BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 153 DB 2018
v.	:	Attorney Registration No. 46392
THOMAS JAMES FIEGER, JR. Respondent	:	(Delaware County)

ORDER

AND NOW, this 17th day of March, 2021, upon consideration of the Amended Report and Recommendation of the Special Master filed on August 17, 2020; it is hereby

ORDERED that the said THOMAS JAMES FIEGER, JR., of Delaware County shall be subjected to **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. Costs shall be paid by the Respondent.

BY THE BOARD:

Board Chair

TRUE COPY FROM RECORD
Attest:

Marcee D. Sloan
Board Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 153 DB 2018
v.	:	Attorney Registration No.46392
THOMAS JAMES FIEGER, JR., Respondent	:	(Delaware County)

OPINION

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on August 31, 2018, Petitioner, Office of Disciplinary Counsel, charged Respondent, Thomas James Fieger, Jr., with multiple violations of the Rules of Professional Conduct arising from Respondent's representation of Dr. Suk Chul Chang. The parties entered into a one-time stipulation to grant Respondent an additional 20 days in which to respond to the Petition for Discipline. Respondent filed an Answer to Petition on November 1, 2018.

Due to the need for multiple hearing dates, on December 3, 2018, the Board appointed Special Master Carl Buchholz, III, Esquire. A prehearing conference was held on December 13, 2018, with the hearing scheduled to begin on February 11, 2019. Respondent's counsel sought and obtained a continuance, with the hearing rescheduled to commence the week of March 25, 2019. On March 7, 2019, Special Master Buchholz recused himself from the case and on March 14, 2019, the Board appointed Special Master Marc S. Raspanti, Esquire, to hear the matter.

The Special Master held six days of disciplinary hearing: May 3, 6, 7, 21, June 20 and July 31, 2019. Petitioner presented four witnesses: Sharon McKenna, Deputy District Attorney in Delaware County; Pearl Chang, Dr. Chang's daughter; Susan Roehre, Petitioner's investigator/auditor; and Respondent. Respondent testified on his own behalf and presented the testimony of Matthew Fieger, his son. The record was held open in order to complete a stipulation, to identify exhibits to be moved into evidence and circulate objections, and for Respondent to supplement the record with mitigation evidence. The record of proceedings closed on November 12, 2019.

Petitioner filed a brief to the Special Master on December 16, 2019, requesting that the Master recommend to the Board that Respondent be suspended for a period of five years. Respondent filed a brief on January 17, 2020, requesting that the Special Master find the evidence insufficient to establish the charged violations and dismiss the petition for discipline.

The Special Master filed his Amended Report on August 17, 2020. Therein, he concluded that Petitioner met its burden of proof on three of the 11 charged violations and recommended that Respondent be suspended for a period of eleven months, followed by probation for eighteen months with conditions requiring that Respondent: (1) take the Bridge the Gap course; (2) select a certified public accountant or qualified lawyer to serve as a practice monitor tasked with reviewing Respondent's financial records quarterly for compliance with RPC 1.15, reviewing written fee agreements, filing quarterly reports and reporting any violations; (3) take three credits of Continuing Legal Education in

professionalism/civility; and (4) provide a full and complete accounting to the executors of Dr. Chang's Estate.

On September 4, 2020, Petitioner filed a Brief on Exceptions, contending that the Special Master committed errors of fact and law that compelled erroneous conclusions and requesting that the Board consider a five year suspension as appropriate discipline. Respondent filed a Brief on Exceptions on September 4, 2020, contending that the Special Master erred in his conclusions of law and further contending that suspension of his license is not warranted. Respondent requested oral argument before the Board.

On October 1, 2020, Petitioner filed a Brief Opposing Respondent's Exceptions and on that same date, Respondent filed a Response to Petitioner's Exceptions.

A three-member panel of the Board heard oral argument on October 7, 2020.

The Board adjudicated this matter at the meeting on January 21, 2021.

II. FINDINGS OF FACT

The Board relies on the Special Master's detailed findings of fact and determinations on witness credibility and makes the following findings:

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

Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said rules.

2. Respondent is Thomas James Fieger, Jr., born in 1959 and admitted to practice law in the Commonwealth of Pennsylvania in 1986. Respondent maintains his law office in Delaware County, Pennsylvania. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of prior discipline. In 2015, the Board imposed a private reprimand and one year probation to address Respondent's misconduct in two client matters consisting of failing to act with reasonable diligence and promptness, failing to communicate and failing to provide a written explanation to a client of the terms of a settlement.

Respondent's Representation of Dr. Chang

4. Respondent represented Dr. Suk Chul Chang from May 2007 to the date of Dr. Chang's death on March 5, 2013. The representation involved, among other things, defending Dr. Chang in a healthcare fraud criminal trial in Delaware County and representing him in forfeiture proceedings. ODC-31.

5. At the commencement of the representation in 2007, Dr. Chang was in his early 80s. Dr. Chang was 89 when he died in 2013.

6. Respondent first met with Dr. Chang on or around May 25, 2007, following the execution of a search warrant on Dr. Chang's office. On November 18, 2008, a criminal complaint was filed against Dr. Chang. R-02256A-0068. Additionally, seizure warrants were issued to Citizens Bank and Fidelity, in response to which several of Dr.

Chang's accounts were frozen. S-52, S-55; R-310; S-65, S-70-71; R-0256A-0037-e.

7. From May 30, 2007 through 2013, Respondent handled 11 matters of representation on an hourly rate time charge basis, two matters of representation on a capped hourly rate time charge basis, and numerous other matters on a capped contingent fee basis with the fee contingent on the release of seized funds. R-0261; S-9 ¶¶ 36-37; ODC-2; S-3 ¶¶ 94-97; S-9 ¶ 60; 3T361:11 – 363:24; ODC-5; S-7 ¶ 79; ODC-6; S-7 ¶ 80; 4-5; S-9 ¶¶ 36-37.

8. Respondent recreated the amount of time dedicated to the representation, which exceeded 5,500 hours. R-85; S-9 ¶¶ 50-51. These records were sufficient to document the services Respondent provided his client.

9. The hourly rate and capped hourly rate matters were handled based on an oral agreement between Respondent and Dr. Chang. R-261; S-9 ¶¶ 36-37; N.T. (5/7/19) 44:5-12; 57:9-23; 58:7-59:15.

10. On September 22, 2009, Respondent and Dr. Chang entered into a representation agreement effective as of May 25, 2007. ODC-2; S-3 ¶¶ 94-97; S-9 ¶ 60.

11. Dr. Chang accepted the terms of the September 22, 2009 representation agreement by signing[1] the agreement. ODC-2; S-3 ¶¶ 94-97; S-9 ¶ 60.

12. The September 22, 2009 representation agreement described the matters of representation as: Com of PA v. Dr. Suk C. Chang – investigation, preliminary hearing, motions (if any) & trial, State Department charges – Paul Griffiths & Elizabeth

[1] Petitioner stipulated that it does not challenge the authenticity of Dr. Chang's signature on the various documents admitted into evidence. S-9 ¶ 60.

McHenry, Forfeiture procedures & seizure of assets, Miscellaneous proceedings – compel medical records from patients and Malpractice Insurance. ODC-2; S-3 ¶¶ 94-97; S-9 ¶ 60.

13. The September 22, 2009 representation agreement provided for a fee amount calculated as 33 1/3% of the seized amount of $1.388 million + Citizens Bank accounts of $60,000. ODC-2; S-3 ¶¶ 94-97; S-9 ¶ 60.

14. The basis for the $1.388 million was from the affidavit of probable cause that identified one Fidelity account with a value of $1.388 million. R-0256A-0068 (last page); S-2 ¶¶ 49-51; N.T. (5/21/19) 250:3 – 251:8.

15. The September 22, 2009 representation agreement also provided:

> If Client does not elect the lump sum payment plan, Client will pay $200.00 per hour for legal representation.

ODC-2; S-3 ¶¶ 94-97; S-9 ¶ 60.

16. Dr. Chang consistently told Respondent that he did not have any money other than in the seized accounts and verified and approved submissions to authorities that he did not have any money. ODC-54; S-4 (¶¶ 34-36); R-256A-0053; ODC-57; S-5 (¶¶ 71-73); R-0256A-0060; S-9 (¶¶ 36-39); S-7 (¶ 14); R-356; S-6 (¶¶ 16-17); R-31; ODC-68; S-2 (¶¶ 108-109); S-6 (¶¶ 22-23); *see also* ODC-69; S-6 (¶¶ 24-25); S-7 (¶ 18).

17. Respondent accepted these representations, although Dr. Chang's final Estate was apparently in excess of $5 million.

18. On May 20, 2011, Dr. Chang signed a document called Affidavit of Confession of Judgment that provided:

a. That I hereby Confess Judgment in this Court in

> favor of Plaintiff, Thomas J. Fieger, Jr., Esquire in the sum of Four Hundred Thousand Dollars ($400,000.00) and do hereby authorize the Plaintiff or his assigns to enter Judgment for said amount.
>
> b. That said Confession of Judgment is for a debt justly due to the Plaintiff, Thomas J. Fieger, Jr. arising out of the following facts: Plaintiff, Thomas J. Fieger, Jr., Esquire has been representing Defendant, Suk Chul Chang M.D. and is continuing to represent Defendant in civil and criminal proceedings arising as a result of allegations by law enforcement of Criminal acts said to have been engaged in by Defendant in the course of his medical practice. I, Suk Chul Chang, M.D. am without the financial resources to pay Plaintiff, Thomas J. Fieger, Jr., Esquire for legal services rendered as a result of the seizure of my Fidelity Annuity Account by law enforcement. I, Suk Chul Chang, M.D. intend to pay Plaintiff for the services rendered from the proceeds of my Fidelity Annuity Account upon release by law enforcement of the seizure warrant on said Fidelity Annuity Account or in the event of failure by law enforcement to release the seizure warrant on my Fidelity Annuity, I intend to pay Plaintiff, Thomas J. Fieger, Jr., Esquire from the equity in my real property located at 461 Wyngate Road, Wynnewood, PA 19096 and / or from the equity in my real property located at 382 Avon Road, Upper Darby, PA 19082. This Confession of Judgment is given to Plaintiff, Thomas J. Fieger, Jr., Esquire in the event of my failure to pay Plaintiff, Thomas J. Fieger, Jr., the sum due for attorney's fees upon demand by Plaintiff.

ODC-3; S-5 ¶¶ 80-82; S-9 ¶ 60.

19. Dr. Chang elected the lump sum payment option under the September 22, 2009 representation agreement in the May 20, 2011 Affidavit for Confession of Judgment. ODC-3; S-5 ¶¶ 80-82; S-9 ¶ 60.

20. Respondent did not enter into a business transaction with Dr. Chang or acquire an ownership, possession, security or other pecuniary interest adverse to Dr. Chang.

21. The May 20, 2011 Affidavit for Confession of Judgment was an attempt by Respondent to protect his considerable unpaid legal fees and related out-of-pocket costs.

22. The fee owed to Respondent by Dr. Chang under the September 22, 2009 representation agreement was $482,666.67. ODC-S; S-3 ¶¶ 94-97; S-9 ¶ 60.

23. On April 4, 2012, Citizens Bank released the hold on Dr. Chang's account in reaction to letters, threatened motions, telephone calls and personal appearances at the bank branches by Respondent. R-0256A-225e-62; R-0256A-025-e-71; R-376; R-686; R-392; R-390; R-85; R-391; R-284; R-340; ODC-26; S-5 ¶¶ 101-03; S-6 ¶¶ 38-39; S-7 ¶ 32; S-9 ¶¶ 2, 36-37, 40-42, 50-51.

24. On April 4, 2012, Dr. Chang signed an authorization for Fidelity to communicate with Respondent and Sharon Cherry, Esquire, Respondent's wife and co-counsel, about Dr. Chang's account. R-266 (p. 1); S-9 ¶ 60.

25. Between April 4, 2012 and April 10, 2012, Respondent learned there were two other Fidelity accounts that had been seized by the Commonwealth. S-7 ¶¶ 36.

26. Dr. Chang requested Respondent pursue the release and recovery of the two additional Fidelity accounts. N.T. (5/7/19) 362:9 - 363:24.

27. Respondent agreed to modify the September 22, 2009 representation agreement to provide additional legal services, including the release and recovery of the two additional Fidelity accounts, for an additional fee of 33 1/3% of those seized accounts. N.T. (6/20/19) 347:23 - 350:16.

28. Dr. Chang accepted the change to the September 22, 2009

representation agreement on or about April 10, 2012. N.T. (5/7/29) 362:9 - 363:24.

29. On April 10, 2012, Dr. Chang signed a second Affidavit for Confession of Judgment that provided.

> a. That I hereby Confess Judgment in this Court in favor of Plaintiff, Thomas J. Fieger, Jr., Esquire in the sum of Four Hundred Thousand Dollars ($400,000.00) and do hereby [sic] authorize the Plaintiff or his assigns to enter Judgment for said amount.
>
> b. That said Confession of Judgment is for a debt justly due to the Plaintiff, Thomas J. Fieger, Jr. arising out of the following fact: Plaintiff, Thomas J. Fieger, Jr., Esquire has been representing Defendant, Suk Chul Chang M.D. and is continuing to represent Defendant in civil and criminal proceedings arising as a result of allegations by law enforcement of criminal acts said to have been engaged in by Defendant in the course of his medical practice. I, Suk Chul Chang, M.D. am without the financial resources to pay Plaintiff, Thomas J. Fieger, Jr., Esquire for legal services rendered as a result of the seizure of my Fidelity Annuity Account by law enforcement. I, Suk Chul Chang, M.D. intend to pay Plaintiff for the services rendered from the proceeds of my Fidelity Annuity Account or in the event of failure by law enforcement to release the seizure warrant on my Fidelity Annuity, I intend to pa [sic] Plaintiff, Thomas J. Fieger, Jr., Esquire from the equity in my real property located at 461 Wyngate Road, Wynnewood, PA. This Confession of Judgment is given to Plaintiff, Thomas J. Fieger, Jr., Esquire in the event of my failure to pay Plaintiff, Thomas J. Fieger, Jr., the sum due for attorney's fees upon demand by Plaintiff.

ODC-4; S-7 ¶ 37; S-9 ¶ 60.

30. Respondent agreed that the aggregate fee owed by Dr. Chang would be capped at $866,666. N.T. (5/7/19) 462:15; N.T. (5/21/19) 28:19-29:8; 293:6-12; N.T. (6/20/19) 359:5-12; 439:21-440:5.

31. The basis for the $866,666 amount was 33 1/3% of the Fidelity

account valued at $1.388 million when seized plus 33 1/3% of the value of the two additional Fidelity accounts as provided by Fidelity. N.T. (5/7/19) 36:2-364:4; 467:19-468:5.

32. After April 10, 2012, the court documents filed by Respondent and Ms. Cherry (acting as co-counsel) relating to the account seizure began identifying three Fidelity accounts, whereas prior court filings only identified one Fidelity account. ODC-55; ODC-56; ODC-57; ODC-83; R-0256B-0251; R-256A-0069-i; R-0256A-0082; ODC-26; R-0256B-246-x; R-0256A-0038-e; S-5 ¶¶ 46-47, 64-66, 71-73; S-6 ¶¶ 26-27; S-7 ¶¶ 39, 59-60; S-9 ¶¶ 2, 16-17, 26-27.

33. On May 21, 2012, Dr. Chang signed two authorizations for federal and state civil rights actions commenced against various parties. R-266 (pp. 2-3); S-9 ¶ 60.

34. On June 18, 2012, Dr. Chang signed an authorization for Fidelity to pay Respondent $400,000. R-266 (p.4); S-9 ¶ 60.

35. After Respondent filed seven motions, four appeals, two mandamus actions, a civil rights action against the prosecutors and an action in Montgomery County, and with a hearing before a Montgomery County judge approaching, the Commonwealth filed motions to release the funds in two of the three Fidelity accounts on October 16 and 17, 2012. ODC-52; S-4 ¶¶ 16-18; S-9 ¶ 60 (April 7, 2010 motion for release of Dr. Chang's assets); ODC-55 at ¶¶ 64-66 (memorandum of law); ODC-58; S-5 ¶¶ 97-99 (second memorandum of law); ODC-57; S-5 ¶¶ 71-73 (May 2, 2011 motion for release of funds); ODC-45; S-7 ¶ 74; R-0256A-0090; S-7 ¶ 75; S-9 ¶¶ 2, 5; S-7 ¶ 76 (Commonwealth's motion).

36. The Commonwealth's release of the two Fidelity accounts was a result

of Respondent's efforts. ODC-55; ODC-56; ODC-83; R-056A-0069-i; R-0256B-046-x; ODC-26; ODC-45; R-0256A-0090; R-360; S-5 ¶¶ 46-47, 64-66; S-6 ¶¶ 26-27; S-7 ¶¶ 41, 42, 49, 58-59, 74-75, 83; S-9 ¶¶ 2, 4, 16-17, 26-27.

37. On October 18, 2012, Respondent met with Dr. Chang and memorialized their April 2012 oral agreement to modify the fee terms in a document called Contingent Fee Agreement. R-5; S-9 ¶¶ 36-37; ODC-5; S-7 ¶ 79; S-9 ¶ 60. No evidence rebutted this testimony.

38. The October 18, 2012 Contingent Fee Agreement indicated the fee was 33 1/3% (circled or) of the Fidelity Investments – three (3) seizures via two (2) warrants - $2.6 million from the total seized proceeds via warrants. ODC-5; S-7 ¶ 79; S-9 ¶ 60.

39. Dr. Chang signed and accepted the October 18, 2012 Contingent Fee Agreement. ODC-5; S-7 ¶ 79; S-9 ¶ 60.

40. On October 18, 2012, Respondent handwrote a distribution sheet that included an explanation of the attorney fees owed by Dr. Chang. R-5; S-9 ¶¶ 36-37. This sheet laid out the fundamental agreement between the parties.

41. The notes reflected $736,666 was owed based on the recovery of the two Fidelity accounts. R-5; S-9 ¶¶ 36-37.

42. Respondent believed and testified he needed to allocate a portion of the total fee ($866,666) to the criminal representation for purposes of having documentation to support an attorney fee claim in a civil rights action. N.T. (5/7/19) 454:4-12. Federal civil rights claims allow successful plaintiffs to recover fees and costs.

43. Respondent and Dr. Chang agreed to $130,000, which was the balance left on the $866,666 after subtracting $736,666. N.T. (5/7/19) 445:20-446:4; 456:6-457:1; *see also* R-5; S-9 ¶¶ 36-37.

44. The distribution sheet also indicated the "TOTAL FEE – NOW OWE" was $866,666 and "$400,000 to be paid BEFORE TRIAL and BALANCE to be transferred AFTER TRIAL." R-5; S-9 ¶¶ 36-37.

45. On October 18, 2012, Dr. Chang also signed another authorization for Fidelity that provided:

> Please liquidate the value of the [sic] my Retirement Reserves Contract Number 321667972 and pay my attorneys, Thomas J. Fieger, Jr. and Sharon Cherry, Four Hundred Thousand Dollars ($400,000) and pay the balance to me, Suk Chul Chang, M.D.
>
> R-266 (p. 5); S-9 ¶ 60.

46. On October 19, 2012, Dr. Chang signed another Contingent Fee Agreement. ODC-6; S-7 ¶ 80; S-9 ¶ 60. Respondent had Dr. Chang sign the second agreement because Dr. Chang had left the original of the first one at the courthouse the day before. N.T. (5/21/19) 13-16.

47. Respondent's intention with the October 19, 2012 Contingent Fee Agreement was to enter the same terms as the October 8, 2012 Contingent Fee Agreement, that memorialized the April 2012 oral agreement, except to update the hourly rate fee for quantum meruit to $300 per hour from $200 per hour. N.T. (5/21/29) 13-18.

48. Respondent acknowledged there were minor discrepancies in the October 19, 2012 Contingent Fee Agreement that he and Dr. Chang did not intend, but

Respondent testified that the entire agreement reflected the amount seized, and they always operated off of the $2.6 million as the amount seized. N.T. (6/20/19) 309:20 - 311:17.

49. Dr. Chang was not charged on a quantum meruit basis. N.T. (5/21/19) 27:9-17.

50. On or about November 7, 2012, Respondent received payment directly from Fidelity in the amount of $400,000. *See* R-5.

51. Of that $400,000, $9,484.72 was applied to reimburse costs advanced by Respondent's law firm, and $390,515.28 was paid as fee. R-274; S-7 ¶ 87; S-2 ¶¶ 11-12.

52. On November 9, 2012, prior to the criminal trial, Dr. Chang executed a Limited Power of Attorney authorizing the deposit of the balance of the Fidelity funds, $887,288.65, into a non-IOLTA attorney trust account with Susquehanna Bank. ODC-7; S-7 ¶ 91; S-9 ¶ 60.

53. The power of attorney was designed only to allow Respondent to open a non-IOLTA attorney trust account to deposit the assets of Dr. Chang that were recovered from the Commonwealth.

54. The $887,288.65 included funds from which the balance of Respondent's fee was to be paid.

55. As a defense strategy, and one which is considered routine in criminal cases, Respondent unsuccessfully challenged Dr. Chang's competency to stand trial and to assist in his own defense or appropriately understand his actions in writing the

prescriptions at issue. S-7 (¶¶ 96, 102); N.T. (5/7/19) 243:12-249:4; N.T. (6/20/19) 286:1-12.

56. Other than the unsuccessful motions and defense pursued by Respondent on Dr. Chang's behalf, there is no evidence that Dr. Chang was not competent generally or to contract with Respondent. A careful review of the colloquy of the court as to competency and notes written by Dr. Chang to Respondent demonstrate Dr. Chang's competency to assist his counsel and to stand trial.

57. Dr. Chang adamantly asserted his innocence and that he wanted to defend himself and not accept a plea deal. R-8; R-0256A-070; S-3 ¶¶ 3-4; S-8 ¶¶ 15-17.

58. Dr. Chang actively participated in his defense. R-8; R-0256A-070; S-3 ¶¶ 3-4; S-8 ¶¶ 15-17; N.T. (5/7/19) 271:8-22.

59. Dr. Chang signed numerous verifications, bank documents and other important documents, including waiving his constitutional right to a speedy trial in front of the Court. R-288; R-377; R-0256B-0245-g; R-85; R-0256B-0245-i; R-408; R-267 (p.2); R-362; R-318; R-319; R-324; R-315; R-321; R-325; R-322; R-323; R-316; R-317; R-363; R-320; ODC-52; R-373; R-275; R-358; ODC-57; R-374; R-356; ODC-68; R-340; R-266; (original); R-287; R-361; R-359; S-2 ¶¶ 4-7, 16-18; S-3 ¶¶ 11-13, 29-31, 36-38, 57-59, 81-83, 85-89, 100-02, 111-15, 117-21; S-4 ¶¶ 5-9, 11-18, 47-49, 50-52; S-5 ¶¶ 25-27, 71-73, 75-77; S-6 ¶¶ 16-17, 22-23, 38-39; S-7 ¶ 121; S-9 ¶¶ 4, 12-13, 38-41, 47, 50-51, 60.

60. The court interacted directly with Dr. Chang in a colloquy about the plea deal offered by Deputy District Attorney McKenna and determined Dr. Chang competent to knowingly reject the plea deal. ODC-43-I; S-7 ¶ 92; S-9 ¶ 9.

61. Dr. Chang was adjudicated by the court competent to stand trial. S-7 ¶ 102.

62. Ms. McKenna testified at the disciplinary hearing that Dr. Chang was competent to stand trial and that she did not try and convict an incompetent person. N.T. (5/3/19) 123:9-11; 183:14-21; 185:3-16; 257:3-25:8, *see also* R-355; S-9 ¶ 2 (Commonwealth's opposition to motion to declare Dr. Chang incompetent) (alleging among other things that Dr. Chang "was quite active in holding conversations with his attorneys and showing his attorneys documents and participating with his attorneys during the course of trial" (¶ 9), colloquied with the Court about the plea offer (¶ 4) and his right to remain silent or testify (¶ 6), and made statements "he wished to, 'check the chart to see if he prescribed a controlled substance on that day' that 'he did nothing wrong' and his 'lawyers are doing a good job for him.'" (¶ 8)); R-4; S-5 ¶¶ 57-58.

63. Pearl Chang testified at the disciplinary hearing that her father was living on his own at the time of his death. N.T. (5/6/19) 187:14-16; 190:20-191:2; 260:24-261:4. She also testified she had not seen him in years.

64. Respondent testified Dr. Chang was sharp as a tack and never incompetent. N.T. (5/7/19) 244:19-246:9.

65. Matthew Fieger, Respondent's son, testified at the disciplinary hearing that he had socialized with Dr. Chang, had lengthy and meaningful conversations with Dr. Chang, and he never observed any bizarre or inappropriate behavior by Dr. Chang. N.T. (6/20/19) 417:11-421:3. The Special Master found Matthew Fieger particularly credible in his testimony of his observations of Dr. Chang.

66. Dr. Chang was competent during his representation by Mr. Fieger.

67. The criminal jury trial commenced in November 2012 and on November 30, 2012, Dr. Chang was found guilty on two counts of prescribing a controlled substance not in accordance with treatment principles. R-3 (p. 1); S-7 ¶ 114; S-9 ¶ 4.

68. Dr. Chang's family, including his wife and two daughters, were not present at the criminal trial and did not assist in Dr. Chang's defense. The evidence of record indicated that Dr. Chang and his family were estranged, with his family living on the West Coast for many years.

69. On January 11, 2013, Respondent and Dr. Chang "settled up" the fees owed on the hourly rate and capped hourly rate matters. R-261; S-9 ¶¶ 36-37; N.T. (5/7/19) 57:9-23; 58:7-59:15.

70. Respondent handwrote an itemization of all matters, the basis for the charges and the source of payment for the charges, to which Dr. Chang agreed. R-261; S-9 ¶¶ 36-37; N.T. (5/7/19) 57:9-23; 58:7-59:15.

71. The total fees earned from hourly rate and capped hourly rate matters was $46,700. R-261; S-9 ¶¶ 36-37.

72. Respondent reviewed the fee basis and distribution arrangements with Dr. Chang. R-5; R-261; S-9 ¶¶ 36-37.

73. Dr. Chang authorized the fees and distributions according to the written distribution statements. R-5; R-261; S-9 ¶¶ 36-37.

74. On February 8, 2013, Dr. Chang was sentenced, with no jail time. R-3; S-7 ¶ 120; S-9 ¶ 4.

75. Respondent collected $8,500 of the balance owed on the $866,666 fee between January 15, 2013 and March 5, 2013. S-7 ¶¶ 117-19, 124; R-295; S-9 ¶¶ 50-51.

76. On March 5, 2013, Dr. Chang was found dead inside his residence by Respondent. S-7 ¶ 125; N.T. (5/21/19) 147.

77. On March 12, 2013, Respondent filed a notice of death in the criminal case.

The Events After Dr. Chang's Death

78. Respondent's representation following Dr. Chang's death was provided in accordance with the fee agreement with Dr. Chang and did not include additional fees for which a new fee agreement was necessary. Respondent continued to work on Dr. Chang's criminal appeal and forfeiture action for the remaining frozen Fidelity account.

79. Respondent was not a creditor of the Estate, although arguably he could have been.

80. Pearl Chang testified at the disciplinary hearing.

81. Ms. Chang learned of her father's death on March 6, 2013, and she, her mother and sister flew to Philadelphia on March 7, 2013, to arrange for services.

82. On March 8, 2013, the Changs met Respondent at Dr. Chang's house. Ms. Chang testified that while her mother knew about the criminal suit, neither she nor her adult sister had been told prior to her father's death, because Dr. Chang was deeply ashamed and embarrassed by the charges. N.T. (5/6/19) 25.

83. On March 11, 2013, Respondent filed paperwork on Mrs. Chang's behalf with the Montgomery County Register of Wills asking for the grant of letters of administration and representing that Dr. Chang had no will. N.T. (5/21/19) 182-83. Respondent was listed as the Estate's attorney.

84. Several days later, while cleaning the house, the Changs found Dr. Chang's will, which left everything to Mrs. Chang. On March 13, 2013, the Changs returned to the Register of Wills, filed paperwork with the letters testamentary, obtained a short certificate establishing Mrs. Chang as the executrix, filed the will, and removed Respondent as the attorney. N.T. (5/6/19) 34.

85. Ms. Chang described her father's house as being in bad shape, with 40 plus years of documents piled up. Ms. Chang testified that they reviewed all of the documents and found financially related documents, bank statements and bills going back to the 1970s. They found a few copies of court documents relating to the criminal case, but no correspondence between Respondent and Dr. Chang, as well as no fee agreements, bills, invoices or records of time worked. *Id.* at 36. With respect to Respondent's fees, they found check registers indicating some checks had been written to Respondent as well as copies of canceled checks in the bank statements. *Id.* at 36-37.

86. Ms. Chang testified that they had previously arranged to meet with Respondent on March 14, 2013, at his office in Media. *Id.* at 38. When they arrived, they were instead met by Sharon Cherry, Esquire who told them that Respondent was "tied up with something and couldn't make it." *Id.* at 38.

87. At the meeting, the Changs and Ms. Cherry discussed the criminal

case. Ms. Chang learned that her father had been found guilty on several counts and that an appeal was in place to reverse that. Her understanding after the meeting was that the process was mostly completed. *Id.* at 39. They were also told about the Susquehanna Account. Specifically, they learned that expenses related to the criminal case were being paid from the account. Ms. Chang testified that she asked for documents relating to the account, the governing documents that established the account, the authority to make withdrawals for the account, and a full accounting of the transactions. *Id.* at 41-44.

88. Ms. Chang further testified that she specifically asked Ms. Cherry "to not make any additional withdrawals." *Id.* at 43. Ms. Chang claimed that when she specifically told Ms. Cherry not to make any withdrawals from the account, because her mother was the executrix and it seemed that the account would be an Estate asset, Ms. Cherry responded and agreed that she and Respondent would not make any further withdrawals without first obtaining approval. *Id.* at 45. Although Ms. Chang asked, Ms. Cherry did not tell her the amount of money in the account. *Id.* at 46.

89. The Changs also asked about the fees that had been paid to date, and Ms. Cherry stated that she and Respondent had been paid $400,000 in fees. *Id.* at 47. Ms. Cherry indicated that there was a second fee agreement that had replaced a prior fee agreement, but she did not have the original fee agreements available. Ms. Cherry also stated that she and Respondent had full detailed time and billing records that could account for every minute that they spent on the case and that such records would be provided. *Id.* at 49-50.

90. As the Changs were leaving the meeting, Respondent, who had not

been involved, gave them a check for $250,000 from the Susquehanna account and told them that more would be coming. *Id.* at 50; S-7 ¶¶ 136-138; ODC-47. When Ms. Chang asked Respondent how much money was in the account, his response was "we can discuss that later." *Id.* at 53. Respondent acknowledged, consistent with Ms. Chang's testimony, that he was the person who got the $250,000.00 check from the bank. N.T. (5/21/19) 190. Respondent claimed to have arrived at that figure because $250,000.00 was the amount he was planning to give back to Dr. Chang, and he wanted to see what the bills would be that were still coming in from the criminal trial. *Id.*

91. The Changs received a number of emails from Ms. Cherry with respect to the Estate. After the March 14, 2013 meeting, by email sent that day, Ms. Cherry provided them with the most recent bank statement (from January 9, 2013 through February 7, 2013) and confirmed the request for an accounting, writing "We will be providing you with a full accounting." N.T. (5/6/19) 62; ODC-47. Ms. Cherry followed up with an additional email the next day, March 15, 2013, in which, among other things, she indicated that she was putting together an accounting of the disbursements from the escrow account. ODC-48.

92. Respondent acknowledged knowing that Mrs. Chang wanted a complete accounting for the duration of the representation. N.T. (5/21/19) 184. ("She wanted a full accounting all the way back to, like, 2007."). He further admitted that he told her that he would "sit down and show her everything, what was done."

93. Although admittedly not present during the March 14, 2013 meeting, Respondent vehemently denied that Mrs. Chang and her daughters ever expressly told

Respondent or Ms. Cherry that Respondent was not to remove any funds from the Susquehanna Account. *Id.* at 191.

94. On March 15, 2013, Respondent withdrew $288,000.00 of his earned fee from the Susquehanna Account. ODC-20; R-332; S-7 ¶ 140; S-9 ¶ 7. Respondent testified it was "a non-IOLTA interest-bearing account. I had earned fees in there. It was earned prior to Dr. Chang's death." *Id.* at 196.

95. Respondent stated that he selected $288,000 as "just a number that I picked out that it left approximately $175,000 in the account. And. . . I still had to get some bills, like for Guy Smith [expert who testified at Dr. Chang's trial], and just what I picked out." *Id.* at 199.

96. Respondent could not fully explain why he decided to take $288,000 rather than his total remaining fee. *Id.* at 200. Respondent admitted that he did not notify Mrs. Chang when he withdrew the $288,000.00 on March 15, 2013, stating that he had no duty to do so. *Id.* at 230.

97. Respondent did not enter into a separate written fee agreement with the Estate for the work Respondent continued to do relative to the criminal appeal and release of the third frozen account. Respondent claimed that he did not need to have any fee agreement with Mrs. Chang or the Chang Estate because "I didn't represent the Estate basically. My wife is the one who was basically doing the whole appeal. . . . Plus we capped the fee out, so it was not going to be – what are they going to get? Let me get a fee agreement. I'll put in there 33 1/3% of zero or zero dollars an hour." *Id.* at 193.

98. Respondent also acknowledged that once his client was dead, and he

substituted the Estate, the client would be the Estate. *Id.* at 193.

99. Ms. Chang testified that in the week following the March 14, 2013 meeting, she reviewed financial documents she found in the house. She found a number of statements reflecting bank and financial accounts, called all of the institutions, and put the process in place to have the accounts transferred to her mother as executrix of the Estate. N.T. (5/6/19) 73-74. Dr. Chang had a number of accounts with other financial institutions. In addition, Ms. Chang located statements from Fidelity. *Id.* at 74-76. Many of the accounts were long-standing. Her testimony established that Dr. Chang had considerable assets available to him in addition to the Citizens Bank and Fidelity accounts. *Id.* at 77-79.

100. In addition to reviewing documents and marshalling Estate assets, Ms. Chang and her mother looked for an Estate attorney. *Id.* at 79. In May 2013, Mrs. Chang hired Stephanie Kalogredis, Esquire of Lamb McErlane to represent Dr. Chang's Estate. *Id.* at 79-80. Ms. Chang testified that among other things, they had not received an accounting or billing and time records from Respondent or Ms. Cherry, and consequently, Ms. Kalogredis began requesting documents on their behalf. *Id.* at 80; 90-92.

101. On May 3, 2019, Ms. Cherry sent an email with some attachments to the Changs in response to their requests for information. ODC-49; S-7 ¶ 146.

102. Respondent acknowledged receipt of a May 22, 2013 letter addressed to him and Ms. Cherry from Ms. Kalogredis seeking information which she enumerated in five separate paragraphs: (1) copies of the fee agreements; (2) time and billing records if the fee was not based on a contingent fee; (3) a copy of the escrow agreement for the

Susquehanna Escrow account ending 6492; (4) statements for the account from inception through the current date; and (5) a copy of a life insurance policy. N.T. (5/21/19) at 233-238; ODC-8.

103. In the May 22, 2013 letter, Ms. Kalogredis stated that when Ms. Chang met with Respondent and Ms. Cherry, Ms. Chang was told that only minimal work needed to be done to finalize the active cases. Ms. Kalogredis asked Respondent to call as soon as possible to discuss additional costs and quantify the potential recovery.

104. Although Respondent disputed that the Susquehanna Account belonged to the Estate and consistently claimed that the account included Respondent's earned fees along with Estate funds, Respondent did not respond to Ms. Kalogredis' letter to explain his position. It appears at this point that Ms. Cherry was handling the communication with the Estate lawyer. N.T. (5/21/19) at 238-240.

105. On June 12, 2013, because no response had been received, Ms. Kalogredis resent the May 22, 2019 letter to Ms. Cherry by email. N.T. (5/6/19) 96; ODC-8. Ms. Chang testified that as of June 12, 2013, she still had no idea what fees Respondent and Ms. Cherry claimed were owed, nor had she been provided with any document that would show the total fee to which they believed they were entitled. N.T. (5/6/19) 96. All she had been told was that Respondent and Ms. Cherry had been paid $400,000 and that there were fee agreements, but they were not told that they owed "X" amount over the $400,000. *Id.* at 97.

106. Ms. Cherry responded to Ms. Kalogredis in a letter dated September 18, 2013. ODC-9. In that letter, somewhat inexplicably, Ms. Cherry provided factual

information inconsistent with the positions later taken by Respondent. Ms. Cherry stated that there were two fee agreements with Dr. Chang, one from 2009 and one from 2012. She took the position that the Second Fee Agreement replaced the first only with respect to the civil forfeiture. Rather than stating that Dr. Chang "elected" the flat fee under the 2009 agreement, she explained that she and Respondent were entitled to either an hourly rate of $200.00 for work performed for the criminal action or alternatively, a flat fee of $462,667, but that the hourly fees in the criminal case "far exceeded $462,667."

107. When asked about Ms. Cherry's statements in the letter, Respondent testified that "technically, Dr. Chang at that point chose the top amount" meaning the flat fee, and that "subsequently, it was confirmed by the confessions of judgment that were signed." N.T. (5/21/19) 246. He agreed that their hourly fees would have exceeded $462,667, although he also acknowledged that they did not keep time records. *Id.* Respondent acknowledged that Ms. Cherry's "numbers are a little off. She's rounding off." *Id.* at 256.

108. In the September 18, 2013 letter, Ms. Cherry wrote that "the total amount taken for the fee for the work completed in both cases is $688,000" and made the following offer to the Estate: "We are agreeable to capping the fees to be charged (for both the criminal action and civil forfeiture) at $866,667 provided that it is agreed that all costs for the appeals (e.g. transcript fees, filing fees, copying costs) and any costs that would be incurred if the forfeiture were called to trial, would be paid out of the escrow account." She ended by stating "Please discuss the foregoing proposal with Sook [Mrs. Chang] and let me know whether this is an agreeable arrangement." ODC-9. Ms. Cherry's

letter did not explain to Ms. Kalogredis that if their "offer" were not accepted she and Respondent would take a total fee of $866,667 regardless.

109. When questioned about Ms. Cherry's letter and the offer she made to the Estate, Respondent testified that "I never – I agreed to cap the fees with Dr. Chang. When the Estate comes in and starts giving us a problem, we didn't have – that wasn't totally binding on the Estate; you follow me? So that's the thing – I think that's what Ms. Cherry was trying to say." N.T. 5/21/19 261.

110. Ms. Chang testified that the Estate did not accept Ms. Cherry's offer with respect to the fees. N.T. (5/6/19) 107-108. She also testified that Ms. Cherry's September 18, 2013 letter was the first time she had been told that the total fee to date taken was $688,000. *Id.*

111. On November 18, 2013, Roman Koropey, Esquire, from Lamb McErlane, wrote to Respondent and Ms. Cherry. Mr. Koropey explained that he would be representing Mrs. Chang concerning issues with regard to Respondent and Ms. Cherry's representation of Dr. Chang and the Estate in the criminal and forfeiture actions. ODC-10. Among other things, Mr. Koropey stated the Changs' position that the funds in the Susquehanna Account were assets of the Estate, and he requested that all remaining funds be disbursed to Mrs. Chang within ten days from the date of his letter. Mr. Koropey further stated that if the funds were not disbursed as requested they would take appropriate legal action to secure them.

112. On November 20, 2013, payment in the amount of $4,000 was issued from the Susquehanna Account to Guy Smith for expert services provided for Dr. Chang

relative to the criminal trial. R-265; S-8 ¶¶ 9-11.

113. By email dated November 27, 2013, Ms. Cherry wrote to Mr. Koropey, stating that the account would be closed the following week and that a letter would be sent to him along with a check made payable to the Estate. N.T. (5/21/19) 276-277; R-7.

114. By letter dated December 3, 2013, Ms. Cherry wrote to Mr. Koropey, enclosing a check in the amount of $84,133.56 made payable to the Estate of Suk Chul Chang "representing the balance remaining in the Susquehanna account after payment of attorney's fees and costs." ODC-11.

115. On December 6, 2013, Respondent intended to remove the remaining $170,166 of his earned fee from the Susquehanna Account but inadvertently moved funds from a different account he owned, due to the confusion over the new accounting numbering system caused by the transition of Susquehanna Bank to BBT. R-336; S-7 ¶ 158; S-9 ¶ 7; N.T. (5/21/19) 309:17-310:20; 325:13-20; 332:7-17.

116. By letter dated December 27, 2013, Mr. Koropey wrote to Respondent and Ms. Cherry. Mr. Koropey terminated the representation on behalf of Mrs. Chang and requested copies of time and billing records for each attorney who worked on matters for Dr. Chang and the Estate. ODC-12.

117. On January 29, 2014, Mr. Koropey wrote again to Respondent and Ms. Cherry and demanded copies of time and billing records. ODC-14.

118. By letter dated February 24, 2014, Respondent answered Mr. Koropey and provided a lengthy, detailed explanation regarding the history of the representation of Dr. Chang, the retention terms and fee basis and some recreated time records. ODC-15;

S-7 ¶ 160. In that letter, among other things, Respondent admitted that the purpose of the Confessions of Judgment were to provide himself and Ms. Cherry with "protection" and to "assure" payment of their long outstanding fees, explaining that:

> a. In May of 2011 I asked Dr. Chang to sign a $400,000 Confession of Judgment, the purpose of which was to give Ms. Cherry and myself some level of protection with regard to payment of our fees.
>
> b. In April of 2012 after learning about the two additional accounts at Fidelity, I "advised Dr. Chang that the fee for the work at the trial level would be 33 1/3% of the value of the three frozen accounts" and "asked Dr. Chang to sign a second Confession of Judgment for $400,000, the purpose of which was to assure payment of $800,000 in attorney's fees. Dr. Chang signed the Confession of Judgment on April 10, 2012.

119. In the letter, Respondent acknowledged the "offer" to Mrs. Chang to cap fees at $866,666, and stated that "We reserve the right to enforce all of our rights under the 2009 and 2012 fee agreements and to seek compensation for the reasonable value of the time spent on the criminal appeal and the time spent in responding to the requests of Mrs. Chang and your firm." *Id.*

120. Respondent testified that he was the person who authorized disbursements from the account after Dr. Chang's death as the "trust person on the account. I was the fiduciary." N.T. (5/21/19) 216. Respondent further testified that "[the] only fiduciary duty I owe to the Estate is whatever the remaining funds that would go back to the Estate at some point, whenever that determination is going to be made." "I did not owe them a fiduciary duty as to my earned fees and costs." *Id.* at 218.

121. On March 7, 2014, Respondent moved the balance of the earned fees

from the Susquehanna Account that he believed he had moved on December 6, 2013. R-33; S-9 ¶ 7; *see also* R-334; N.T. (5/21/19) 305:9-21; 309:17-310:20; 332:7-23.

122. Respondent received $857,181.28 of the $866,666 fee. R-295; S-9 ¶¶ 50-51.

123. Respondent no longer has receipts for $8,450 of costs reflected on the bank account statements for the Susquehanna Account. R-295; S-9, 50-51.

124. Respondent collected $25,000 of the $46,700 owed for his hourly rate and capped hourly rate fees. R-295; S-9 ¶¶ 50-51.

125. After a fair amount of work, Respondent provided the information to render a full accounting of the funds deposited into the Susquehanna account. Respondent performed his obligation under the fee agreements. The fee amounts received by Respondent were earned.

126. The fee was not excessive based on the amount of work demonstrated over the years.

127. The record established that Respondent developed a close relationship with Dr. Chang over the years of representation. In addition to his legal representations, Respondent took him shopping, socialized with him, and hosted him at Respondent's home for the holidays. N.T. (6/20/19) 275-277.

128. Over the years, Respondent developed a course of communication or "shorthand" with Dr. Chang that they understood and agreed upon.

129. Respondent zealously advocated for his client's objectives.

Lawsuits Against Deputy District Attorney McKenna and Others

130. Respondent filed three lawsuits naming Ms. McKenna, among others, as a party, including a federal civil rights action. These lawsuits were part of Respondent's effort to release Dr. Chang's frozen funds. ODC-25 at ¶¶ 2, 26; R-0256A-0082; S-2 ¶¶ 100-01; S-9 ¶ 2.

131. The record established that the Commonwealth seized and did not release Dr. Chang's Fidelity accounts or proceed with a forfeiture proceeding for more than five years. ODC-55; R-0256A-0038-a (pp. 2-10); R-0256A-0203; R-026A-0035-d; R-0256A-0038-c; S-2 ¶¶ 58, 70-71; S-4 ¶¶ 19-22, 26-28; S-5 ¶¶ 46-4; S-7 ¶ 58; S-9 ¶ 2.

132. The September 20, 2012 order dismissing the civil rights action indicated Dr. Chang had failed to plead facts sufficient to establish "Delaware County's 'deliberately indifferent failure to train its officers.'" ODC-27.

133. Respondent's efforts in multiple courts led to the release of his client's funds.

Action Against Mrs. Chang

134. The June 14, 2016 DB-7 letter sent by Petitioner to Respondent provided:

> Please be advised that this office has received and is currently considering a complaint against you from Kyoung Sook Kim Chang, c/o Gary Lightman, Esquire, 1520 Locust Street, 12th Floor, Philadelphia, PA 19102. It is important for you to understand that issuance of this letter means that the complaint against you has survived this office's initial screening process and that, based upon the information currently available to us, it appears that your alleged conduct may have violated the Rules of Professional Conduct and the Pennsylvania Rules of Disciplinary Enforcement.

ODC-37 at p. 1; S-9 ¶ 57 (admitted into evidence for a limited purpose).

135. Paragraphs 53 and 54 of the June 14, 2016 DB-7 letter provided:

> 53. On November 20, 2013, you wrote a check to G. Guy Smith, Esquire, from the Susquehanna Bank account in the amount of $4,000.00.
>
> 54. G. Guy Smith, Esquire, has never been formally retained to represent you in a potential criminal case in Delaware County regarding the excessive fees you have unilaterally taken in connection with the representation of Dr. Chang.

ODC-37 ¶¶ 53-54; S-9 ¶ 57 (admitted into evidence for a limited purpose).

136. The payment to Mr. Smith was made more than two years before Mr. Smith was retained by Respondent as his personal lawyer. ODC-16.

137. The transcripts from Dr. Chang's criminal trial revealed Mr. Smith testified as an expert for Dr. Chang on November 21, 2012. Mr. Smith was paid $4,000 for his services. R-14; S-9 ¶ 9.

138. On January 15, 2017, Respondent commenced a civil action against Mrs. Chang and her lawyer arising from paragraphs 53 and 54 of the June 14, 2016 DB-7 letter that alleged Respondent used Dr. Chang's funds to pay fees for his personal attorney. S-7 ¶ 173; ODC-41; ODC-42; S-2 ¶¶ 112-15.

139. The action against Mrs. Chang and her lawyer alleged the basis for Respondent's belief that qualified immunity did not apply and respected confidentiality requirements. ODC-42 ¶¶ 20-27; S-2 ¶¶ 114-15.

140. On June 5, 2017, the civil action against Mrs. Chang and her lawyer was dismissed by Respondent. S-7 ¶ 176.

141. The dismissal of the civil action against Mrs. Chang was reported to

Office of Disciplinary Counsel on June 7, 2017. R-97; S-9 ¶¶ 10-11.

142. On or about November 18, 2015, Mrs. Chang, as Executrix of Dr. Chang's Estate, initiated civil litigation in the Court of Common Pleas, Delaware County, against Respondent, Sharon Cherry, David Cherry and Cherry Fieger & Cherry, P.C., docketed at CV-2015-0010074. ODC-87; N.T. (5/6/19) 146-47.

143. Respondent credibly testified at the disciplinary hearing. Respondent's testimony and the documentary evidence were consistent.

III. CONCLUSIONS OF LAW

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

1. RPC 1.15(f) – When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.

Petitioner failed to meet its burden to establish violation of the following Rules of Professional Conduct:

1. RPC 1.2(a) – A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by the client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
2. RPC 1.5(a) – A lawyer shall not enter into an agreement for, charge,

or collect an illegal or clearly excessive fee.

3. RPC 1.7(a) – A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

4. RPC 1.8(a) – A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

5. 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.

6. RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

7. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so

defend the proceeding as to require that every element of the case be established.

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

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

10. Pa.R.D.E. 209(a) – Complaints submitted to the Board or Disciplinary Counsel shall be confidential unless the matter results in the filing of formal charges.

IV. DISCUSSION

This matter is before the Board for consideration of the Special Master's conclusion that Respondent violated RPC 1.15(e), RPC 1.15(f) and RPC 1.16(d), and his recommendation to suspend Respondent for eleven months followed by 18 months of probation with conditions. Both parties take exception to the Special Master's conclusions of law and recommendation of discipline. Petitioner contends the Special Master erred in concluding that Respondent did not violate RPC 1.5(a), 1.5(b), 1.7(a), 1.8(a), 3.1, 8.4(c), 8.4(d) and Pa.R.D.E. 209(a), and erred in concluding that Respondent's misconduct did not warrant a lengthy license suspension. Respondent contends the Special Master erred in concluding that Respondent violated RPC 1.15(e), RPC 1.15(f) and RPC 1.16(d) because the findings are not supported by the evidence or the Special Master's own

findings, and erred in recommending a sanction requiring suspension of his license to practice law.

The essence of the alleged violations against Respondent include self-dealing, unauthorized fees in excess of $450,000 taken from a fiduciary account after Dr. Chang's death without accountability to the decedent's estate, failure to abide by duties with respect to fiduciary funds, dishonesty, and engaging in retaliatory, bad faith litigation.

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, and after considering the parties' briefs and arguments, we conclude that Respondent engaged in professional misconduct in violation of RPC 1.15(f). Petitioner failed to meet its burden on the balance of the charges in the Petition for Discipline. The Board finds no basis to uphold Petitioner's exceptions to the Special Master's report. For the following reasons, we conclude that a public reprimand is the appropriate discipline to address Respondent's misconduct.

The full record of this matter is voluminous.[2] The Special Master did an excellent job synthesizing a massive amount of material and distilling the essence of the case to focus on Respondent's conduct subsequent to Dr. Chang's death, which we agree is at the heart of this matter. We rely on the Special Master's detailed findings in support of our conclusion that Respondent violated RPC 1.15(f) and that the other ten charged

[2] The record contains 2,180 transcript pages and 7,426 pages of exhibits. The parties submitted 781 stipulations (plus sub-parts).

violations were not established.

Respondent was born in 1959, admitted to practice law in the Commonwealth in 1986, and maintains his law office in Delaware County. This disciplinary matter arises from Respondent's representation of Dr. Suk Chul Chang, a medical doctor who at the commencement of the representation was in his early 80s. The representation spanned six years, from May 2007 until Dr. Chang's death on March 5, 2013. While Respondent performed a multitude of legal tasks for his client during the attorney-client relationship, the bulk of the representation involved defending Dr. Chang in a multi-week healthcare fraud criminal trial in Delaware County, as well as related forfeiture proceedings that occurred in a number of courts throughout the Commonwealth.

Respondent handled 11 matters of representation on an hourly rate time charge basis, two matters on capped hourly rate time charge basis, and numerous other matters on a capped contingent fee basis. Over the course of the representation, Respondent prepared written agreements which Dr. Chang signed related to Respondent's fees. Dr. Chang accepted the terms of the representation agreements. In sum, the record established that the total fee agreed to and to which Respondent was entitled was $866,666. The total fee was derived from 33 1/3% of the $2.6 million defined value of three frozen Fidelity accounts.

Respondent defended Dr. Chang on more than 140 criminal charges brought by the Delaware County DA triggering a lengthy mandatory minimum and in obtaining the return of $2.6 million of Dr. Chang's financial assets seized and held frozen by the authorities for a long period of time. Dr. Chang was found competent to stand trial after a

competency hearing and the criminal matter was tried to a guilty verdict in November 2012. Dr. Chang was found guilty on two charges of writing a prescription for a patient he had not seen or examined. Dr. Chang was sentenced on February 8, 2013, with no jail time. As to the frozen funds, Respondent filed a dozen different motions, appeals and actions in various courts, resulting in the Commonwealth filing motions to release the funds in two of three accounts on October 16 and 17, 2012.

In November 2012, after the Commonwealth released two of the frozen accounts, Dr. Chang paid Respondent $400,000 from the Fidelity Funds and executed a Limited Power of Attorney authorizing the deposit of the balance of the Fidelity Funds ($887,288.65) into an account with Susquehanna Bank. The account listed Dr. Chang as the "customer" and Respondent as "escrow agent." The $887,288.65 included funds from which the balance of Respondent's fee ($466,666) was to be paid, as well as expenses related to the criminal case.

With this background in mind, we focus on Respondent's conduct subsequent to Dr. Chang's death on March 5, 2013. On March 11, 2013, Respondent filed paperwork on Mrs. Chang's behalf with the Montgomery County Register of Wills asking for a grant of letters of administration and representing that Dr. Chang had no will. Soon thereafter, a will was located and on March 13, 2013, Mrs. Chang filed the will and removed Respondent as the attorney. On March 14, 2013, the Changs met with Sharon Cherry, Esquire, Respondent's wife. It appears from the record that Ms. Cherry began handling communications with the Changs at this point. The Changs learned the specifics of the criminal matter, that an appeal had been filed, and a forfeiture proceeding continued

as to the third frozen account. The Changs were informed about the Susquehanna Account, learning that expenses related to the criminal case were being paid from that account. The Changs requested documents relating to the account, including the governing documents that established the account, the authority to make withdrawals, and a full accounting of transactions. That day, Ms. Cherry emailed the most recent bank statement to the Changs. Pearl Chang asked Ms. Cherry not to make any withdrawals from the account, because it seemed to Ms. Chang the account would be an Estate asset. According to Ms. Chang, Ms. Cherry agreed. Ms. Cherry stated that she and Respondent (Ms. Cherry was co-counsel in Dr. Chang's criminal matter) had been paid $400,000 in fees (prior to Dr. Chang's death). Upon further questioning from the Changs, Ms. Cherry stated she and Respondent had time and billing records and would provide such records.

As the Changs were leaving the meeting, Respondent, who had not attended the meeting, gave them a check for $250,000.00 from the Susquehanna Account. On March 15, 2013, the day after the Changs met with Ms. Cherry, Respondent withdrew $288,000 from the account, which constituted earned fees under his fee agreement with Dr. Chang.

After the March 14, 2013 meeting between the Changs and Ms. Cherry, there was a flurry of activity and correspondence concerning Dr. Chang's estate. Mrs. Chang retained an Estate lawyer, Stephanie Kalogredis, who by letter of May 22, 2013 sought information from Respondent consisting of copies of fee agreements, time and billing records if the fee was not based on a contingent fee, a copy of the escrow agreement for the Susquehanna Account, statements for that account, and insurance information.

Respondent did not respond to this letter. Ms. Kalogredis reached out again and by letter dated September 18, 2013, Ms. Cherry responded and made an offer to the Estate to cap the fees to be charged at $866,667. However, the letter did not explain that if the "offer" wasn't accepted, she and Respondent would take the total fee anyway. The Estate did not accept the offer.

On November 18, 2013, Roman Koropey, Esquire informed Respondent and Ms. Cherry that he would be representing Mrs. Chang concerning issues with regard to Respondent's and Ms. Cherry's representation of Dr. Chang and the Estate in the criminal and forfeiture actions. Among other things, Mr. Koropey stated that the funds in the Susquehanna Account were assets of the Estate, and he requested that all remaining funds be disbursed to Mrs. Chang. By email to Mr. Koropey on November 27, 2013, Ms. Cherry stated the Susquehanna Account would be closed the next week and a check made payable to the estate. By letter of December 3, 2013, Ms. Cherry wrote to Mr. Koropey and enclosed a check for $84,133.56 representing the balance remaining in the Susquehanna Account after payment of attorney's fees and costs. Thereafter, Respondent removed the balance of his earned fees from the account. By letter of January 29, 2014, Mr. Koropey demanded copies of time and billing records. This time, Respondent answered Mr. Koropey by letter of February 24, 2014, in which he explained that the representation was a contingent arrangement and provided a detailed explanation of his representation of Dr. Chang and the terms of the fee agreement.

The instant disciplinary matter was initiated some three years after Dr. Chang's death by Mrs. Chang, his wife and primary beneficiary of his Estate. Dr. and Mrs.

Chang had been estranged for decades, with Mrs. Chang living on the West Coast. Mrs. Chang was not involved in Dr. Chang's criminal proceedings and did not appear at his trial, nor did his two daughters. Mrs. Chang filed the disciplinary complaint after she initiated a civil action against Respondent for damages including all fees paid to Respondent.

The record established that Respondent formed a clear and lasting attorney-client relationship with Dr. Chang and zealously represented his client on all aspects of Dr. Chang's matters. The record further established that Dr. Chang, in his 80s at the time the representation commenced in 2007, was competent and accepted and agreed to the fee basis and terms of representation. The evidence suggested that Dr. Chang was actually a shrewd negotiator, as it came to light after his death that he had assets worth more than $5 million. We find no evidence to support a finding that Dr. Chang was incapacitated, under duress, or incapable of handling his own affairs, or that Respondent took advantage of an elderly client who had cognitive impairment.

The evidence presented by Petitioner did not establish that Respondent's fee of 33 1/3% of the defined account value was excessive or that he engaged in self-dealing. Rather, the record supports the conclusion that the fee was commensurate with Respondent's representation of Dr. Chang, which lasted for approximately six years and included defending multiple counts, a lengthy criminal trial and numerous proceedings to successfully recover frozen assets. Dr. Chang contracted with Respondent for the fees charged for these legal services, did not complain, and was not available to testify about the bargaining process. The totality of the evidence established Dr. Chang's acceptance of the retention terms and agreement with the disbursement schedule. The documentary

evidence is consistent with Respondent's testimony on these points.

While we conclude that Respondent earned his fee, Respondent's conduct after Dr. Chang's death relative to taking his earned fee from the Susquehanna Account is troubling. The distribution sheet indicated that $400,000 of the fee was due to Respondent prior to the criminal trial, which he collected, and the balance was to be transferred to Respondent from the Susquehanna Account after trial. The record established that Respondent did not take the $466,666 in earned fees after the trial concluded in 2012 or even after Dr. Chang was sentenced in February 2013. Instead, Respondent delayed taking his earned fees, removing a portion of the balance of his earned fee ($288,000) on March 15, 2013 and the rest ($170,166) in March 2014,[3] after he had disbursed the remainder of Dr. Chang's funds to the Estate.

The record established that the earned fees were not disputed and Respondent was not required to hold them for the Estate; once earned, Respondent was obligated to promptly remove them from the account, which held Dr. Chang's funds that were being used to pay for expenses related to the criminal proceeding. Respondent's earned fees should not have remained in the account. Respondent could not satisfactorily explain the piecemeal manner in which he took his fees after Dr. Chang's death, except to say that the $288,000 was simply a number he had picked at the time. Respondent's conduct violated RPC 1.15(f), as he failed to promptly distribute to himself his earned funds, inexplicably allowing them to remain in the Susquehanna Account until at least

[3] The record demonstrated that Respondent intended to remove the funds in December 2013, but mistakenly moved funds from another account.

December 2013.

Upon this record, we further conclude that Petitioner did not establish by clear and satisfactory evidence that Respondent violated RPC 1.15(e) and RPC 1.16(d). These rules required Respondent to promptly distribute funds to a client or third person, provide an accounting, and surrender papers and property to which the client was entitled. The record demonstrated that within ten days of Dr. Chang's death, Respondent disbursed $250,000 of funds in the Susquehanna Account to the Changs. Between May 2013, when the Estate's lawyers first contacted Respondent, and December 2013, Respondent disbursed the remainder of the funds to the Estate. He provided the Estate with an accounting by February 2014. Respondent or his wife communicated with the Estate and provided information and explanations. The time line shows that within less than one year of Dr. Chang's death, the remaining funds belonging to Dr. Chang were disbursed to the Estate and an accounting and related information provided.

We appreciate the Master's frustration that Respondent allowed his antagonistic attitude toward Mrs. Chang, which was on full display during the disciplinary hearing, to inform his response to the Estate's inquiries. The record supports a finding that Respondent and Dr. Chang enjoyed a personal relationship as well as a professional relationship, with Dr. Chang spending Christmas at Respondent's home on one occasion, Respondent running errands for Dr. Chang and eating lunch with him, and members of Respondent's family attending Dr. Chang's trial. On the other hand, the record is abundantly clear that the relationship between Respondent and Mrs. Chang was very strained and contentious, fueled by Respondent's apparent resentment arising from his

negative perceptions of Mrs. Chang's treatment of Dr. Chang and failure to support him at the criminal trial, and her motives in questioning Respondent's representation. As the Master aptly noted, had Respondent taken a different approach towards Mrs. Chang and laid out his position relative to his earned fees in a forthright manner without rancor, Respondent may have alleviated some of the consequences he is dealing with at present. Be that as it may, a lack of civility in communications does not form a basis for discipline in this matter.

Having determined that Respondent's failure to promptly remove his earned fees from the Susquehanna Account violated RPC 1.15(f), we turn to the appropriate discipline to address the misconduct.

Disciplinary sanctions serve the dual role of protecting the interests of the public while maintaining the integrity of the bar. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986). Each disciplinary matter is considered on its own unique facts and circumstances; there is no per se discipline for attorney misconduct in the Commonwealth of Pennsylvania. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 190 (Pa. 1983). It follows that the Board must review evidence of aggravating and mitigating factors when determining the appropriate level of discipline. ***Office of Disciplinary Counsel v. Brian Preski***, 134 A.3d 1027, 1031 (Pa. 2016).

Respondent has practiced law in the Commonwealth since his admission in 1986. Unfortunately, the instant matter is not Respondent's first encounter with the disciplinary system. In 2015, Respondent received a private reprimand and probation for one year. The underlying misconduct involved two client matters, wherein Respondent

failed to communicate with clients, failed to act with diligence and promptness, and failed to provide a written explanation to a client regarding a settlement. By his actions, Respondent violated RPC 1.3, RPC 1.4(a)(3) and (a)(4), and RPC 1.16(d). This misconduct occurred during the time frame 2010-2012, contemporaneous with Respondent's representation of Dr. Chang. Office of Disciplinary Counsel filed the charges against Respondent in 2013, the Board imposed the private reprimand on March 15, 2015 and the probation period concluded on March 15, 2016.

Although it is worth noting that the misconduct in the private reprimand matter occurred during the time frame of the instant misconduct and is not necessarily "prior" misconduct, nevertheless, we must consider this discipline as an aggravating factor in the instant matter, as it reveals that Respondent has engaged in misconduct in other client matters.

In the instant matter, Respondent zealously advocated for his client and obtained a favorable outcome. Respondent did not engage in dishonest conduct. There was no misappropriation, mishandling or otherwise unauthorized dealings with client funds that evidence a breach of trust. Respondent's sole rule violation resulted from his failure to take the balance of his earned fees promptly from the account that also held Dr. Chang's funds.[4] The nature of Respondent's misconduct does not render him unfit nor does it require that he be removed from the practice of law.

A review of prior matters reveals that public reprimands have been imposed

[4] The Petition for Discipline did not charge Respondent with commingling his funds with his client's funds.

to address a wide variety of misconduct, including but not limited to IOLTA account mishandling, deficient recordkeeping, failure to return files or client property, incompetence, neglect, communications shortcomings, and conflicts of interest. Respondent's misconduct falls within this type of misconduct and is appropriately addressed by a public reprimand. *See* ***Office of Disciplinary Counsel v. Kristen Doleva-Lecher***, 137 DB 2020 (D. Bd. Order 10/8/2020) (mismanagement of IOLTA, poor recordkeeping, no prior discipline); ***Office of Disciplinary Counsel v. Richard Patrick Gainey***, 210 DB 2018 (D. Bd. Order 4/15/2020) (mishandled IOLTA, no prior discipline); ***Office of Disciplinary Counsel v. Susan O'Brien Curran*** 199 DB 2016 (D. Bd. Order 12/20/2016) (neglect, incompetence, conduct prejudicial to the administration of justice, no prior discipline); ***Office of Disciplinary Counsel v. David J. Selingo***, 45 DB 2015 (D. Bd. Order 4/10/2015) (overdraft of IOLTA, distribution of settlement funds prior to resolution of outstanding claims, no prior discipline).

Public reprimands have been imposed on respondent-attorneys who, like the instant Respondent, had a history of private discipline. *See*, ***Office of Disciplinary Counsel v. John Joseph Grenko***, No. 81 DB 2020 (D. Bd. Order 10/9/2020) (neglect, failure to communicate, failure to return client files and property, prior discipline); ***Office of Disciplinary Counsel v. Benjamin Cooper***, No. 119 DB 2020 (D. Bd. Order 8/20/2020) (incompetence, neglect, conduct prejudicial to the administration of justice, prior discipline); ***Office of Disciplinary Counsel v. Fred William Freitag***, ***IV***, No. 188 DB 2017 (D. Bd. Order 6/28/2019) (failure to properly hold RPC 1.15 funds, failure to list business accounts on attorney registration form, prior discipline); ***Office of Disciplinary Counsel v. Venus***

Foster, No. 99 DB 2017 (D. Bd. Order 8/14/2017) (improperly advanced funds to a client, failed to explain a matter to a client, prior discipline); ***Office of Disciplinary Counsel v. Geoffrey Vincent Seay***, No.79 DB 2017 (D. Bd. Order 6/7/2017) (failure to file pleadings and take action in a matter, failure to return client file, prior discipline); ***Office of Disciplinary Counsel v. Robert J. Dixon***, No. 5 DB 2016 (D. Bd. Order 1/28/2016) (failure to communicate, failure to distribute undisputed portion of client's funds, prior discipline).

Upon this record, we conclude that a public reprimand is appropriate discipline to address Respondent's misconduct and is consistent with discipline imposed in prior similar matters.

V. DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the Respondent, Thomas James Fieger, Jr. shall receive a Public Reprimand. 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: _____
John P. Goodrich, Member

Date: March 17, 2021

Member Rassias recused.