IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2852 Disciplinary Docket No. 3
Petitioner	:	No. 189 DB 2020
v.	:	Attorney Registration No. 28134
	:	(Allegheny County)
RICHARD S. ROSS,	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 18th day of March, 2022, upon consideration of the Report and Recommendations of the Disciplinary Board, Richard S. Ross is suspended from the Bar of this Commonwealth for a period of two years. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. *See* Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 03/18/2022

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 189 DB 2020
v.	:	Attorney Registration No. 28134
RICHARD S. ROSS, Respondent	:	(Allegheny County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on December 10, 2020, Petitioner, Office of Disciplinary Counsel, charged Respondent, Richard S. Ross, with violations of the Pennsylvania Rules of Professional Conduct ("RPC") arising out of Respondent's financial transaction with his client. Respondent filed an Answer to Petition on December 29, 2020.

Hearing Committee Chair Elizabeth L. Hughes conducted a prehearing conference on March 8, 2021. On that date, Respondent filed a Motion to Dismiss Stale

Matter under Disciplinary Board Rule § 85.10, which, subject to certain exceptions not applicable here, general precludes the Office of Disciplinary Counsel or the Board from "entertain[ing] any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint." Following oral argument on April 5, 2021, Hearing Committee Chair Hughes entered an order denying Respondent's Motion.[1]

On April 9, 2021, a District IV Hearing Committee ("Committee") held a disciplinary hearing. During the adjudicatory phase of the hearing, Petitioner offered and had admitted into evidence Petitioner's Exhibits 1 through 7. Petitioner also called Brandon Stash to testify. Respondent testified on his own behalf during his case-in-chief. Respondent did not offer any exhibits. Following the Committee's ruling that there was prima facie proof of at least one violation of the RPC, the hearing continued to the dispositional phase. Petitioner offered and had admitted into evidence Petitioner's Exhibits 8 through 23. Respondent testified and offered the testimony of an expert witness and two character witnesses. Respondent did not offer any exhibits. At the conclusion of the hearing on April 9, 2021, the record was closed.

On May 26, 2021, Petitioner filed a post-hearing brief with the Committee and requested that the Committee recommend to the Board that Respondent be suspended for a minimum of one year and one day. On June 25, 2021, Respondent filed a post-hearing brief to the Committee and requested that the Committee recommend to the Board that he receive a public reprimand with psychological probation.

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[1] Because Respondent did not pursue this issue before the Board, we need not consider it any further. *See* Pa.D.B. § 89.201(c) (providing that failure to file exceptions to report of a hearing committee constitutes waiver). In any event, however, even if properly preserved, this argument lacks merit based on the record before us. Specifically, the record established that Respondent engaged in ongoing acts or omissions commencing in 2013 and continuing into 2018. The complainant filed a complaint against Respondent in 2019. Therefore, the matter was not stale under § 85.10.

By Report filed on August 23, 2021, the Committee concluded that Respondent violated the rules charged in the Petition for Discipline and recommended that he be suspended for a period of one year and one day. The parties did not take exception to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on October 25, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Richard S. Ross, born in 1951 and admitted to practice law in the Commonwealth of Pennsylvania in 1978. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a record of prior discipline. On February 12, 2018, the Supreme Court of Pennsylvania suspended Respondent on consent for a period of one year and one day, with the suspension stayed in its entirety and probation for a period of two years. Therein, Respondent mishandled his IOLTA and misappropriated entrusted

funds from clients, which he later repaid. Petitioner's Exhibit 8; Petitioner's Exhibit 9; Petitioner's Exhibit 10.

The Stash Matter

4. Respondent represented Brandon Stash in a civil action filed in the Court of Common Pleas of Allegheny County, Pennsylvania at case number GD-07-018968, captioned ***Brandon Stash v. Alexander Graham Bell Cafe et al***. Petitioner's Exhibit 1, at ¶3; Petitioner's Exhibit 2, at ¶3 .

5. Mr. Stash's lawsuit was settled and Respondent filed a Praecipe to Settle and Discontinue the case on November 7, 2012. Mr. Stash received a net recovery of $230,833.00. Petitioner's Exhibit 1, at ¶4; Petitioner's Exhibit 2, at ¶4.

6. At the time the case was settled and the settlement funds were available for distribution, Mr. Stash did not want to take possession of all of the settlement funds. N.T. 14, 16, 17.

7. Mr. Stash and Respondent agreed that Respondent would retain a portion of the settlement funds. N.T. 14.

8. On or about January 24, 2013, Respondent prepared a Security Agreement whereby Respondent received $117,000.00 from the proceeds of Mr. Stash's lawsuit pursuant to a promissory note with Respondent. Petitioner's Exhibit 1, at ¶5; Petitioner's Exhibit 2, at ¶5.

9. Pursuant to the terms of the Security Agreement, Respondent granted Mr. Stash a security interest in Respondent's Self-Directed IRA Account with

CAMA Self Directed IRA, LLC as collateral for the Note. Petitioner's Exhibit 1, at ¶6; Petitioner's Exhibit 2, at ¶6.

10. Respondent represented in the Security Agreement that he had full title to the collateral free from any lien, security interest, encumbrance or claim. Petitioner's Exhibit 1, at ¶7; Petitioner's Exhibit 2, at ¶7.

11. Respondent represented in the Security Agreement that he would not sell, encumber or redeem the collateral at any time without the written consent of the secured party (Mr. Stash). Petitioner's Exhibit 1, at ¶8; Petitioner's Exhibit 2, at ¶8.

12. Respondent did not at that time advise his client, Mr. Stash, in writing, of the desirability of seeking the advice of independent legal counsel on the transaction, nor did Respondent give Mr. Stash reasonable opportunity to do so. Petitioner's Exhibit 1, at ¶9; Petitioner's Exhibit 2, at ¶9.

13. Mr. Stash did not give informed consent in a writing signed by him to the essential terms of the transaction, including whether Respondent was representing him in that transaction. Petitioner's Exhibit 1, at ¶10; Petitioner's Exhibit 2, at ¶10.

14. Respondent did not advise Mr. Stash of the material risks of the transaction or the risk associated with Respondent's dual role as both legal adviser and participant in the transaction. Petitioner's Exhibit 1, at ¶11; Petitioner's Exhibit 2, at ¶11.

15. Respondent and Mr. Stash signed the Security Agreement. Petitioner's Exhibit 4.

16. The $117,000.00 that Respondent originally received from Mr. Stash, as stipulated in the Security Agreement, included $17,000.00, which Respondent was holding on behalf of Mr. Stash for a potential medical lien. Petitioner's Exhibit 1, at ¶13; Petitioner's Exhibit 2, at ¶13.

17. When no medical lien was asserted, Respondent returned the $17,000.00 to Mr. Stash, thereby reducing the amount referenced in the Security Agreement to $100,000.00. Petitioner's Exhibit 1; at ¶14; Petitioner's Exhibit 2 at ¶14.

18. Respondent signed a promissory note dated January 4, 2014 promising to pay Mr. Stash the principal sum of $100,000.00, together with any interest thereon, on or before December 31, 2014. Petitioner's Exhibit 1, at ¶12; Petitioner's Exhibit 2, at ¶12; Petitioner's Exhibit 5.

19. Respondent signed a promissory note dated February 18, 2015 promising to pay Mr. Stash the principal sum of $90,000.00, together with any interest thereon, on or before December 31, 2015, superseding the earlier promissory note in 2014. Petitioner's Exhibit 1, at ¶15; Petitioner's Exhibit 2, at ¶15; Petitioner's Exhibit 6.

20. Respondent failed to file or perfect the Security Agreement by which Respondent was giving Mr. Stash a security interest in Respondent's Self-Directed IRA as security for the promissory note. Petitioner's Exhibit 1, at ¶17; Petitioner's Exhibit 2, at ¶17.

21. Mr. Stash maintained regular contact with Respondent and requested payment under the terms of the promissory notes. but Respondent made

numerous excuses to Mr. Stash as to why Respondent could not repay the funds. N.T. 22-23.

22. On June 28, 2018, Respondent filed a Chapter 7 voluntary bankruptcy in the United States Bankruptcy Court for the Western District of Pennsylvania at case number 18-22598-JAD, in which Respondent named Mr. Stash as a creditor to whom he owed $39,800.00. Petitioner's Exhibit 1, at ¶20; Petitioner's Exhibit 2, at ¶20; Petitioner's Exhibit 7.

23. In 2019, Mr. Stash filed a claim against Respondent with the Pennsylvania Lawyers Fund for Client Security ("PaLFCS"). Petitioner's Exhibit 1, at ¶21; Petitioner's Exhibit 2, at ¶21.

24. In his response to the PaLFCS, Respondent admitted that the total principal owed to Mr. Stash at the end of 2016 was $77,482.95 and further stated that he paid $4,250.00 to Mr. Stash in 2017. Petitioner's Exhibit 1, at ¶22; Petitioner's Exhibit 2, at ¶22.

25. On December 11, 2019, the PaLFCS approved payment of Mr. Stash's claim against Respondent in the amount of $71,232.95. Petitioner's Exhibit 1, at ¶23; Petitioner's Exhibit 2, at ¶23.

26. On December 18, 2019, Respondent was discharged as a debtor in his Chapter 7 voluntary bankruptcy case. Petitioner's Exhibit 1, at ¶24; Petitioner's Exhibit 2, at ¶24.

Witness Testimony

27. Petitioner presented the testimony of Brandon Stash, who testified about his dealings with Respondent concerning the Security Agreement and promissory notes. N.T. 12-31.

28. After his case settled, Mr. Stash wanted Respondent to hold a portion of his settlement funds because Mr. Stash did not want to put all of the money in his bank account and Respondent told Mr. Stash he would protect it. N.T. 14, 16, 27.

29. Mr. Stash testified that he trusted Respondent to hold his money. N.T. 14.

30. Mr. Stash testified that Respondent was the one who talked him into giving Respondent the money. N.T. 27.

31. Mr. Stash testified that Respondent never told him that Respondent was not his attorney. N.T. 16.

32. Mr. Stash believed that Respondent was his attorney when Mr. Stash entered into the Security Agreement with Respondent. N.T. 16-17.

33. Mr. Stash testified that Respondent never told him to talk to another attorney before he signed the Security Agreement. N.T. 17.

34. Mr. Stash believed that Respondent would return Mr. Stash's money to him anytime Mr. Stash asked for it. N.T. 21.

35. Mr. Stash testified that Respondent made some payments to him that he believed were interest payments. Mr. Stash explained, "But he made interest

payments to hold my money, because I asked – I mean – that was – after I asked for it, he – he didn't have it, so he said 'I'll pay you interest to use your money.' So that's how it happened." N.T. 18.

36. Mr. Stash further testified, "[Respondent] gave me, like, I think, 7,000 at a point for, like car stuff and whatever, or when I asked him for more, like, what I wanted, he never could give it to me. After – the agreement was he should be able to give me money any time I asked for it." N.T. 21.

37. Mr. Stash received some payments from Respondent over the years but he did not receive all of the money that was owed. N.T. 31.

38. At some point in 2018, Mr. Stash asked Respondent for his money and Respondent told Mr. Stash he had spent it all. Mr. Stash attempted to contact Respondent about receiving payment, but "[Respondent] always blew me off or didn't answer the calls." N.T. 22, 23.

39. Mr. Stash became aware that Respondent filed for bankruptcy in 2018 when he received a letter in the mail from Respondent, which informed Mr. Stash not to contact Respondent. *Id.*

40. The testimony of Mr. Stash was credible.

41. Respondent presented the testimony of Andrew Field.

42. Mr. Field and Respondent are friends and met by way of their children attending the same schools more than a decade ago. N.T. 67.

43. Mr. Field testified that Respondent is a considerate person and a caring person. N.T. 68-69.

44. Mr. Field was not aware of the nature of the disciplinary charges against Respondent. N.T. 69.

45. The testimony of Mr. Field was credible.

46. Respondent presented the testimony of Keith Schmidt.

47. Mr. Schmidt and Respondent have maintained a friendship for fifteen years and have collaborated both professionally and personally on different projects. N.T. 73-74.

48. Mr. Schmidt testified that Respondent always acted with honesty and integrity. N.T. 76.

49. Mr. Schmidt was vaguely aware of the nature of the charges against Respondent and was aware that Respondent had prior discipline, but was not aware of the details of that discipline.. N.T. 76-77.

50. The testimony of Mr. Schmidt was credible.

51. Respondent presented the credible expert testimony of Steven S. Carter, Ph.D. Dr. Carter is a clinical psychologist who maintains a private practice in Pittsburgh and predominantly treats individuals with bipolar disorder. N.T. 80 - 83.

52. Dr. Carter did not treat Respondent at the time of the misconduct. He first met with Respondent in January 2019 and diagnosed him with bipolar disorder, after

Respondent presented with depression, mood disorder, and sleep disorder. N.T. 84, 87, 88-89.

53. Dr. Carter testified that during the time he has worked with Respondent, Respondent mostly has been depressed and further testified, "That's because of [Respondent's] financial problems, to a lesser extent this situation, and having to make major changes in his lifestyle due to his financial problems." N.T. 88.

54. Dr. Carter's understanding of the underlying disciplinary matter was that Respondent's failure to do "essential paperwork" was "the result of being in a hurry and not being able to handle detail well and trying [to] do everything by himself. As a result, he left some stuff out." N.T. 96.

55. Dr. Carter opined that there was a causal relationship between Respondent's bipolar disorder and his misconduct involving Mr. Stash yet in explaining his opinion, Dr Carter based much of his assumption on his limited perception of the misconduct in that Respondent was not "trying to scam anybody" and "did not intend to rip people off." N.T. 101-102.

56. Dr. Carter did not link the bipolar disorder to Respondent's specific underlying misconduct, of which Dr. Carter did not exhibit a thorough understanding.

57. Respondent testified on his own behalf.

58. Respondent explained that from his viewpoint, after Respondent distributed Mr. Stash's portion of the settlement, Mr. Stash was no longer his client. Respondent testified that Mr. Stash loaned him money for a business investment in

December 2012, which they discussed and agreed that Respondent would pay a 10 percent interest rate on his money. N.T. 37-38.

59. Respondent claimed he kept "very good" records of the transaction and made payments to Mr. Stash. N.T. 38 Respondent testified that the last of any such payments were made in 2016. N.T. 42.

60. Respondent admitted that he never paid Mr. Stash back in full. N.T. 42.

61. Respondent admitted that when he borrowed money from the self-directed IRA, he never obtained Mr. Stash's written consent, as agreed to under the security agreement and promissory note. N.T. 46-47.

62. At some point after the disciplinary charges were filed against him, Respondent came to understand that he could not pledge an IRA for a loan. N.T. 47.

63. Respondent filed for Chapter 7 bankruptcy in 2018 and listed Mr. Stash as a creditor. In addition, Respondent listed other businesses and individuals who had loaned him money, one of whom made a claim to the PaLFCS, similar to Mr. Stash. N.T. 132.

64. Respondent admitted that he has not repaid the PaLFCS and has made no effort to contact the PaLFCS regarding repayment. *Id.*

65. Respondent expressed remorse for his conduct. When asked what his thoughts were about Mr. Stash and what happened in his matter, Respondent testified, "I feel generally terrible about it, and I really felt bad about it before." N.T. 122.

66. Even though Respondent expressed remorse, Respondent has not acknowledged why his actions were unethical and inappropriate. He did not admit that what he did was actually wrong. Respondent continues to describe the arrangement with Mr. Stash as a loan that was an arm's length transaction.

67. Respondent testified concerning his past law practice handling personal injury matters and insurance subrogation, his current solo law practice doing collection work, his failed business ventures and financial difficulties since approximately 2014, and his past health problems, including two head injuries suffered years ago and two strokes in 2013. N.T. 11-116, 119-120, 123 – 128.

68. Respondent testified to his bipolar disorder and treatment of that disorder. N.T. 120-122.

69. Respondent speaks with Dr. Carter on a weekly basis and with his psychiatrist on a monthly basis, and takes several medications on a daily basis. N.T. 121-122.

70. Respondent feels that he is very well-grounded at the current time. N.T. 121.

III. CONCLUSIONS OF LAW

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

a. RPC 1.7(a)(2) – Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if 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.

b. 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.

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

2. Respondent failed to establish by clear and convincing evidence that his psychiatric disorder caused his misconduct. ***Office of Disciplinary Counsel v. Seymour H. Braun***, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

In this disciplinary matter, the Board considers the Committee's unanimous recommendation to suspend Respondent for a period of one year and one day. Petitioner and Respondent have not taken exception to the Committee's Report and recommendation.

Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Upon this record, the Board concludes that Petitioner satisfied its burden of proof as to each of the charged rule violations in the Petition for Discipline. For the following reasons, the Board recommends that Respondent be suspended for a period of two years.

The record established that Respondent represented Brandon Stash in a civil action filed in the Court of Common Pleas of Allegheny County, which was settled in November 2012. Mr. Stash received a net recovery of $230,833.00. At some point shortly after receiving the settlement proceeds, Mr. Stash indicated to Respondent that he did not want to deposit all of the monies in his own bank account. The reason for this is not entirely clear from the record. Respondent insinuates that Mr. Stash had domestic

problems, averring in his Answer to Petition for Discipline at No. 5 that Mr. Stash asked Respondent to keep $117,000.00 from the lawsuit proceeds so that Mr. Stash could "earn some interest and at the same time hide the funds from [Mr. Stash's] wife." In any event, according to Mr. Stash, Respondent told him he would protect the money. At the time that Mr. Stash and Respondent discussed the arrangement, Mr. Stash considered Respondent to be his attorney and he trusted him. The record is clear that Respondent never advised Mr. Stash that he was no longer Mr. Stash's attorney, leaving Mr. Stash under the impression that the lawyer/client relationship continued.

Approximately two months after the settlement proceeds were distributed and one month after Respondent and Mr. Stash discussed the arrangement, on or about January 24, 2013, Respondent drafted and entered into a Security Agreement with Mr. Stash, whereby Respondent received $117,000.00 of Mr. Stash's funds pursuant to a promissory note signed by Respondent. Pursuant to the terms of the Security Agreement, Respondent granted Mr. Stash a security interest in Respondent's Self-Directed IRA Account with CAMA Self Directed IRA, LLC as collateral for the Note. Respondent represented in the Security Agreement that he had full title to the collateral free from any lien, security interest, encumbrance or claim. Respondent also represented in the Security Agreement that he would not sell, encumber or redeem the collateral at any time without the written consent of Mr. Stash.

The record demonstrated that at the time of the execution of the Security Agreement, Respondent did not advise his client, Mr. Stash, in writing, of the desirability of Mr. Stash seeking the advice of independent legal counsel on the transaction, nor did Respondent give Mr. Stash reasonable opportunity to do so. At no time did Respondent advise Mr. Stash of the material risks of the transaction or the risk associated with

Respondent's dual role as both legal advisor and participant in the transaction, or obtain Mr. Stash's written informed consent. Respondent has vigorously argued that he entered into an arm's length business transaction with a former client; however, the facts of record do not support this assertion, and instead support the finding that Mr. Stash's legal matter was ongoing and Mr. Stash was Respondent's current client. Respondent admits in his Answer to the Petition for Discipline that $17,000.00 of the principal included in the original Security Agreement for $117,000.00 included funds for a potential medical lien resulting from Mr. Stash's civil action. Accordingly, this demonstrated Respondent's ongoing role as counsel for Mr. Stash as he was holding these funds on behalf of Mr. Stash for a potential lien related to the underlying cause of action. Once it was determined that no lien had been asserted, Respondent returned the $17,000.00 to Mr. Stash.

The transaction was even more unbalanced by the fact that Mr. Stash was unsophisticated in financial matters, as demonstrated by Mr. Stash's testimony at the hearing, which revealed his limited understanding and confusion as to the nature of the agreement with Respondent. This testimony underscores the very reason why Respondent's dereliction of ethical duties to his client in failing to advise Mr. Stash to seek independent counsel is such a serious problem. It is far from clear from the record that Mr. Stash reasonably understood the terms and potential consequences of the transaction.

Subsequent to entering into the 2013 Security Agreement with Mr. Stash, Respondent signed a promissory note dated January 4, 2014, promising to pay Mr. Stash the principal sum of $100,000.00 together with any interest thereon, on or before December 31, 2014. Respondent signed a later promissory note dated February 18, 2015, promising to pay the principal sum of $90,000.00, together with any interest

thereon, on or before December 31, 2015. The record showed that while Respondent made some payments to Mr. Stash, in approximately 2016 he stopped making payments altogether and never made full payment in accordance with the terms of the promissory notes. The record further demonstrated that from time to time, Mr. Stash made requests to Respondent for payment, to which Respondent made excuses as to why he did not repay the funds. Thereafter, Respondent filed for Chapter 7 Bankruptcy in 2018, listing Mr. Stash as a creditor. Respondent's bankruptcy was finalized in December 2019, thus discharging Respondent's debt owed to Mr. Stash. In order to recoup his monies, Mr. Stash was forced to file a claim with the PaLFCS, which approved payment in the amount of $71.232.95. Respondent has not repaid the PaLFCS nor has he demonstrated any initiative to contact the PaLFCS regarding repayment.

From the facts of this matter, it can be deduced that Respondent saw an opportunity and took advantage of his client, who was left without benefit of independent legal counsel and little understanding of the transaction with his attorney that involved $100,000.00 of Mr. Stash's monies. Respondent's testimony concerning his many financial woes at the time of his business arrangement with Mr. Stash further bolsters this interpretation of the facts. Respondent needed money and seized his chance with Mr. Stash's settlement. Respondent never explained the significance of the documents he presented to his client, failed to advise his client to have other counsel review the documents, and did not provide notice to his client of the bankruptcy filing. Respondent's bankruptcy demonstrated the many businesses and individuals who he left empty-handed, including at least one other individual in addition to Mr. Stash who sought recompense from the PaLFCS. As the Committee aptly concluded, "Respondent simply took the money and allowed Stash to fend for himself. Respondent then relied on the

Client Security Fund to clean up his mess." Hearing Committee Report, p. 7. The Board agrees with this conclusion. The record evidenced that Respondent took steps to protect his interests while defeating his client's interests.

Having determined that Respondent committed ethical misconduct in violation of RPC 1.7(a)(2), 1.8(a), and 8.4(c), this matter is ripe for the determination of discipline. 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). There is no per se discipline for attorney misconduct in the Commonwealth of Pennsylvania; each disciplinary matter is considered on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 190 (Pa. 1983). In assessing appropriate discipline, the Board must weigh any aggravating and mitigating circumstances. ***Office of Disciplinary Counsel v. Brian Preski***, 134 A.3d 1027, 1031 (Pa. 2016).

Upon review of the record, we find several weighty aggravating factors. Respondent has a record of discipline that must be considered when assessing the appropriate disciplinary sanction in this matter. On February 12, 2018, the Supreme Court granted a Joint Petition in Support of Discipline on Consent and imposed upon Respondent a suspension of one year and one day, stayed in its entirety with probation for two years. Respondent's misconduct concerned his mishandling of his IOLTA and his misappropriation of the entrusted funds of several clients. That misconduct occurred in 2011 through 2016, during the same time period as the misconduct in the instant matter. While the discipline imposed in 2018 cannot be viewed as a warning or deterrent since it occurred after Respondent's misconduct with Mr. Stash, the 2018 misconduct is relevant

here and calls into question Respondent's fitness to practice law and the need to protect the public.

We also consider Respondent's expression of remorse, which the Committee found lacked credibility. The Committee determined that although Respondent testified that he felt bad about what happened, his lack of effort to rectify the financial damage caused by his actions showed that he was not truly remorseful. We defer to the Committee's findings as a guideline for judging the credibility of witnesses. ***Office of Disciplinary Counsel v. Lawrence J. DiAngelus***, 907 A.2d 452, 456 (Pa. 2006). After review of the record, we agree with the Committee's assessment on this point. Further, the record reflected that Respondent never recognized that his conduct was wrong, as he continued to depict the transaction with Mr. Stash as an arm's length arrangement with a "former" client. Respondent's failure to accept responsibility, his less than credible expression of contrition, and his failure to take steps to address the PaLFCS debt aggravate this matter.

In an attempt to establish mitigation, Respondent presented the expert testimony of Dr. Carter, his treating psychologist. Dr. Carter diagnosed Respondent with bipolar disorder in 2019 and has treated him since that time. Dr Carter testified that the bipolar disorder was a causal factor in Respondent's misconduct. After review, we find that Dr. Carter's testimony failed to establish by clear and convincing evidence a causal connection between Respondent's psychiatric disorder and his misconduct in order to demonstrate ***Braun*** mitigation.

Dr. Carter's understanding of the nature of the underlying disciplinary matter was that Respondent failed to do "essential paperwork" as the result of "being in a hurry and not being able to handle detail well and trying [to] do everything by himself. As a

result, he left some stuff out." N.T. 96. This testimony fails to describe and address the actual, serious misconduct engaged in by Respondent. Dr. Carter testified that Respondent was not "trying to scam anybody" and "did not intend to rip people off." However, Respondent's dealings with Mr. Stash can readily be described as just that – dishonest. Additionally, at one point in his testimony, Dr. Carter attributed Respondent's depression to his finances and to the instant proceeding, which implies that Respondent's circumstances caused his mental health disorder, rather than the opposite. As a whole, Dr. Carter's testimony is insufficient to establish the causal connection necessary to meet the ***Braun*** standard for mitigation.

Respondent presented the testimony of two character witnesses. The Committee acknowledged their appreciation for these witnesses appearing on Respondent's behalf, but found that the testimony was not compelling. Both witnesses are personal acquaintances of Respondent and credibly testified that he is a good person. However, the witnesses did not address Respondent's reputation in the community and demonstrated little knowledge of Respondent's misconduct in the instant matter or of his past misconduct. Upon review, we agree with the Committee's assessment and accord little mitigating weight to the character evidence.

In order to "strive for consistency so that similar misconduct is not punished in radically different ways," ***Office of Disciplinary Counsel v. Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012) (quoting ***Lucarini***, 472 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the respondent's conduct against other similar transgressions." ***In re Anonymous (Linda Gertrude Roback)***, 28 Pa. D. & C. 4th 398, 406 (1995).

The discipline imposed in prior similar matters supports the Board's recommendation for a two year period of suspension. Generally, an attorney's conflict of interest with a client, business dealings with a client where the client was not advised to seek independent counsel, dishonest conduct, and aggravating factors result in suspension for more than one year.

In ***Office of Disciplinary Counsel v. Mary Ellen Tomasco***, 111 DB 2004 (D. Bd. Rpt. 11/22/2005) (S. Ct. Order 3/10/2006), the Court suspended Tomasco for a period of one year and one day. Tomasco violated RPC 1.7(b), 1.8(a), and 1.8(b) in connection with her participation in a real estate transaction with an elderly incapacitated client. Tomasco "borrowed" $275,000.00 of her client's money to buy herself property in New Mexico. While the record reflected that Tomasco did not misappropriate her client's funds and was repaying the loan, she failed to take steps to fully protect the client's "investment."

In the matter of ***Office of Disciplinary Counsel v. Anthony B. Rearden, III***, No. 181 DB 2016 (S. Ct. Order 1/5/2017), the Court granted a Joint Discipline in Support of Discipline on Consent and imposed a three year suspension. Rearden, a practitioner of forty years with no prior history of discipline, was appointed as a successor trustee to the Eways Trust, which held $700,000.00 in assets. In that role, Rearden repeatedly breached his fiduciary duties to the sole beneficiary by making a series of imprudent investments in which Rearden had a conflict of interest. Rearden began utilizing trust funds to purchase residential real estate, and at the time, he owned a real estate company. Rearden admitted that his company realized a broker or agent fee from real estate transactions in which the Eways Trust was a party. Rearden often received payment from both the Trust and the seller, and collected management fees for rent and

maintenance after acquiring properties for the Trust. In addition, Rearden utilized Trust funds to make loans, which were often unsecured, to his clients, former clients, and business associates. As a result of Rearden's decisions, at one point in time the Eways Trust had lost more than one-half of its value. The record reflected that Rearden did not misappropriate funds. In mitigation, Rearden acknowledged his misconduct and demonstrated remorse.

The Court has imposed disbarment in certain cases of self-dealing and conflicts of interest. In ***Office of Disciplinary Counsel v. Glenn D. McGogney***, No. 94 DB 2009 (D. Bd. Rpt. 2/25/2011) (S. Ct. Order 3/26/2012), McGogney engaged in misconduct in two separate matters. In one matter, McGogney was a part owner of a failing restaurant and hoped to salvage the business by converting the restaurant into a strip club. He solicited his client to invest in the strip club without first disclosing the club's financial troubles and without advising the client to seek independent counsel. Moreover, the client's loan was to be secured by a first lien on the liquor license purportedly owned by McGogney's company, but McGogney in fact did not own the liquor license. The other matter involved a personal injury case where McGogney failed to pursue his client's case. The Board weighed in aggravation McGogney's prior private reprimand and his lack of credibility and remorse. The Board recommended disbarment, which the Court imposed.

In another matter involving a prohibited financial transaction with a client, ***Office of Disciplinary Counsel v. Keith S. Houser***, No. 158 DB 2004 (D. Bd. Rpt. 11/21/2005) (S. Ct. Order 3/10/2006), Houser entered into a written loan agreement with a client for a personal loan of $7,000.00. Houser did not advise his client to seek independent counsel in regard to the loan agreement and did not provide the client with reasonable opportunity to seek independent counsel prior to entering into that agreement.

Houser possessed no ownership interest in the realty he pledged as security for the loan transaction and did not repay the loan amount in accordance with the terms of the agreement. Houser also failed to handle the client's legal matter with reasonable diligence. In a separate matter, Houser misappropriated $500 paid to him to be given to a charity. In aggravation, Houser did not participate in the disciplinary proceedings brought against him. The Court adopted the Board's recommendation and disbarred Houser.

Similar to the respondents in the cited matters, Respondent demonstrated his lack of fitness to practice law by engaging in a financial transaction with a current client and failing to comply with any of the requirements under the ethical rules that would safeguard the client and allow a balanced transaction. Respondent's legal skills and training instilled false confidence in Mr. Stash, who trusted Respondent as his attorney to handle the details of the transaction, despite the fact that Mr. Stash failed to understand what was happening to his money. This unequal balance of power allowed Respondent to engage in overreaching and take advantage of his client. This serious misconduct merits more than the one year and one day suspension recommended by the Committee. Accounting for the serious aggravating factors and the weak mitigation, a two year suspension is warranted to comply with the guiding decisions reviewed above, and to protect the public and maintain the integrity of the profession.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Richard S. Ross, be Suspended for two years from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By:_____
Shohin H. Vance, Member

Date: 1/11/2022