

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2151 Disciplinary Docket No. 3
Petitioner :
 : No. 185 DB 2014
v. :
 : Attorney Registration No. 19026
ROBERT T. SEIWELL, :
Respondent : (Chester County)

ORDER

PER CURIAM

AND NOW, this 10th day of April, 2015, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated March 20, 2015, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Pa.R.D.E. 215(g), and it is

ORDERED that Robert T. Seiwel is suspended on consent from the Bar of this Commonwealth for a period of two years, and he shall comply with all the provisions of Pa.R.D.E. 217.

A True Copy Patricia Nicola
As Of 4/10/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL	:	No. 185 DB 2014
Petitioner	:	
v.	:	Attorney Registration No. 19026
ROBERT T. SEIWELL	:	
Respondent	:	(Chester County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Brian J. Cali, Tracey McCants Lewis, and P. Brennan Hart, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on February 18, 2015.

The Panel approves the Joint Petition consenting to a two year suspension and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.



Brian J. Cali, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 3/20/2015

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 185 DB 2014
Petitioner :
 :
v. : Attorney Reg. No. 19026
 :
ROBERT T. SEIWELL, :
Respondent : (Chester County)

JOINT PETITION IN SUPPORT OF
DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215(d)

Petitioner, the Office of Disciplinary Counsel by Paul J. Killion, Chief Disciplinary Counsel, and Barbara Brigham Denys, Disciplinary Counsel, and Respondent, Robert T. Seiwell (hereinafter "Respondent"), file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and respectfully represent:

1. Petitioner, 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 Pa.R.D.E. 207, 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

FILED
FEB 18 2015

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

brought in accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent, Robert T. Seiwell, was born on September 6, 1942, was admitted to practice law in the Commonwealth of Pennsylvania on May 3, 1974, is currently on retired status, and maintains his address of record at 1661 Hunters Circle, West Chester, Pennsylvania 19380.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

Misconduct Relating to Czukiewski Divorce Matter

4. On October 6, 2006, the Treasurer of Delaware County issued a check on its account at Commerce Bank for \$41,311.00 payable to Robert Czukiewski and Donna Czukiewski, which was a refund of monies which Mr. and Mrs. Czukiewski had used to bid on a property at a Judicial Sale.

5. On November 22, 2006, Respondent met with Donna Czukiewski for the first time. At that meeting or shortly thereafter, Mrs. Czukiewski gave Respondent a \$3,000.00 check in satisfaction of a "non-refundable" retainer Respondent required for legal services.

6. On November 28, 2006, the \$41,311.00 check made payable to Robert Czukiewski and Donna Czukiewski was deposited

into Mrs. Czukiewski's bank account without Mr. Czukiewski's authorization and/or approval.

7. On November 29, 2006, Respondent deposited into his operating account the \$3,000.00 check Mrs. Czukiewski had given to him in satisfaction of his retainer.

8. On December 7, 2006, Robert Czukiewski filed a complaint in divorce captioned *Robert J. Czukiewski v. Donna M. Richardson Czukiewski* in the Delaware County Court of Common Pleas, Case Number 06-17318.

9. On December 8, 2006, Respondent filed a complaint in divorce on behalf of Mrs. Czukiewski captioned *Donna M. Richardson Czukiewski v. Robert J. Czukiewski* in the Delaware County Court of Common Pleas, Case No. 06-17437. The action Respondent filed was later consolidated into Case No. 06-17318.

10. On or about January 8, 2007, Mrs. Czukiewski gave Respondent a Commerce Bank Official Check (numbered 317-34751) made payable to Respondent in the amount of \$20,000.00.

11. The \$20,000.00 check represented roughly one-half of the \$41,311.00 refund issued to Mr. and Mrs. Czukiewski by the Treasurer of Delaware County and, on its face, reflected no connection to the Czukiewski matter.

12. On January 18, 2007, Mr. Czukiewski filed a Petition for Special Relief and Injunction seeking to prevent the removal, disposition, encumbering or alienation of property and

the return of property he asserted had been taken by Mrs. Czukiewski, which included the \$41,311.00 refund check.

13. On February 8, 2007, Respondent filed an Answer and New Matter to the Petition for Special Relief on behalf of Mrs. Czukiewski.

14. Respondent stated in the Answer that Mrs. Czukiewski "did deposit the check into her checking account, as petitioner had withdrawn and closed the parties' joint checking account. [Mrs. Czukiewski] then gave [Respondent] 1/2 of the monies to hold in escrow for [Mr. Czukiewski] and used part of the remaining money for her support and bills."

15. On February 16, 2007, Respondent deposited the \$20,000.00 check Mrs. Czukiewski had given to him into his IOLTA Account; Respondent did not deposit \$20,655.50 into his Operating Account, as Respondent later represented to Disciplinary Counsel.

16. Respondent knew or should have known that the \$20,000.00 he received from Mrs. Czukiewski were Nonqualified Funds as defined in Rule of Professional Conduct 1.15(a) which Respondent was required to place in a Non-IOLTA escrow account or in another specifically agreed-upon investment vehicle.

- a. Those funds were not nominal in amount; and
- b. Respondent did not reasonably expect those funds to be held for such a short period of time that

sufficient income would not be generated to justify the expense of administering a segregated account to hold those funds until ownership of the funds was finally determined.

17. Almost immediately upon depositing the \$20,000.00 check into his IOLTA Account, Respondent began to draw against that \$20,000.00 deposit, bringing the total balance of Respondent's IOLTA Account below \$20,000.00 by March 2, 2007. Respondent transferred the funds he drew from the IOLTA Account in large part to his Operating Account.

18. On September 17, 2007, Delaware County Court of Common Pleas Judge James P. Bradley entered an Order upon consideration of Robert Czukiewski's Petition for Special Relief, and defendant's Answer and New Matter, and upon agreement of the parties in open court on June 25, 2007, that:

1. The amount of \$20,655.50 (representing 1/2 of the refund check issued to the parties by the Treasurer of Delaware County) remain in escrow with [Respondent] until such time as an order for equitable relief is entered, or until such time as the parties reach amicable agreement for its disbursement. Accounting to be provided at or before time of equitable distribution.

2. Defendant shall not access or have access to any rental account for the properties of the parties.

3. The parties shall determine by bank records who withdrew any rental escrow monies. The party that withdrew escrow funds that have not been returned to lessor, shall return the rental

escrow monies to an escrow bank account at Commerce Bank, to be held as rental escrow funds only.

4. The parties shall each sign and deliver to the other party a mutual consent 3301(c) form for a no-fault divorce within thirty (30) days of this Order.

5. The parties shall move forward with all ancillary matters, including equitable distribution, without unnecessary delay.

19. Respondent took no action before or after the entry of the September 17, 2007 Order to correct his false representation to the Court and to opposing counsel that he was holding the \$20,655.50 (representing one-half of the refund check issued to the parties by the Treasurer of Delaware County) in an escrow account.

20. As of the date of the September 17, 2007 Order and thereafter, Respondent was not holding \$20,566.50 in his IOLTA Account or in any other escrow account.

a. Although Respondent had deposited the \$20,000.00 check Mrs. Czukiewski gave him into his IOLTA Account on January 8, 2007, those funds did not remain in Respondent's IOLTA Account as of February 16, 2007.

b. The balance of Respondent's IOLTA Account was less than \$20,566.50 during most of the period when the September 17, 2007 Order was in place.

21. On July 7, 2008, Respondent made a check payable to Mrs. Czukiewski and drawn against Respondent's IOLTA Account in the amount of \$1,000.00. With that distribution, the total balance of Respondent's IOLTA Account was \$14,567.14, which was below the \$20,655.50 Respondent was required to maintain in escrow by the Court's September 17, 2007 Order.

22. On October 27, 2008, Respondent distributed \$2,000.00 to Mrs. Czukiewski from Respondent's IOLTA Account.

a. Respondent made that distribution following entry of a bench order, later confirmed by a December 10, 2008 Order.

b. In the December 10, 2008 Order, the Court stated that "Petitioner [Mrs. Czukiewski] should be paid Two Thousand Dollars (\$2,000.00) from the currently escrowed marital fund to be applied to support arrears of Respondent [Mr. Czukiewski]."

c. Upon Respondent's distribution of the \$2,000.00 to Mrs. Czukiewski on October 27, 2008, the total balance of Respondent's IOLTA Account was \$6,173.09.

23. Respondent took no action before or after the entry of the bench order, as confirmed by the December 10, 2008 Order, to correct his false representation to the Court, to his client, and to opposing counsel that he was holding one-half of the

\$41,311.00 refund, less the \$2,000.00 distribution addressed by the December 10, 2008 Order, in an escrow account.

24. On August 2, 2010, an equitable distribution proceeding was held before Delaware County Court of Common Pleas Judge Mary Alice Brennan.

25. On August 3, 2010, Respondent filed a post-trial memorandum. Included in that submission was the following description of the funds Respondent had been ordered to hold in escrow:

This item is entireties property. It is a refund for a bid on a property at county tax sale. Wife did withdraw one-half of this refund at the time of separation, with the remaining one-half held in escrow by order of Judge Bradley dated 9/17/07. The total refund is set forth in this valuation, so wife's withdraw [sic] at separation will not effect [sic] the valuation.

Note: It also should be noted that on 12/10/08, Judge Bradley ordered Wife to be paid \$2,000. [sic] from monies escrowed to be applied towards Husband support arrears.

(Emphasis added.)

26. Respondent's representation in the post-trial memorandum to the Court and to opposing counsel that one-half of the \$41,311.00 refund, less a \$2,000.00 distribution ordered December 10, 2008, remained in escrow pursuant to the September 17, 2007 Order was false.

27. As of August 3, 2010, the total balance of Respondent's IOLTA Account was \$18,450.38.

28. On November 10, 2010, Judge Brennan entered the Court's Order of Equitable Distribution, which awarded to Mrs. Czukiewski "[t]he balance of the monies deposited in the escrow account of the refund for the property purchased in error at tax sale in the original amount of \$41,311.00."

29. On December 2, 2010, Mrs. Czukiewski went to Respondent's office seeking distribution of the escrowed funds.

30. Although Respondent told Mrs. Czukiewski on December 2, 2010, that he was not yet at liberty to release funds from the escrow pending a possible appeal, Respondent did give Mrs. Czukiewski a check on that date drawn against Respondent's IOLTA Account in the amount of \$1,000.00.

31. Mrs. Czukiewski was not entitled to the \$1,000.00 Respondent distributed to her from his IOLTA Account on December 2, 2010.

32. On December 14, 2010, Mrs. Czukiewski returned to Respondent's office.

33. On that date, Respondent gave Mrs. Czukiewski a check drawn against Respondent's IOLTA Account in the amount of \$12,655.50, which Mrs. Czukiewski negotiated the following day.

34. On or about December 16, 2010, before entry of a Final Decree in Divorce, Respondent took a Civil Judgment against Mr. Czukiewski based upon the equitable distribution award.

35. On December 20, 2010, Respondent transferred \$5,000.00 from his IOLTA Account to his Operating Account in satisfaction of the remaining fee Respondent required from Mrs. Czukiewski.

36. On December 21, 2010, counsel for Mr. Czukiewski, Francis A. Urso, Esquire, filed a Petition for Reconsideration of the November 10, 2010 Order of Equitable Distribution seeking, in part, reconsideration of the award to Mrs. Czukiewski of the balance of the funds believed to be held in escrow.

37. By February 8, 2011 Order, the Court vacated the judgment that had been entered in favor of Mrs. Czukiewski and against Mr. Czukiewski.

38. On August 25, 2011, Judge Brennan, upon reconsideration, entered an amended Order of Equitable Distribution that awarded to Mr. Czukiewski "[t]he balance of the monies deposited in the escrow account of the refund for the property purchased at tax sale in the original amount of \$41,311.00."

39. On August 30, 2011, Mr. Urso's associate, Anna E. Samuelian, Esquire, sent a letter to Respondent requesting "a current statement for the Escrow account in the [matter of *Czukiewski v. Czukiewski*]."

40. Respondent made no response to the letter.

41. Thereafter, Ms. Samuelian sought to reach Respondent by telephone.

42. Respondent made no response.

43. On August 31, 2011, Respondent filed a Motion for Reconsideration of the August 25, 2011 Order.

44. On or about March 6, 2012, the Divorce Decree was entered by Judge Spiros E. Angelos.

45. On March 27, 2012, Respondent spoke by telephone with Ms. Samuelian and disclosed for the first time that Respondent had disbursed funds to Mrs. Czukiewski following Judge Brennan's November 10, 2010 Order.

46. Respondent made no disclosure that Respondent had not maintained the funds inviolate in escrow from the date of the September 17, 2007 Order.

47. On or about April 4, 2012, Respondent filed a notice of appeal on behalf of Mrs. Czukiewski from the entry of the Final Equitable Distribution Order of August 25, 2011, in the Superior Court (Docket Number 961 EDA 2012).

48. On April 11, 2012, Mr. Urso filed a Petition for Contempt of Equitable Distribution Order / And to Join Additional Defendant.

49. The Petition sought an Order finding Mrs. Czukiewski and Respondent in willful contempt, holding Respondent and Mrs. Czukiewski jointly and severally responsible to provide an

accounting for the escrow account, requiring Respondent to pay the balance that was in the account as of November 9, 2010, to Mr. Czukiewski, adding Respondent as an indispensable third party, and awarding Mr. Czukiewski counsel fees.

50. On April 12, 2012, the Court set a hearing date on the Petition for Contempt for July 17, 2012.

51. On May 1, 2012, Lawrence S. Rubin, Esquire, filed a response to the Petition for Contempt on Respondent's behalf.

52. In that response, it was stated: "the history of the escrowed funds are as follows:

\$ 20,655.50	9/17/07	escrow established per 9/17/07 court order
<u>-\$ 2,000.00</u>	12/10/08	payment to Donna Czukiewski per 12/20/08 court order

\$18,655.50

<u>-18,655.50</u>	12/14/10	payment to Donna Czukiewski and her counsel per court order of 11/10/10 (no post-trial motions or motions for reconsideration having been filed)
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-0- Balance"

53. The "history of the escrowed funds," attributable to Respondent, was false in the following respects:

- a. Respondent never established an escrow account in the amount of \$20,655.50 per the September 17, 2007 Order.
- b. Respondent did not hold \$20,655.50 in an escrow account or in any other Trust Account from September 17, 2007, through December 10, 2008; rather, Respondent drew against the \$20,000.00

Respondent deposited into his IOLTA Account, using the funds for his own purposes.

- c. The \$2,000.00 Respondent distributed to Mrs. Czukiewski upon entry of the Court's December 10, 2008 Order was not "per" that Order as it was not distributed from the escrow account Respondent was ordered to establish and maintain or from any Trust Account which continued to hold the \$20,000.00 Mrs. Czukiewski had given to Respondent in January 2007.
- d. On July 7, 2008, Respondent made a \$1,000.00 payment from Respondent's IOLTA Account to Mrs. Czukiewski not reflected in Respondent's "history of the escrowed funds."
- e. On December 2, 2010, Respondent made a \$1,000.00 payment from Respondent's IOLTA Account to Mrs. Czukiewski not reflected in Respondent's "history of the escrowed funds."
- f. The \$18,655.50 Respondent distributed -- \$12,655.50 to Mrs. Czukiewski on December 15, 2010, and \$5,000.00 to Respondent on December 20, 2010 -- was not "per" the Court's November 10, 2010 Order as those funds were not distributed from the escrow account Respondent was required

to establish and maintain or from any Trust Account which had consistently held the funds at issue.

54. On June 13, 2012, the Delaware County Court of Common Pleas issued its Opinion in support of its August 25, 2011 Order. In part, the Court provided (a) that "[a]s of November 10, 2010, [it] had not issued a final order regarding the equitable disposition of marital assets nor a decree of divorce"; and (b) that it "was within [the Court's] power to modify an interlocutory order [the November 10, 2010 Order] prior to its final judgment regarding the equitable distribution of the marital estate and decree of divorce."

55. On July 17, 2012, Respondent appeared with Mr. Rubin for a hearing on the Petition for Contempt before Judge Kathrynann W. Durham. At the suggestion of Anna Samuelian, Esquire, counsel who appeared on behalf of Mr. Czukiewski, the matter was heard off the record in the Judge's chambers.

56. Although Respondent acknowledged to the Court on July 17, 2012, that he had distributed the funds at issue to Mrs. Czukiewski and to himself in satisfaction of his attorney fee in December 2010, Respondent did not disclose his improper, personal use of the funds he had been ordered to hold in escrow dating back to 2007.

57. At the July 17, 2012 conference, there was some

discussion of Mrs. Czukiewski's ability to return the funds that Respondent had distributed to her.

58. Judge Durham determined that although the funds at issue probably belonged to Mr. Czukiewski, Judge Durham would deny the Petition and abstain from requiring that the funds be immediately returned in light of the appeal pending in the Superior Court.

59. Judge Durham, however, addressed measures to be taken to safeguard Mr. Czukiewski's ability to collect from Mrs. Czukiewski the funds Respondent had distributed to her.

60. Per direction from Judge Durham, the parties, through their counsel, were to produce a proposed Order for Judge Durham's consideration and signature to reflect the measures discussed at the July 17, 2012 conference.

61. Following the conference, Respondent's attorney, Mr. Rubin, and counsel for Mr. Czukiewski were unable to agree upon a proposed Order because Respondent was resistant to producing a complete accounting of the funds Respondent had been ordered to hold in escrow from the date of the September 17, 2007 Order.

62. On July 24, 2012, Respondent filed Appellant's Brief in the Superior Court.

63. On August 14, 2012, Judge Durham signed a proposed Order that was submitted by Mr. Czukiewski's counsel. The Order denied the Petition for Contempt but required: (a) that

Respondent provide "all Statements from the Escrow account established on or about September 17, 2007 (established by Court Order dated September 17, 2007) within ten (10) days of the date of th[e] Order"; (b) that "Defendant Donna M. Richardson Czukiewski, shall place in Escrow an amount equal to the funds held in the aforementioned Escrow account as of March 1, 2010 within ten (10) days pending the outcome of the Superior Court Appeal"; and (c) that "[i]f Defendant fail[ed] to deposit said moneys into an escrow account, she shall provide a complete disclosure, through counsel, of any and all financial holdings . . . whether titled in Defendant's name solely or with a third party, to Plaintiff's Attorney within ten (10) days of the date of th[e] Order."

64. Thereafter, Mr. Rubin, on behalf of Respondent, produced to Mr. Czukiewski's counsel a one page "Escrow Accounting" with copies of the checks drawn against Respondent's IOLTA Account and made payable to Mrs. Czukiewski in the amounts of \$2,000.00 (dated October 7, 2008), \$1,000.00 (dated December 2, 2010), and \$12,655.50 (dated December 14, 2010).

65. In violation of the terms of the August 14, 2012 Order, Respondent failed to produce within ten days any statements from an escrow account required by the September 17, 2007 Order.

66. Respondent did produce a list of assets prepared by

Mrs. Czukiewski which reflected that Mrs. Czukiewski did not have assets sufficient to make a refund to Mr. Czukiewski of the \$18,655.50 Respondent had distributed to Mrs. Czukiewski and to himself in December 2010.

67. By letter dated August 24, 2012, Respondent sent a "self-reporting of a violation of professional responsibilities" to the Disciplinary Board.

68. In Respondent's August 24, 2012 letter, he stated:

In late 2006 I accepted \$20,655.50 from a newly retained divorce client, representing one-half of a marital asset. On September 17, 2007, the court ordered that this money remain in escrow with myself until an order for equitable relief was entered. I failed to establish or maintain this money in an escrow fund. While I did make full distribution of the escrow monies pursuant to a December 10, 2008 order (\$2,000.00) and the Equitable Distribution order entered November 10, 2010 (\$18,655.50), I never properly established nor maintained the escrow funds and violated my duties under the Rules of Professional Conduct as a result. I regret my actions and submit this matter for your consideration.

69. On August 29, 2012, Disciplinary Counsel sent Respondent a letter seeking additional information.

70. On September 13, 2012, Respondent mailed Disciplinary Counsel a response to the August 29, 2012 request.

71. In Respondent's September 13, 2012 response, he identified his divorce client as Donna M. Richardson Czukiewski

and enclosed limited materials from the divorce proceeding pending in the Delaware County Court of Common Pleas.

72. Respondent stated in his September 13, 2012 response:

- a. that "[t]he 20,655.50 did not get placed into [his] escrow account" and that "[i]t apparently was deposited into [his] attorney account and used for business and personal expenses";
- b. that he made distributions to Mrs. Czukiewski by payments to her from his IOLTA account in the amounts of \$2,000.00 (by October 27, 2008 direction of the Court and subsequent December 20, 2008 Order), \$1,000.00 (on December 2, 2010, at the request of Mrs. Czukiewski), and \$12,655.50 (by check dated December 14, 2012, pursuant to a November 10, 2010 Order);
- c. that he retained the remaining \$5,000.00 as a final payment of his fees;
- d. that "[p]rior to distribution [he] did become aware that the funds were not in the escrow account and deposited sufficient funds for the escrow balance";
- e. that "[w]hen the court entered its second equitable distribution order and reversed its decision re the award of the escrowed funds [to

Mrs. Czukiewski], [he] advised opposing counsel that the funds had been distributed to [his] client pursuant to the court's first equitable distribution order [dated November 10, 2010]"; and

- f. that he had "recently prepared an accounting for the distribution of the funds, and provided the same, together with copies of the distribution checks, and the enclosed information to opposing counsel shortly after the date [he] reported to [the Disciplinary Board]."

73. On September 24, 2012, counsel for Mr. Czukiewski filed Appellee's Brief in the Superior Court.

74. On October 4, 2012, Disciplinary Counsel sent Respondent another letter requesting additional documents and information.

75. On October 11, 2012, Ms. Samuelian sent a letter to Mr. Rubin enclosing a copy of the August 14, 2012 Order, noting Respondent's and Mrs. Czukiewski's failure to comply with the terms of that Order, and demanding immediate compliance.

76. On October 17, 2012, Respondent submitted a response to Disciplinary Counsel's October 4, 2012 request.

77. In Respondent's October 17, 2012 submission (which incorrectly stated it was submitted in response to Disciplinary

Counsel's September 19, 2012 letter), Respondent declined to respond to requests for information and documents to substantiate his assertion that he had used funds to which he had a right (and not funds he was to be holding for other clients) to make disbursements in 2008 and 2010 from his IOLTA account to Mrs. Czukiewski; Respondent provided no records and claimed that he "[c]annot prove a negative."

78. On October 22, 2012, Disciplinary Counsel sent Respondent a letter noting the requirements of Rule of Professional Conduct 1.15(c) in connection with the request for documents which would reflect the source of the funds Respondent used to make distributions to Mrs. Czukiewski and to himself and informed Respondent that the Office of Disciplinary Counsel would subpoena records relevant to its investigation since Respondent was not inclined to produce them voluntarily.

79. In the same letter, Disciplinary Counsel stated:

Based upon our investigation to date, it does not appear that you have disclosed to the Court or to opposing counsel in the Czukiewski matter your violation of the terms of the September 17, 2007 Order which required you to hold the \$20,655.50 in escrow. On the contrary, it appears that you have misrepresented to the Court and to opposing counsel that you established an escrow account on September 17, 2007 pursuant to the September 17, 2007 Order[.] See Response to Motion for Contempt / and to Join Add'l Defendant ("9/17/07 escrow established per 9/17/07 order"). If you disagree, I invite you to provide an explanation and any related documents in your position.

80. On October 30, 2012, Respondent replied to the October 22, 2012 letter to state (a) that he had requested his attorney's account statements for the relevant period from his bank; and (b) that Disciplinary Counsel had "misread [his] Response to the motion for contempt [filed against Respondent and Mrs. Czukiewski following Respondent's disbursement of funds to Mrs. Czukiewski]," which did not constitute a misrepresentation to the Court.

81. On or about November 2, 2012, Mr. Rubin supplied to counsel for Mr. Czukiewski the monthly statements of Respondent's IOLTA Account from November 1, 2006, through December 31, 2010; Respondent had supplied the same set of bank statements to Disciplinary Counsel on October 1, 2012.

82. On or about November 8, 2012, Disciplinary Counsel served Respondent with a November 7, 2012 subpoena *duces tecum* requiring Respondent's appearance at the District II Office of Disciplinary Counsel on November 28, 2012, with records and documents.

83. On November 28, 2012, Respondent appeared for the subpoena return. Respondent did not, however, fully comply with the subpoena.

- a. Although Respondent had previously supplied monthly statements relating to his IOLTA Account,

he provided none of the additional information relating to that account.

- b. Respondent claimed the inability to produce a check register or separately maintained ledger for the IOLTA Account for any time period.
- c. With the exception of the check register, Respondent supplied none of the records relating to his Operating Account.
- d. Respondent withdrew a request he had directed to his bank for records relating to his Operating Account to avoid the cost associated with obtaining those records in favor of those costs being incurred by the Office of Disciplinary Counsel.

84. On April 16, 2013, the Superior Court (Docket Number 961 EDA 2012) affirmed the Final Equitable Distribution Order entered on August 25, 2011, by the Delaware County Court of Common Pleas.

85. On January 23, 2014, the Delaware County Court of Common Pleas entered an Order finding Mrs. Czukiewski in contempt of the Court's August 25, 2011 Order of Equitable Distribution to the sum of \$18,655.50, which amount was equal to one-half of the \$43,311.00 refund less the \$2,000.00 distribution to Mrs. Czukiewski ordered on December 10, 2008.

86. On the same date, an Order was entered denying a second attempt Mr. Czukiewski's counsel had made to add Respondent as an additional defendant to the divorce proceeding.

87. To date, Mr. Czukiewski has not been made whole as the \$18,655.50 he is due remains outstanding.

General Misuse of IOLTA Account

88. Respondent has misused his IOLTA Account for many years.

89. Respondent failed to hold Rule 1.15 Funds separate from his own property such that Rule 1.15 Funds were identified and appropriately safeguarded.

90. Respondent held his own funds in his IOLTA Account for a purpose other than paying service charges on that account.

91. Respondent failed to withdraw from his IOLTA Account his fees as they were earned. As Respondent incrementally removed earned fees, transferring them from his IOLTA Account to his Operating Account, he maintained no record of the client matters to which those transfers of funds related.

92. Aside from monthly bank statements, Respondent maintained no records of the receipt, maintenance, and disposition of Rule 1.15 Funds relating to his IOLTA Account for any time period. Respondent maintained no check register or separately maintained ledger for his IOLTA Account.

93. Respondent transferred his own funds from his Operating Account and his personal Franklin Mint FCU account into his IOLTA Account to replace Rule 1.15 Funds he had improperly removed from his IOLTA Account.

Commingling

94. Although Respondent appears to have consistently deposited settlement checks into his IOLTA Account and made prompt payment to his clients of the settlement funds to which they were entitled, Respondent did not properly and promptly remove from the IOLTA Account those portions of settlement funds to which Respondent was entitled in satisfaction of earned contingent fees.

95. On a routine basis, Respondent maintained earned contingent fees in his IOLTA Account, removing those fees in an incremental manner, usually transferring several hundred dollars at a time from his IOLTA Account to his Operating Account.

96. By way of example:

Czarnota Settlement

- a. On July 1, 2009, Respondent deposited a settlement check in the amount of \$300,000.00 associated with Respondent's settlement of claims asserted on behalf of Kevin Czarnota against One Beacon Insurance Company into Respondent's IOLTA Account.

- b. On July 6, 2009, Respondent drew a check against his IOLTA Account made payable to Kevin Czarnota in the amount of \$201,943.77, disbursing to Mr. Czarnota his share of the settlement proceeds minus Respondent's earned contingent fee.
- c. Respondent did not withdraw his earned contingent fee from the IOLTA Account in a lump sum or in a timely fashion.
- d. Instead, Respondent withdrew his earned fee incrementally.

King Settlement

- e. On March 11, 2009, Respondent settled claims on behalf of Henry and Elizabeth King against Sunoco, Exxon, Mobil, Getty and Conoco Phillips for a total of \$75,000.00.
- f. In April 2009, Respondent deposited checks from the defendant companies totaling \$75,000.00 into his IOLTA Account.
- g. On May 13, 2009, Respondent distributed his clients' share of the settlement proceeds (\$49,201.28) to his clients from the IOLTA Account.

- h. Respondent did not, however, withdraw his earned contingent fee from the IOLTA Account in a lump sum or in a timely fashion.
- i. Instead, Respondent withdrew his earned fee incrementally.

Mundy Settlement

- j. On November 21, 2007, Respondent settled claims on behalf of Paul and Joann Mundy against Sunoco, Exxon, Mobil, Getty and Conoco Phillips for a total of \$75,000.00.
- k. In December 2007, Respondent deposited checks from the defendant companies totaling \$75,000.00 into his IOLTA Account.
- l. On December 28, 2007, Respondent distributed his clients' share of the settlement proceeds (\$49,149.17) to his clients from the IOLTA Account.
- m. Respondent did not, however, withdraw his earned contingent fee from the IOLTA Account in a lump sum or in a timely fashion.
- n. Instead, Respondent withdrew his earned fee incrementally over the next several months.

Strand Settlements

- o. Respondent had several clients named Strand: Lewis Strand, Inc., Jean Strand and Reverend Horace Strand.
- p. In all cases where Respondent obtained settlements on behalf of any of the Strand clients, Respondent promptly distributed to the client from his IOLTA Account its share of the settlement proceeds.
- q. Respondent did not, however, withdraw his earned contingent fee from the IOLTA Account in a lump sum or in a timely fashion.
- r. Instead, Respondent withdrew his earned fee incrementally.

97. In addition, from December 2006 through September 2010, Respondent transferred his own funds, totaling \$27,325.00, into his IOLTA Account.

98. Respondent routinely deposited his own funds into his IOLTA Account to replace Rule 1.15 Funds he had converted from his IOLTA Account.

Conversion of Rule 1.15 Funds

99. Respondent's handling of the \$20,000.00 from Mrs. Czukiewski, which he deposited into his IOLTA Account on

February 16, 2007, provides a clear example of his conversion of Rule 1.15 Funds. (See ¶¶ 4-87 above.)

100. Respondent also converted Rule 1.15 Funds given to him for safekeeping by Harold Taussig as follows:

- a. On May 18, 2007, Respondent deposited into his IOLTA Account a check he received from Harold Taussig made payable to Respondent in the amount of \$25,000.00.
- b. That \$25,000.00 check was given to Respondent for the purpose of establishing or adding funds to a Taussig Trust account at Self Help Credit Union.
- c. Those funds were Rule 1.15 Funds to which Respondent was not entitled.
- d. Immediately before Respondent made the \$25,000.00 deposit, the balance of Respondent's IOLTA Account was \$1,621.41.
- e. Any withdrawal from the IOLTA Account of an amount greater than \$1,621.41 following Respondent's deposit of the \$25,000.00 funds, absent deposits of other Rule 1.15 Funds, was a draw against the funds held in the IOLTA Account for Mr. Taussig.
- f. Between May 22, 2007, and July 2, 2007, Respondent transferred funds from his IOLTA

Account to his Operating Account totaling \$6,400.00 to pay personal and business expenses.

- g. As a result of those transfers, the funds Respondent maintained in the IOLTA Account for Mr. Taussig fell below \$25,000.00, and the IOLTA Account was out-of-trust from May 22, 2007, through July 2, 2007.
- h. On July 2, 2007, Respondent transferred \$5,200.00 from his Operating Account into his IOLTA Account, bringing the balance of the IOLTA Account back above \$25,000.00.
- i. On July 10, 2007, Respondent wrote a check from his IOLTA Account in the amount of \$25,025.00 to the Self Help Credit Union. The memo section of that check stated: "Taussig Trust."

101. Respondent has also engaged in improper conduct by advancing funds from his IOLTA Account to clients who were not entitled to those funds. For example:

- a. On July 7, 2008, Respondent drew a check from his IOLTA Account in the amount of \$1,000.00 to Mrs. Czukiewski. Mrs. Czukiewski had no right to those funds as of that date.
- b. On July 22, 2010, Respondent drew a check from his IOLTA Account in the amount of \$4,000.00 to

Reverend Horace Strand in anticipation of a settlement with Walgreens. As noted on the July 22, 2010 check, which read "Adv. Strand v. Walgreens Sett.," the check constituted an advance of settlement proceeds. The proceeds of the settlement were not deposited into the IOLTA Account until August 31, 2010. Respondent therefore advanced to Reverend Strand funds that did not belong to him.

- c. On August 9, 2010, Respondent drew a check from his IOLTA Account in the amount of \$1,500.00 to Reverend Horace Strand in anticipation of the same settlement with Walgreens. The memo on that check read: "2nd Adv. Strand v. Walgreens." For a second time, Respondent advanced to Reverend Strand funds that did not belong to him.
- d. As set forth above, on December 2, 2010, Respondent drew a check in the amount of \$1,000.00 to Mrs. Czukiewski after the entry of the November 10, 2010 Order, but before the appeal period had lapsed.
- e. On December 14, 2010, Respondent drew a check in the amount of \$12,655.50 to Mrs. Czukiewski after

entry of the November 10, 2010 Order, but before the appeal period had lapsed.

SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED

102. Respondent violated the following Rules of Professional Conduct:

a. **RPC 1.1**, which states that a lawyer shall provide competent representation to a client and that competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;

b. **RPC 1.8(e)**, which states, with some exceptions not applicable here, that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation;

c. **RPC 1.15(b)**, which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property and that such property shall be identified and appropriately safeguarded;

d. **RPC 1.15(c)**, which states that complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later, and that a lawyer shall maintain the following books and

records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to RPC 1.15(1): (1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks, deposited items and records of electronic transactions; and (2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction, noting that the records required by this rule may be maintained in electronic or hard copy form, and that if the records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device;

e. **RPC 1.15(e)**, which states that 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;

f. **RPC 1.15(f)**, which states that 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, and that 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;

g. **RPC 1.15(h)**, which states that a lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose;

h. **RPC 1.15(k)**, which states that all Nonqualified Funds which are not Fiduciary Funds shall be placed in a Non-IOLTA Account or in another investment vehicle specifically agreed upon by the lawyer and the client or third person which owns the funds;

i. **RPC 3.3(a)(1)**, which states that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

j. **RPC 3.4(a)**, which states that a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having evidentiary value or assist another person to do any such act;

k. RPC 8.1(a), which states that a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact;

l. RPC 8.1(b), which states that a lawyer in connection with a disciplinary matter shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

m. RPC 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

n. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

o. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

103. Petitioner and Respondent jointly recommend that appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for a period of two (2)

years.

104. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgments contained in Pa.R.D.E. 215(d)(1) through (4).

105. In support of Petitioner's and Respondent's joint recommendation, it is respectfully submitted that the following mitigating circumstances are present:

- a. Respondent, who has been a member of the Pennsylvania bar for forty years, has no history of discipline.
- b. ODC's investigation of Respondent's misconduct was prompted by a report by Respondent that he had failed to properly establish and maintain escrowed funds in violation of his duties under the Rules of Professional Conduct.
- c. Respondent has admitted engaging in misconduct and violating all of the Rules of Professional Conduct charged.
- d. Respondent is remorseful for his misconduct and understands he should be disciplined, as is

evidenced by his consent to receiving a two (2) year suspension.

106. A suspension for two (2) years falls within the range of precedent addressing the appropriate discipline in cases of misappropriation, which is a suspension of not less than one year and one day to disbarment. See, e.g., *ODC v. Robert P. Maizel*, 26 DB 2014 (respondent suspended for two years on consent for misappropriation of fiduciary funds from clients and third parties in excess of \$175,000.00; misconduct mitigated by *Braun*, no history of discipline, full restitution, expression of remorse, and excellent reputation in legal profession); *ODC v. Hopkin T. Rolands, Jr.*, 115 DB 2013 (respondent suspended for one year and one day for taking undocumented loans from bank accounts of his client to which respondent had sole access; although respondent had practiced law for more than 50 years with no history of discipline, Disciplinary Board found it necessary for the protection of the public that respondent receive a sanction requiring a petition for reinstatement and proof of fitness); *ODC v. James Lawrence Paz*, 97 DB 2010 (respondent suspended for one year and one day on consent for misappropriating approximately \$4,000.00 in entrusted funds and commingling personal funds with entrusted funds; mitigation included admission of misconduct, restitution, and no history of discipline); and *ODC v. Jonathan M. Levin*, 108 DB 2001

(Pennsylvania Supreme Court declined Board's recommendation of a ten month suspension in favor of a two year suspension for respondent's improper handling of his escrow account in violation of RPC 1.15(a), RPC 1.15(b), and RPC 8.4(c)).

107. In light of Respondent's misrepresentation to the Delaware County Court of Common Pleas and the limited and misleading information Respondent supplied in response to ODC's inquiries, a suspension exceeding one year and one day is appropriate. However, a suspension exceeding two years is unnecessary given Respondent's age and retired status and the fact that the proposed sanction necessitates Respondent filing a petition for reinstatement and proof of fitness to be reinstated to the practice of law.

108. Petitioner and Respondent submit that a two (2) year suspension is a fair and appropriate resolution based upon the specific facts of this case and analysis of prior cases.

WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pa.R.D.E. 215(e) and Pa.R.D.E. 215(g), a three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent receive a two (2) year suspension and that Respondent be ordered to pay all necessary expenses incurred in the investigation and prosecution of this matter as a condition to

the grant of the Petition.


Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION,
Chief Disciplinary Counsel

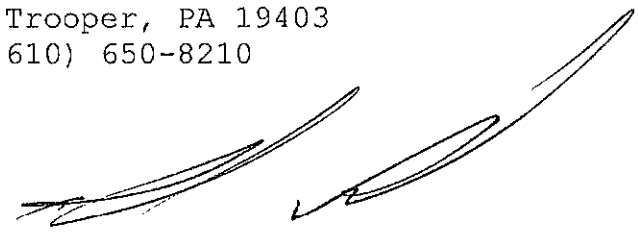
Date: 2/17/15

BY:


BARBARA BRIGHAM DENYS
Attorney Registration No. 78562
Disciplinary Counsel
Suite 170
820 Adams Avenue
Trooper, PA 19403
610) 650-8210

Date: 2/17/15

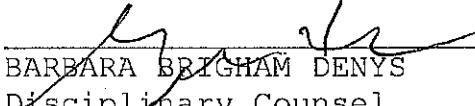
BY:


ROBERT T. SEIWELL
Respondent

VERIFICATION

The statements contained in the foregoing Joint Petition in Support of Discipline on Consent are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

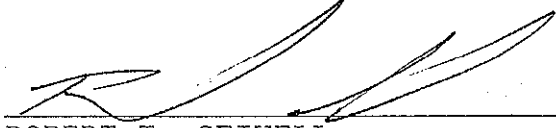
Date: 2/17/15



BARBARA BRIGHAM DENYS
Disciplinary Counsel

Date: 3/17/15

BY:



ROBERT T. SEIWELL
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 185 DB 2014
Petitioner :
 :
v. : Attorney Reg. No. 19026
 :
 :
ROBERT T. SEIWELL, :
Respondent : (Chester County)

CERTIFICATE OF SERVICE

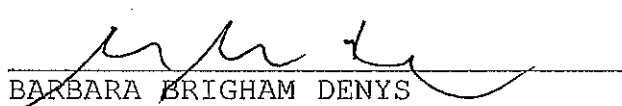
I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class Mail, as follows:

Robert T. Seiwell
1661 Hunters Circle
West Chester, PA 19380

Date: 2/17/15

BY:


BARBARA BRIGHAM DENYS
Attorney Registration No. 78562
Disciplinary Counsel
Suite 170
820 Adams Avenue
Trooper, PA 19403
610) 650-8210

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 185 DB 2014
Petitioner :
 :
v. : Attorney Reg. No. 19026
 :
 :
ROBERT T. SEIWELL, :
Respondent : (Chester County)

AFFIDAVIT
UNDER RULE 215(d) Pa.R.D.E.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CHESTER

ROBERT T. SEIWELL, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of a two (2) year suspension from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about May 3, 1974.

2. He desires to submit a Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d).

3. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress, and he is fully aware of the implications of submitting this affidavit.

4. He is aware that there are presently pending investigations into allegations that he has been guilty of

misconduct as set forth in the Joint Petition in Support of Discipline on Consent to which this affidavit is attached.

5. He acknowledges that the material facts set forth in the Joint Petition are true.

6. He submits the within affidavit because he knows that if charges predicated upon the matter under investigation continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has not consulted or followed the advice of counsel in connection with his decision to consent to execute the within Joint Petition.

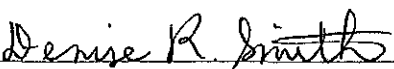
It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 17th day of February, 2015.



Robert T. Seiwell

Sworn to and subscribed before me this 17th day of February, 2015


Notary Public

