

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 148 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Registration No. 88918
	:	
EVAN SHINGLES,	:	
Respondent	:	(Philadelphia)

OPINION

This matter is before the Board on a Petition for Discipline filed by Petitioner, Office of Disciplinary Counsel, on August 8, 2019, charging Respondent, Evan Shingles, with violation of Rules of Professional Conduct (“RPC”) 1.8(e), 1.15(b), 1.15(c), 1.15(e), 1.15(g), 1.15(h), 1.15(j), 5.1(a), 5.1(b), 5.1(c), 5.3(a), 5.3(b), 5.3(c), and 8.4(c), and violation of Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) 219((d)1)(iii), (iv) and (v), 221(e) and 221(g)(1), related to allegations that Respondent misused his IOLTA account, failed to supervise other lawyers and nonlawyers within his firm, failed to maintain records required by RPC 1.15(c), provided financial assistance to a client in connection with pending litigation, and engaged in dishonest conduct. On October 7, 2019, Respondent filed an Answer to the Petition for Discipline.

Following a prehearing conference on November 14, 2019, a District I Hearing Committee (“Committee”) conducted a disciplinary hearing on February 7, 2020 and February 13, 2020. Petitioner and Respondent, through counsel, entered into stipulations prior to the disciplinary hearing. Respondent admitted to violating RPC 1.8(e), 1.15(b), 1.15(c), 1.15(h), Pa.R.D.E.221(e) and 222(g)(1). Petitioner introduced ODC Exhibits 1-17, 21-55 and 58-82, which were admitted without objection. Petitioner

presented the testimony of two witnesses. Respondent offered into evidence Respondent's Exhibits A-Z, which were admitted without objection. Respondent testified on his own behalf and presented the testimony of six witnesses.

Following the submission of the parties' briefs, the Committee filed a Report on August 14, 2020, concluding that Respondent violated the rules charged in the Petition for Discipline and recommending that Respondent receive a Public Reprimand with probation for one year, subject to conditions.

On September 3, 2020, Petitioner filed a Brief on Exceptions and requested that the Board reject the Committee's recommendation and instead recommend to the Supreme Court that Respondent be suspended for a period of one year and one day. On October 9, 2020, Respondent filed a Response to Petitioner's Brief on Exceptions and requested that the Board affirm the Committee's recommendation and impose a Public Reprimand to address Respondent's misconduct. The Board adjudicated this matter at the meeting on October 16, 2020.

Petitioner bears the burden of proving by a preponderance of the evidence that is clear and satisfactory, that Respondent's actions constitute professional misconduct. ***Office of Disciplinary Counsel v. John T. Grigsby III***, 425 A.2d 730, 732 (Pa. 1981). Upon the record before us, the Board finds that Petitioner met its burden of proving that Respondent engaged in professional misconduct in violation of the rules as to all charges in the Petition for Discipline, but for RPC 8.4(c). We conclude that a Public Reprimand with a one year period of probation is the appropriate discipline to address Respondent's misconduct.

Born in 1972, Respondent was admitted to practice law in the Commonwealth in 2002. Respondent practiced for many years as a sole practitioner with

his own office space in Philadelphia. Stanley Shingles, Esquire (“Stanley”), Respondent’s father and a Pennsylvania lawyer since 1963, maintained his own firm in Conshohocken, Pennsylvania. In approximately 2014, the decision was made for Stanley to join Respondent at his office suite, due in large part to Stanley suffering from the physical manifestations of Parkinson’s disease and Respondent’s desire to assist his father. Accompanying Stanley in this move was Mitzi Cobbs, Stanley’s long-term legal assistant. Once installed in Respondent’s office, Stanley continued his practice, consisting in large part of personal injury cases, some referred to Stanley by Respondent. Mitzi handled the bookkeeping for the office and had access to the IOLTA account, of which Respondent was listed as the sole authorized signatory, and the business operating account, of which Respondent and Stanley were listed as authorized signatories. In the course of Mitzi’s duties, she often times used a signature stamp authorized by Respondent with his signature.

Approximately one year after Stanley joined Respondent’s office suite, Respondent discovered that his father and Mitzi were mismanaging client funds and mismanaging the IOLTA by depositing entrusted funds into the business operating account, instead of the IOLTA. Respondent immediately directed Stanley and Mitzi to cease that practice and use the IOLTA for entrusted funds. However, in a critical error based primarily on the fact that Respondent trusted his father, a long time practitioner, and Mitzi to correct these practices, Respondent failed to execute proper supervisory functions to ensure that his instructions were heeded, and did not monitor the records to ensure the sanctity of client funds. Respondent underestimated the extent of the problem and believed it was limited to using the wrong account, but in fact the issues were more pervasive.

While undoubtedly Stanley and Mitzi did not properly use the IOLTA, the record established that Respondent himself did not employ proper bookkeeping and recordkeeping procedures, which allowed the mishandling of funds to occur for a year before detection. For his own part, Respondent wrongfully deposited borrowed funds designated for construction and such other purposes into his IOLTA and wrongfully paid the office suite rent by issuing a check from his IOLTA. Respondent had a clear responsibility to oversee his accounts and review his records, and to correct errors that might arise, but failed to do so. As a result of Respondent's failure to perform the required bookkeeping and recordkeeping and the misuse of bank accounts and client funds by both Stanley/Mitzi and Respondent from July 3, 2014 until sometime in mid-2016, the IOLTA and business operating account where client funds were held were out of trust to a combined amount of \$42,470.21. Importantly, no client was harmed.

By his conduct, Respondent violated his fiduciary obligations in that he commingled personal and operating funds in the IOLTA, retained attorney fees in the IOLTA, paid operating expenses out of the IOLTA, deposited entrusted funds into the business operating account, provided financial assistance to one client in connection with pending litigation, displayed an unawareness of the steps needed to comply with obligations, and failed to properly supervise Stanley and Mitzi. Upon the record, we conclude that Respondent did not engage in intentionally dishonest conduct involving conversion of client funds, and therefore did not violate RPC 8.4(c).

In January 2017, Respondent appeared at Petitioner's office for a subpoena return and testified that he did not keep a ledger and did not understand recordkeeping and bookkeeping requirements but intended to do better and had hired an accountant. During the subpoena return, Respondent promised to obtain records requested by

Petitioner, including monthly statements for the business operating account, cancelled checks, deposit records and the general ledger.

Thereafter, Respondent destroyed his signature stamp and opened a separate bank account for the office suite rent. He also began organizing his documents as instructed by the accountant. Respondent kept records but did not perform monthly reconciliations on his IOLTA. Some 22 months later, in response to Petitioner's request in November 2018, Respondent was not able to produce the documents that had earlier been requested in 2017, and admitted that although he had been keeping the required records, he had not reconciled the IOLTA on a monthly basis, a failure for which he takes full responsibility. After this false start, Respondent now understands RPC 1.15 and its requirements and has been in full compliance since June 2019. Respondent opened a new IOLTA in June 2019, maintains client ledgers and performs three-way reconciliations.

At the disciplinary hearing, Respondent testified on his own behalf and offered mitigating evidence. Respondent expressed genuine remorse for his misconduct and testified that his account improprieties were unintentional. Respondent forthrightly admitted that he did not keep required records and failed to monitor accounts in the manner that the rules required, resulting in his unintentional commingling of entrusted funds with his own. Moreover, Respondent admitted that he failed to promptly remediate these problems, both after his discovery of Stanley's and Mitzi's mishandling of entrusted funds and after the subpoena return. Respondent held himself accountable for his failings and acknowledged that he must be sanctioned for his violations. Respondent, who has practiced law since 2002 without any disciplinary incident, expressed shame and embarrassment about his prior failings and recognized that protecting entrusted funds is an indispensable component of being a good lawyer.

Respondent put forth compelling evidence from six character witnesses, including five attorneys, several of whom have known him for over twenty years, that he is a trustworthy, diligent, and caring lawyer. Each attorney witness testified that Respondent told them of his misconduct and despite this knowledge, each expressed no hesitation in referring clients to Respondent. The nonlawyer witness, a veterinarian and Respondent's former client, credibly testified that Respondent very diligently handled her matter, she is aware of his misconduct and Respondent expressed remorse for it to her, and similarly testified that she would feel comfortable referring others to Respondent.

Upon this record we find, as did the Committee, that there is no evidence Respondent committed the type of misconduct that would justify a suspension of his license in order to protect the public. Rather, his recordkeeping violations and his failure to address such violations in a timely fashion support public discipline in the form of a public reprimand. Respondent improperly handled his accounts, remediated that problem, and comported with the rules since June 2019. Respondent did not engage in intentional misappropriation of funds and did not harm his clients. In accepting full responsibility for his actions, Respondent expressed genuine and sincere remorse, embarrassment and shame. He provided ample proof of his good character and competence as an attorney. Furthermore, Respondent has no history of discipline in his nearly twenty years of legal practice, some of which has been spent representing underprivileged individuals and performing pro bono legal service.

The purpose of the disciplinary system is "to protect the public from unfit attorneys and to maintain the integrity of the legal system." ***Office of Disciplinary Counsel v. Robert W. Costigan***, 584 A.2d 296, 300 (Pa. 1990). Each disciplinary matter must be decided on a case-by-case basis, considering the totality of the facts and

circumstances, with precedent considered due to “the need for consistency in the results reached in disciplinary cases.” ***Office of Disciplinary Counsel v. Robert S. Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

A wide range of discipline has been imposed in matters involving mishandling of entrusted funds and mishandling of IOLTA accounts, including suspension. Upon review, we conclude that cases with similar misconduct and similar mitigating facts support the imposition of a public reprimand in the instant matter.

In ***Office of Disciplinary Counsel v. Richard Patrick Gainey***, 210 DB 2018 (D. Bd. Order 4/15/2020), the Board imposed a public reprimand for Gainey’s mismanagement of his IOLTA, failure to keep required records, including monthly reconciliations and ledgers, and failure to list certain accounts on the annual attorney registration form. The Board found that “[Gainey’s] behavior with respect to his bookkeeping and management of records was undeniably negligent and careless conduct” and that “[Gainey’s] careless inattention to his professional responsibilities resulted in his violation of RPC 1.15(b), for failing to keep entrusted funds separate from personal funds, RPC 1.15(c), for failing to keep required records of entrusted funds, and RPC 1.15(h), for depositing personal funds in his IOLTA account.” ***Gainey*** at pp. 5-6. However, the Board concluded that Gainey did not violate RPC 8.4(c), as there was insufficient evidence to clearly and satisfactorily establish dishonest intent or purpose on Gainey’s part. In determining that a Public Reprimand was warranted, the Board considered in mitigation that Gainey had no prior record of discipline during his 20-year legal career, accepted responsibility and expressed remorse, did not harm his clients, and presented credible character evidence. The facts in ***Gainey*** are on point with the facts in the instant matter and support the conclusion that a public reprimand is

appropriate discipline. Respondent engaged in similar misconduct with very similar mitigating circumstances.

The following cases are factually similar to the instant matter and resulted in the imposition of a public reprimand: ***Office of Disciplinary Counsel v. Clair Michelle Stewart***, No. 228 DB 2018 (D. Bd. Order 12/21/2018) (public reprimand imposed for mishandling estate funds and mishandling IOLTA and failure to comply with RPC 1.15, cooperated with Office of Disciplinary Counsel, no prior discipline); ***Office of Disciplinary Counsel v. Elliott Tolan***, No. 200 DB 2015 (D. Bd. Order 12/30/2015) (public reprimand imposed for commingling client funds and engaging in dishonest conduct, no prior discipline).

We also note matters of a similar factual nature that resulted in public reprimand despite the fact that the respondent-attorney had a history of discipline and did not have weighty mitigating factors. See, ***Office of Disciplinary Counsel v. John E. Quinn***, No. 138 DB 2019 (D. Bd. Order 8/2/2019) (public reprimand imposed for mismanagement of IOLTA and lack of communication with clients in several matters, no client harm and no dishonest conduct, prior discipline); ***Office of Disciplinary Counsel v. James T. Marsh***, No. 247 DB 2018 (D. Bd. Order 1/18/2019) (public reprimand imposed for mishandling IOLTA and failing to maintain client ledgers, prior discipline); ***Office of Disciplinary Counsel v. Gordon D. Fisher***, No. 21 DB 2016 (D. Bd. Order 1/19/2017) (public reprimand imposed for failing to hold entrusted funds in a separate account and allowing the account to be deficient for a period of time, prior discipline); ***Office of Disciplinary Counsel v. Manrico Troncelliti, Jr.***, No. 196 DB 2016 (D. Bd. Order 12/12/2016) (public reprimand imposed for taking unearned fees and failing to maintain and account for fiduciary funds in an estate matter, neglect and failure to

communicate, prior discipline).

The Committee recommended that Respondent serve a one year period of probation. We concur that the facts support a period of probation in order for Respondent to demonstrate that his current compliance with RPC 1.15 is robust and continues. The record establishes that Respondent's initial remediation of his recordkeeping issues was not undertaken promptly, and while he has been compliant with the rules since June 2019, a one year period of probation conditioned on Respondent's submitting records on a quarterly basis to Petitioner will ensure that Respondent is meeting the requirements of RPC 1.15.

Respondent demonstrated a clear understanding of his misconduct and has taken appropriate measures to prevent his violations from reoccurring and there have been no reported violations since that time. The record established that Respondent is fit to practice law and is capable of avoiding a relapse of his past conduct. Under these circumstances, a public reprimand with a one year period of probation is appropriate discipline and is consistent with discipline imposed in prior similar matters.

DETERMINATION

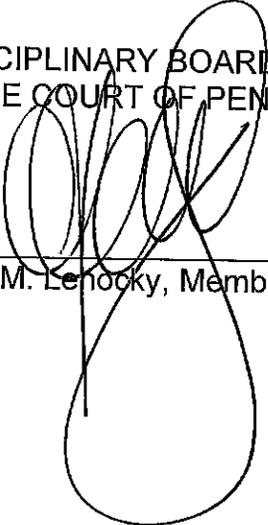
The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the Respondent, Evan Shingles, shall receive a Public Reprimand and shall be placed on Probation for a period of one year, subject to the following conditions:

1. Respondent shall continue to maintain the records required by Pa.R.P.C. 1.15(c) for all IOLTA accounts;
2. Respondent shall submit those records to the Office of Disciplinary Counsel on a quarterly basis;
3. Respondent shall employ a CPA or other qualified professional to review Respondent's records for accuracy prior to their submission to the Office of Disciplinary Counsel;
4. Respondent shall comply with any request by the Office of Disciplinary Counsel for corrected or supplemental records within 20 days of receipt of such records, without the need for the Office of Disciplinary Counsel to issue a subpoena;
5. Respondent shall maintain all of the required books and records required by RPC 1.15(c) in electronic form, which shall be securely backed up and readily available to Respondent and, upon demand, to the Office of Disciplinary Counsel;
6. Respondent shall reply to any request for backup records from the Office of Disciplinary Counsel within 20 days of receipt of such a request, without the need for the Office of Disciplinary Counsel to issue a subpoena; and

7. Respondent's probationary term shall not expire until he has provided the Office of Disciplinary Counsel with required records, and any requested corrected or supplemental records, and the Office of Disciplinary Counsel has determined that such records are sufficient under 1.15(c).

The expenses incurred in the investigation and prosecution of this matter shall be paid by Respondent.

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Jerry M. Lenocky, Member

Date: 12-8-20