IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 1882 Disciplinary Docket No. 3
v.	:	No. 256 DB 2010
PICARD LOSIER, Respondent	:	Attorney Registration No. 35550 (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 3rd day of January, 2013, there having been filed with this Court by Picard Losier his verified Statement of Resignation dated November 6, 2012, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of Picard Losier is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 1/3/2013

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1882 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 256 DB 2010
v.	:	
	:	Attorney Registration No. 35550
PICARD LOSIER	:	
Respondent	:	(Philadelphia)

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner	:	No. 1882 Disc. Dkt. No. 3
v.	:	
	:	No. 256 DB 2010
	:	
	:	Atty. Reg. No. 35550
PICARD LOSIER,	:	
Respondent	:	(Philadelphia)

RESIGNATION
UNDER Pa.R.D.E. 215

Picard Losier, Esquire, hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215 ("Enforcement Rules") and further states as follows:

1. He was admitted to the bar of the Commonwealth of Pennsylvania on December 9, 1981. His attorney registration number is 35550.

2. He desires to submit his resignation as a member of said bar.

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

4. He is aware that there is presently pending a

disciplinary proceeding involving allegations that he has been guilty of misconduct, the nature of which allegations have been made known to him by his receipt and review of the Petition for Discipline ("the Petition") filed with the Disciplinary Board Secretary's Office on December 22, 2010, docketed at 256 DB 2010, and three days of hearing concerning the Petition held on April 27, 2011, July 19, 2011, and August 29, 2011.

5. He acknowledges that on October 10, 2012, the Disciplinary Board issued its Report and Recommendations ("the Board Report"), in which the Disciplinary Board unanimously recommended to the Supreme Court of Pennsylvania that he be disbarred. A true and correct copy of the Board Report is attached hereto, made a part hereof, and marked "Exhibit A."

6. He acknowledges that the material facts and legal conclusions as contained in Exhibit A are true.

7. He submits the within resignation because he knows that he could not and cannot successfully defend himself against the allegations of professional misconduct set forth in Exhibit A.

8. He is fully aware that the submission of this Resignation Statement is irrevocable and that he can only apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b) and (c).

9. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted with and acted upon the advice of counsel, Brian E. Quinn, Esquire, in connection with his decision to execute the within resignation.

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

Signed this 6TH day of NOVEMBER, 2012.

Picard Losier, Esquire

WITNESS: Brian E. Quinn

Brian E. Quinn, Esquire
Counsel for Respondent

EXHIBIT A

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 256 DB 2010
v.	:	Attorney Registration No. 35550
PICARD LOSIER Respondent	:	(Philadelphia)

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

On December 22, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Picard Losier. The Petition charged Respondent with violations of the Rules of Professional Conduct arising from allegations that he commingled and converted funds arising out of his representation of a client, and improperly used his escrow account as an attorney account. Respondent filed an Answer to Petition on February 14, 2011.

A disciplinary hearing was held on April 27, July 19, and August 29, 2011, before a District I Hearing Committee comprised of Chair Jonathan W. Hugg, Esquire, and Members Amy C. Lachowicz, Esquire, and Kevin F. Berry, Esquire. Respondent was represented at the hearing by Samuel C. Stretton, Esquire.

Prior to the first hearing, Joint Stipulations of Fact and Law were submitted to the Hearing Committee. At the hearing on April 27, 2011, Petitioner presented the testimony of three witnesses and introduced one exhibit. Respondent called 21 character witnesses, the testimony of a forensic psychologist, and introduced four exhibits. At the hearing on July 19, 2011, Respondent concluded the testimony of his forensic psychologist and presented the testimony of his treating psychiatrist and his own testimony. Respondent introduced three exhibits. Petitioner introduced three exhibits. At the hearing on August 29, 2011, Respondent and his psychologist concluded their testimony and Respondent introduced one exhibit. Petitioner presented the testimony of an auditor and introduced five exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 20, 2012, concluding that Respondent violated the Rules of Professional Conduct as contained in the Petition for Discipline, and recommending that Respondent be disbarred.

Respondent's counsel withdrew his appearance on February 2, 2012, and Brian E. Quinn, Esquire entered his appearance on behalf of Respondent on February 14, 2012.

Respondent filed a Brief on Exceptions and request for oral argument on March 12, 2012.

Petitioner filed a Brief Opposing Exceptions on April 2, 2012.

Oral argument was held on May 16, 2012 before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on May 23, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

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

2. Respondent is Picard Losier. He was born in 1953 and was admitted to practice law in the Commonwealth in 1981. His office is located at 1518 Walnut Street, Suite 807, Philadelphia, PA 19102-3408. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of professional discipline in Pennsylvania.

4. A Joint Stipulation of Fact and Law was entered into by the parties and is the basis for Findings of Fact 5 – 68.

Howell Matter

5. Respondent represented Harry Howell in his claim for workers' compensation benefits for work-related injury he suffered on October 18, 1984, while employed at Crown Paperboard Company.

6. PMA was the carrier for Crown.

7. Mr. Howell was awarded workers' compensation benefits and was paid benefits through sometime in 1997.

8. On July 24, 1997, Respondent filed on behalf of Mr. Howell a Reinstatement Petition, alleging that Mr. Howell became re-disabled as of May 3, 1997.

9. On October 16, 2001, Mr. Howell died intestate. Bernice Howell, his mother, was the beneficiary of the estate.

10. Alfonso Asber, Mr. Howell's brother, filed with the Register of Wills for Philadelphia County a Petition for Grant of Letters of Administration for the Howell Estate, which petition was granted.

11. By decision dated August 27, 2002, Workers' Compensation Judge Thomas J. Hines granted the Reinstatement Petition. He ordered Crown to reinstate Mr. Howell's disability benefits at a weekly rate of $254.36, with credit for partial benefits paid to Mr. Howell, and ordered Crown to pay 20% of the award as a counsel fee to Respondent.

12. Respondent received the Decision.

13. Crown filed a Petition for Supersedeas with the Appeal Board.

14. By letter dated September 25, 2002, sent to Respondent by regular mail, Gayle Frink Johnson, Esquire:

a. Reminded Respondent that she was the attorney representing Crown and PMA;

b. Informed Respondent that an appeal had been filed from the August 27, 2002 Decision;

c. Stated that she understood that Mr. Howell was no longer residing at 706 N. Preston Street in Philadelphia; and

d. Requested that Respondent provide a new address for Mr. Howell so that checks could be mailed directly to Mr. Howell.

15. By Order dated October 16, 2002, the Appeal Board denied the Supersedeas Petition.

16. From November 2002 through April 2003, Respondent received eight checks made payable to "Harry Howell" from PMA that totaled $101,131.33.

17. On January 27, 2003, Respondent opened an account with Hudson United Bank titled "Harry Howell, PICARD LOSIER, ESCROW AGENT."

18. Respondent had sole signature authority for the escrow account.

19. Respondent deposited the eight checks he received from PMA into the escrow account.

20. From November 2002 through April 2003, Respondent received eight checks from PMA as a counsel fee that totaled $25,210.29.

21. Respondent negotiated the checks and expended those funds.

22. By letter dated February 4, 2003, sent to Respondent by regular mail, Ms. Johnson stated that she understood that Mr. Howell was no longer residing at 706 N. Preston Street in Philadelphia and requested that Respondent provide a new address for Mr. Howell so that checks could be mailed directly to Mr. Howell.

23. By letters dated February 13, 2003 and March 3, 2003, sent to Respondent by regular mail, Ms. Lillian Carpenter, an employee with IMX Medical Management Services, advised Respondent of the date and location of an Independent Medical Evaluation for Mr. Howell.

24. Respondent received those letters.

25. On April 8, 2003, Ms. Bernice Howell died. On some unknown date, Respondent obtained a pamphlet that was distributed at Ms. Howell's funeral service.

26. On or about April 11, 2003, Ms. Johnson spoke with Respondent by telephone and advised him that PMA had recently obtained information indicating that Mr. Howell had died on October 16, 2001.

27. Respondent told Ms. Johnson that he was unable to confirm that Mr. Howell had died.

28. By letter dated May 2, 2003, sent to Respondent by regular mail, Ms. Johnson enclosed a copy of Mr. Howell's Certificate of Death and requested that Respondent contact her.

29. Respondent received Ms. Johnson's letter.

30. The Death Certificate provided Mr. Howell's last known address at 4129 Ogden Street in Philadelphia and Ms. Howell's residence at 706 N. Preston Street in Philadelphia.

31. After learning of Mr. Howell's death, Respondent did not take prompt or reasonable steps to locate Mr. Howell's heirs

32. Due to Mr. Howell's death, PMA had issued an overpayment to Mr. Howell in the amount of $18,640.98.

33. Due to Mr. Howell's death, PMA had issued an overpayment of counsel fees to Respondent in the amount of $4,150.43.

34. After learning of Mr. Howell's death, Respondent failed to advise PMA that he had deposited funds he received on behalf of Mr. Howell into the escrow account; failed to contact PMA to ascertain the overpayment it made to Mr. Howell; and failed to refund to PMA the overpayment it made to Mr. Howell.

35. As of October 31, 2003, the balance in the escrow account was $101,386.18.

36. Respondent made the following withdrawals of funds from the escrow account:

a. On November 21, 2003, a cash withdrawal of $14,400;

b. On November 30, 2004, a transfer of $22,000 into an account maintained with Hudson, titled "Picard Losier, Esquire";

c. On April 1, 2005, a transfer of $50,000 into an account maintained with Hudson, titled "Committee to Elect Sharon Williams Losier".

37. In the spring of 2005, Sharon Williams Losier, Respondent's wife, was a candidate for judge of the Court of Common Pleas of Philadelphia County. The campaign account was opened in connection with Ms. Losier's attempt to secure the elected position. Respondent had sole signatory authority and was the treasurer of the Committee.

38. From November 21, 2003 through April 1, 2005, Respondent withdrew the total sum of $86,400 from the escrow account.

39. As of April 30, 2005, the balance in the escrow account was $15,159.32.

40. Respondent did not have permission from PMA to use any funds from the escrow account that belonged to PMA.

41. Respondent did not have permission from Mr. Asber or the beneficiaries of Mr. Howell's estate to use any funds from the escrow account that belonged to the Howell Estate.

42. Respondent misappropriated to his own use the $14,400 he withdrew from the escrow account on November 21, 2003.

43. Respondent misappropriated to his own use the $22,000 he transferred from the escrow account into the attorney account on November 30, 2004.

44. Respondent misappropriated the $50,000 he transferred from the escrow account to the campaign account on April 1, 2005.

45. On July 22, 2005, Respondent deposited $190,000 into a money market account maintained with Hudson, titled "Picard Losier, Esquire Sharon W. Losier, Esquire."

46. The money deposited into the money market derived entirely from the sale of a property in Nyack, New York.

47. Respondent used the deposit into the money market account to make a transfer into the escrow account, in that on July 29, 2005, Respondent transferred $65,000 from the money market account to the escrow account.

48. The balance in the escrow account following the $65,000 transfer was $80,162.36.

49. On August 10, 2005, Respondent deposited a $17,600 check made payable to him and "JEAN LAURENT" into the money market account.

a. This check, issued by Commerce and Industry Insurance Company had typed on it "Claim No: 00030424" and "LUMP SUM SETTLEMENT 6/22/05 REISSUE LAURENT."

b. On August 15, 2005, Respondent wrote out check #721 in the amount of $17,000, drawn on the IOLTA account he maintained with Hudson, which was payable to Jean Claude Laurent, and notated "Full Payment WC."

50. On September 21, 2005, Special Agent Mark G. Sabo with the Pennsylvania Office of Attorney General, Insurance Fraud Section, contacted Respondent and scheduled a meeting for September 22, 2005.

51. During the meeting, Respondent made the following statement/inquiries to Agent Sabo:

a. Respondent had established an escrow account with Hudson for depositing the checks he received from PMA in connection with Mr. Howell's case;

b. Respondent was the escrow agent for the escrow account;

c. Respondent was unaware of Mr. Howell's death until receiving a letter from PMA advising him of such;

d. Respondent had used funds deposited into the escrow account on possibly two occasions to cover checks made out to other clients; and

e. Respondent inquired twice of Agent Sabo the amount that should be held in the escrow account on behalf of Mr. Howell.

52. At the conclusion of the meeting, Agent Sabo made arrangements to meet with Respondent again on September 26, 2005, to obtain the account statement and other documents related to the escrow account.

53. On September 22, 2005, Respondent transferred into the escrow account $32,616.14 from the money market account.

54. The balance in the escrow account following the transfer was $112,788.86.

55. During the September 22, 2005 meeting, Respondent provided Agent Sabo with a written statement containing the following statements:

a. Respondent had established an escrow account with Hudson for depositing the checks he received from PMA in connection with Mr. Howell's case;

b. Respondent learned of Mr. Howell's death upon receiving a May 2, 2003 letter from Ms. Johnson, which enclosed the death certificate of Mr. Howell;

c. "2 or 3 times" Respondent had used funds deposited into the escrow account to "clear some checks," but he had "put the money right back";

d. Respondent did not believe that he had taken funds from the escrow account other than the "2 or 3 times" he identified to Agent Sabo;

e. Respondent had deposited approximately $31,000 into the escrow account after meeting with Agent Sabo on September 22, 2005;

f. Respondent had hired investigators to locate Mr. Howell's sister and daughter; and

g. Respondent had use the funds in the escrow account after learning of Mr. Howell's death.

56. On or about February 1, 2007, PMA filed a Petition for Review with the workers' compensation court, seeking to recover the overpayments made to Respondent and Mr. Howell.

57. Sometime in February 2007, Respondent established a new account on behalf of Mr. Howell's estate and transferred the sum of $82,454 from the escrow account into the estate account.

58. Sometime in October 2007, acting on behalf of himself and Mr. Howell's estate, Respondent paid to PMA the sum of $21,042.95.

a. The $21,042.95 payment to PMA was comprised of $16,892.57 of funds that Respondent held in the escrow account and $4,150.38 of his own funds.

b. PMA accepted this amount as representing the overpayment of benefits paid to Mr. Howell and of Respondent's counsel fees following Mr. Howell's death.

c. By Order dated December 13, 2007, Workers' Compensation Judge Karen Wertheimer approved a "Stipulation of Facts" entered into between PMA, Respondent and Mr. Howell's estate that resolved the Petition for Review, and Judge Wertheimer dismissed the Petition for Review.

59. Thereafter, the escrow account balance should have been no less than $1,784.76, exclusive of interest, after deducting the funds Respondent transferred from the escrow account into the estate account and the payment Respondent made on behalf of Mr. Howell's estate to PMA.

60. Under cover of letter dated December 14, 2007, sent by Brian E. Quinn, Esquire, Respondent's counsel, to Dennis Turner, the attorney for Mr. Asber, Mr. Quinn enclosed a check from Respondent in the amount of $2,492.78, which represented the remaining funds in the escrow account and a payment of $708.02 in interest.

Pattern of Misconduct Relating to Maintenance and Handling of Funds

61. At all times relevant, Respondent maintained an IOLTA account for holding fiduciary funds with Hudson United Bank titled "Picard Losier, Esquire PA IOLTA Board". Respondent had sole signature authority for the IOLTA account.

62. At all times relevant, Respondent maintained a business account for the private practice of law with Hudson, titled "Picard Losier, Esquire". Respondent had sole signature authority for the account.

63. At all times relevant, Respondent maintained a money market account with Hudson, titled "Picard Losier, Esquire Sharon W. Losier, Esquire." Respondent and Ms. Losier had joint signature authority for the account.

64. From January 7, 2003 through November 13, 2007, Respondent routinely advanced funds to clients by drawing checks on the IOLTA account before Respondent received and deposited any funds on behalf of those clients into the IOLTA account.

65. From December 2003 through June 2009, Respondent commingled his own funds with fiduciary funds held in the IOLTA account by making deposits of non-fiduciary funds into the IOLTA account.

66. Respondent made disbursements and transfers of funds from the IOLTA account without maintaining required records that would allow Petitioner to confirm

Respondent's assertion that these transactions were satisfied by funds belonging to Respondent rather than by fiduciary funds belonging to clients and third parties that were held in the IOLTA account. (See PHC-1 Joint Stipulation of Fact 75, 76, 77, 78)

67. From May 5, 2003 through December 6, 2004, Respondent deposited fiduciary funds into the attorney account in seven client matters and failed to transfer those fiduciary funds into the IOLTA account, or failed to transfer those fiduciary funds into the IOLTA account before disbursing the funds clients were entitled to receive. (See PHC-1 Joint Stipulation of Fact 79)

68. From August 2, 2005 through December 20, 2005, Respondent made six disbursements from the attorney account to Kenneth Williams without having received any funds on behalf of Mr. Williams. (See PHC-1 Joint Stipulation of Fact 80)

69. A criminal case was filed against Respondent in the Philadelphia Court of Common Pleas based on his misappropriation of funds from the escrow account. Respondent was found not guilty of all charges after a bench trial that took place on March 13-14, 2008. (ODC-1; N.T. July 19, 2011 p. 120)

Additional Findings

70. Respondent testified on his own behalf. He was born in Haiti, moved to the United States when he was 16 years of age, and is a naturalized citizen of the United States. (N.T. July 19, 2011 p. 17-18)

71. While in Haiti, Respondent experienced traumatic events in his life. His father went into seclusion to avoid retribution by the Haitian government and there were many threats of violence to Respondent and his family. His older sister was shot and killed while Respondent was living in Haiti. (N.T. July 19, 2011 p. 18-20)

72. Respondent did not speak any English when he arrived in the United States, but eventually graduated in 1976 from the State University of New York at Albany and the Syracuse University College of Law in 1979. He received a Master's Degree in Taxation from Boston University School of Law in 1980. (N.T. July 19, 2011 p. 23 - 25)

73. After law school, Respondent commenced employment with the State Workers Compensation Insurance Fund as a staff attorney from 1981 to 1988. He began his own private practice of law thereafter, concentrating in the area of workers compensation claimants' work. Respondent has substantial trial and appellate workers compensation experience. He has argued three or four times before the Pennsylvania Supreme Court. (N.T. July 19, 2011 p. 30-34)

74. Respondent is a member of various bar associations and the NAACP, and is involved with the Haitian community. He described putting together a radio station called Radio Haiti. (N.T. July 19, 2011 p. 42 - 45)

75. Alex Pierre worked with Respondent as an associate attorney from 1997 until 2003. (N.T. July 11, 2011 p. 35)

76. Mr. Pierre neglected cases and allowed default judgments to be entered against Respondent and Respondent's law firm. Respondent terminated Mr. Pierre's employment in March of 2003. (N.T. July 19, 2011 p. 67-74)

77. Mr. Pierre is currently a suspended Pennsylvania attorney.

78. Respondent began to use his IOLTA account as an escrow account because of the many judgments and lawsuits filed against him as a result of Mr. Pierre's conduct. Respondent used the IOLTA account as a firm operating account and as a personal account to avoid garnishment of his cash. (N.T. July 19, 2011 p. 81-84)

79. In workers compensation cases, Respondent received two checks: one for the claimant and one for his fees. Respondent placed his fees in the IOLTA escrow account to avoid garnishment. (N.T. July 19, 2011 p. 86-89)

80. Respondent abused alcohol from approximately 1981 until January of 1988. He has not had a drink since June 28, 1988. In the late 1980s, Respondent sought help from Dr. Richard F. Limoges, a psychiatrist, to address his drinking issues. (N.T. July 19, 2011 p. 54-56, 57-60)

81. Respondent did not seek treatment with Dr. Limoges or any other medical professional for any mental illness after 1991 until 2007. (N.T. July 19, 2011 p. 171)

82. Dr. Limoges began seeing Respondent as a patient in 2007 after Respondent's criminal defense attorney referred him. Respondent was diagnosed with anxiety and depression. The treatment continued from April of 2007 through December 9, 2008, on 16 occasions. (N.T. July 19, 2011 p. 273-274)

83. The therapy sessions ended by mutual agreement, as Dr. Limoges found no acute matters at hand. (N.T. July 11, 2011 p. 276)

84. Dr. Limoges met with Respondent on March 30, 2011 and continued to meet with him up to the time of the disciplinary hearing. Dr. Limoges' primary diagnosis of Respondent is Post Traumatic Stress Disorder (PTSD), with underlying generalized anxiety disorder and dysthymic disorder. (R-2; N.T. July 19, 2011 p. 228, 229)

85. Dr. Limoges did not diagnose Respondent with PTSD in the 1980s when he saw him for alcohol problems, or in 2007 – 2008 when he treated him for anxiety and depression. (N.T. July 19, 2011 p. 232) On cross-examination, Dr. Limoges admitted that he would never have diagnosed Respondent with PTSD from 1998 through 2008 as

he did not then observe any symptoms that would lead to such a diagnosis. (N.T. July 19, 2011 p. 294)

86. Respondent's current treatment consists of therapy. He takes no medication. (N.T. July 19, 2011 p. 233-234)

87. Dr. Limoges sees improvement in terms of Respondent's recognition of and control of his psychiatric disorders. (N.T. July 19, 2011 p. 234) Dr. Limoges believes that weekly treatment for a couple of years will be required. (N.T. July 19, 2011 p. 266)

88. Dr. Limoges's prognosis is very positive. (N.T. July 19, 2011 p.266)

89. Dr. Limoges believes that Respondent's psychiatric disorders would have "caused or contributed to" Respondent's misconduct. (N.T. July 19, 2011 p. 251, 260, 261)

90. Respondent did not provide truthful information to Dr. Limoges:

a. During a February 20, 2008 session, Respondent in answer to a question from Dr. Limoges, said that he "put the money back in a few months" when referring to his misappropriation of funds from the escrow account; however, 20 months had passed from when Respondent first misappropriated funds from the escrow account until he replaced a portion of the funds. (N.T. July 19, 2011 p. 283; S-36, 53-54);

b. During that same session, Respondent conveyed to Dr. Limoges that the transfer of the $22,000 from the escrow account to the operating account was connected to the wrongful use of civil process lawsuit filed against him, his law firm and Alex Pierre. (N.T. July 19, 2011 p. 285);

c. On July 18, 2011, Respondent provided to Dr. Limoges several documents, one of which was a five –page document that Dr. Limoges relied upon. That document contained false information. (N.T. July 19, 2011 p. 302-304; P-39)

91. Respondent began treating with Dr. Steven Samuel, a psychologist, on September 29, 2011, and met on three additional occasions prior to the disciplinary hearing. (N.T. April 27, 2011 p. 206-207)

92. After conducting numerous tests, Dr. Samuel concluded that Respondent suffered from Post Traumatic Stress Disorder and dysthymic depressive disorder. (R-1; N.T. April 27, 2011 p. 231-232)

93. Dr. Samuel described the illnesses as being "present in him during the period of time that [you're] investigating." (N.T. April 27, 2011 p. 231) He further stated that the symptoms of the illnesses were in "remission, not total remission" at that time. (N.T. April 27, 2011 p. 231)

94. Dr. Samuel indicated that Respondent's mental disorders "affected his judgment" and "contributed to" Respondent's misconduct. (N.T. April 27, 2011 p. 239-240). When asked by Respondent's counsel if the psychological conditions caused or contributed to the misconduct, Dr. Samuel specifically stated, "They contributed to. They didn't cause them. They contributed to them." (N.T. April 27, 2011 p. 244)

95. Dr. Samuel believes that Respondent needs three or four years of intensive treatment, including therapy and medication to deal with his mental disorders, with no guarantee that such treatment would be effective. (N.T. April 27, 2011 p. 236-238)

96. Dr. Samuel was unaware of the extent of Respondent's misconduct in that he did not know that Respondent commingled his funds with fiduciary funds as far

back as 2002, made advances to client since the late 1990s, made loan repayments to Kenneth Williams on checks drawn on the IOLTA and attorney accounts, and did not tell his wife that he had misappropriated funds from the escrow account. (N.T. July 19, 2011 p. 69-74)

97. While Respondent admitted his misconduct and expressed remorse for his actions (N.T. July 19, 2011 p. 106-112,127), his expressions were at times equivocal. Respondent focused on the negative consequences of his experiences, stating that it "has cost [him] a lot. Criminal charges were filed against [him]," and that "[t]his thing has killed me." (N.T. August 29, 2011 p. 191, 205-206)

98. Respondent raised credibility issues during his testimony in that:

a. He claimed that the $14,000 withdrawal from the escrow account was used to unfreeze a Hudson bank account that had been seized, which testimony is contradicted by the record (N.T. July 19, 2011 p. 105-106, 131-138, P-6, 35, S-36);

b. He claimed that he intended to use the $22,000 transfer from the escrow account to the attorney account to resolve a wrongful use of civil process lawsuit that had been filed against him, which testimony is contradicted by the record (N.T. July 19, 2011 p. 107-108, 145-151; N.T. August 29, 2011 p. 209-211; P-36, 40-41; S-36);

c. He testified that he voluntarily quit the State Workers Insurance Fund to start his own law practice, but this is contradicted in a written statement Respondent provided to Dr. Limoges, in which Respondent admitted that he was fired from SWIF (N.T. April 27, 2011 p. 55-57; R-6 p.2);

d. He stated that Radio Haiti generated sufficient income to pay for itself, which testimony is refuted by Respondent's loan to Radio Haiti and admission to Dr. Limoges that money was being stolen from him with respect to that venture (N.T. July 19, 2011 p. 46, 289-290; N.T. August 29, 2011 p. 178-179, 221-222; P-42);

e. He denied characterizing his loan repayment to Mr. Williams as being related to a workers compensation matter so that Respondent could reduce his tax liability even though he had previously offered sworn testimony to that effect (N.T. August 29, 2011 p. 141-146, 223-224; P-27,30,33, 104-105,114,123-134,150; S-77,80);

f. Respondent characterized himself as "frugal in terms of managing [his] own money," yet he made advances to clients with no assurance of repayment, lent money to his brothers with no expectation of repayment, lent money to Radio Haiti when he suspected that individuals associated with that venture were stealing from him, and spent "over $300,000" on his wife's judicial campaign (N.T. July 19, 2011 p. 127,152, 290; N.T. August 29, 2011 p. 178-179; P-33, p. 53,59-60; P-42; R-1 p. 4);

g. Respondent claimed that he resumed treatment with Dr. Limoges in 2007 due to his wife's intervention when it was Respondent's criminal defense attorney who urged Respondent to meet with Dr. Limoges because the criminal proceedings were affecting Respondent (N.T. July 19, 2011 p. 92, 171-173, 272-273);

h. Respondent provided his attorney in the instant matter with a letter which falsely stated that Respondent had used the $14,400 from the

escrow account to "unfreeze" an account that had been seized and had used the $22,000 from the escrow account to pay his son's tuition at a private school. (N.T. August 29, 2011 p. 119-121; P-38, p. 3,5);

i. Respondent provided his character witnesses and Dr. Limoges with a letter which falsely stated that Respondent had used the $14,400 from the escrow account to "unfreeze" an account that had been seized; Respondent also failed to disclose in that letter that he had taken $22,000 from the escrow account in November 2004. (N.T. August 29, 2011 p. 174-177; P-39, p. 2).

99. Eleven civil cases have been filed against Respondent in the Philadelphia Court of Common Pleas:

a. In seven of the eleven cases judgments were entered against Respondent. (ODC – 2-4, 7-9,11);

b. In one of the eleven cases the plaintiff had to file a Motion to Enforce Settlement to compel Respondent to comply with the terms of the settlement agreement. (ODC -10);

c. Six of the seven judgments entered against Respondent relate to his failure to pay for gas services. (ODC – 2-4, 7-9);

100. Eight code enforcement complaints have been filed against Respondent in the Philadelphia Municipal Court. (ODC – 13-15, 19 – 20).

101. Thirteen civil complaints have been filed against Respondent in the Philadelphia Municipal Court. (ODC -21, 26-27, 32)

102. Respondent currently owes the City of Philadelphia and Cheltenham Township several thousand dollars for outstanding real estate taxes; he also owes the City

of Philadelphia an unspecified sum of money for outstanding use and occupancy taxes. (N.T. July 19, 2011 p. 122-123; August 29, 2011 p. 169 – 170, 172-173)

103. PGW has placed liens on several properties owned by Respondent because he has not paid his gas bills. (N.T. July 19, 2011, p. 125)

104. Respondent presented 21 character witnesses. (N.T. April 27, 2011 p. 133-143)

105. Five character witnesses who gave individual testimony, did not know that Respondent made advances to clients and commingled his funds with fiduciary funds, and were unfamiliar with the extent of the Respondent's misappropriation of funds from the escrow account. (N.T. April 27, 2011 p. 161-163, 168-170, 173-174, 183- 184, 192-193)

106. Ten of the character witnesses, including three who gave individual testimony, received a letter from the Respondent that contained false information and omitted details regarding his misconduct. (N.T. April 27, 2011 p. 143-147; P-39)

107. Although Respondent has no history of discipline, his pattern of making advances to clients and commingling his funds with fiduciary funds existed over a long period of time. (N.T. July 19, 2011 p. 196-197)

108. In or around 2010, Respondent ceased commingling his funds with fiduciary funds on advice of counsel and sometime before September 2010, stopped making advances to clients. (N.T. July 19, 2011, p. 89-91)

109. Respondent continued to operate his law practice without interruption from 1990 through the present time. (N.T. July 19, 2011 p. 359).

110. Respondent described himself as "functioning" from 2001 through 2007. (N.T. July 19, 2011 p. 169)

111. Respondent, at the time of the disciplinary hearing, had repaid all of the funds he misappropriated plus interest. (N.T. July 19, 2011 p. 111)

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.8(e) - A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

3. RPC 1.15(a) (effective 4/1/88, superseded effective 4/23/05) - 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.

4. RPC 1.15(a) (effective 4/23/05, superseded effective 9/20/08) - 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.

5. RPC 1.15(b) (effective 4/1/88, superseded affective 4/23/05) - 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 render a full accounting regarding such property.

6. RPC 1.15(b) (effective 4/23/05, superseded effective 9/20/08) - 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.

7. RPC 1.15(c) - 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.

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

9. Respondent has failed to show clear and convincing evidence that he suffers from a psychological disorder which caused his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989)

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline filed against Respondent alleging that he engaged in misappropriation of entrusted funds and related misconduct. Respondent filed an Answer to Petition and entered into Joint Stipulations of Fact and Law. Three days of hearing were held, during which multiple witnesses were presented and exhibits introduced. Respondent, by his Answer to Petition for Discipline and Joint Stipulations, has admitted his misconduct and the violations of the Rules of Professional Conduct. The exhibits and Respondent's hearing testimony further support all of the Rule violations. Petitioner bears the burden of proving by a preponderance of the evidence that is clear and satisfactory that Respondent violated the Rules of Professional Conduct. Office of Disciplinary Counsel v. Grisgsby, 425 A.2d 730 (Pa. 1981). Review of the record shows that Petitioner met its burden of proof.

The evidence of record demonstrates that Respondent failed to act promptly to locate his client, Harry Howell, or Mr. Howell's beneficiaries after learning of Mr. Howell's death; knowingly and intentionally misappropriated $86,400 in funds belonging to the beneficiaries of Mr. Howell's estate and PMA; deposited into a money market account a $17,600 settlement check Respondent received on behalf of his client, Jean Laurent,

thereby commingling investment funds with funds belonging to Respondent and his wife; made advances to clients from January 7, 2003 through November 13, 2007; commingled Respondent's funds with fiduciary funds held in the IOLTA account from December 2003 through June 2009; failed to maintain required records relating to fiduciary funds belonging to client and third parties that were held by Respondent; and, converted fiduciary funds held in the IOLTA account.

Upon concluding that Respondent has engaged in violations of the Rules of Professional Conduct, the Board must recommend a sanction to address such misconduct. The nature and gravity of the misconduct, the aggravating and mitigating factors, and the sanctions imposed in prior similar matters determine the appropriateness of any sanction. In re Anonymous No. 85 DB 97, 44 Pa. D. & C. 4th 299 (1999).

Respondent contends that he suffers from a psychiatric disorder which caused his misconduct, thus entitling him to mitigation pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). In Braun, the Pennsylvania Supreme Court recognized that a psychiatric disorder may be the basis for the mitigation of discipline if the attorney is able to prove by clear and convincing evidence that such disorder caused the misconduct. 553 A.2d at 895. The Hearing Committee concluded as a matter of law that Respondent did not meet his burden of proving by clear and convincing evidence that he had a mental disorder which caused the misconduct. Careful review of the record persuades the Board that the Committee did not err in making this conclusion.

Respondent presented the expert testimony of Dr. Richard F. Limoges, a psychiatrist, and Dr. Steven Samuel, a psychologist. Dr. Limoges first treated Respondent for alcoholism in the 1980s. Respondent is currently in recovery from alcoholism and has been sober since 1988. In 2007, Respondent began treatment with Dr. Limoges upon the

advice of Respondent's criminal defense attorney. At that time, Respondent was involved as a defendant in a criminal matter arising from the conversion of funds from his escrow account. Dr. Limoges diagnosed Respondent with anxiety and depression. The treatment, which consisted of therapy, lasted until December 9, 2008. The sessions ended by mutual agreement, as Dr. Limoges found no acute issues.

Dr. Limoges met with Respondent at the end of March, 2011 in connection with the instant matter. His primary diagnosis of Respondent is Post Traumatic Stress Disorder (PTSD), with underlying generalized anxiety disorder and dysthymic disorder. Dr. Limoges never diagnosed Respondent with PTSD when he treated him on previous occasions in the 1980s and 2007 through 2008. Dr. Limoges admitted on cross-examination that he never would have diagnosed Respondent with PTSD during his previous treatment periods of Respondent, as he did not then observe any symptoms that would lead to such a diagnosis. When questioned about the impact of Respondent's disorders on his misconduct, Dr. Limoges believes that the disorders would have "caused or contributed to" the misconduct.

Respondent began treatment with Dr. Steven Samuel on September 29, 2011, at the behest of his counsel in the instant matter, and met three additional times prior to the disciplinary hearing. Dr. Samuel conducted numerous tests and concluded that Respondent suffers from Post Traumatic Stress Disorder and dysthymic depressive disorder. Dr. Samuel indicated that the symptoms of such illnesses were in remission, although not totally, and were present at the time of the misconduct. When questioned as to the impact of the mental disorders on Respondent's misconduct, Dr. Samuel stated that "They contributed to. They didn't cause them."

Neither Dr. Samuel nor Dr. Limoges were fully aware of the extent of Respondent's dishonest and unethical acts. Dr. Samuel did not know that Respondent commingled funds as far back as 2002, made advances to clients since the late 1990s, and did not tell his wife he had misappropriated funds from the escrow account. Respondent conveyed false information to Dr. Limoges regarding how long Respondent took to replace the funds he misappropriated from the escrow account, and he provided Dr. Limoges with a document containing false information.

We conclude that Respondent's Braun evidence fails on several bases. The evidence is not clear and convincing that Respondent in fact suffered from PTSD at the time of his misconduct from 2003 through 2009. Dr. Limoges clearly states he would not have diagnosed Respondent with such disorder, either during the time frame of the alcoholism treatment, or the treatment in 2007-2008 for anxiety and depression. Dr. Samuel opined that mental illness was present in Respondent but in some form of remission. Even allowing for the proposition that Respondent suffered from PTSD, neither expert clearly and convincingly stated that the mental disorder caused the misconduct, which is the test of Braun. Dr. Limoges stated that the disorder "caused or contributed to" the misconduct while Dr. Samuel firmly stated that the disorder contributed to the misconduct. He declined to state that the disorder caused the misconduct.

The last point on which the evidence fails is that neither expert had a true picture of Respondent's misconduct. Their opinions were predicated on the information received from Respondent, which was revealed at times to be inconsistent or false. To support a Braun claim, the Board may consider whether the expert provided a detailed case history of Respondent and whether the expert is fully apprised of the details of the disciplinary proceedings. Office of Disciplinary Counsel v. Anonymous (Anthony J.

Popeck) 66 DB 96 (Pa. Feb. 10, 1998) Both experts herein based their opinions on the information given to them by Respondent. As Respondent has been found to be an incredible source of information, the value of the expert testimony is weakened.

The Braun standard is a stringent standard and the expert testimony must unequivocally link the attorney's disorder with the misconduct in a credible and persuasive manner. Based on the expert testimony and Respondent's own testimony, the Board concludes that Respondent did not establish a causal connection between his psychiatric disorder and his misconduct and is not entitled to mitigation pursuant to Braun.

The only mitigating factors found in Respondent's favor are his lack of a prior disciplinary record in more than 30 years of practicing law and his community involvement. Several aggravating factors are present. Respondent was not a credible witness. His testimony was contradicted on several occasions, as referenced in the findings of fact. He provided a letter to several character witnesses and to Dr. Limoges in which he made false statements about his actions. His expressions of remorse were less than wholehearted, as he appeared to be most concerned with the impact of the experience on himself. Finally, Respondent admitted that his pattern of making advances to clients and commingling his own funds with fiduciary finds existed over a long period of time, since at least the 1990s, not merely the time frame of the disciplinary charges.

The Supreme Court has declared that the misappropriation of client funds is a serious offense that may warrant disbarment. Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997). The Court disbarred an attorney with no record of discipline who misappropriated over $155,000 from a client. Office of Disciplinary Counsel v. Patricia M. Renfroe a/k/a Patty M. Renfroe and Patty Michelle Renfroe, 122 DB 2004 (Pa. Aug. 30, 2005).

Disbarment was the appropriate sanction for an attorney who misappropriated $90,000 from an estate, wherein he was acting as the executor and the attorney for the estate. Office of Disciplinary Counsel v. Evans, 69 Pa. D. & C. 4th 265 (2003). Mr. Evans failed to diligently handle the estate and made misrepresentations on his attorney registration form concerning the entrusted estate funds. Mr. Evans had no record of professional discipline in more than 35 years of legal practice, and stipulated to many of the facts of the case, including that he had used funds belonging to the estate.

Another attorney who had practiced for many years with no discipline was disbarred for engaging in commingling, conversion and misrepresentation limited to one client matter. Office of Disciplinary Counsel v. Anonymous (Ronald L. Muha) 121 DB 1999 (Pa. March 23, 2001). Although the Board had recommended a suspension of five years, the Court imposed disbarment on Mr. Muha to address his conversion of $18,000 of a client's settlement funds, which he applied to his many financial concerns. There are other instances of disbarment in matters involving one incident of conversion, even where the attorney had no discipline. In the Matter of Marx S. Leopold, 366 A.2d 227 (Pa. 1976); In re Anonymous (Robert Peter Flanagan), 49 Pa. D. & C. 3d. 605 (1987).

Respondent's misconduct was extensive and lengthy in its duration. Respondent commingled his personal funds with fiduciary funds for over eight years; advanced funds to clients for over a decade; and failed to maintain required financial records for client matters transacted through his IOLTA account for over five years. Respondent did not stop making advances to his clients and commingling funds until 2010. These actions occurred in addition to his egregious misappropriation of the Howell funds. The proper handling of client money goes to the heart of a lawyer's obligation to a client; it follows that the mishandling of such funds abuses the trust between the client and lawyer

and must be dealt with severely. In this case, disbarment is necessary to protect the public and maintain the integrity of the bar.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Picard Losier, be Disbarred from the practice of law.

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:_____
Gerald Lawrence, Board Member

Date: October 10, 2012

Board Members Nasatir and Hastie abstained.