

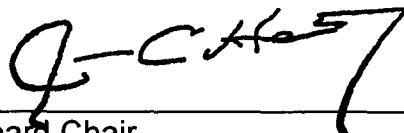
BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 160 DB 2018
Petitioner	:	
	:	
v.	:	Attorney Registration No. 82171
	:	
RICHARD PATRICK GAINEY	:	
Respondent	:	(Allegheny County)

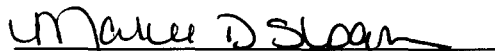
**ORDER**

AND NOW, this 15<sup>th</sup> day of April, 2020, upon consideration of the Report and Recommendation of the Hearing Committee filed on September 23, 2019; it is hereby ORDERED that the said RICHARD PATRICK GAINEY, of Allegheny 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,	:	No. 210 DB 2018
Petitioner	:	
	:	
v.	:	Attorney Registration No. 82171
	:	
	:	
RICHARD PATRICK GAINEY,	:	
Respondent	:	(Allegheny County)

OPINION

Herein, we consider the charges of professional misconduct filed against Respondent in a Petition for Discipline on November 9, 2018. Petitioner has charged Respondent with violations of the Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) arising from allegations that he mismanaged his IOLTA Account, failed to keep required records, failed to list certain accounts on his annual attorney registration form, and misappropriated client funds. On December 26, 2018, Respondent filed an Answer to Petition, admitting substantially all of the averments, but denying that he misappropriated client funds.

Following a prehearing conference on March 15, 2019, a District IV Hearing Committee (the “Committee”) conducted a disciplinary hearing on April 16, 2019 and April 29, 2019. Petitioner called one witness and offered fifty-two exhibits and two administrative exhibits, all of which were admitted into evidence. Respondent, who was represented by counsel, testified on his own behalf and called four witnesses, offered

nine exhibits, which were admitted into evidence, and submitted two post-hearing character reference letters, which were admitted into evidence.

Following the submission of the parties' briefs, the Committee filed a Report on September 23, 2019, and concluded that Respondent violated RPC 1.15(b), 1.15(c), and 1.15(h), and Pa.R.D.E. 219(d)(1)(iii-v). The Committee further determined that Respondent did not violate RPC 1.5(b), 8.4(c), or Pa.R.D.E. 203(b)(3). Upon analysis of the evidence, the Committee found that while there was no dispute that Respondent failed to keep required records and mismanaged his IOLTA account, his mismanagement did not evidence dishonest intent that would require a suspension of Respondent's license to practice law. The Committee unanimously recommended that Respondent receive a public reprimand.

On October 11, 2019, Petitioner filed a Brief on Exceptions to the Board and contends that the Committee erred in concluding that Respondent did not violate RPC 8.4(c), and erred in recommending that Respondent be publicly reprimanded. Petitioner requested that the Board find that Respondent violated RPC 8.4(c), reject the Committee's recommended discipline, and recommend to the Supreme Court that Respondent be suspended for at least one year and one day. Respondent filed a Brief Opposing Exceptions on October 31, 2019, and requested that the Board adopt the Committee's findings and recommendation and impose a public reprimand. Thereafter, the Board adjudicated this matter at the meeting on January 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 in violation of the rules governing the practice of law. ***Office of Disciplinary Counsel v. John Grigsby***, 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 RPC 1.15(b), 1.15(c), 1.15(h), and Rule 219(d)(1)(iii-v). For the following reasons, we conclude that a public reprimand is the appropriate discipline to address Respondent's misconduct.

Born in 1972, Respondent was admitted to practice law in the Commonwealth of Pennsylvania in 1998. He has no prior history of discipline. For most of his career, Respondent practiced primarily in the area of bankruptcy law while at various law firms. During his employment at these firms, Respondent was not responsible for managing client funds or handling recordkeeping. In 2014, Respondent was employed by Paul McElrath, Esquire, handling bankruptcy matters. At that time, Respondent established an IOLTA account and an operating account, in order to work on non-bankruptcy matters separate from his work with Mr. McElrath. In the spring of 2016, Respondent was laid off from his work with Mr. McElrath due to a downturn in business and began practicing as a sole practitioner, using the IOLTA account and operating account he had established in 2014. At the time he undertook his solo practice, Respondent had no experience with law firm management, had no file management or recordkeeping system, and had no training in IOLTA accounts or recordkeeping.

The conduct at issue relates to Respondent's mishandling of his IOLTA account for approximately one year. This matter came to light in October 2016, when a Dishonored Escrow/Trust Check Reporting Form was generated by Respondent's bank notifying the Pennsylvania Lawyers Fund for Client Security (the "Fund") that Respondent's IOLTA was overdrawn in the amount of \$273.96. The Fund requested that Respondent provide information on the overdraft. Respondent replied and explained that it was an oversight due to a bookkeeping error. However, Respondent failed to provide the Fund with all of the requested financial records and the Fund referred the matter to Petitioner. On May 24, 2017, Petitioner issued a subpoena for Respondent's monthly reconciliations, account ledgers, and other documents and correspondence. In his counseled response, Respondent stated that he had no ledger documentation or reconciliation statements.

Following investigation, Petitioner identified five clients for whom Respondent was to be holding entrusted funds, but failed to do so. The evidence of record demonstrates that in the Bookmyer Estate, Lewis, Ray Estate, Iyer, and Etzel Estate matters, Respondent's IOLTA account was out of trust on various occasions from 2016 to 2017 with respect to these five clients. The evidence also supports the conclusion that all funds were disbursed to clients in a timely fashion and no client lost money due to Respondent's mismanagement of his IOLTA account.

Respondent admitted that he did not keep any required ledgers for his IOLTA account and did not perform required monthly reconciliations, leading to his IOLTA

account being repeatedly out of trust. He admitted to withdrawing attorney fees from his IOLTA account prior to being earned, depositing personal funds into his IOLTA account on three occasions to cure deficiencies, and did not dispute that his IOLTA account was at times out of trust. Respondent'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. Additionally, Respondent violated Pa.R.D.E. 219(d)(1)(iii-iv) by failing to list his operating account on his 2016-2017 annual attorney registration form

Petitioner contends that Respondent's actions were dishonest and violated RPC 8.4(c). Petitioner points to Respondent's general conduct with regard to his IOLTA account, and to his specific conduct in regard to the Iyer matter, where Respondent represented to the United States Bankruptcy Court for the Western District of Pennsylvania in a filing that he was holding a certain amount of funds in his IOLTA on behalf of his client, when in fact the balance was less than the amount represented in the filing.

As to the specific conduct before the Bankruptcy Court, at the time that Respondent represented to the Court in his filing that he was holding \$4,150 in his IOLTA account for his client, he did not check the IOLTA account balance to ensure his statement in the filing was accurate. As he had not checked the balance, Respondent had no idea if his representation was correct. While certainly Respondent should have checked the

numbers, we do not find his conduct in this instance involved “dishonesty, fraud, deceit or misrepresentation” as much as it was extremely careless.

Concerning Petitioner’s charge that Respondent’s mismanagement of his IOLTA account constituted serial misappropriation of entrusted funds, Respondent’s behavior with respect to his bookkeeping and management of records was undeniably negligent and careless conduct, but we conclude there is insufficient evidence to clearly and satisfactorily establish dishonest intent or purpose on Respondent’s part.

Having disposed of Petitioner’s exceptions relative to RPC 8.4(c), we turn to the issue of the appropriate discipline to address Respondent’s misconduct.

Respondent has fully admitted his misconduct and acknowledged that his actions warrant discipline. These admissions demonstrate his remorse and recognition of wrongdoing. At the disciplinary hearing, Respondent credibly testified and expressed remorse, acknowledged that the recordkeeping issues were solely his fault, and stated repeatedly that he would never have done anything to intentionally harm a client. Respondent offered evidence to demonstrate that since his involvement in these disciplinary proceedings, he has taken actions to remediate his recordkeeping problems. To prevent future mismanagement of his IOLTA account, Respondent purchased and learned QuickBooks and made arrangements to refer all of his personal injury cases and estate matters to other attorneys. In making these impactful changes, Respondent consulted with other attorneys for advice. Respondent intends to focus his practice on bankruptcy matters, an area in which he has experience. Respondent’s character

witnesses credibly testified to his good reputation for honesty and his competency as a legal practitioner, and his character reference letters affirm his integrity and reputation as an honest practitioner.

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 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 Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

A wide range of discipline has been imposed in matters involving mishandling of entrusted funds and trust accounts. Upon review, we conclude that cases with similar misconduct to the instant matter support the imposition of a public reprimand. ***See, Office of Disciplinary Counsel v. Michael Patrick O’Day***, No. 108 DB 2018 (D. Bd. Order 9/20/2019) (public reprimand imposed for failing to keep entrusted funds and earned funds separate; disbursing entrusted funds for purposes unrelated to the representation; failing to maintain required records of funds; failing to promptly deliver funds to clients; and, engaging in dishonesty, fraud, deceit or misrepresentation; O’Day admitted all factual allegations in the Petition for Discipline; no prior discipline; character evidence; remorse; mitigation pursuant to ***Office of Disciplinary Counsel v. Seymour Braun***, 553 A.2d 894 (Pa. 1989) that his psychiatric disorder caused his misconduct);



**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 account; failed to comply with RPC 1.15; cooperated with Office of Disciplinary Counsel; no prior discipline); **Office of Disciplinary Counsel v. Michael Paul Petro**, No. 195 DB 2014 (D. Bd. Order 2/2/2016) (public reprimand imposed for violations of RPC 1.15(b), 1.15(c), and 1.15(h); Petro failed to maintain proper records of his IOLTA account, leading to an overdraft; commingled personal and entrusted funds in the IOLTA account in an attempt to cure the shortfall; no dishonest conduct; inexperience in recordkeeping; no prior discipline; remorse; took steps to learn proper bookkeeping).

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. 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 account 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 account 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).

Under these circumstances, where Respondent accepted responsibility for his actions, took remedial steps to avoid future misconduct, did not act dishonestly, did not harm his clients, and has no prior discipline, a public reprimand is appropriate 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, Richard Patrick Gainey, 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: S/Christopher M. Miller  
Christopher M. Miller, Member

Date: April 15, 2020