

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1604 Disciplinary Docket No. 3  
Petitioner :  
v. : No. 205 DB 2009  
DAVID CLEMENT HARRIS, : Attorney Registration No. 45980  
Respondent : (Philadelphia)

ORDER

**PER CURIAM:**

AND NOW, this 2<sup>nd</sup> day of June, 2010, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated April 21, 2010, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that David Clement Harris is suspended on consent from the Bar of this Commonwealth for a period of three years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola

As of June 2, 2010

Attest:

  
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL : No. 205 DB 2009  
Petitioner :  
v. : Attorney Registration No. 45980  
DAVID CLEMENT HARRIS :  
Respondent : (Philadelphia)

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 Sal Cognetti, Jr., R. Burke McLemore, Jr., and Stephan K. Todd, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on March 22, 2010.

The Panel approves the Joint Petition consenting to a three 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.

  
Sal Cognetti, Jr. Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: April 21, 2010

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 205 DB 2009  
v. :  
: Atty. Reg. No. 45980  
DAVID CLEMENT HARRIS, :  
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, and by Respondent, David Clement Harris, Esquire, and Michael W. Kiernan, Esquire, Respondent's counsel, 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 that:

I. BACKGROUND

1. Petitioner, whose principal office is located at PA Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested pursuant to Pa.R.D.E. 207, 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

**FILED**

MAR 22 2010

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

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, David Clement Harris, was admitted to practice law in the Commonwealth on May 29, 1986.

3. Respondent maintains an office for the practice of law at 510 Roumfort Road, Philadelphia, PA 19119.

4. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

## II. FACTUAL ADMISSIONS AND VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

5. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 97.

### CHARGE I: RUTH N. OLIVER ESTATE

#### A. Administration of Ruth N. Oliver Estate

6. On June 18, 2002, Ms. Ruth N. Oliver, a resident of Philadelphia County, died testate.

7. Ms. Oliver's Last Will and Testament appointed Respondent as the Executor of her estate.

8. On August 7, 2002, Respondent filed with the Register of Wills for Philadelphia County a Petition For Probate and Grant of Letters Testamentary and Oath of Personal Representatives for the Estate of Ruth N. Oliver;

on August 7, 2002, the Register of Wills granted Respondent Letters Testamentary to administer the estate according to law and assigned the matter file no. 51-02-W3926.

9. The dispositive provisions of Ms. Oliver's Will were as follows:

- a. legacy of \$1,000 to Helen Street;
- b. legacy of \$1,000 to Emogene H. Johnson;
- c. the residuary estate was to be divided into quarters and distributed:
  1. one quarter to Ernest Miller, Ms. Oliver's godson;
  2. one quarter to Marva Sergest, Ms. Oliver's stepdaughter;
  3. one quarter to the Martin Endowment held by the First African Presbyterian Church; and
  4. one quarter to the Chancel Guild of the First African Presbyterian Church.

10. The known assets of Ms. Oliver's estate are Ms. Oliver's:

- a. residence located at 628 North Frazier Street, Philadelphia, PA 19131;
- b. bank account;
- c. bonds;

- d. certificates of deposit; and
- e. china cabinet.

11. On or about August 9, 2002, Respondent opened a bank account titled "Est of Ruth N. Oliver, David C. Harris, Esq Exec" ("Estate Account") at Mellon Bank, N.A., which was assigned Account No. 879-5262; subsequently, Citizens Bank acquired certain retail deposits of Mellon and assigned Account No. 610684-849-5 to this estate.

- a. The opening deposit in the account was \$84,929.17.

12. Within three months of the grant of letters, Respondent failed to send a written notice of estate administration to the beneficiaries of the estate, as required by Pa. O.C. Rule 5.6(a).

13. Within nine months after the date of death, Respondent failed to file an inheritance tax return for the estate or request an extension of time to do so, as required by 72 Pa.C.S.A. § 9136(d).

- a. As of December 1, 2009, Respondent has failed to file an inheritance tax return with the Pennsylvania Department of Revenue.

14. Within nine months after the date of death, Respondent failed to file a verified inventory of all real or personal property of the decedent as required by 20 Pa.C.S.A. § 3301(c) and 72 Pa.C.S.A. § 9136(d).

15. Respondent failed to pay the Commonwealth of Pennsylvania inheritance tax when it was due, as required by 72 Pa.C.S.A. § 9142.

- a. As of March 2003, the balance of funds in the Estate Account was not less than \$42,600.

16. By letter to Respondent dated July 16, 2003, Ronald R. Donatucci, Esquire, Register of Wills (Register):

- a. reminded Respondent that it had been more than nine months since Letters were granted in the Estate of Ruth N. Oliver;
- b. informed Respondent that Section 3301 of the PEF Code requires a personal representative to file a verified inventory of all real and personal property no later than the date he files an account or the due date for the filing of the Inheritance Tax return, whichever is earlier; and

c. enclosed two Inventory Forms and an instruction guide.

17. Respondent received the Register's letter.

18. Respondent failed to comply with the Register's request.

19. Beginning on June 18, 2004 and annually thereafter, Respondent failed to file with the Register of Wills a Status Report of uncompleted administration, as required by O.C. Rule 6.12(a).

20. By letter dated April 10, 2004, Respondent attempted to give written notice to Mr. Miller of his beneficial interest in the Oliver estate.

21. On or before August 1, 2005, the Department of Revenue sent Respondent Notice of Inheritance Tax, Appraisement, Allowance or Disallowance of Deduction and Assessment of Tax (Notice); the Notice:

- a. valued the real estate at \$30,000;
- b. did not include a deduction for the 50% share of the residuary estate distributable to charity;
- c. did not include a reduction in tax from the 15% rate to the 4.5% rate for the one quarter share of the residuary estate



distributable to step-daughter Marva  
Sergest; and

d. calculated taxes due as follows:

Credit:	0
Balance of tax due:	\$21,000
Interest and Penalties:	\$2,329.99
TOTAL DUE:	\$23,329.99

22. Respondent's failure to file an Inheritance Tax return resulted in the Department of Revenue assessing taxes based on the information available to it, including the Petition for Probate.

23. Respondent failed to pay the inheritance tax of \$21,000, even though the estate had the ability to do so.

a. In August 2005, the balance in the Estate Account was not less than \$21,246.25.

24. Respondent's failure to promptly pay the outstanding balance of inheritance tax resulted in the estate being assessed interest and penalties through December 29, 2005.

25. On September 27, 2005, Respondent wrote check number 534, payable to Register of Wills, in the amount of \$12,750, as partial payment of the state inheritance tax.

26. On September 30, 2005, Respondent filed a Petition with the Board of Appeals (Board) challenging the Department of Revenue's inheritance tax assessment.

27. By letter dated October 12, 2005, the Board requested that Respondent supply documentation to support Respondent's claim that the Department of Revenue incorrectly valued the real, tangible, and intangible personal property of the estate and incorrectly computed the interest charges.

28. Respondent received the Board's letter.

29. Respondent did not provide the Board with the requested documentation.

30. By Decision and Order mailed December 7, 2005, the Board found that Respondent had "to date, failed to respond to the Board's request for additional documentation" and concluded that "no relief can be granted."

31. On or before December 14, 2005, the Department of Revenue sent Respondent notice of inheritance tax due on the estate as follows:

Credit:	\$12,750
Balance of tax due:	\$8,250
Interest and Penalties:	\$2,548.95
TOTAL DUE:	\$10,798.95

32. Respondent failed to pay the inheritance tax of \$8,250, even though the estate had the ability to do so.

a. In December 2005, the balance in the Estate Account was not less than \$8,516.07.

33. Respondent's failure to promptly pay the outstanding balance of inheritance tax resulted in the estate being assessed interest and penalties through August 15, 2006.

34. On June 15, 2006, Respondent wrote check number 535, payable to Register of Wills, in the amount of \$7,000, as partial payment of the state inheritance tax.

a. Respondent did not mail check number 535 to the Department of Revenue until June 30, 2006.

35. On or before July 31, 2006, the Department of Revenue sent Respondent notice of inheritance tax due on the estate as follows:

Credit:	\$19,750
Balance of tax due:	\$1,250
Interest and Penalties:	\$2,848.96
TOTAL DUE:	\$4,098.96

36. Respondent received the notice from the Department of Revenue.

37. Respondent failed to pay any money due to the Department.

38. In August 2006, the balance in the Estate Account was not less than \$1,036.89.

39. Respondent's failure to promptly pay the inheritance tax resulted in the estate incurring additional interest and penalties.

40. Respondent failed to complete the administration of the estate and file a final accounting.

**B. Bank Account for the Estate of Ruth N. Oliver**

41. Respondent made the following deposits into the Estate Account:

a. on July 10, 2003, Respondent deposited \$1,171.22 from the sale of Ms. Oliver's house; and

b. on June 14, 2005, Respondent deposited \$4,086 from a bond redemption.

42. From August 9, 2002 to June 14, 2005, the total amount of funds deposited into the Estate Account was \$92,135.75.

- a. From August 9, 2002 to May 31, 2009, the estate account accumulated \$464.21 in interest.

43. In accordance with the Will bequests, Respondent wrote the following checks to the heirs from the Estate Account:

- a. \$1,000 to Emogene H. Johnson, by check number 95, dated September 7, 2002, with the notation "Will-Distribution";
- b. \$15,000 to First African Presbyterian Church, by check number 503, dated October 12, 2002, with the notation "Partial distribution";
  1. The check did not specify whether the funds were for the Martin Endowment or the Chancel Guild, both of which were one quarter residual beneficiaries under the Will.
- c. \$1,000 to Helen Street, by check number 523, dated September 1, 2003, with notation "Replacement check bequest"; and
- d. \$10,000 to Marva Suggest, by check number 532, dated May 21, 2004, with the notation "distribution."

44. By letter dated May 11, 2004, Respondent informed Ms. Surgest that her beneficial interest in the Oliver estate was "\$10,000."

a. Respondent's letter to Ms. Surgest was false in that Ms. Surgest was entitled to receive one quarter of the residual estate, or at least \$15,000, the amount that Respondent paid in partial distribution to the First African Presbyterian Church on October 12, 2002.

45. Respondent failed to comply with Ms. Oliver's bequest to distribute an additional quarter of the residuary estate to the First African Presbyterian Church.

46. Respondent failed to comply with Ms. Oliver's bequest and distribute one quarter of the residuary estate to Mr. Miller.

47. Respondent wrote the following checks to himself or cash from the Estate Account:

<u>Check Date</u>	<u>Check No.</u>	<u>Amount</u>	<u>Payee</u>	<u>Notation</u>
8/9/02	91	\$750.00	Cash	Partial Legal Fee
8/20/02	92	\$1,500.00	David C. Harris, Esq.	Partial Legal Fee
8/26/02	93	\$2,500.00	Cash	Partial Legal Fee

Check Date	Check No.	Amount	Payee	Notation
9/6/02	94	\$1,000.00	David C. Harris, Esq.	Partial Legal Fee
9/12/02	97	\$3,000.00	David C. Harris, Esq.	Partial Legal Fee
9/26/02	501	\$2,100.00	David C. Harris, Esq.	Partial Legal Fee
10/7/02	502	\$1,000.00	David C. Harris, Esq.	Partial Legal Fee
10/24/02	504	\$1,200.00	David C. Harris, Esq.	Partial Legal Fee
11/13/02	0	\$2,500.00	David C. Harris, Esq.	Partial Legal Fee
12/13/02	510	\$1,750.00	David C. Harris, Esq.	Partial Legal Fee
12/22/02	511	\$1,500.00	Cash	Partial Legal Fee
1/7/03	512	\$1,500.00	David C. Harris, Esq.	Partial Legal Fee
1/16/03	513	\$1,600.00	David C. Harris, Esq.	Partial Legal Fee
2/12/03	514	\$1,250.00	David C. Harris, Esq.	Partial-Legal
3/13/03	516	\$1,000.00	David C. Harris, Esq.	Partial Legal Fee
4/29/03	519	\$1,000.00	David C. Harris, Esq.	Partial Legal Fee
5/30/03	521	\$750.00	David C. Harris, Esq.	Housing Closing Fees

Check Date	Check No.	Amount	Payee	Notation
7/10/03	522	\$525.00	David C. Harris, Esq.	Partial Legal Fee
10/1/03	524	\$1,000.00	David C. Harris, Esq.	Partial Legal Fee
11/4/03	525	\$1,500.00	David C. Harris, Esq.	Legal/Partial
12/30/03	526	\$1,275.00	David C. Harris, Esq.	Expense Reimbursement
1/5/04	527	\$1,500.00	David C. Harris, Esq.	Reimbursement Esq. CK#153 Simpson
3/8/04	529	\$1,751.00	David C. Harris, Esq.	Reimbursement
4/24/04	531	\$1,750.00	David C. Harris, Esq.	Cost/Reimbursement
12/6/04	528	\$5,300.00	David C. Harris, Esq.	Reimbursement Funeral Expenses
2/20/05	533	\$1,001.00	David C. Harris, Esq.	Reimbursement #4
6/29/06	536	\$500.00	David C. Harris, Esq.	Final Fee
10/23/07	537	\$600.00	David C. Harris, Esq.	Legal
2/13/08	538	\$400.00	David C. Harris, Esq.	Legal



48. From August 2002 through February 2008, Respondent wrote 29 checks to himself and to cash from the Estate Account, paying himself \$43,002, of which \$5,300 was purported reimbursement for funeral expenses.

49. Respondent's legal and executor fee for the administration of the estate was illegal and clearly excessive, in that Respondent paid himself \$37,702, approximately 40.9% of the gross estate.

50. Respondent converted the excess fee from the estate for Respondent's personal use.

51. On January 3, 2003, NCS Healthcare, Inc. filed a civil action against Ruth Oliver, deceased, in the Court of Common Pleas of Philadelphia County seeking to recover \$1,086.78, which the decedent owed to NCS; the case was docketed at No. 11 DE of 2003.

52. Respondent failed to pay NCS Healthcare; Inc. from the proceeds of the estate.

- a. Respondent failed to comply with the terms of the Will and pay all outstanding debts of the estate out of the estate funds.

53. On June 16, 2009, Respondent was personally served with a subpoena *duces tecum* requiring Respondent to appear on July 1, 2009, at ODC's office with records of the estate and Estate Account; on July 1, 2009, Respondent:

- a. appeared at the Office of Disciplinary Counsel;
- b. failed to bring any records; and
- c. agreed to return to ODC's offices with all responsive records on July 17, 2009.

54. On July 7, 2009, Respondent was personally served with a subpoena *duces tecum* requiring Respondent to appear on July 17, 2009, at ODC's office with records of the estate and Estate Account; on July 17, 2009, Respondent:

- a. appeared at ODC's office;
- b. produced 26 pages of records, which Respondent copied on ODC's copy machine, in response to the subpoena;
- c. failed to bring most of the records that were requested in the subpoena; and
- d. requested an extension of time, until July 27, 2009, to produce the remaining records.

55. By letter dated July 27, 2009, from Respondent to ODC, Respondent:

- a. produced 6 additional pages of estate records;

- b. requested a two-week extension of time to produce the remaining records requested by ODC; and
- c. explained that Respondent needed another extension of time because Respondent was "a solo practitioner who must reconstruct matters from ten (10) years ago" and Respondent was "also working on a matter taking [Respondent] out-of-state two days a week."

56. By his conduct as alleged in paragraphs 6 through 55 above, Respondent violated the following Rules:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;
- c. former RPC 1.15(a) (effective 4/1/88), which states that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a

separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation;

- d. former RPC 1.15(a) (effective 4/23/05), which states that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later;

e. former RPC 1.15(b) (effective 4/1/88), which states that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property 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 such property;

f. former RPC 1.15(b) (effective 4/23/05), which states that upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. 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 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 such property;

g. 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. Such property shall be identified and appropriately safeguarded;

h. 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. 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 Rule 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.

(3) The records required by this Rule may be maintained in electronic or hard copy form. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device.

i. 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; provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

- j. 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;
- k. 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
- l. 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.



**CHARGE II: ANNUAL ATTORNEY REGISTRATION STATEMENTS**

57. On Respondent's 2003-2004 Annual Attorney Registration Statement, Respondent identified United Bank of Philadelphia, account number 1019041112, where Respondent held fiduciary funds; Respondent's Annual Attorney Registration Statement:

- a. failed to identify all accounts in which Respondent held fiduciary funds;
- b. falsely certified that Respondent was in compliance with RPC 1.15; and
- c. falsely certified that all information on Respondent's statement was true and correct.

58. On Respondent's 2004-2005 Annual Attorney Registration Statement, Respondent identified United Bank of Philadelphia, account number 1019041112, where Respondent held fiduciary funds; Respondent's Annual Attorney Registration Statement:

- a. failed to identify all accounts in which Respondent held fiduciary funds;
- b. falsely certified that Respondent was in compliance with RPC 1.15; and
- c. falsely certified that all information on Respondent's statement was true and correct.

59. On Respondent's 2005-2006 Annual Attorney Registration Statement, Respondent did not identify any account where Respondent held fiduciary funds; Respondent's Annual Attorney Registration Statement:

- a. failed to identify all accounts in which Respondent held fiduciary funds;
- b. falsely certified that Respondent was in compliance with RPC 1.15; and
- c. falsely certified that all information on Respondent's statement was true and correct.

60. On Respondent's 2006-2007 Annual Attorney Registration Statement, Respondent did not identify any account where Respondent held fiduciary funds; Respondent's Annual Attorney Registration Statement:

- a. failed to identify all accounts in which Respondent held fiduciary funds;
- b. falsely certified that Respondent was in compliance with RPC 1.15; and
- c. falsely certified that all information on Respondent's statement was true and correct.

61. On Respondent's 2007-2008 Annual Attorney Registration Statement, Respondent identified Citizens Bank of PA, account number 6213542012, where Respondent held

fiduciary funds; Respondent's Annual Attorney Registration Statement:

- a. failed to identify all accounts in which Respondent held fiduciary funds;
- b. falsely certified that Respondent was in compliance with RPC 1.15; and
- c. falsely certified that all information on Respondent's statement was true and correct.

62. By his conduct as alleged in paragraphs 57 through 61 above, Respondent violated the following Rules:

- a. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- b. 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; and
- c. Pa.R.D.E. 203(b)(3), which states that willful violation of any other provision of the Enforcement Rules shall be grounds for discipline, via Pa.R.D.E. 219(d)(1)(iii), which provides that on or before July 1 of

each year all persons required by this Rule to pay an annual fee shall file with the Attorney Registration Office a signed form prescribed by the Attorney Registration Office in accordance with the following procedures: (1) The form shall set forth: (iii) The name of each financial institution in this Commonwealth in which the attorney on May 1 of the current year or at any time during the preceding 12 months held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The form shall include the name and account number for each account in which the lawyer holds such funds, and each IOLTA Account shall be identified as such. The form provided to a person holding a Limited In-House Corporate Counsel License or a Foreign Legal Consultant License need not request the information required by this subparagraph.

**CHARGE III: OVERDRAFTS AND ADVERTISING**

63. In accordance with Rule of Professional Conduct 1.15(b), Respondent maintains an Interest on Lawyer Trust Account (IOLTA) with Citizens Bank, account number 62135-42012.

64. By Supreme Court Order dated August 7, 2008, Respondent was placed on inactive attorney status pursuant to Pa.R.C.L.E. 111(b), due to Respondent's failure to complete his continuing legal education requirements.

65. Respondent failed to close his IOLTA account at Citizens Bank.

66. On October 14, 2008, check number 2 was presented to Citizens Bank for payment on the IOLTA account.

67. The amount of the check was \$4,000.

68. At the time Respondent wrote check number 2, Respondent's IOLTA account did not contain sufficient funds to pay that check.

69. Because the IOLTA did not contain sufficient funds to pay check number 2, an overdraft resulted in the amount of \$22.50.

70. Citizens Bank did not honor check number 2 and provided Respondent with written notice of its action.

71. By letter to Respondent dated October 27, 2008, Kathy J. Peifer, Esquire, Executive Director of the Pennsylvania Lawyers Fund for Client Security ("Fund"):

- a. enclosed a copy of the Dishonored Check Notice;
- b. requested that Respondent provide within seven business days, a written, signed, and documented explanation as to why the overdraft occurred;
- c. requested that Respondent provide: the client ledger sheet on which the check was presented; copy of monthly statements for the last three months; and copy of documentation of deposit if funds have been deposited to cover the overdraft; and
- d. advised Respondent that if Respondent did not respond or if Respondent's explanation was unsatisfactory, then the Fund would transfer the matter to ODC.

72. Respondent received Ms. Peifer's letter.

73. Respondent did not timely respond to Ms. Peifer's letter.

74. On October 21, 2008, Respondent made a telephone payment to his Discover Card from his IOLTA account at Citizens Bank.

75. The amount of the telephone payment was \$4,000.

76. At the time Respondent made the telephone payment, Respondent's IOLTA account did not contain sufficient funds.

77. Because Respondent's IOLTA account did not contain sufficient funds to make the telephone payment, an overdraft resulted in the amount of \$34.50.

78. Citizens Bank did not honor Respondent's \$4,000 telephone payment and provided Respondent with written notice of its action.

79. By certified letter to Respondent dated December 12, 2008, Ms. Peifer:

- a. enclosed a copy of her October 27, 2008 Overdraft Notification Letter regarding check number 2;
- b. enclosed a subsequent overdraft notification regarding Respondent's overdraft telephone payment;
- c. requested that within five days of Respondent's receipt of her letter, Respondent send her a written and documented

explanation of the circumstances surrounding the two overdrafts; and

- d. informed Respondent that his failure to provide the requested information would result in immediate referral of the matter to Office of Disciplinary Counsel.

80. Respondent received Ms. Peifer's letter.

81. By letter dated December 29, 2008, from Respondent to Ms. Peifer, Respondent:

- a. enclosed Respondent's monthly statements for August, September, and October 2008;
- b. stated that unbeknownst to Respondent, Citizens Bank had placed an eight-day hold on Respondent's deposit of \$4,000;
- c. claimed that Citizens Bank's prior practice was to make funds available on the next business day;
- d. advised that Citizens Bank informed Respondent on October 14, 2008, of their change in banking practice; and
- e. claimed that "there were no client funds involved in this matter."



82. Respondent's December 29, 2008 letter to Ms. Peifer:

- a. was written on stationery with "David C. Harris, Esquire" in the letterhead; and
- b. contained a signature line with the appellation "Esquire" after Respondent's name.

83. Respondent's letterhead contained a false or misleading professional designation in that Respondent's letterhead identified Respondent as "David C. Harris, Esquire," when Respondent was not an active member of the Pennsylvania Bar pursuant to Supreme Court Order dated August 7, 2008.

84. Respondent's signature line contained a false or misleading professional designation in that Respondent's signature line identified Respondent as "David C. Harris, Esquire," when Respondent was not an active member of the Pennsylvania Bar pursuant to Supreme Court Order dated August 7, 2008.

85. By letter dated January 5, 2009, from Ms. Peifer to Respondent, Ms. Peifer:

- a. acknowledged receipt of Respondent's December 29, 2008 letter;

- b. requested that Respondent "clarify why the \$4,000 was deposited into the IOLTA account if these funds were not client funds"; and
- c. requested Respondent's answer on or before January 15, 2009.

86. Respondent received Ms. Peifer's letter.

87. Respondent failed to respond to Ms. Peifer's request for clarification.

88. By certified letter dated January 22, 2009, Ms. Peifer advised Respondent that she had referred Respondent's matter to Office of Disciplinary Counsel.

89. By his conduct as alleged in paragraphs 63 through 88 above, Respondent violated the following Rules:

- a. 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. Such property shall be identified and appropriately safeguarded;
- b. RPC 7.1, which states that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services; and
- c. RPC 7.5(a), which states that a lawyer shall not use a firm name, letterhead or other

professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply connection with a government, government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

### III. JOINT RECOMMENDATION FOR DISCIPLINE

90. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of three years.

91. Respondent hereby consents to the discipline being imposed 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 acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

92. Petitioner and Respondent respectfully submit that there are the following aggravating circumstances:

- a. Respondent has a record of private discipline. On March 6, 2009, Respondent received an Informal Admonition for violating: 1.1; 1.3; 1.4(a)(3); 1.4(a)(4); 1.4(b); 1.15(b) [former]; 1.16(d); and 8.4(c). (ODC File No. C1-08-818); and
- b. Respondent failed to cooperate with ODC's investigation of the above charges.

93. Respondent and ODC respectfully submit that there are the following mitigating factors:

- a. Respondent has voluntarily agreed to resign as Executor of the Will of Ruth N. Oliver, deceased;
- b. Respondent has voluntarily agreed to fully cooperate with successor Personal Representative and the Office of the Attorney General as *parens patriae* for charitable interests, including but not limited to making restitution to the estate; and

c. By virtue of signing this Discipline on Consent, Respondent has expressed recognition of his wrongdoing and remorse for his misconduct.

94. Respondent understands that his failure to comply with the above-referenced agreements may result in further disciplinary action.

95. A three-year suspension is within the range of discipline that an attorney may receive for mismanaging an estate and mishandling entrusted funds.

In *Office of Disciplinary Counsel v. Olshock*, No. 28 DB 2002, D.Bd. Rpt. 7/30/2003 (S.Ct. Order 7/30/2003), the Supreme Court imposed a three-year suspension on an attorney who wrote himself 18 checks from the estate account, totaling \$22,093, that were not related to estate expenses. Olshock admitted to the heirs that he had taken too much money and fully reimbursed the funds prior to any investigation by Office of Disciplinary Counsel.

Similarly, in *Office of Disciplinary Counsel v. Bolden*, No. 165 DB 2003, D.Bd. Rpt. 1/25/2005 (S.Ct. Order 4/19/25), an attorney withdrew funds from an estate account, constituting approximately 40% of the estate assets, to which he was not entitled. Bolden also failed to account for the funds he withdrew and resisted the

heirs' efforts to receive restitution. To temper his wrongdoing, Bolden presented weighty mitigating evidence, including his distinguished work history, distractions caused by tending to his ill spouse, and remorse. The Disciplinary Board recommended and the Supreme Court imposed a three-year suspension.

More recently, an attorney who mishandled an estate, making incorrect distributions to the heirs, erroneously placing estate funds in her IOLTA account, and mistakenly calculating estate taxes, received a three-year suspension. *Office of Disciplinary Counsel v. Patricia Datsko*, No. 74 DB 2008, D.Bd. Rpt. 6/24/2009 (S.Ct. Order 10/15/2009). Most troubling to the Disciplinary Board, however, was Datsko's mismanagement of her IOLTA account, which contained numerous overdrafts and negative balances. Nonetheless, the Disciplinary Board found that Datsko's "actions do not rise to the level of outright dishonesty that would indicate a more severe discipline."

96. The above precedent supports the imposition of a three-year suspension on Respondent, who mismanaged an estate, misappropriated estate funds, mishandled his IOLTA account, and made misstatements on his Annual Attorney Registration Statement. While Respondent has not yet made restitution to the Estate, Respondent's voluntary agreement

to resign from being Executor of the Estate of Ruth N. Oliver, fully cooperate with the successor administrator and the Attorney General's Office, and make full restitution, are substantial mitigating factors, as were the mitigating facts in **Bolden**, warranting a three-year suspension.

97. A three-year suspension is necessary to protect the public, profession, and the courts.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order:
  1. suspending Respondent from the practice of law for three years; and
  2. directing Respondent to comply with all provisions of Pa.R.D.E. 217.
- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an order for Respondent to pay the necessary

expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition, and that all expenses be paid by Respondent before the imposition of discipline under Pa.R.D.E. 215(g).

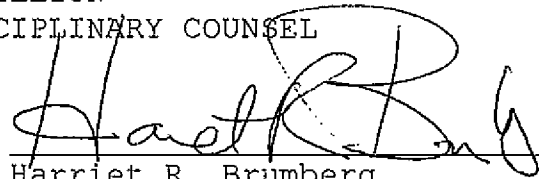
Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

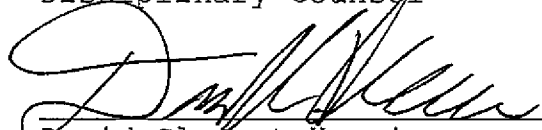
3/19/10  
Date

By



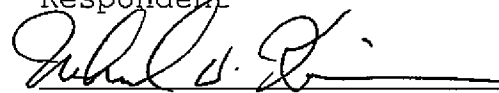
Harriet R. Brumberg  
Disciplinary Counsel

3/19/10  
Date



David Clement Harris  
Respondent

3/19/10  
Date

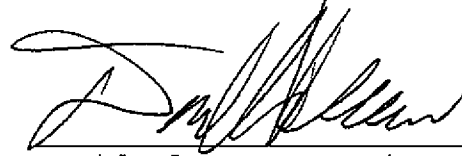


Michael W. Kiernan, Esquire  
Counsel for Respondent





4. He consents because he knows that if the charges continue to be prosecuted in the pending proceeding, he could not successfully defend against the charges.

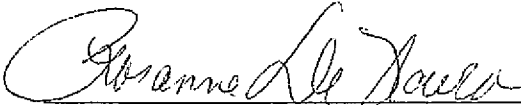


David Clement Harris  
Respondent

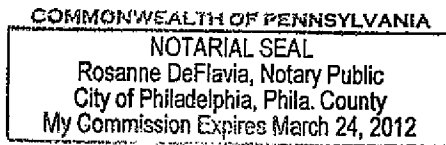
Sworn to and subscribed

before me this 19<sup>th</sup>

day of March, 2010



Notary Public



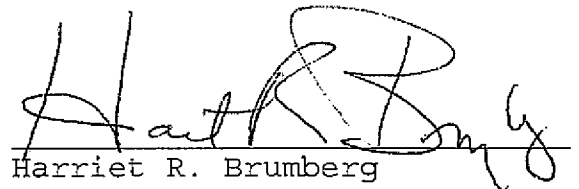
BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 205 DB 2009  
v. :  
: Atty. Reg. No. 45980  
DAVID CLEMENT HARRIS, :  
Respondent : (Philadelphia)

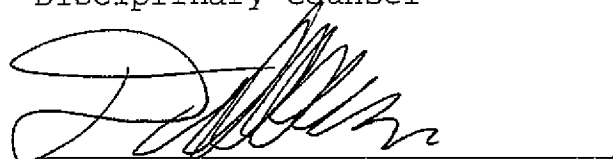
VERIFICATION

The statements contained in the foregoing Joint Petition In Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E., are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.


3/19/2010  
Date

  
Harriet R. Brumberg  
Disciplinary Counsel

3/19/2010  
Date

  
David Clement Harris  
Respondent

3/19/10  
Date

  
Michael W. Kiernan, Esquire  
Counsel for Respondent