

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2777 Disciplinary Docket No. 3
Petitioner :
 : No. 215 DB 2019
v. :
 : Attorney Registration No. 76306
VALERIE ANDRINE HIBBERT, :
Respondent : (Delaware County)

ORDER

PER CURIAM

AND NOW, this 27th day of April, 2021, upon consideration of the Report and Recommendations of the Disciplinary Board, Valerie Andrine Hibbert is suspended from the Bar of this Commonwealth for a period of one year and one day. 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 Patricia Nicola
As Of 04/27/2021


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 215 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Registration No. 76306
	:	
VALERIE ANDRINE HIBBERT,	:	
Respondent	:	(Delaware 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 23, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent, Valerie Andrine Hibbert, with violations of the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement. Respondent failed to file a timely Answer to Petition.

Following the appointment of a District II Hearing Committee (“Committee”), the Committee Chair held a prehearing conference on February 28, 2020. Respondent

failed to appear. Due to concerns arising from the COVID-19 pandemic, the disciplinary hearing scheduled for April 3, 2020 was continued.

On June 4, 2020, the Committee Chair conducted a telephone conference with the parties, at which time Respondent's then counsel advised of his intention to file an untimely Answer to Petition for Discipline. By Order dated June 4, 2020, Respondent was directed to file a response to the Petition for Discipline by June 8, 2020. Respondent failed to file an Answer to Petition on or before June 8, 2020. On June 17, 2020, Respondent submitted an untimely Answer to Petition and failed to serve the untimely Answer on Petitioner. On June 18, 2020, Petitioner filed a motion to strike the untimely Answer. By Order dated June 24, 2020, the Committee Chair accepted the filing but struck 28 paragraphs where Respondent denied allegations contained in the Petition.

The Committee conducted a disciplinary hearing on July 31, 2020. Petitioner offered into evidence exhibits ODC-1 through ODC-66, which were admitted without objection, and offered the testimony of one witness. Respondent, represented by counsel, testified on her own behalf and presented the testimony of six witnesses. Respondent offered into evidence exhibits R-1 through R-4, which were admitted over Petitioner's objections. Another hearing was scheduled for August 6, 2020, but technical difficulties prevented that hearing from taking place. This matter was concluded on August 18, 2020 by videotape and stenographic deposition.

On September 11, 2020, Petitioner filed a brief to the Committee and recommended that Respondent be suspended for a period of two years. On October 1, 2020, Respondent filed a brief to the Committee and recommended a public censure with or without probation as appropriate discipline.

By Report filed on November 12, 2020, the Committee concluded that Respondent violated the rules as charged in the Petition for Discipline and recommended that she be suspended for a period of one year and one day.

On December 3, 2020, Respondent filed a Brief on Exceptions and adjusted her recommended discipline to a public reprimand or stayed suspension with a period of probation. Respondent requested oral argument before the Board. Petitioner filed a Brief Opposing Exceptions on December 17, 2020.

A three-member Board panel heard oral argument on January 11, 2021.

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

II. FINDINGS OF FACT

The Board makes the following findings:

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 Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said rules.

2. Respondent is Valerie Andrine Hibbert, born in 1963 and admitted to practice law in the Commonwealth of Pennsylvania in 1995. Respondent maintains her office at Hibbert & Associates PC, 22 N. Lansdowne Avenue, Lansdowne, Delaware County, Pennsylvania 19050.

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

4. Respondent has no prior history of discipline.

5. On January 7, 2020, Daniel G. Richer, an auditor/investigator with the Office of Disciplinary Counsel, personally served the Petition for Discipline on Respondent. ODC-1.

6. Respondent failed to timely file an Answer to the Petition for Discipline.

7. All allegations in the Petition for Discipline are deemed admitted. N.T. 7/31/20 at 9; Pa.R.D.E. 208(b)(3).

8. Paragraphs 1-39 and 41-141 of the Petition for Discipline are set forth below and incorporated as Findings of Fact 9-44, 47-81, 86-100, 105-115, 117-118, 120-130, 132-157.

Misuse of IOLTA Accounts

9. During the time frame in question, Respondent maintained an IOLTA at TD Bank ("TD Bank IOLTA").

10. Respondent failed to maintain individual ledgers for each client whose funds she held in the TD Bank IOLTA, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.

11. Respondent failed to maintain a regular trial balance of individual client ledgers and failed to conduct a reconciliation for the TD Bank IOLTA on a monthly basis, reconciling the total cash balance with the total of the client balance listing.

12. During the time frame in question, Respondent maintained an IOLTA at Royal Bank America (hereinafter the "RBA IOLTA").

G.D.

13. In or before December of 2016, Respondent resolved a personal injury claim on behalf of G.D. for fifteen thousand dollars (\$15,000.00).

14. On December 23, 2016, Respondent deposited into the TD Bank IOLTA a check in the amount of five thousand dollars (\$5,000.00) from GEICO General Insurance Company, in partial satisfaction of Ms. D.'s claim.

15. On December 23, 2016, Respondent deposited into the TD Bank IOLTA a check in the amount of five thousand dollars (\$5,000.00) from Progressive, in partial satisfaction of Ms. D.'s claim.

16. By letter to Ms. D. dated December 27, 2016, Respondent, *inter alia*, enclosed a check dated January 10, 2017, made payable to Ms. D. in the amount of seven thousand six hundred forty-six dollars and seventy-one cents (\$7,646.71), drawn against the TD Bank IOLTA, which represented the portion of the settlement proceeds to which Ms. D. was entitled.

17. By check dated December 27, 2016, Respondent withdrew two thousand dollars (\$2,000.00) of Ms. D.'s settlement proceeds from the TD Bank IOLTA.

18. By check dated December 27, 2016, Respondent withdrew two thousand one hundred and sixty-three dollars (\$2,163.00) of Ms. D.'s settlement proceeds from the TD Bank IOLTA.

19. On December 29, 2016, Respondent deposited into the TD Bank IOLTA a check in the amount of five thousand dollars (\$5,000.00) from The Hartford – Eastern Auto Litigation Center, in satisfaction of Ms. D.’s claim.

20. By check dated January 10, 2017, made payable to Allied Medical in the amount of four hundred twenty-seven dollars and sixty-six cents (\$427.66), drawn against the TD Bank IOLTA, Respondent satisfied Ms. D.’s account with Allied Medical.

21. By check dated January 10, 2017, made payable to Nextgen Reporting in the amount of eight hundred forty dollars and fifty cents (\$840.50), drawn against the TD Bank IOLTA, Respondent satisfied costs associated with Ms. D.’s claim.

22. By check dated January 10, 2017, made payable to UPHS HUP Patient Pay in the amount of one hundred dollars (\$100.00), drawn against the TD Bank IOLTA, Respondent satisfied Ms. D.’s account with the University of Pennsylvania Health System.

23. By check dated January 10, 2017, Respondent withdrew five hundred fifteen dollars and thirteen cents (\$515.13) of Ms. D.’s settlement proceeds from the TD Bank IOLTA.

24. By check dated January 10, 2017, Respondent withdrew two hundred and twenty dollars (\$220.00) of Ms. D.’s settlement proceeds from the TD Bank IOLTA.

25. Respondent failed to promptly withdraw from the TD Bank IOLTA funds from Ms. D.’s settlement to which Respondent was entitled in the amount of one thousand eighty-seven dollars (\$1,087.00).

M.B.

26. In or before January of 2017, Respondent settled a personal injury claim on behalf of M.B. for sixty thousand dollars (\$60,000.00).

27. On January 20, 2017, Respondent deposited into the TD Bank IOLTA a check in the amount of sixty thousand dollars (\$60,000.00) from Allstate, in satisfaction of Ms. B.'s claim.

28. By check dated January 24, 2017, Respondent withdrew five thousand dollars (\$5,000.00) of Ms. B.'s settlement proceeds from the TD Bank IOLTA.

29. By check dated January 24, 2017, Respondent withdrew five thousand dollars (\$5,000.00) of Ms. B.'s settlement proceeds from the TD Bank IOLTA.

30. By check dated January 24, 2017, made payable to National Liability and Fire in the amount of seventeen thousand dollars (\$17,000.00), drawn against the TD Bank IOLTA, Respondent satisfied Ms. B.'s account with National Liability and Fire.

31. By check dated January 24, 2017, made payable to Ms. B. in the amount of nineteen thousand dollars (\$19,000.00), drawn against the TD Bank IOLTA, Respondent distributed to Ms. B. the portion of the settlement proceeds to which she was entitled.

32. By check dated February 7, 2017, Respondent withdrew six thousand dollars (\$6,000.00) of Ms. B.'s settlement proceeds from the TD Bank IOLTA.

33. By check dated February 7, 2017, Respondent withdrew one thousand dollars (\$1,000.00) of Ms. B.'s settlement proceeds from the TD Bank IOLTA.

34. By check dated April 18, 2017, Respondent withdrew six thousand dollars (\$6,000.00) of Ms. B.'s settlement proceeds from the TD Bank IOLTA.

35. Respondent failed to promptly withdraw from the TD Bank IOLTA funds from Ms. B.'s settlement to which Respondent was entitled in the amount of one thousand dollars (\$1,000.00).

J.Y.

36. In or before March of 2016, Respondent was retained by J.Y. to represent him in a dispute with his tenant, Halia Home & Community Services, Inc., docketed at Case ID: 16-1942 (Court of Common Pleas of Delaware County).

37. Between March of 2016 and September of 2016, Halia Home & Community Services, Inc. paid ten thousand four hundred dollars (\$10,400.00) into escrow with the Delaware County Court of Common Pleas.

38. On November 28, 2016, a panel of arbitrators found in favor of Mr. Y. in the amount of eleven thousand three hundred dollars (\$11,300.00).

39. On January 12, 2017, Hugh P. McElhenney, Esquire, filed a Petition for Release of Escrow on behalf of Halia Home & Community Services, Inc., seeking the release of all funds held in escrow to Respondent and Mr. Y.

40. By Order dated March 6, 2017, all funds held in escrow were released to Respondent and Mr. Y.

41. On March 27, 2017, Respondent deposited into the TD Bank IOLTA a check in the amount of ten thousand four hundred dollars (\$10,400.00) from the Treasurer of Delaware County.

42. By check dated March 27, 2017, made payable to J.Y. and drawn against the TD Bank IOLTA, Respondent distributed to Mr. Y. the funds to which he was entitled.

43. By check dated April 18, 2017, Respondent withdrew two hundred dollars (\$200.00) from the TD Bank IOLTA.

44. By check dated April 27, 2017, Respondent withdrew one thousand dollars (\$1,000.00) from the TD Bank IOLTA.

45. By check dated May 26, 2017, drawn on the TD Bank IOLTA, Respondent paid Mr. McElhenney \$400.00 for "Settlement Payment in Full CCP No. 1942-2016." ODC-2; N.T. 8/18/20 at 179-180.

46. Respondent failed to promptly withdraw from the TD Bank IOLTA funds to which she was entitled in connection with Mr. Y's matter in the amount of \$800.00. Ans. at ¶¶ 31-39; ODC-2 at 29; ODC-13 – ODC-15.

A.A.

47. In or before March 2017, Respondent resolved a claim against State Farm Mutual Automobile Insurance Company on behalf of A.A. for ten thousand dollars (\$10,000.00).

48. On April 6, 2017, Respondent deposited into the TD Bank IOLTA a check in the amount of ten thousand dollars (\$10,000.00) from State Farm Mutual Automobile Insurance Company, in satisfaction of Ms. A.'s claim.

49. By check dated April 13, 2017, Respondent withdrew one thousand five hundred dollars (\$1,500.00) of Ms. A.'s settlement funds from the TD Bank IOLTA.

50. By check dated April 18, 2017, made payable to Oxford Rehabilitation Center in the amount of eight hundred ninety-eight dollars and eighty-four cents (\$898.84), drawn against the TD Bank IOLTA, Respondent settled Ms. A.'s account with Oxford Rehabilitation Center.

51. By check dated April 18, 2017, made payable to Ms. A. in the amount of five thousand one hundred one dollars and sixteen cents (\$5,101.16), drawn against the TD Bank IOLTA, Respondent distributed to Ms. A. the funds to which she was entitled.

52. Respondent failed to promptly withdraw from the TD Bank IOLTA funds from the resolution of Ms. A.'s claim to which Respondent was entitled in the amount of two thousand five hundred dollars (\$2,500.00).

Robert Wilson

53. By Order of the Supreme Court of Pennsylvania dated October 5, 2016, Robert Arnold Wilson, Esquire was administratively suspended.

54. In or before January 2017, Respondent agreed to assist Mr. Wilson in resuming active status.

55. Mr. Wilson provided nine hundred dollars (\$900.00) in cash to Respondent for fees related to his resumption of active status.

56. Respondent did not deposit these funds into the TD Bank IOLTA.

57. By letter to the Attorney Registration Office dated January 3, 2017, Mr. Wilson submitted a 2016-17 PA Administrative Change in Status Form and a check in the amount of nine hundred dollars (\$900.00), made payable to "PA Attorney Registration" and drawn against the TD Bank IOLTA.

58. By letter to Respondent dated January 17, 2017, Disciplinary Counsel:

- a. requested Respondent's Statement of Position regarding allegations that she either misapplied entrusted funds or impermissibly commingled personal funds with entrusted funds in the TD Bank IOLTA; and

b. directed Respondent to produce copies of the records that she is required to maintain pursuant to RPC 1.15(c) for the TD Bank IOLTA for the period of December 1, 2016, through the present (hereinafter the "Requested Records").

59. By letter to Disciplinary Counsel dated January 27, 2017, Respondent, *inter alia*, advised that she had assisted Mr. Wilson with opening a personal account at TD Bank in early January 2017 and that "[a]lthough Mr. Wilson is not a client, [she] thought it was best not to put his funds in [her] business account."

60. Respondent failed to produce the requested records.

61. By letter to Respondent dated February 23, 2017, Disciplinary Counsel directed Respondent to produce the requested records on or before March 6, 2017.

62. By letter to Disciplinary Counsel dated March 21, 2017, Respondent, *inter alia*, advised that:

a. Mr. Wilson had received three (3) starter checks with his TD Bank account, but that she "did not believe that sending a starter check [to Attorney Registration] would be the right course of action"; and

b. while Mr. Wilson gave her nine hundred dollars (\$900.00) cash, she never deposited these funds into the TD Bank IOLTA because there were funds in the account that were "due to Hibbert & Associates, P.C., from [a personal injury] settlement."

63. Respondent failed to produce the requested records.

64. By letter to Respondent dated March 30, 2017, Disciplinary Counsel, pursuant to Pa.R.D.E. 221(g)(1) and D.Bd. Rules § 91.178(b), directed Respondent to produce the requested records within 10 business days after personal service of the letter.

65. On March 31, 2017, Auditor/Investigator Richer personally served this letter on Respondent.

66. Respondent failed to produce the requested records or otherwise respond to Disciplinary Counsel's March 30, 2017 letter.

67. By letter to Respondent dated August 18, 2017, Disciplinary Counsel requested Respondent's Statement of Position regarding allegations that she, *inter alia*, failed to comply with repeated requests to produce the requested records and maintained personal funds in the TD Bank IOLTA.

68. By letter to Disciplinary Counsel dated September 21, 2017, Respondent advised that "[a]t this time, [she is] reserving [her] rights to respond after [Disciplinary Counsel] complete[s] [their] investigation."

69. By letter to Respondent dated September 27, 2017, Disciplinary Counsel advised that Respondent's failure to respond to the August 18, 2017 letter was an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7) and directed Respondent to respond to the allegations of misconduct by October 9, 2017.

70. Respondent failed to respond to Disciplinary Counsel's September 27, 2017 letter.

3609 North Lawrence Street

71. On March 30, 2010, E.S. entered into an Agreement of Sale with J.R. and N.V. regarding real property located at 3609 North Lawrence Street in Philadelphia, Pennsylvania (hereinafter the "Agreement of Sale").

72. Respondent served as escrow agent for this transaction.

73. On March 30, 2010, Mr. R. and Ms. V. provided Respondent with ten thousand dollars (\$10,000.00) in cash, to be held in escrow pursuant to the terms of the Agreement of Sale.

74. Respondent deposited Mr. R. and Ms. V.'s ten thousand dollar (\$10,000.00) payment into the RBA IOLTA.

75. Pursuant to the terms of the Agreement of Sale, Mr. R. and Ms. V. were obligated to make monthly payments in the amount of four hundred sixty-four dollars and twenty-four cents (\$464.24) until the entire purchase price of eighteen thousand dollars (\$18,000.00) was paid in full.

76. Ms. S. was unable to deliver clear title for the real property located at 3609 North Lawrence Street in Philadelphia, Pennsylvania, and, accordingly, the transaction outlined in the Agreement of Sale was never completed.

77. Between March 2010 and April 2017, Respondent failed to maintain ten thousand dollars (\$10,000.00) in the RBA IOLTA. Accordingly, the RBA IOLTA was out of trust.

78. Respondent failed to hold Mr. R. and Ms. V.'s ten thousand dollar (\$10,000.00) payment inviolate.

79. On April 19, 2017, Respondent deposited a check into the RBA IOLTA, creating a balance in that account of ten thousand three hundred twenty-one dollars and ninety-four cents (\$10,321.94).

80. By check dated May 31, 2017, Respondent withdrew three hundred twenty-one dollars and ninety-four cents (\$321.94) from the RBA IOLTA.

81. From April 2017 through the present Respondent has maintained at least \$10,000.00 in the RBA IOLTA pending the resolution of a dispute regarding Mr. R. and Ms. V.'s monthly payments.

82. Respondent admitted to maintaining \$10,000 in her escrow account related to her representation of the seller in connection with the real estate transaction at 3609 North Lawrence Street, which was to have occurred in March 2010. N.T. 8/18/20 at 182-183, 187.

83. Respondent does not dispute that these client funds were invaded at some unspecified point and thereafter replenished from a separate settlement. N.T. 8/18/20 at 185-186.

84. Respondent conceded that she held the \$10,000 for over a decade, and that the funds remained in her account as of 2020. N.T. 8/18/20 at 188-189.

85. Respondent made no meaningful effort to discern which party had a valid claim to these funds and return them, even though she acknowledged the terms of the property sale agreement entitled the buyers of the property to those funds, and she only very recently sought advice to deposit the funds with the City of Philadelphia. N.T. 8/18/2020 at 57, 190, 195-198.

Howard Taylor

86. On or about January 23, 2016, Glenn Ross slipped and fell at the NT Corner Store on Kingsessing Avenue in Philadelphia (hereinafter the "January 23, 2016 Slip and Fall").

87. Mr. Ross engaged Respondent to represent him in a personal injury action arising out of the January 23, 2016 Slip and Fall.

88. Respondent failed to inform Mr. Ross in writing that she did not maintain professional liability insurance.

89. In or about February 2017, Mr. Ross was assaulted by an employee of Unique Pizza in Suburban Station (hereinafter the "February 2017 Assault").

90. Mr. Ross engaged Respondent to represent him in a personal injury action arising out of the February 2017 Assault.

91. Respondent failed to inform Mr. Ross in writing that she did not maintain professional liability insurance.

92. By letter to Respondent dated February 15, 2018, Howard Taylor, Esquire *inter alia*, advised that Mr. Ross no longer wanted Respondent to represent him regarding the February 2017 Assault and requested that Respondent forward a copy of her case file to Mr. Taylor.

93. Respondent failed to respond to Mr. Taylor's February 15, 2018 letter.

94. By letter to Respondent dated February 27, 2018, Mr. Taylor again requested that Respondent provide him with a copy of the case file regarding the February 2017 Assault.

95. In or about March of 2018, Respondent provided Mr. Taylor with her case file for the January 23, 2016 Slip and Fall.

96. Respondent failed to provide Mr. Taylor with a copy of her case file regarding the February 2017 Assault.

97. By letter to Respondent dated June 18, 2018, Disciplinary Counsel requested Respondent's Statement of Position regarding allegations that she, *inter alia*, failed to advise Mr. Ross in writing that she did not maintain professional liability insurance

and failed to provide Mr. Taylor with a copy of the case file regarding the February 2017 Assault.

98. By letter to Disciplinary Counsel dated October 31, 2018, Respondent, through counsel, provided her Statement of Position and represented, *inter alia*, that her counsel would “make arrangements with Mr. Taylor to review the file [Respondent’s counsel] ha[s] received.”

99. Respondent conceded that she failed to advise Mr. Ross in writing that she did not maintain professional liability insurance.

100. In or before November of 2018, Respondent’s counsel provided Respondent’s case file regarding the February 2017 Assault to Mr. Taylor.

101. At the disciplinary hearing Respondent testified that Mr. Ross “wasn’t [her] client,” and that she “never signed an agreement with him or anything.” N.T. 8/18/20 at 28-29.

102. This testimony is not credible in light of the documents from Respondent’s own file, including a March 29, 2017 signed contingency fee agreement and a March 30, 2017 letter over Respondent’s signature to SEPTA stating “[p]lease be informed of my representation of Glenn Ross who sustained disabling personal injuries by reason of assault at Unique Pizza Suburban Station.” ODC-58.

103. Respondent’s testimony that she has been advising clients in her fee agreements “since approximately 2015 or a little bit earlier” that she does not maintain professional liability insurance was not corroborated. N.T. 8/18/2020 at 77, 125-127; ODC-58 at 44.

104. In her testimony, Respondent admitted that her retainer agreement with Mr. Ross did not advise him that she did not carry malpractice insurance, nor did she otherwise advise him in writing. N.T. 8/18/20 at 126-127.

Abdullah Dukuly

105. In or about April of 2016, Abdullah Dukuly on behalf of God's Divine Favor Ministries, hired Respondent to prepare and file Articles of Incorporation and a Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code (hereinafter "Form 1023").

106. On or about June 3, 2016, Mr. Dukuly paid Respondent three hundred and forty dollars (\$340.00).

107. Respondent failed to deposit this advance payment into a trust account or IOLTA.

108. Respondent failed to obtain Mr. Dukuly's informed consent, confirmed in writing, to not maintain this advance payment in a trust account or IOLTA.

109. On July 1, 2016, Mr. Dukuly paid Respondent two hundred and fifty dollars (\$250.00).

110. Respondent failed to deposit this advance payment into a trust account or IOLTA.

111. Respondent failed to obtain Mr. Dukuly's informed consent, confirmed in writing, to not maintain this advance payment in a trust account or IOLTA.

112. On or about August 23, 2016, Respondent filed Articles of Incorporation-NonProfit with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations, on behalf of God's Divine Favor Ministries.

113. By letter to Mr. Dukuly dated September 7, 2016, Respondent advised that the next step for God's Divine Favor Ministries would be "to obtain a 501(c)(3)," and that the "cost of this filing is **Eight Hundred and Fifty Dollars (\$850.00)**" (emphasis in original).

114. By email to Respondent dated January 25, 2017, Mr. Dukuly, *inter alia*, asked Respondent to provide "a clear understanding" of the 501(c)(3) certification.

115. Respondent failed to respond to this email.

116. By letter dated May 19, 2017, Respondent submitted a Form 1023 to the IRS on behalf of God's Divine Favor Ministries, and also submitted a Form 2848, Power of Attorney and Declaration of Representative, indicating that she was God's Divine Favor Ministries' representative. N.T. 8/18/20 at 139-140; ODC-47 at 2.

117. By letter to God's Divine Favor Ministries dated August 24, 2017, the IRS enclosed an Information Request and indicated that a response was due by September 21, 2017.

118. Respondent received a copy of this letter from the IRS.

119. Respondent's testimony that the IRS' August 24, 2017 Information Request "did not come to [her] office" was not credible. N.T. 8/18/20 at 42, 138-140; Ans. at § 104; ODC-51 at 5; ODC-58 at 4.

120. By letter to Mr. Dukuly dated September 15, 2017, Respondent advised that God's Divine Favor Ministries' Articles of Incorporation would need to be amended, at a "total cost" of three hundred dollars (\$300.00) and that Mr. Dukuly had an outstanding balance of one hundred and eighty dollars (\$180.00). Respondent further advised that "[t]he total balance of **Four Hundred and Eighty Dollars (\$480.00)** will

need to be paid in full prior to use [sic] completing the IRS's [sic] request for additional information" (emphasis in original).

121. By check dated September 24, 2017, Mr. Dukuly paid Respondent four hundred and eighty dollars (\$480.00).

122. Respondent failed to deposit this advance payment into a trust account or IOLTA.

123. Respondent failed to obtain Mr. Dukuly's informed consent, confirmed in writing, to not maintain this advance payment in a trust account or IOLTA.

124. In September 2017, Mr. Dukuly called Respondent several times regarding the IRS' Information Request.

125. Respondent failed to answer or return Mr. Dukuly's calls.

126. On October 23, 2017, Respondent faxed an untimely response to the IRS' Information Request.

127. By letter to God's Divine Favor Ministries dated November 3, 2017, the IRS advised that they "didn't receive the additional information [they] requested," and that they had "closed [the] case without making a determination."

128. By letter to Respondent dated June 18, 2018, Disciplinary Counsel requested Respondent's Statement of Position regarding allegations that she, *inter alia*, failed to deposit Mr. Dukuly's advance payments into a trust account or IOLTA.

129. By letter to Disciplinary Counsel dated October 31, 2018, Respondent, through counsel, provided her Statement of Position.

130. Respondent conceded in her Statement of Position that she failed to deposit Mr. Dukuly's advance payments into a trust account or IOLTA.

131. Respondent testified that she returned “some” of Mr. Dukuly’s legal fees to him. N.T. 8/18/20 at 50, 51.

James Webb/Peter Tecco

132. On June 16, 2017, Chhay Laim filed a Landlord/Tenant Complaint against James Webb and Peter V. Tecco, Sr., in Magisterial District Court 32-2-40 (Delaware County) (hereinafter the “Eviction Proceedings”).

133. On June 22, 2017, JW Hot Heads-Peter V. Tecco, Sr., filed a civil complaint against Mr. Laim in Magisterial District Court 32-2-40 (Delaware County) (hereinafter the “Civil Proceedings”).

134. On July 19, 2017, judgment was entered in Mr. Laim’s favor in the Eviction Proceedings and in the Civil Proceedings.

135. Mr. Webb and Mr. Tecco hired Respondent to represent JW Hot Heads, a business that they were operating out of the property that was the subject of the Eviction Proceedings.

136. By check dated July 31, 2017, Mr. Tecco paid Respondent one thousand five hundred dollars (\$1,500.00).

137. Respondent failed to deposit this advance payment into a trust account or IOLTA.

138. Respondent failed to obtain Mr. Tecco’s informed consent, confirmed in writing, to not maintain this advance payment in a trust account or IOLTA.

139. Respondent failed to obtain Mr. Webb’s informed consent, confirmed in writing, to not maintain this advance payment in a trust account or IOLTA.

140. Mr. Webb paid Respondent an additional one hundred dollars (\$100.00) in cash.

141. Respondent failed to deposit this advance payment into a trust account or IOLTA.

142. Respondent failed to obtain Mr. Webb's informed consent, confirmed in writing, to not maintain this advance payment in a trust account or IOLTA.

143. Respondent failed to obtain Mr. Tecco's informed consent, confirmed in writing, to not maintain this advance payment in a trust account or IOLTA.

144. On August 17, 2017, Respondent filed a Notice of Appeal from Magisterial District Judge Judgment on behalf of Mr. Tecco and Mr. Webb (hereinafter the "Notice of Appeal"), appealing the July 19, 2017 judgments entered in the Eviction Proceedings and the Civil Proceedings to the Court of Common Pleas of Delaware County (hereinafter the "Common Pleas Proceedings").

145. Respondent failed to file a proof of service with the Office of Judicial Support demonstrating that the Notice of Appeal and accompanying rule to file complaint had been served on Mr. Laim.

146. On September 1, 2017, Andrew Goldberg, Esquire filed a Praecipe to Strike Appeal from District Justice Judgment in the Common Pleas Proceedings, asserting that Respondent had failed to comply with Pa.R.C.P.M.D.J. 1005B.

147. On September 1, 2017, the appeal was stricken.

148. Respondent failed to advise Mr. Tecco or Mr. Webb that the appeal had been stricken.

149. Respondent made no attempt to reinstate the Common Pleas Proceedings.

150. By letter to Respondent dated July 12, 2018, Mr. Webb requested a refund of Mr. Tecco's one thousand five hundred dollar (\$1,500.00) payment.

151. Respondent failed to respond to this letter.

152. Respondent failed to refund any portion of the advance payment.

153. By letter to Respondent dated September 17, 2018, Disciplinary Counsel requested Respondent's Statement of Position regarding allegations that she, *inter alia*, failed to refund any portion of Mr. Webb's and Mr. Tecco's advance payments.

154. By letter to Disciplinary Counsel dated October 31, 2018, Respondent, through counsel, provided her Statement of Position and asserted, *inter alia*, that she was "addressing the refund at this time."

155. Respondent conceded that she failed to deposit Mr. Tecco's and Mr. Webb's advance payments into a trust account or IOLTA.

156. By letter to Mr. Webb and Mr. Tecco dated November 8, 2018, Respondent through counsel provided a refund check in the amount of one thousand five hundred dollars (\$1,500.00), drawn against the TD Bank IOLTA. N.T. 7/31/20 at 27.

157. On or before November 8, 2018, Respondent deposited one thousand five hundred dollars (\$1,500.00) into the TD Bank IOLTA.

158. On November 19, 2018, James Webb filed a civil complaint against Respondent in Magisterial District Court 32-3-54 (Delaware County), alleging that Respondent "failed to provide competent and skillful representation." ODC-60A at 2; ODC-61C at 1.

159. On March 20, 2019, judgment was entered in Mr. Webb's favor and against Respondent in the amount of twelve thousand one hundred seventy-one dollars and seventy-five cents (\$12,171.75). ODC-60B.

160. On April 17, 2019, Respondent filed a Notice of Appeal from Magisterial District Judge Judgment in the Court of Common Pleas of Delaware County,

docketed at CV-2019-003420. ODC-61A; ODC-61B. This action remains pending. ODC-61A.

161. Mr. Webb testified at the disciplinary hearing that the adverse decision in the landlord/tenant matter had a substantial adverse impact on his business and finances. N.T. 7/31/20 at 28-29.

Additional Findings

162. Respondent failed to appear for the February 28, 2020 prehearing conference.

163. Respondent failed to provide Petitioner with the financial net worth statement set forth in Disciplinary Board Rules § 89.151(b)(6) on or before March 13, 2020, as directed by the March 2, 2020 Pre-Hearing Order. Pre-Hearing Order I at ¶ 9; ODC-66 (July 24, 2020 Personal Net Worth Statement).

164. Respondent failed to provide Petitioner with the financial net worth statement set forth in Disciplinary Board Rules § 89.151(b)(6) on or before June 18, 2020, as directed by the June 4, 2020 Pre-Hearing Order. Pre-Hearing Order II at ¶ 10; ODC-66 (July 24, 2020 Personal Net Worth Statement).

165. Respondent failed to disclose in her July 24, 2020 verified Personal Net Worth Statement an outstanding fine in the amount of \$2,000.00 imposed by the Municipal Court of Philadelphia County. ODC-64; ODC-66.

166. During the relevant time frame, Respondent was assisting in the care of senior citizens in her community with various health issues and limitations. N.T. 8/18/20 at 93-95.

167. During the relevant time frame, Respondent was the custodian of a

foreign exchange student from Taiwan. This student made threats to perpetrate shootings at various schools in Delaware County, resulting in widespread media attention, involvement by the Upper Darby, Pennsylvania police and the Federal Bureau of Investigation, and Respondent's arrest at an airport in Atlanta, Georgia. N.T. 8/18/20 at 97-98.

168. The exchange student was determined to have stockpiled ammunition in Respondent's home, unbeknownst to Respondent, resulting in the student's arrest and eventual deportation to Taiwan. N.T. 8/18/20 at 98-99.

169. Respondent was not charged with any criminal conduct as a result of the incident involving the foreign exchange student. *Id.*

170. Respondent attributes her failure to properly comply with her professional obligations to being overwhelmed:

Q. And one of the big questions, perhaps. Why did you – why didn't you take your money out of the IOLTA account when you earned the money?

A. Again, if you notice, most of that happened in 2016, 2017. And, again, that was when my plate was just filled. And once the distribution was done, I left my funds there and used it to operate my office in a way of a control mechanism. So I would take what I need when I didn't need it. (Sic) We no -- I no longer do that. Like I said, we have the new IOLTA ledger that's created. So it's just taken out. The file is closed. The ledger is complete. And we just move on, and I don't go back and forth and do that anymore.

Because that can lead to problems. So I should not be doing that, and I don't do it anymore. But that's why. There was just so much on my plate at that time, and I used that as a gauge in terms of running the office, just taking the money when I needed, to make sure things were taken care of. Because I was always being called to do something for someone outside of the office.

N.T. 8/18/20 at 101, 108-09.

171. Respondent admits that she did not respond to the March 30, 2017 letter from Disciplinary Counsel requesting that she produce records and ledgers; her explanation for failing to respond in any way is that she did not have the ledgers requested. N.T. 8/18/20 at 146-49.

172. Respondent introduced the testimony of five character witnesses.

173. Betty Simon, Esquire has been an attorney in Pennsylvania since 1983 and is the director of program operations for Northwest Counseling Services. N.T. 7/31/20 at 69.

174. Ms. Simon has known Respondent for approximately 15 years and has both consulted with Respondent and observed her legal work. N.T. 7/31/20 at 70.

175. Ms. Simon testified that Respondent enjoys a positive reputation in the legal community. N.T. 7/31/20 at 71-73.

176. Ms. Simon had a general awareness of most of the allegations of misconduct against Respondent and testified that isolated incidents “may give [her] pause, but it would not change my whole opinion of [Respondent’s] reputation.” N.T. 7/31/20 at 78.

177. Kenneth Robinson, Esquire has known Petitioner since the 1990s and practiced law in the same office building during the mid-1990s. N.T. 7/31/20 at 84.

178. Mr. Robinson testified that Respondent has a reputation for being law-abiding, truthful and “a very good lawyer.” N.T. 7/31/20 at 85.

179. Mr. Robinson acknowledged that he was not aware of a number of the factual allegations against Respondent and noted that Respondent tends to be “careless.” N.T. 7/31/20 at 89-91.

180. Jerry Yogboh is Respondent's former client. He testified that Respondent has a "great" reputation in the community, including in her capacity as advisor to the Liberian Association in Pennsylvania. N.T. 7/31/20 at 144, 149.

181. Mr. Yogboh testified to a lack of knowledge of most of the misconduct allegations in the instant matter. N.T. 7/31/20 at 152.

182. Ayiesha Eldemire has been Respondent's legal assistant since approximately February or March 2020. N.T. 7/31/20 at 124, 126.

183. Ms. Eldemire created documents and spreadsheets to assist Respondent's office to operate smoothly, including ledgers pertaining to the IOLTA account. N.T. 7/31/20 at 125, 130.

184. Ms. Eldemire acknowledged that she had not reviewed the Petition for Discipline and was unaware of the allegations of misconduct against Respondent. N.T. 7/31/20 at 137-138.

185. Mariam Ives testified on Respondent's behalf and has known Respondent since 2010. Ms. Ives testified that Respondent has a reputation in the community as being loyal, truthful and honest. N.T. 7/31/20 at 114-115.

186. Ms. Ives was aware of some but not all of the allegations of misconduct against Respondent and testified that even in light of those allegations, she would still refer a legal matter to Respondent. N.T. 7/31/20 at 118 -121.

187. Respondent's character witnesses testified sincerely and credibly, although most were unaware of the extent of Respondent's disciplinary issues.

188. Respondent presented the testimony of Dr. Fatima Hafz as a purported expert.

189. Dr. Hafz described herself as an "expert" in providing "support,"

which she stated was “listening to people, and supporting them around challenges they’re having with their work-related environment, with the personal environment, personal life.” N.T. 7/31/20 at 48.

190. Dr. Hafz is not licensed to practice psychiatry or psychology and admitted that she is not a mental health expert and is not qualified to diagnose psychiatric disorders. N.T. 7/31/20 at 56-57, 59-62, 65-66.

191. The Committee ruled that Dr. Hafz could not be qualified as an expert, but her testimony would be received only “as it relates to support determination.” N.T. 7/31/20 at 66.

192. The essence of Dr. Hafz’s testimony was that Respondent had “personal issues happening that didn’t allow her to be focused.” The most Dr. Hafz could state was that she believed Respondent could benefit from clinical mental health support. N.T. 7/31/20 at 100, 102.

193. Dr. Hafz refused to answer questions on cross-examination regarding the services she provided to Respondent and the fees charged for same. N.T. 7/31/20 at 108-109.

194. The Committee found that Dr. Hafz’s credibility was “seriously undermined” by her “unjustified” refusal to answer a relevant question in the absence of any objection. HC Report pp. 20-21, n. 9.

195. Respondent testified on her own behalf.

196. Respondent was not credible in all instances, particularly with respect to her denial of serving as counsel for Glenn Ross, her denial of receiving notification from the IRS, and her explanation for the presence of \$10,000 in escrowed funds in her account for more than a decade.

197. Respondent, while not credible on these points, did not intentionally provide false testimony or intentionally mislead the Committee.

198. Respondent failed to demonstrate sufficient recognition of wrongdoing and contrition for her acts of misconduct.

III. CONCLUSIONS OF LAW

1. All allegations in the Petition for Discipline are deemed admitted due to Respondent's failure to file a timely response. Pa.R.D.E. 208(b)(3).

2. Respondent failed to establish by clear and convincing evidence that she suffers from a psychiatric disorder that was a causal factor in her misconduct. **Office of Disciplinary Counsel v. Seymour Braun**, 553 A.2d 894 (Pa. 1989).

3. By her conduct as set forth above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

a. RPC 1.1 – A lawyer shall provide competent representation to a client. (Dukuly, Webb/Tecco)

b. RPC 1.2(a) – A lawyer shall abide by a client's decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the

client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(Webb/Tecco)

c. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client. (Dukuly, Webb/Tecco)

d. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

(Webb/Tecco)

e. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter. (Webb/Tecco)

f. RPC 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information. (Dukuly)

g. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (Webb/Tecco)

h. RPC 1.4(c) - A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client. (Taylor)

- i. RPC 1.15(b) – 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. (IOLTA Accounts, Dukuly, Webb/Tecco)
- j. RPC 1.15(c)(2) and (4) – 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 retain books and records for each Trust Account and for any other account in which Fiduciary Funds are held as set forth in this rule. (IOLTA Accounts)
- k. RPC 1.15(e) – Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third party, 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. (Webb/Tecco)
- l. RPC 1.15(h) – 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. (IOLTA Accounts)
- m. RPC 1.15(i) – A lawyer shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a difference manner. (Dukuly, Webb/Tecco)

- n. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. (Taylor, Webb/Tecco)
- o. Pa.R.D.E. 203(b)(3) – Willful violation of any other provisions of the Enforcement Rules shall be grounds for discipline. (IOLTA Accounts)
- p. Pa.R.D.E. 203(b)(7) - Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules § 87.7(b) for a statement of the respondent-attorney’s position shall be grounds for discipline. (IOLTA Accounts)
- q. Pa.R.D.E. 222(g)(1) – The records required to be maintained by RPC 1.15 shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security and Office of Disciplinary Counsel in a timely manner upon request or demand by either agency, made pursuant to the rules. (IOLTA Accounts)

IV. DISCUSSION

In this matter, the Board considers the Committee's unanimous recommendation to suspend Respondent for a period of one year and one day. Respondent takes exception to this recommendation, contending that the Committee erred in concluding that Respondent's misconduct warrants a sanction requiring suspension of her license to practice law. Petitioner advocates for the Board's adoption of the Committee's recommended discipline.

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). Petitioner personally served Respondent with the Petition for Discipline; however, Respondent failed to file a timely Answer to the Petition for Discipline. Pursuant to Pa.R.D.E. 208(b)(3), factual allegations in the Petition are deemed admitted if an answer is not timely filed. Further, from the evidence adduced at the hearing, sufficient factual support exists to establish by clear and satisfactory evidence that Respondent committed professional misconduct. Upon this record, we conclude that Petitioner met its burden as to each rule violation charged in the Petition. For the following reasons, we recommend that Respondent be suspended for a period of one year and one day.

The record demonstrates that Respondent's misconduct may be categorized as a pattern of deficient representation in client matters, and a pattern of nonconformance to the financial recordkeeping and accounting requirements imposed by the rules with respect to handling the funds of others and safekeeping property.

Respondent exhibited incompetence, lack of diligence, and lack of communication in her representation of clients. Respondent's inattention needlessly delayed the IRS' determination of God's Divine Favor Ministries' claim for tax-exempt status. In May 2017, Respondent filed a Form 1023 with the IRS on behalf of her client. She simultaneously filed a form indicating that she was God's Divine Favor Ministries' representative. In August 2017, the IRS issued an Information Request regarding the Form 1023, a copy of which was sent directly to Respondent, requiring a response by September 21, 2017. Respondent disregarded several requests for information from Mr. Dukuly, on behalf of God's Divine Favor Ministries, including calls in September 2017 when the response to the IRS' Information Request was due. Despite Mr. Dukuly's calls, Respondent failed to respond timely to the Information Request, instead submitting a response more than a month after it was due. As a result of Respondent's failure to respond timely to this Information Request, the IRS closed God's Divine Favor Ministries' case. Respondent claimed that she did not receive the Information Request from the IRS, but the evidence established that she did.

Respondent's deficient representation of James Webb and Peter Tecco put her clients out of court. Mr. Webb and Mr. Tecco retained Respondent to appeal a magistrate judgment granting their landlord possession of the property from which they operated their barber shop. Respondent filed a Notice of Appeal from that judgment in the Court of Common Pleas of Delaware County, but thereafter failed to serve a copy on the landlord or file the necessary proof of service. The appeal was stricken due to Respondent's laxness and thereafter, Respondent failed to take any action to reinstate the appeal, nor did she advise her clients that the appeal had been stricken.

In both the Dukuly and Webb/Tecco matters, Respondent accepted advance payments of legal fees that she failed to maintain in a trust account or IOLTA until earned. At the hearing, Respondent attempted to classify the payments as nonrefundable retainers, but she was not able to corroborate this position. Respondent belatedly refunded the full amount of the monies to her clients in the Webb/Tecco matter after she was notified of Petitioner's investigation of the complaint filed against her.¹ As to the Dukuly matter, Respondent testified that she believed "some of [Dukuly's] legal fees were returned to him." N.T. 8/18/20 at 51. Respondent did not offer documentary evidence corroborating her testimony.

In the Glenn Ross matter, Respondent failed to communicate to her client in writing that she did not maintain professional liability insurance and failed to promptly turn over Mr. Ross' file to Attorney Taylor when her representation was terminated. Although Respondent claimed she never represented Mr. Ross, her own files demonstrated otherwise.

Respondent's inattention and carelessness had serious consequences in the administration of her practice and was at the heart of her fiduciary and recordkeeping misconduct. The evidence established that Respondent failed to comply fully with her duties under RPC 1.15 and engaged in a pattern of failure to conform to financial recordkeeping and accounting obligations imposed by the rules. She admitted that she failed to withdraw promptly from the TD Bank IOLTA, funds to which she was entitled in connection with several client matters, testifying that "I didn't take all my money at once, because sometimes I would just leave it there." N.T. 8/18/20 at 169-170. Respondent's

¹ Respondent issued the refund against the TD Bank IOLTA, even though she had never deposited the Webb/Tecco advance payments into a trust account or IOLTA.

failure to withdraw earned funds resulted in her personal funds being commingled with the funds of others. As discussed above, in another instance of inattention to her fiduciary duties, Respondent accepted advance payments of legal fees and improperly failed to maintain them in trust until earned.

Respondent failed to maintain individual client ledgers or conduct monthly reconciliations, in violation of RPC 1.15. These failures contributed to Respondent's woes, as she had no way to determine with any accuracy what funds belonged to which client. Troublingly, in a real estate matter where Respondent served as an escrow agent, she has continued to hold \$10,000 for more than a decade. The transaction was never completed because the seller was unable to deliver clear title. However, over the course of the decade, Respondent has never distributed the funds, or any portion thereof. Although Respondent explained her confusion as to who was entitled to the funds, the record was devoid of evidence to establish that she made a good faith effort during the ten year period to dispel that confusion. While acknowledging that she still holds the \$10,000, Respondent indicated that recently she had received advice from legal counsel regarding disposition of the monies and planned to turn over the monies to the City of Philadelphia.

Even though Respondent knew she was responsible for holding \$10,000 inviolate until settlement, she conceded that at some point in time, "the money became less than it was supposed to be" and she replenished it after realizing her accounting was "off" and "At some point, I screwed up the account, yes." Respondent testified that she always knew "in my head" that \$10,000 was supposed to be in trust. N.T. 8/18/20 at 184-186. As Petitioner correctly points out, if Respondent had been maintaining her records

as required pursuant to RPC 1.15(c), she would have been in a better position to ascertain why her IOLTA was out of trust.

As relates to Respondent's records, Respondent was put on notice by Petitioner on five occasions between January 2017 and September 2017 that she was under investigation for apparent IOLTA misuse and was directed to produce her financial records. During that time frame, Respondent replied to three of Petitioner's letters, but failed to produce RPC 1.15 records in accordance with Petitioner's directives. The August 2017 letter requested a statement of Respondent's position with regard to her failure to comply with Petitioner's repeated demands for her financial records. While Respondent replied to that letter, she did not respond to the allegations contained therein, stating that she wanted to "reserve her rights to respond." Respondent continued to frustrate Petitioner's efforts to review her records by simply ignoring two of the five letters. In fact, Respondent never produced any records until subpoenaed in October 2017, which records contained inaccuracies. ODC-30; ODC-31. At the hearing, Respondent and her legal assistant testified that Respondent now maintains records that purportedly comply with RPC 1.15(c). However, despite knowing that Petitioner had sought these records since 2017 and had been dissatisfied with the records that were eventually produced, Respondent unaccountably did not introduce the purported compliant records into evidence.

The record demonstrates that the inattention and carelessness exhibited by Respondent in her legal practice seeped into her handling of the instant disciplinary matter. As described above, she failed to produce records in response to Petitioner's multiple requests until subpoenaed to do so, failed to respond consistently to Petitioner's correspondence, and failed to provide a reply to Petitioner's request for a statement of

position, which failure resulted in her violation of Pa.R.D.E. 203(b)(7). Respondent also failed to file a timely reply to the Petition for Discipline and failed to appear at the prehearing conference. Notwithstanding these acts that served to hamper Petitioner's investigation of her misconduct, Respondent has the temerity to request mitigation for cooperation, which request we reject based on Respondent's dismal history of noncompliance with her professional responsibilities in this disciplinary matter.

Petitioner raised the issue of Respondent's credibility as an aggravating factor, arguing that her sworn testimony was false and that she resorted to lying, particularly with regard to whether she had represented Glenn Ross, whether the IRS' Information Request pertaining to God's Divine Favor Ministries had been sent to her, and her reasons for holding \$10,000 in escrowed funds for more than a decade. While finding that Respondent's testimony on the above issues "strained credulity," the Committee refrained from finding that Respondent engaged in falsities during her sworn testimony. We rely on the Committee's findings as to Respondent's credibility and upon review of the record, will not disturb these findings.

In mitigation, Respondent recognized that she committed misconduct, although we find as did the Committee, that her acknowledgement of wrongdoing and remorse for her acts is somewhat tempered by assertions in her brief that she has been unfairly treated in the disciplinary process. To the contrary, it appears that Respondent has been afforded ample opportunity to present her case.

In further mitigation, we consider Respondent's blemish free record of discipline in the Commonwealth since her admission in 1995. We also give partial weight to Respondent's evidence that during the relevant time period, she was overwhelmed by personal circumstances that diverted her attention from her law practice. Respondent

dealt with a bizarre situation where the foreign exchange student she hosted in her home stockpiled ammunition in the home, unbeknownst to Respondent, and made threats to perpetrate shootings at Delaware County schools. This event triggered widespread media attention, involvement by the authorities, and Respondent's arrest. Respondent was not charged with any criminal conduct. Additionally, Respondent related that she was the caretaker for three senior citizens with various health issues.

Respondent attempted to present the expert testimony of Dr. Hafz with regard to the stressors in her life; however, the Committee determined that Dr. Hafz was not qualified to offer expert testimony in the mental health field. Nevertheless, over Petitioner's objection, the Committee allowed Dr. Hafz's testimony as it related to providing support to Respondent. Viewing this testimony, it does no more than reiterate Respondent's contention that she was overwhelmed and could not focus on her practice, and does not approach the requisite legal standard to establish a causal factor in the misconduct at issue. ***Office of Disciplinary Counsel v. Seymour Braun***, 553 A.2d 894 (Pa. 1989).

Respondent called a series of witnesses to testify as to her reputation. These witnesses were sincere and credible, but each conceded their lack of awareness of some or most of Respondent's professional difficulties. This lack of knowledge undermines the weight of the character testimony. When Petitioner brought the allegations of misconduct to the witnesses' attention, Attorney Robinson noted that Respondent tended to be "careless," while Attorney Simon stated that isolated incidents might give her pause, although she further testified such incidents would not change her overall opinion of Respondent's reputation. N.T. 7/31/20 at 78, 89-91.

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. It is well-established that in evaluating professional discipline, each case must be decided on the totality of its particular facts and circumstances. **Office of Disciplinary Counsel v. Robert Lucarini**, 472 A.2d 186 (Pa. 1983). 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.”

An examination of prior similar matters reveals that a suspension for one year and one day is appropriate where an attorney engages in incompetent representation in client matters, fails to communicate, fails to promptly return unearned fees and return client files, disregards fiduciary obligations and recordkeeping requirements, and fails to respond to Office of Disciplinary Counsel’s request for statement of position. See **Office of Disciplinary Counsel v. Tangie Marie Boston**, 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/12/2020) (suspended for one year and one day for multiple instances of client neglect, failure to communicate, failure to protect a client’s interests, and conduct prejudicial to the administration of justice, no prior discipline); **Office of Disciplinary Counsel v. Douglas Andrew Grannan**, No. 197 DB 2016 (D. Bd. Rpt. 4/3/2019) (S. Ct. Order 7/9/2019) (suspended for one year and one day for neglect of seven client matters, incompetence, lack of diligence, failure to communicate, failure to return client files, and conduct prejudicial to the administration of justice, no prior discipline, no remorse or acceptance of responsibility); **Office of Disciplinary Counsel v. Sterling Artist**, No. 153 DB 2005 (D. Bd. Rpt. 4/27/2007) (S.

Ct. Order 7/18/2007) (suspended for one year and one day for neglect and incompetence in three client matters, lack of communication, failure to return client files, misrepresentation, admitted wrongdoing, no prior discipline).

Respondent's contention that a public reprimand is appropriate discipline is not consistent with the case precedent. A comprehensive review of prior matters indicates that standing alone, attorneys who have engaged in IOLTA misuse have been publicly reprimanded for those acts, See, **Office of Disciplinary Counsel v. Richard Patrick Gainey**, No. 160 DB 2018 (D. Bd. Order 4/15/2020) (public reprimand to address mishandling of IOLTA account for one year and failure to maintain required RPC 1.15 records, sincere remorse, credible evidence of remedial steps to address future mismanagement, no prior discipline); **Office of Disciplinary Counsel v. Clair Michelle Stewart**, No. 228 DB 2018 (D. Bd. Order 12/21/2018) (public reprimand imposed for mishandling estate funds and mishandling IOLTA and failure to comply with RPC 1.15, cooperated with Office of Disciplinary Counsel, no prior discipline).

Here, the circumstances of Respondent's misconduct include not only IOLTA deficiencies, but multiple acts of client neglect that reflect Respondent's insufficient grasp on the necessity of proper attention to client matters, failure to promptly refund unearned fees and return client files, and failure to respond to Petitioner's request for a statement of position. This misconduct, aggravated by Respondent's incredible testimony regarding certain aspects of her culpability, lack of cooperation in the early stages of this disciplinary proceeding, and underwhelming expressions of remorse, requires discipline more severe than a reprimand.

Likewise, Respondent's recommendation of a stayed suspension with probation must be rejected as inappropriate to address the circumstances of the instant

matter. Probation allows an attorney to continue practicing law and holding herself out to the public for the provision of legal services, while adhering to specific conditions set forth in the probation order. See, Disciplinary Board Rules § 89.291. Before recommending that the Court impose probation, the Board must be satisfied that a respondent-attorney will comply with conditions attached to probation; otherwise, the public may be at risk of deficient representation. See, **Office of Disciplinary Counsel v. Anthony Charles Mengine**, No. 66 DB 2017 (D. Bd. Rpt. 9/24/2019) (S. Ct. Order 11/26/2019) (Mengine suspended for a period of two years, nine months stayed and fifteen months on probation for financial improprieties including misuse of his IOLTA account; Mengine made “concerted efforts” to organize his law firm to provide oversight and accountability of financial matters, and he “exhibited a full understanding of the steps he needed to take to align his conduct with professional standards.” Board Report at p. 56.)

Respondent’s interactions with the disciplinary system in this matter do not inspire confidence that she will adhere to the detailed requirements of probation. Respondent has a demonstrated record of noncompliance, in that she failed to produce requested financial records, failed to respond to Petitioner’s request for a statement of her position vis á vis the allegations of misconduct, failed to file a timely answer to Petition for Discipline, and failed to appear at the prehearing conference. Respondent’s testimony as to steps she has taken to remediate her recordkeeping issues was underwhelming and did little to establish that she has a full understanding of how to comply with RPC 1.15. Given this background, we conclude that probation is not appropriate. See, **Office of Disciplinary Counsel v. John A. Gallagher**, No. 65 DB 2019 (D. Bd. Rpt. 9/29/2020) (S. Ct. Order 1/22/2021) (recommendation for probation rejected based on respondent-

attorney's pattern of noncompliance with ethical rules and regulations and lack of compelling evidence demonstrating that he had remediated his practice problems).

Respondent has displayed her unfitness to practice law by her deficient representation of clients, mismanagement of her IOLTA, lackadaisical recordkeeping and lack of cooperation in these disciplinary proceedings. Application of the precedent to the totality of the facts and circumstances leads the Board to conclude that a one year and one day period of suspension, as recommended by the Committee, is consistent and appropriate. This sanction fulfills the predominant mission of the disciplinary system to protect the public, as it requires Respondent to undergo the reinstatement process to ensure her fitness to practice.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Valerie Andrine Hibbert, be suspended for one year and one day 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: 
Hon. Eugene F. Scanlon, Jr., Member

Date: 02/17/2021