

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2096 Disciplinary Docket No. 3
	:	
Petitioner	:	26 DB 2014
	:	
v.	:	Attorney Registration No. 88670
	:	
ROBERT P. MAIZEL,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 20th day of November, 2014, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated August 28, 2014, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

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

A True Copy Patricia Nicola
As Of 11/20/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 26 DB 2014
Petitioner	:	
	:	
v.	:	Attorney Registration No. 88670
	:	
ROBERT P. MAIZEL	:	
Respondent	:	(Philadelphia)

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

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Stephan K. Todd, David E. Schwager, and David A. Fitzsimons, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on July 21, 2014.

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

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

Date: 8/28/2014



Stephan K. Todd, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 26 DB 2014
v. :
: Atty. Reg. No. 88670
ROBERT P. MAIZEL, :
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Esquire, Chief Disciplinary Counsel, and by Richard Hernandez, Esquire, Disciplinary Counsel, and Respondent, Robert P. Maizel, who is represented by Louis F. Hornstine, Esquire, file this Joint Petition In Support Of Discipline On Consent Under Pennsylvania Rule of Disciplinary Enforcement 215(d) ("the Joint Petition"), and respectfully represent that:

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 Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving

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

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, Robert P. Maizel, was born in 1970, was admitted to practice law in the Commonwealth on April 19, 2002, and has an office address at 1500 JFK Boulevard, Suite 1700, Philadelphia, Pennsylvania 19102.

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

4. On February 27, 2014, Petitioner filed a Petition for Discipline against Respondent with the Secretary of the Disciplinary Board ("the Secretary").

5. On or about April 15, 2014, Respondent, through his counsel, filed an Answer to the Petition for Discipline with the Secretary.

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

6. Respondent hereby stipulates that the following factual allegations, which incorporate the factual allegations set forth in the Petition for Discipline, are

true and correct and that he violated the Rules of Professional Conduct as set forth herein.

CHARGE

7. At all times relevant hereto, Respondent maintained an IOLTA account for holding fiduciary funds with Citizens Bank, account number xxxxxx4920, titled "MAIZEL LEGAL ASSOCIATES INC PA LAWYER TRUST ACCT BOARD" ("the IOLTA account").

a. Respondent had sole signature authority for the IOLTA account.

8. At all times relevant hereto, Respondent maintained an operating account for the private practice of law with Citizens Bank, account number xxxxxx8703 ("the operating account").

9. At all times relevant hereto, Respondent maintained a "Circle Checking" account with Citizens Bank, account number xxxxxx3874 ("the checking account").

**FAILURE TO MAINTAIN SUFFICIENT FUNDS IN THE IOLTA ACCOUNT
FOR OBLIGATIONS OWED TO CLIENTS AND THIRD PARTIES**

10. On January 1, 2011, the opening day IOLTA account balance was \$25,145.08.

11. As discussed below, from January 1, 2011 through June 23, 2011, eight checks written by Respondent totaling

\$51,538.83 cleared the IOLTA account; these checks represented the disbursement of fiduciary funds owed to clients and third parties from settlement proceeds that were deposited into the IOLTA account in 2010.

- a. In July 2010, Respondent deposited a \$9,500.00 settlement check relating to Ms. Sharifa Long's personal injury case into the IOLTA account and Respondent gave Ms. Long check number 1025, dated July 28, 2010, in the amount of \$3,745.00. This check was not transacted until March 8, 2011, at which time the check was stale. Respondent gave Ms. Long a replacement check, that being check number 1146, dated March 28, 2011, transacted on April 1, 2011.
- b. On September 16, 2010, Respondent deposited a \$30,000.00 settlement check relating to Mary Novak's personal injury case into the IOLTA account. Ms. Novak received from Respondent check number 1165, dated May 4, 2011, transacted on May 9, 2011, in the amount of \$13,500.38.

- c. On November 9, 2010, Respondent deposited a \$4,000.00 settlement check relating to Sandra Henderson's personal injury case into the IOLTA account. Ms. Henderson received from Respondent check number 1147, dated March 28, 2011, transacted on April 1, 2011, in the amount of \$1,000.00.
- d. On December 16, 2010, Respondent deposited a \$25,000.00 settlement check relating to Joseph Stancati's personal injury case into the IOLTA account. Mr. Stancati received from Respondent two checks totaling \$7,281.91. The first check was check number 1156, dated April 6, 2011, transacted on April 6, 2011, in the amount of \$3,650.00. The second check was check number 1166, dated May 11, 2011, transacted on May 11, 2011, in the amount of \$3,631.91. The Pennsylvania Department of Welfare ("DPW") was entitled to a portion of the proceeds from the settlement of Mr. Stancati's personal injury case. DPW received from Respondent check number check 1167, dated

May 11, 2011, transacted on June 23, 2011, in the amount of \$3,746.41.

e. On December 20, 2010, Respondent deposited a \$50,000.00 settlement check relating to Robert Bizik's personal injury case into the IOLTA account. Mr. Bizik received from Respondent check number 1151, dated March 30, 2011, transacted on March 31, 2011, in the amount of \$21,265.13.

f. On December 23, 2010, Respondent deposited a \$15,000.00 settlement check relating to Valerie Hulme's personal injury case into the IOLTA account. Medical Rehab Centers of Pennsylvania ("MRCP") was entitled to a portion of the proceeds from the settlement of Ms. Hulme's personal injury case. MRCP received from Respondent check number 1106, dated December 30, 2010, transacted on January 25, 2011, in the amount of \$1,000.00.

12. As of January 1, 2011, the amount of funds Respondent was required to hold in trust in the IOLTA account on behalf of clients and third parties was no less

than \$51,538.83, the sum total of the checks drawn on the IOLTA account that Respondent had written to clients and third parties as set forth in paragraph 11, *supra*.

13. As of January 1, 2011, the balance in the IOLTA account was \$26,393.75 below the amount of funds that Respondent was required to hold in trust on behalf of his clients and third parties.

14. Respondent converted \$26,393.75 of funds belonging to his clients and third parties.

15. Respondent knowingly misappropriated \$26,393.75 of funds belonging to his clients and third parties.

16. From January 1, 2011 through May 11, 2011 (excluding the period of March 25, 2011 through March 29, 2011), Respondent failed to maintain fiduciary funds he deposited into the IOLTA account inviolate and he converted those fiduciary funds, in that during that time frame, Respondent failed to hold in the IOLTA account an amount equal to the fiduciary funds entrusted to him; the shortfall in the amount Respondent was to hold in trust in the IOLTA account ranged from as low as \$1,700.49 (March 30, 2011) to as high as \$67,897.46 (March 23, 2011).

17. For each week beginning Sunday, January 2, 2011, and ending the week of Sunday, May 1, 2011, the lowest

amount and the highest amount that Respondent's IOLTA account was out of trust during each week was as follows:

<u>Week</u>	<u>Low</u>	<u>High</u>
1/2/11	\$26,393.75	\$48,858.81
1/9/11	\$44,304.06	\$50,902.31
1/16/11	\$41,639.46	\$50,902.31
1/23/11	\$41,639.46	\$52,298.36
1/30/11	\$52,297.02	\$53,848.36
2/6/11	\$53,685.38	\$56,848.36
2/13/11	\$34,472.71	\$55,031.66
2/20/11	\$52,087.46	\$63,760.64
2/27/11	\$51,474.96	\$54,087.46
3/6/11	\$49,874.46	\$64,432.46
3/13/11	\$58,147.46	\$64,847.46
3/20/11	\$63,197.46	\$67,897.46
3/27/11	\$1,700.49	\$11,200.49
4/3/11	\$11,200.49	\$24,700.49
4/10/11	\$24,700.49	\$35,200.49
4/17/11	\$35,200.49	\$41,789.62
4/24/11	\$37,091.54	\$37,100.49
5/1/11	\$22,070.43	\$37,100.49

18. From January 1, 2011 through May 11, 2011, Respondent engaged in a pattern of depositing fiduciary

funds into the IOLTA account in connection with a client matter and converting those fiduciary funds for Respondent's own personal use either by transferring funds from the IOLTA account to the operating account, the checking account, or other personal accounts Respondent maintained with Citizens Bank, or by writing checks drawn on the IOLTA account made payable to him or to Lynda Bard, Respondent's employee.

19. At no time in 2010 or 2011 did Respondent have the permission of his clients or third parties to use their funds.

20. From January 1, 2011 through May 11, 2011, Respondent knowingly misappropriated funds belonging to his clients and third parties.

21. Paragraphs 22 through 29 represent examples of Respondent's conversion of fiduciary funds for his personal use by transferring funds from the IOLTA account to the operating account.

22. On January 5, 2011, Respondent transferred \$4,000.00 from the IOLTA account to the operating account so that he would have sufficient funds to withdraw \$1,498.00 for a tax payment to the City of Philadelphia and to honor check number 1255, dated January 4, 2011, in the

amount of \$2,500.00, made payable to Alan Zibelman, Esquire, for Respondent's January 2011 office rent.

- a. On January 4, 2011, the end-of-the-day balance in the operating account was \$888.11.
- b. The \$4,000.00 transfer from the IOLTA account to the operating account ensured that Respondent had sufficient funds to make the tax payment to the City of Philadelphia and to honor check number 1255.

23. On January 6, 2011, Respondent transferred \$3,100.00 from the IOLTA account to the operating account so that he would have sufficient funds to make an electronic payment in the amount of \$3,100.17 to American Express.

- a. On January 5, 2011, the end-of-the-day balance in the operating account was \$820.11.
- b. The \$3,100.00 transfer from the IOLTA account to the operating account ensured that Respondent had sufficient funds to make the payment to American Express.

24. On February 4 and 7, 2011, Respondent transferred \$1,000.00 and \$3,000.00, respectively, from the IOLTA account to the operating account so that he would have sufficient funds to honor check number 1279, dated February 4, 2011, in the amount of \$405.95, made payable to Bank of America, and to make an electronic payment in the amount of \$3,050.34 to American Express.

a. On February 3, 2011, the balance in the operating account was \$205.93.

b. The \$1,000.00 and \$3,000.00 transfers from the IOLTA account to the operating account ensured that Respondent had sufficient funds to honor check number 1279 and to make the payment to American Express.

25. On February 23, 2011, Respondent transferred \$3,626.98 from the IOLTA account to the operating account so that he would have sufficient funds to make a payment in the amount of \$2,415.05 to "Paychex Payroll" on February 24, 2011.

a. On February 22, 2011, the end-of-the-day balance in the operating account was \$655.96.

- b. The \$3,626.98 transfer from the IOLTA account to the operating account ensured that Respondent had sufficient funds to make the payment to Paychex Payroll.

26. On March 8, 2011, Respondent transferred \$4,600.00 from the IOLTA account to the operating account so that he would have sufficient funds to withdraw \$1,498.00 for a tax payment to the City of Philadelphia; to make a telephone payment in the amount of \$500.00 to Wells Fargo; to honor check number 1291, dated March 8, 2011, in the amount of \$2,500.00, made payable to "Phila. Lawyers Group LLC" for Respondent's March 2011 office rent; and to honor check number 1292, dated March 8, 2011, in the amount of \$151.52, made payable to Phila. Lawyers Group LLC for his February 2011 postage.

- a. On March 7, 2011, the end-of-the-day balance in the operating account was \$274.10.
- b. The \$4,600.00 transfer from the IOLTA account to the operating account ensured that Respondent had sufficient funds to make the tax payment to the City of Philadelphia, to make the payment to Wells Fargo, and to honor check numbers 1291 and 1292.

27. On March 10, 2011, Respondent transferred \$4,810.00 from the IOLTA account to the operating account so that he would have sufficient funds to make payments in the amount of \$2,657.91 to Paychex Payroll and in the amount of \$910.50 to Travelers Insurance on March 10, 2011.

a. On March 9, 2011, the balance in the operating account was \$87.58.

b. The \$4,810.00 transfer from the IOLTA account to the operating account ensured that Respondent had sufficient funds to make the payments to Paychex Payroll and to Travelers Insurance.

28. On April 14, 2011, Respondent transferred \$4,000.00 from the IOLTA account to the operating account so that he would have sufficient funds to honor check number 1329, dated April 12, 2011, in the amount of \$1,613.00, made payable to "AETNA," and to honor check number 1332, dated April 13, 2011, in the amount of \$1,441.17, made payable to "West German BMS" for "G18234 Inceptions."

a. On April 11, 2011, the balance in the operating account was \$1,147.23.

- b. The \$4,000.00 transfer from the IOLTA account to the operating account ensured that Respondent had sufficient funds to honor check numbers 1329 and 1332.

29. On May 4, 2011, Respondent transferred \$6,300.00 from the IOLTA account to the operating account so that he would have sufficient funds to withdraw \$1,498.00 for a tax payment to the City of Philadelphia; to make payments in the amount of \$2,923.78 to Paychex Payroll and in the amount of \$1,627.50 to Travelers Insurance on May 5, 2011; to honor check number 1361, dated May 3, 2011, in the amount of \$3,250.00, made payable to "Philadelphia Lawyers Group, LLC" for Respondent's April 2011 office rent; and to make a payment in the amount of \$1,375.60 to "Paychex Tps Taxes" on May 6, 2011.

- a. On May 3, 2011, the end-of-the-day balance in the operating account was \$5,604.07.
- b. The \$6,300.00 transfer from the IOLTA account to the operating account ensured that Respondent had sufficient funds to make the tax payment to the City of Philadelphia, to honor check number 1361, and to make the payments to Paychex Payroll, to Travelers

Insurance, and to Paychex Tps Taxes.

30. Paragraphs 31 through 33 represent examples of Respondent's conversion of fiduciary funds for his personal use by writing checks made payable to Respondent that were drawn on the IOLTA account.

31. On January 3, 2011, Respondent wrote two checks made payable to him that were drawn on the IOLTA account, check number 1113, in the amount of \$9,470.60, and check number 1114, in the amount of \$2,891.94.

a. On January 3, 2011, Respondent deposited check numbers 1113 and 1114 into the checking account.

b. Respondent used the proceeds from check numbers 1113 and 1114 to write two checks drawn on the checking account, check number 2110 in the amount of \$9,470.60, and check number 2111 in the amount of \$2,891.94, each transacted on January 4, 2011.

c. Prior to writing check numbers 1113 and 1114, the IOLTA account was \$26,393.75 below the amount of funds that Respondent was required to hold in trust on behalf of Respondent's clients and third parties; that

deficit increased to \$38,758.81 after those two checks cleared the IOLTA account.

32. On February 19, 2011, Respondent wrote check number 1133, in the amount of \$2,602.00, and on February 21, 2011, he wrote check number 1134, in the amount of \$2,000.00, each made payable to him and drawn on the IOLTA account.

- a. Respondent negotiated check numbers 1133 and 1134 and made personal use of the proceeds from those two checks.
- b. Prior to writing check numbers 1133 and 1134, the IOLTA account was \$55,031.66 below the amount of funds that Respondent was required to hold in trust on behalf of Respondent's clients and third parties; that deficit increased to \$60,133.66 after those two checks cleared the IOLTA account.

33. On April 8, 2011, Respondent wrote check number 1157, in the amount of \$3,000.00, made payable to him and drawn on the IOLTA account.

- a. Respondent negotiated check number 1157 and made personal use of the proceeds from that check.

- b. Prior to writing check number 1157, the IOLTA account was \$21,700.49 below the amount of funds that Respondent was required to hold in trust on behalf of Respondent's clients and third parties; that deficit increased to \$24,700.49 after that check cleared the IOLTA account.

34. Paragraphs 35 through 37 represent examples of Respondent's conversion of fiduciary funds for his personal use by transferring funds from the IOLTA account to the checking account.

35. On February 16, 2011, Respondent transferred \$9,900.00 from the IOLTA account to the checking account so that, *inter alia*, he would have sufficient funds to make his mortgage payment of \$3,851.07 to Bank of America; his payment of \$273.66 to Comcast; and his credit card payments of \$430.00 to Barclay, \$250.00 to Wells Fargo, \$1,000.00 to Chase, and \$300.00 to Nordstrom.

- a. Prior to making the transfer, the checking account had a negative balance of \$141.72.
- b. The \$9,900.00 transfer from the IOLTA account to the checking account ensured that Respondent had sufficient funds to make the

payments to Bank of America, Comcast, Barclay, Wells Fargo, Chase, and Nordstrom.

36. On March 16, 2011, Respondent transferred \$6,000.00 from the IOLTA account to the checking account so that, *inter alia*, he would have sufficient funds to make six payments totaling \$6,766.39 to Bank of America, Comcast, Barclay, Wells Fargo, Chase, and Nordstrom.

a. After making the transfer, the checking account had a balance of \$6,948.88.

b. The \$6,000.00 transfer from the IOLTA account to the checking account was necessary so that Respondent had sufficient funds to make a mortgage payment of \$3,851.07 to Bank of America; a payment of \$277.41 to Comcast; and credit card payments of \$420.78 to Barclay, \$200.00 to Wells Fargo, \$1,735.13 to Chase, and \$282.00 to Nordstrom.

37. On April 15, 2011, Respondent transferred \$6,500.00 from the IOLTA account to the checking account, and on April 18, 2011, Respondent transferred \$3,000.00 from the IOLTA account to the checking account, so that, *inter alia*, he would have sufficient funds to meet his

monthly financial obligations to Bank of America, Barclay, Wells Fargo, Chase, and Nordstrom.

INSTANCE OF COMMINGLING

38. On March 9, 2011, Respondent deposited \$1,300.00 of cash belonging to him into the IOLTA account.

39. Respondent commingled his personal funds with fiduciary funds held in the IOLTA account.

FAILURE TO MAINTAIN RECORDS

40. Beginning no later than January 1, 2011, and continuing through June 7, 2011, Respondent failed to maintain complete records showing the reasons for having transferred funds from the IOLTA account to the checking account or other personal accounts he maintained with Citizens Bank, or for writing checks to himself drawn on the IOLTA account.

41. By his conduct as alleged in Paragraphs 7 through 40 above, Respondent violated the following Rules of Professional Conduct:

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

b. RPC 1.15(c), which states that complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(1): (1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks, deposited items and records of electronic transactions; and (2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction. (3) The records required by this rule may be

maintained in electronic or hard copy form. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device;

- c. RPC 1.15(c)(2), which states, in part, that a lawyer shall maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(1): ... (2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction;
- d. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person

is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment;

- e. RPC 1.15(h), which states that a lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose; and
- f. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

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

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

44. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances, as set forth below:

- a. Respondent has been diagnosed with "Persistent Depressive Disorder (Dysthymia)," which is characterized "by a depressed mood that lasts for most of the day" and "for at least two years," and has submitted the attached psychiatric report detailing his diagnosis, treatment, and prognosis (Attachment A);

- b. Respondent has established that there is a causal connection between his misconduct and his mental disorder so as to constitute mitigation under **Office of Disciplinary Counsel v. Braun**, 553 A.2d 894 (Pa. 1989);
- c. prior to the misconduct, Respondent experienced family and professional problems that contributed to his depressed state. The family problems consisted of Respondent: being solely responsible for the care of his elderly father, who was in-patient in a nursing care facility for approximately two years before dying in January 2010; having to care for an infant daughter in 2009 because of post-delivery complications that incapacitated Respondent's wife for several months; and dealing with the dissolution of a law partnership he entered into with another attorney, which dissolution began in 2009 and was finalized in 2010;
- d. Respondent started his solo law practice in 2010 without the proper administrative support and lacking experience in handling

the daily operations of a law firm, including the handling of trust and operating accounts. Respondent's former law partner had assumed the responsibilities of managing their law partnership, which included the law partnership's trust and operating accounts;

- e. Respondent has addressed his inexperience with handling trust and operating accounts by providing proof that he retained the services of a bookkeeper in March 2011 and an accountant in June 2011 (Attachment B);
- f. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- g. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a suspension of two years;
- h. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receive a suspension of two years;

- i. Respondent has no record of discipline in the Commonwealth; and
- j. Respondent made full restitution to his clients in 2011.

45. Respondent, through his attorney, desires to bring to the attention of the three-member panel of the Disciplinary Board and the Supreme Court of Pennsylvania that if the within disciplinary matter had proceeded to a disciplinary hearing, Respondent would have: testified that he is involved in community activities; and presented character evidence.

46. Precedent supports a suspension of two years.

Respondent's matter is strikingly similar to ***Office of Disciplinary Counsel v. Paul Robert Giba***, No. 52 DB 2003 (D.Bd. Rpt. 3/23/05) (S.Ct. Order 6/16/05), in which a two-year suspension was imposed on Respondent Giba for having misappropriated a substantial amount of fiduciary funds from clients and third parties.

Between December 1999 and September 2002, Respondent Giba misappropriated funds belonging to clients and third parties. D.Bd. Rpt. at 4-5. The highest amount that Respondent Giba's IOLTA account was out-of-trust was

\$175,659.63, although it was out-of-trust on numerous occasions in amounts exceeding \$100,000. *Id.* at 4, 10.

The Board found that Respondent Giba's conduct had violated RPC 1.15(a) and RPC 8.4(c). *Id.* at 10.

The Board identified several mitigating factors that were considered in determining the discipline to impose. Respondent Giba established **Braun** mitigation, having shown that he suffered from major depression which was a cause of his misconduct (*id.* at 6-7, 11). Also, Respondent Giba: experienced family problems, in that one child had "albinism, eye deficiencies, and cardiac problems," another child "exhibited disciplinary problems," and his wife engaged in an extra-marital affair (*id.* at 6, 11); experienced staff and administrative problems that "adversely impacted his maintenance of and recordkeeping for his trust accounts" (*id.* at 6, 11-12); had addressed his office problems (*id.* at 12); made full restitution (*id.*); had no record of discipline (*id.*); expressed remorse (*id.*); and showed he had an "excellent reputation in the legal community" (*id.*).

The Board stated that "in similar cases" involving misappropriation of funds, suspensions were imposed that ranged from one year to three years, and listed four

specific cases (only one in which the **Braun** standard was not met) in support of that proposition. *Id.* After having considered "the gravity of this misconduct in light of the Respondent's psychiatric disorder and other mitigating factors," the Board opined that it was "persuaded" that a two-year suspension served "to protect the public" and to maintain "the integrity of the disciplinary system." *Id.* at 13.

A comparison of **Giba** to Respondent's matter indicates that a two-year suspension is an appropriate sanction for Respondent's misconduct.

Like Respondent **Giba**, Respondent **Maizel** has: misappropriated a substantial amount of funds from client and third parties (over \$67,000.00, but fewer funds than Respondent **Giba**, whose misappropriations exceeded \$175,000); engaged in misconduct over a period of time (9 months, but fewer than the 33 months in **Giba**); **Braun** mitigation; experienced family problems; taken action to secure administrative and professional services to ensure that he is properly handling the IOLTA account (and operating account); no record of discipline; made restitution; and shown remorse. Had Respondent **Maizel's** matter proceeded to a disciplinary hearing, he would have

presented character evidence, another mitigating factor that was identified in **Giba**.

In short, the disciplinary case of **Giba** supports Petitioner and Respondent's joint recommendation for a two-year suspension.

47. After considering precedent and weighing the mitigating factors, Petitioner and Respondent submit that a suspension of two years is appropriate discipline for Respondent's misconduct.

WHEREFORE, Petitioner and Respondent respectfully request that:

a. Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., the three-member panel of the Disciplinary Board review and approve the above Joint Petition In Support Of Discipline On Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court enter an Order:

(i) suspending Respondent from the practice of law for a period of two years; and

(ii) directing Respondent to comply with all
of the provisions of Rule 217,
Pa.R.D.E.

- b. Pursuant to Rule 215(i), the three-member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation of this matter as a condition to the grant of the Petition and that all expenses be paid by Respondent before the imposition of discipline under Rule 215(g), Pa.R.D.E.

Respectfully submitted,

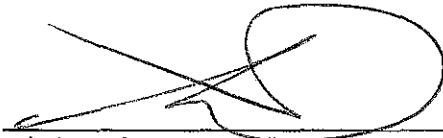
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION

CHIEF DISCIPLINARY COUNSEL

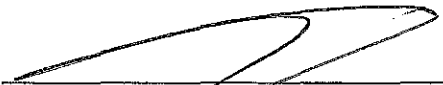
July 21, 2014
Date

By


Richard Hernandez
Disciplinary Counsel


7/21/14
Date

By


Robert P. Maizel, Esquire
Respondent

07/21/2014
Date

By


Louis F. Hornstine, Esquire
Counsel for Respondent

ATTACHMENT A

CAROL WOLF WITTMAN, Ph.D.
7237 Hollywood Road
Fort Washington, PA 19034
215-628-4440

July 2, 2014

To Whom It May Concern:

I write on the behalf of my patient Robert Maizel ("Mr. Maizel") who over the past two years, and currently has been in treatment for depression. I offer all of my opinions contained herein within a reasonable degree of the professional certainty that are held within the profession of psychology.

I first came to treat Mr. Maizel approximately two years ago. Mr. Maizel had previously undergone treatment for his depression with a former psychologist who has since retired from the profession. His prior treatment lasted approximately one year. He came to me immediately following his former professional's retirement. As such, he has been in treatment for the past three years. Mr. Maizel sought treatment in or about 1985 as well following the death of his mother which lasted approximately three years. Currently, Mr. Maizel has been in treatment both with his wife and alone on a weekly basis during the two years that I have treated him.

Mr. Maizel has a long history of suffering with depression. His current treatment has focused on his depression and his inability to focus on the daily requirements of his profession. We have focused his treatment on how to cope with the daily stresses of both the practice of law and family constraints. Mr. Maizel has made great strides in his recovery, has admitted and now understands his professional shortcomings.

As a history, Mr. Maizel's mother passed away when he was fifteen years old. He was then essentially thrust into the adult world, and was raising himself as his father was not present all the time. Over time, Mr. Maizel became the caretaker of his father who became ill with the debilitating diseases of Dementia and Alzheimer's. Mr. Maizel was partially responsible for the cost of his father's care, as well as the emotional support required.

Mr. Maizel's professional shortcoming, the comingling, of trust funds came about directly related to his depression and other mitigating factors described herein. Since the passing of Mr. Maizel's mother, he has been a depressed individual. He has attempted to cope with this depression but with stressing factors in his life, this depression magnifies.

Mr. Maizel suffers from Persistent Depressive Disorder (Dysthymia) DSM5 300.4. Dysthymia is characterized by a depressed mood that lasts for most of the day for and for at least two years. Accompanied by the depressed mood are symptoms that include appetite and sleep disturbance, low energy, poor concentration, difficulty in making decisions, and feeling of hopelessness. Effective therapies include both pharmacological treatment and/or psychotherapy sessions. Here, psychotherapy has been sufficient in the treatment of Mr. Maizel.

Mr. Maizel's Dysthymia DSM5 300.4, is a direct factor in causing his lack of focus in being able to properly maintain his attorney trust account and therefore, directly led to the comingling of funds. Also, the following additional factors described herein furthermore led to the comingling of funds as the factors worked in conjunction with Mr. Maizel's depression to lead to these professional shortcomings.

During his treatment Mr. Maizel has been extremely forthcoming about his professional problems. I have been aware of these issues since he commenced treatment. He has confided that he had instances of problems with his trust account. He has explained with great remorse that as an attorney he is required to maintain the safeguard of these funds and to properly distribute these funds. He is aware and remorseful that this did not occur on these occasions, but has also informed me that none of his clients lost any of their funds. He has made me aware that there was comingling of funds that were held in trust for clients with his personal funds. He has also confided that this has not occurred since these five instances and that it will never happen again. He knows that such comingling is not proper, and he has taken professional safeguards such as having a bookkeeper and his accountant perform proper checks of the trust account to insure its proper safekeeping from here and into the future.

Importantly, he has explained that this trust account problem occurred in a distinct time frame that centered around specific triggers in his life. These triggers all unfortunately culminated in the same time. These triggers included: First, the breakup of his former partnership with Eric Borjeson. Until the breakup of his partnership with Mr. Borjeson, he was not responsible for any of the accounting matters. Mr. Borjeson was the partner in charge of the firm and ultimately the trust accounts. Also, the firm employed a full time office manager that maintained all trust accounts. As such, Mr. Maizel did not have any responsibility for the maintenance of the trust account until the firm dissolved and he was operating on his own. Once he was operating on his own, Mr. Maizel was then, for the first time, responsible for not only practicing law, managing over 100 files, litigation cases, marketing for business, handling employees, managing rent and payroll, but also maintaining cash flow of the business and maintaining the trust account.

Second, in and around this time, Mr. Maizel's second child was born wherein he was responsible for the care and welfare of his daughter. He shared these responsibilities with his wife, but he did spend many sleepless nights with his daughter, as well and simply caring for the newborn.

Third, at this time, Mr. Maizel's father became sicker, and was placed into long term care for Dementia and Alzheimer's. Mr. Maizel was responsible both emotionally and financially for his father. Ultimately his father passed away during this time leaving Mr. Maizel without parents.

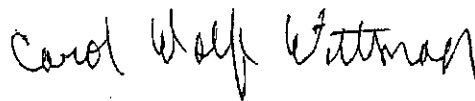
It is clear from my treatment of Mr. Maizel, and my professional opinion that his depression combined with the factors of abruptly ending his partnership with Mr. Borjeson, being thrust into maintaining his own practice for the first time, the birth of his daughter resulting in extreme lack of sleep, and the illness and ultimate demise of his father all led to the unfortunate shortcomings in Mr. Maizel's trust account. It is my opinion that in no manner did Mr. Maizel intend to comingle such funds, but rather his lack of focus was directly precipitated by his depressive disorder that, at that time was not properly maintained by psychotherapy. Furthermore, his lack of focus was magnified by the circumstances identified above which made it virtually impossible for Mr. Maizel to be able to handle all of his professional duties.

It is extremely important to address Mr. Maizel's remorse about the comingling of the funds and to address his future plan for preventing this from occurring again. Robert has expressed how he is sorry that the funds were comingled, but took steps to insure that no client lost any money as a result. To further express his remorse and to insure this will never happen in the future, he has hired an accountant to monitor his bank accounts and to insure that all funds are properly distributed. Also, he has employed a bookkeeper who monitors the distribution of funds as well on a more daily basis. He explained that the bookkeeper is there to insure all distributions are made timely and properly.

Also, Mr. Maizel is dedicated to remaining in therapy to keep his depression and focus properly "in check" to make sure that this problem does not happen again. He is aware and agrees that therapy is necessary to make sure that he is not overwhelmed at work and to maintain his professional focus. It is my prognosis that Mr. Maizel's depression shall not interfere with his professional judgment in the future because he is dedicated to continuing with his psychotherapy, but also he alone is aware of the need to continue with treatment to keep his depression "in check."

Thank you for the opportunity to comment on Mr. Maizel. All statements herein are made within a reasonable degree of psychological certainty.

Very truly yours,



Carol Wolf Wittman, PhD.
Licensed Counseling Psychologist

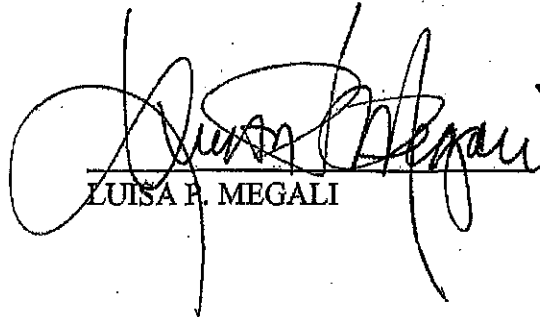
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ATTACHMENT B

AFFIDAVIT

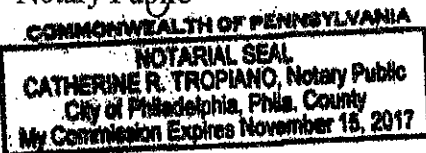
LUISA P. MEGALI, being duly sworn according to law, deposes and says the following:

1. I have been an office manager and bookkeeper in the Philadelphia area for more than twenty (25) years.
2. I have examined the books and records of Robert Maizel, Esquire from March 2011 to the present and the client funds have been deposited.
3. I have found no instances where client funds have not been properly escrowed;
4. I have found no instances where client funds have not been properly distributed;
5. I have found no instances where escrow monies withheld from client settlements were not properly accounted for;
6. I have found no instances where funds have not cleared the account properly;
7. I have assisted Mr. Maizel with his bookkeeping since 2011 and shall continue to do so.


LUISA P. MEGALI

Sworn to and Subscribed
before me this 27th day
of March, 2014.


Notary Public



CEMA 22

**Gitomer &
Berenholz, P.C.**
CERTIFIED PUBLIC ACCOUNTANTS

RICHARD B. GITOMER, CPA
RONALD P. FELDMAN, CPA
NEIL S. ROSENBAUM, CPA, CFP
MARK S. BLANK, CPA
TED R. LANDAY

ROBERT S. BERENHOLZ, CPA
(1959 - 2009)

To Whom It May Concern:

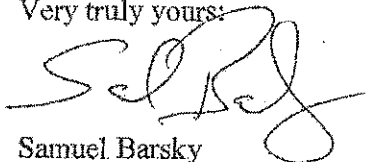
This letter is to confirm that I have performed periodical reviews of both the IOLTA Trust Account and the Operating Account for Maizel Legal Associates, Inc.

Both accounts are contained in the QuickBooks bookkeeping software. During visits I randomly reviewed QuickBooks to ascertain that the operating account had been reconciled, and any old transactions were reviewed and decisions made, to void or reissue any outstanding checks that had not cleared, or allow them to remain open until the next review.

As to the IOLTA Trust Account, I also confirmed that the account was reconciled, that disbursed funds matched distribution schedules, and all checks written out of the account cleared the bank.

If you have any additional questions, I can be reached at 610-733-9923.

Very truly yours:



Samuel Barsky
GITOMER & BERENHOLZ, P.C.

**GITOMER &
BERENHOLZ, P.C.**
CERTIFIED PUBLIC ACCOUNTANTS

RICHARD B. GITOMER, CPA
RONALD P. FELDMAN, CPA
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TED R. LANDAY

ROBERT S. BERENHOLZ, CPA
(1959 - 2009)

May 5, 2014

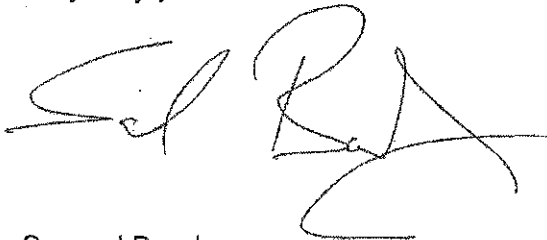
To Whom It May Concern:

I write to supplement my prior submission regarding the review of the Maizel Legal Associates IOLTA Trust Account.

I have reconciled the trust account since June 2011 through the first quarter of 2014. I attempt to reconcile on a quarterly basis, but timing often dictates what months I do the actual reconciliation. Every month has been reconciled since June 2011, and each time I reconcile I review with Robert Maizel to confirm if and why a check has remained uncashed or to why funds are withheld and maintained in the trust account.

If you need additional information or have any questions, I can be reached at 610-733-9923.

Very truly yours

A handwritten signature in black ink, appearing to read 'Sam Barsky', with a stylized flourish at the end.

Samuel Barsky

GITOMER & BERENHOZ, P.C.

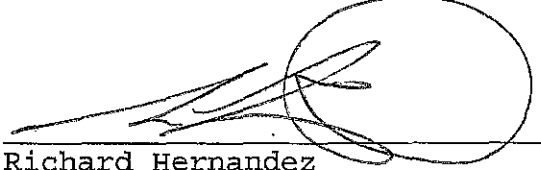
BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 26 DB 2014
v. :
: Atty. Reg. No. 88670
ROBERT P. MAIZEL, :
Respondent : (Philadelphia)

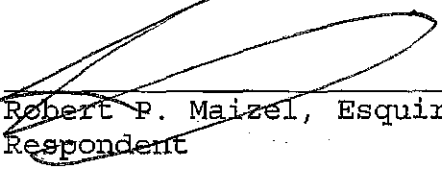
VERIFICATION

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


July 21, 2014
Date


Richard Hernandez
Disciplinary Counsel

7/21/14
Date


Robert P. Maizel, Esquire
Respondent

07/21/2014
Date


Louis F. Hornstine, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 26 DB 2014
v. :
: Atty. Reg. No. 88670
ROBERT P. MAIZEL, :
Respondent : (Philadelphia)

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

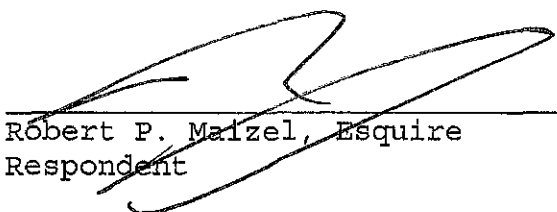
Respondent, Robert P. Maizel, hereby states that he consents to the imposition of a suspension of two years as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline on Consent and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with Louis F. Hornstine, Esquire, in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a disciplinary proceeding at 26 DB 2014 involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

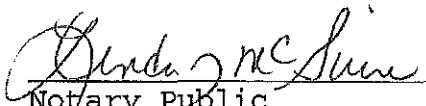
3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He consents because he knows that if the charges pending at No. 26 DB 2014 continued to be prosecuted, he could not successfully defend against them.


Robert P. Maizel, Esquire
Respondent

Sworn to and subscribed

before me this 21
day of July, 2014.


Notary Public

