 1.

69. On May 12, 2014, a cashier's check for \$4,000.00 was paid by Respondent's law firm to Mr. Ogg and on May 20, 2014, a second cashier's check for \$4,045.00 was paid by Respondent's law firm to Mr. Ogg. AE 1.

#### IOLTA Account Overdrafts

70. On July 7, 2014, a check was issued drawn on Respondent's Huntington National Bank IOLTA Account in the amount of \$49.00 which caused a negative balance in the account in the amount of \$33.19. PE 1; PE 2.

71. Thereafter, in July 9, 2014, a check was issued in the amount of \$97.00, which caused a negative balance in Respondent's Huntington National Bank IOLTA Account of \$166.71. PE 1; PE 2.

72. The overdrafts from Respondent's accounts were referred by the bank to the Pennsylvania Lawyers Fund for Client Security ("Fund"), which contacted Respondent by letter dated July 16, 2014. AE 1.

73. On July 16, 2014, checks were issued drawn on Respondent's Huntington National Bank IOLTA Account in the amounts of \$300.00 and \$381.43, which caused a negative balance in the account of \$558.62. PE 1; PE 2.

74. On July 29, 2014, a check was issued drawn on Respondent's Huntington National Bank IOLTA Account in the amount of \$308.50, which resulted in a negative balance of \$910.18. PE 1; PE 2.

75. On August 1, 2014, checks were issued drawn on Respondent's Huntington National Bank IOLTA Account in the amount of \$831.15, \$220.15, \$220.50 and \$325.00, which resulted in a negative balance of \$910.18. PE 1; PE 2.

76. By letter dated August 1, 2014, Respondent answered the Fund, stating that he had not had any entrusted funds in his Huntington National Bank IOLTA Account since April of 2014. AE 1.

77. Andrea ripped checks out of the IOLTA account checkbook and hid them for later use. N.T. 60, 84-85.

78. Andrea forged Respondent's name on the IOLTA checks. N.T. 60, 61

79. In response to Petitioner's October 2, 2014 Letter of Inquiry sent to Respondent in this matter, Respondent stated that at the time the overdrafts occurred, his office was suffering from the "loss of its long-time office manager, paralegal and also bookkeeper." AE 1; PE 44; PE 45.

#### Additional Findings

80. Andrea testified at the disciplinary hearing.



81. Andrea was never formally employed at Respondent's law firm, but acted as the office manager. N.T. 38-39. She oversaw the work product of other staff, performed all of the financial work and bookkeeping, handled the mail, answered telephones, and kept Respondent's calendar. N.T. 39.

82. Specifically as to the firm's banking, Andrea "did everything." N.T. 40. She handled deposits and wrote all the checks. N.T. 40.

83. After Andrea admitted her acts to Respondent in March of 2013, she remained a part of Respondent's office staff and maintained a presence in Respondent's law office for approximately two years. N.T. 74-75.

84. During this time frame, Andrea helped conduct interviews and trained new staff on all aspects of running Respondent's office. While she was training new staff, Respondent stayed in his office. N.T. 74-75. Andrea testified that during that time she still had her name on accounts and that the bookkeeper she was training was monitoring her. N.T. 61-62.

85. Correspondence to Respondent's law firm was still addressed to Andrea in August 2013, five months after she confessed to her criminal acts, and Andrea had access to the mail during 2013 and 2014. PE-39; N.T.71-72.

86. Andrea had access to Respondent's law firm's email account into 2014 and used that account to send emails. Andrea testified that she was able to use the email account when the bookkeeper got up and moved from the work station. N.T. 62-63, 76, 80-81; PE-43.

87. Andrea testified that she diverted monies of her own volition, did not discuss her actions with Respondent and deceived him. N.T. 43, 44-45, 47-48.

88. Respondent has been a sole practitioner since 2003, following employment with Pittsburgh-area law firms as an associate attorney. N.T. 91, 95.

89. Respondent relied on Andrea's role as officer manager and placed "too much confidence" in her. N.T. 32-33.

90. Respondent admitted that he was not reviewing bank statements for his IOLTA and office accounts. N.T. 30.

91. Respondent testified that he was "deceived" by Andrea as she actively concealed her actions from him. N.T. 34-35.

92. Respondent testified that the monies diverted by Andrea were not used to benefit him, but in fact some of the monies went to make college payments for the Colaizzi children. N.T. 55.

93. Respondent testified that after Andrea admitted her activities to him in March 2013, he still needed her help in his office during a "transitional" period to determine the status of matters and hire and train new office staff. N.T. 32-33.

94. During 2013 and 2014, Respondent and Andrea looked through the client files to figure out what was going on in each file. N.T. 81.

95. Respondent testified he removed Andrea's name from the IOLTA account in March or April of 2013. N.T. 32.

96. Respondent admitted that Andrea committed more wrongdoing after March 2013, and testified that does not know how Andrea had access and ability to make deposits after March of 2013. N.T. 32.

97. Respondent testified that he still represents Ms. Regan and Ms. Phillips. N.T. 34.

III. CONCLUSIONS OF LAW

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

1. 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.

2. RPC 1.15(d) – Upon receiving Rule 1.14 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. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment.

3. 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 requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.



4. RPC 5.3(a) – With respect to a nonlawyer employed or retained by or associated with a lawyer: a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

5. RPC 5.3(b) – With respect to a nonlawyer employed or retained by or associated with a lawyer: a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

6. RPC 5.3(c)(1) – With respect to a nonlawyer employed or retained by or associated with the lawyer: a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer orders, or with the knowledge of the specific conduct, ratifies the conduct involved.

7. RPC 5.3(c)(2) – With respect to a nonlawyer employed or retained by or associated with a lawyer: a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

8. 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

Herein, the Board considers the matter of Respondent's mismanagement of entrusted funds in six separate matters and mismanagement of a nonlawyer employee. Respondent answered the Petition for Discipline and the parties entered into Stipulations Based on Petition and Answer. The stipulations, the documentary exhibits, and the testimony of Respondent and his witness at the hearing demonstrate that Respondent engaged in misconduct in violation of the rules charged in the Petition for Discipline. We conclude that Petitioner met its burden to prove Respondent's ethical misconduct by clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730 (Pa. 1981). For the following reasons, we recommend that Respondent be suspended for a period of one year and one day.

Respondent failed to properly handle his IOLTA account and the funds entrusted to him. In the Regan, Pittsburgh Central FCU, Tri-Valley, Phillips and IOLTA Account matters, Respondent violated RPC 1.15(b) by failing to hold funds separate from his own property and failing to provide appropriate safeguards. Specifically, Respondent did not hold all funds in trust, which resulted in overdrafts of his IOLTA Account.

In the Tri-Valley matter, Respondent violated RPC 1.15(d) by failing to notify a client or third person upon receipt of entrusted funds which were not fiduciary funds. Respondent violated RPC 1.15(e) in the Regan, Pittsburgh Central FCU, Tri-Valley and Phillips matters by failing to promptly deliver to his clients or third persons any property that such persons were entitled to receive.

Respondent offered numerous explanations about his wife Andrea's involvement in his law practice and her mishandling of his accounts. Despite these



explanations regarding his wife's conduct, Respondent bore the ultimate responsibility. His conduct in failing to supervise his wife and allowing her to repeatedly mismanage his law practice finances and engage in theft of entrusted funds is a violation of RPC 5.3(a) and 5.3(b), which required him as manager and supervisor of his practice to make reasonable efforts to ensure that Andrea's conduct was compatible with the professional obligations of a lawyer.

Respondent's failure to supervise his wife in the handling of his IOLTA account is similarly violative of RPC 5.3(c)(1) and (c)(2), which required him to be responsible for Andrea's conduct as a nonlawyer, and to take reasonable remedial action to avoid or mitigate the consequences of her actions.

Respondent's handling of the Regan matter and the contempt and enforcement actions which became necessary to compel him to pay out entrusted funds violated RPC 8.4(d), as he engaged in conduct that prejudiced the administration of justice.

Having concluded that Respondent violated the rules, this matter is ripe for the determination of discipline. It is well-established that in evaluating professional discipline, each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 427 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***, 473 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the respondent's conduct against other similar transgressions." ***In re Anonymous No. 56 DB 94 (Linda Gertrude Roback)***, 28 Pa. D. & C. 4<sup>th</sup> 398 (1995).

Respondent expressed remorse, cooperated with Petitioner during the investigation of this matter and entered into stipulated facts, has no prior disciplinary record since his bar admission in 1988, and made reimbursement, although he has not satisfied the consent judgment entered against him in connection with the Tri-Valley matter. Respondent urges leniency in this matter on the basis that his wife's unlawful acts show that his violations were not intentional. Respondent insists he was deceived by his wife and unaware of her wrongful acts, and that the monies she diverted were not for his own use, although the record is clear that Andrea used these misbegotten funds to make college payments on behalf of the Colaizzi children. Irrespective of any specific knowledge that Respondent may have had at the time of his wife's acts, the undisputed facts establish that Respondent failed to properly manage his IOLTA Account, properly manage his law firm finances, and adequately manage and supervise his wife in her capacity as his office manager.

The record demonstrates that as of March 18, 2013, Respondent was put on notice by Andrea that she diverted entrusted funds in the Regan matter. As of that point in time, Respondent cannot claim he remained unaware of her actions, or her capacity to engage in such conduct. In fact, after March 18, 2013, Andrea diverted funds on two occasions, in the Pittsburgh Central FCU matter (April 2013) and in the Zebley matter (August 2013). During this same time period, criminal charges were brought against Andrea in the FCU matter. In addition, in 2014, Andrea had access to checks from Respondent's Huntington National Bank IOLTA account and attempted to access funds, causing overdrafts.

Respondent's conduct once he learned of Andrea's wrongful acts in Regan is the crux of this disciplinary matter. Inexplicably, Respondent continued to allow Andrea

to be present at his law office, train new employees, and access his law firm's financial records, accounts, mail and email. The record supports the finding that Andrea continued to have full access to the office for approximately two years. As to any supervision during those two years, Andrea testified that the bookkeeper she trained acted as a monitor. Even during this time frame, when he was fully aware of the diverted funds, it is not clear that Respondent provided the necessary oversight to prevent another theft.

In aggravation, Respondent did not fully acknowledge and accept his own responsibility in these matters and significantly, did not demonstrate that he was aware of the need for an immediate response to Andrea's conduct, in order to protect his clients. Simply put, Respondent did not do enough to protect entrusted funds and to protect his law practice. As the Supreme Court observed in *Office of Disciplinary Counsel v. Suber Lewis*, 426 A.2d 1138, 1143 (Pa. 1981), "The public trust that an attorney owes to his client is in the nature of a fiduciary relationship involving the highest standard of professional conduct." Respondent's duty was to his clients, not his office manager/spouse. There is scant evidence of record that Respondent took concrete steps to address the serious problem Andrea's presence created, such as by changing locks on the office doors, securing accounts and files, changing passwords on email accounts and remote access capability, among other potential avenues.

We further note as evidence of Respondent's failure to accept responsibility that as of the date of the disciplinary hearing, Respondent had failed to satisfy the judgment in the amount of \$5,174.50 entered against him in the Tri-Valley matter in October 2013. This judgment concerned unearned fees and entrusted funds on behalf of the Hendrixes that were never paid to Tri-Valley.



The Hearing Committee's recommendation in this matter is for a suspension of two years, stayed in its entirety, with probation for two years, a practice monitor, and conditions requiring Respondent to refrain from contact with Andrea regarding his law practice matters, including excluding her physical presence at his law office, preventing Andrea from having remote access capability, and preventing Andrea from having access to his IOLTA and bank accounts and records, and to his email and the law firm email.

Board Rule §89.291(a) sets forth the qualifications for a respondent-attorney to be placed on probation. In particular, §89.291(a)(2) requires that an attorney demonstrate that he or she is unlikely to harm the public during the period of probation and the necessary conditions of probation can be adequately supervised. In this matter, it is not clear that the conditions of probation can be adequately supervised and complied with so that the public is protected. The conditions recommended by the Hearing Committee require Respondent essentially to control the actions of another individual, Andrea, to ensure that she does not interfere with the management of his law office. Respondent has not shown evidence on the record of changes he has made to his law practice to demonstrate that he acknowledges and understands the past serious problems and that he has improved supervisory oversight to remediate those problems. Upon the record, we conclude that probation is not appropriate in this matter

In a similar matter, a respondent-attorney received a private reprimand with five years of probation with conditions for failing to hold entrusted property separate from his own and failing to supervise a nonlawyer after his wife misappropriated funds from his law practice. ***Office of Disciplinary Counsel v. Anonymous***, No. 134 DB 2009 (D. Bd. Order 10/27/2010). Thereafter, the respondent-attorney violated the probation by failing to safeguard funds, which resulted in his suspension for a period of five years. ***Office of***

***Disciplinary Counsel v. Ronald Peter Langella***, No. 102 DB 2012 (D. Bd. Rpt. 9/23/2013) (S. Ct. Order 1/15/2014).

By way of background, in 2005, Mr. Langella, a sole practitioner, discovered that his wife, who was his office manager, had misappropriated \$57,000 in funds entrusted to him. Mr. Langella restored the funds and took immediate action to deprive his wife of access to his accounts and checkbooks. However, despite these efforts, Mr. Langella's wife continued to misappropriate funds in the amount of \$76,000 from his IOLTA accounts. Again, Mr. Langella restored the funds and took action to deny his wife access to his accounts, by destroying signature stamps and securing his checkbooks. The Board determined that although the matter was very serious, a private reprimand and five years of probation was appropriate in light of Mr. Langella's quick action to reimburse funds and to prevent his wife's access to his accounts, along with his cooperation with Office of Disciplinary Counsel. The Board concluded that private discipline was warranted in order to permit Mr. Langella to continue practicing law. The conditions attached to Mr. Langella's probation required him to take certain actions to deny his wife's access to the law firm's bank accounts. Unfortunately, Mr. Langella was not able to comply with the conditions, once again failing to hold entrusted funds separate from his own, as his wife was implicated in overdrafts that occurred in his IOLTA accounts. Disciplinary charges were brought against Respondent based on his probation violation. Although the Board recommended a suspension of one year and one day, the Court imposed a five-year suspension.

Although aspects of ***Langella*** and the instant matter are similar, we conclude that the instant Respondent's actions are not as egregious as Mr. Langella's and do not warrant a five-year suspension. In addition to Mr. Langella's failure to



safeguard entrusted funds and his violation of probation, he failed to diligently represent a client, failed to communicate, failed to have a written fee agreement, and failed to refund unearned fees.

We contrast the result in *Langella* with the matter at *Office of Disciplinary Counsel v. Anonymous*, No. 22 DB 2014 (D. Bd. Order 8/26/2015). Therein, the Board imposed a private reprimand with probation for one year on an attorney who mishandled an estate and failed to supervise his paralegal's access to his IOLTA account. This attorney demonstrated mitigating factors in that he suffered from emotional problems resulting from his father's death, he took immediate steps to remedy the problems with the estate, including making reimbursement and taking steps to improve his office procedures, he cooperated with Office of Disciplinary Counsel, and he had no prior record of discipline. The Board concluded that the compelling mitigating factors warranted private discipline, rather than the one year and one day suspension recommended by the Hearing Committee.

The instant matter is more serious and warrants more severe discipline, based on Respondent's failure to acknowledge and swiftly address his wife's wrongful actions, as well as his own actions in the Allegheny Court of Common Pleas that prejudiced the administration of justice in the Regan matter, and his failure to pay the judgment entered in the Tri-Valley matter.

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 117 (Pa. 2005). Upon the totality of the facts and circumstances of this particular matter, and guided by decisional law, the

Board concludes that a suspension of one year and one day fulfills the purpose of the disciplinary system.

V. RECOMMENDATION

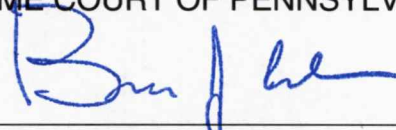
The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert J. Colaizzi, be Suspended for One Year and One Day from the practice of law in this Commonwealth.

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: \_\_\_\_\_



Brian J. Call, Chair

Date: 9/28/18

Members Trevelise and Cordisco recused.