

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. 2596 Disciplinary Docket No. 3  
: :  
Petitioner : No. 29 DB 2018  
: :  
v. : Attorney Registration No. 64371  
: :  
JOHN KELVIN CONNER, : (Montgomery County)  
: :  
Respondent :

**ORDER**

**PER CURIAM**

**AND NOW**, this 20<sup>th</sup> day of June, 2019, upon consideration of the Report and Recommendations of the Disciplinary Board, John Kelvin Conner is disbarred from the Bar of this Commonwealth and shall comply with the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola  
As Of 06/20/2019

  
Attest:  
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 29 DB 2018
Petitioner	:	
	:	
v.	:	Attorney Registration No. 64371
	:	
JOHN KELVIN CONNER	:	
Respondent	:	(Montgomery County)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on February 28, 2018, Petitioner, Office of Disciplinary Counsel, charged Respondent, John Kelvin Conner, with violations of Rules of Professional Conduct 8.4(b) and 8.4(c). Respondent filed an Answer to Petition for Discipline on March 20, 2018, and denied that he violated any Rules of Professional Conduct.

Following the assignment of this matter to a District II Hearing Committee (“Committee”), Committee Chair Jeffrey A. Krawitz conducted a prehearing conference

on May 3, 2018. The Committee held a disciplinary hearing on June 21, 2018. Respondent appeared *pro se*. Petitioner offered into evidence, without objection, Exhibits ODC-1; ODC-2; composite Exhibit ODC-3<sup>1</sup> (consisting of Exhibits ODC-3A through ODC-3J); and ODC-5 through ODC-8. Petitioner offered composite Exhibit ODC-9 (consisting of Exhibits ODC-9A through ODC-9G), which was admitted over Respondent's objection. Petitioner presented the testimony of Sarah Fauntleroy and Seth P.Maltzman, Esquire. Respondent testified on his own behalf. He presented no other witnesses. Respondent offered into evidence, without objection, Exhibits RS-1; RS-5; RS-6a and RS-11a. Respondent also offered into evidence Exhibit RS-26, which was admitted over Petitioner's objection.

At the conclusion of the hearing on June 21, 2018, the panel held the record open for one week in order to permit Respondent to present evidence on the issue of type of discipline to be imposed. Respondent did not provide any evidence. The record was closed on July 3, 2018.

On July 23, 2018, Petitioner filed a Brief to the Committee and recommended that Respondent be disbarred.

On August 23, 2018, Respondent filed a Brief to the Committee and recommended that the matter be dismissed, as Petitioner did not meet its burden of proof as to the charged rules violations.

On October 10, 2018, the Committee filed a Report and concluded that Respondent violated the rules charged in the Petition for Discipline. The Committee recommended that Respondent be disbarred.

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<sup>1</sup> Petitioner and Respondent each moved separately for the admission of composite Exhibit ODC-3.

On November 8, 2018, Respondent filed a Brief on Exceptions to the Committee's Report and contends that the factual findings upon which the Committee relied to reach their conclusion that Respondent did not have permission from his client to use her funds were not supported by the evidence. Respondent requests that the Board reject the Committee's findings and conclusions.

On November 19, 2018, Petitioner filed a Brief Opposing Respondent's Exceptions and requested that the Board adopt the Committee's recommendation and recommend to the Court that Respondent be disbarred.

On November 26, 2018, Respondent requested oral argument before the Board.

A three-member Board panel held oral argument on January 7, 2019.

The Board adjudicated this matter at the meeting on January 10, 2019.

## II. FINDINGS OF FACT

The Board makes the following findings:

### The Parties' Stipulated Facts (Exhibits ODC-1 and ODC-2)

1. Petitioner's principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106.

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

3. Respondent, John Kelvin Conner, was born in 1956.

4. Respondent was admitted to practice law in the Commonwealth of Pennsylvania on May 18, 1992.

5. Respondent maintains his office at Conner Law Group, LLC, 766 Old York Road, Suite 1, Jenkintown, Montgomery County, Pennsylvania 19046.

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

7. On July 29, 2016, Sarah Fautleroy executed a General Durable Power of Attorney in Respondent's favor.

8. In connection with Ms. Fautleroy's execution of the General Durable Power of Attorney, Respondent signed an Acknowledgment Executed by Agent, in which Respondent acknowledged that in the absence of a specific provision to the contrary, in the power of attorney or in 20 Pa.C.S. (sic), when acting as agent Respondent would, *inter alia*, "exercise the powers for the benefit of the principal" (Ms. Fautleroy). RS-1.

9. Respondent executed the following transactions against Ms. Fautleroy's checking account at Wells Fargo, account number ending in 1496 ("1496 Account"):

a. an August 16, 2016 ATM withdrawal in the amount of two hundred three dollars and ninety-nine cents (\$203.99) at Parx Casino in Bensalem, Pennsylvania;

b. an August 16, 2016 ATM withdrawal in the amount of sixty three dollars and ninety-nine cents (\$63.99) at Parx Casino in Bensalem, Pennsylvania;

c. an August 22, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

d. an August 23, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

e. an August 27, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on August 29, 2016;

f. an August 29, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

g. an August 30, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at SugarHouse Casino in Philadelphia, Pennsylvania;

h. a September 1, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

i. a September 2, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

j. a September 8, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

k. a September 9, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

l. a September 13, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

m. a September 16, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

n. a September 17, 2016 ATM withdrawal in the amount of one hundred sixty-four dollars and ninety-nine cents (\$164.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey, which posted against Ms. Fauntleroy's checking account on September 19, 2016;

o. a September 22, 2016 ATM withdrawal in the amount of three hundred dollars (\$300.00) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

p. a September 23, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

q. a September 27, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

r. a September 30, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

s. an October 5, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

t. an October 7, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

u. an October 10, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on October 11, 2016;

v. an October 11, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

w. an October 16, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on October 17, 2016;

x. an October 18, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

y. an October 19, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

z. an October 20, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey, which posted against Ms. Fauntleroy's checking account on October 21, 2016;

aa. an October 21, 2016 ATM withdrawal in the amount of three hundred dollars (\$300.00) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

bb. an October 22, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey, which posted against Ms. Fauntleroy's checking account on October 24, 2016;

cc. an October 23, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey, which posted against Ms. Fauntleroy's checking account on October 24, 2016;

dd. an October 26, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania;

ee. an October 29, 2016 ATM withdrawal in the amount of three hundred three dollars and ninety-nine cents (\$303.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on October 31, 2016;

ff. a November 2, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

gg. a November 4, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

hh. a November 11, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on November 14, 2016;

ii. a November 12, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on November 14, 2016;

jj. a November 15, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

kk. a November 22, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

ll. a November 25, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

mm. a November 27, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on November 28, 2016;

nn. a December 1, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

oo. a December 2, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

pp. a December 6, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

qq. a December 9, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

rr. a December 11, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on December 12, 2016;

ss. a December 13, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

tt. a December 20, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

uu. a December 27, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

vv. a December 29, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

ww. a December 31, 2016 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey, which posted against Ms. Fauntleroy's checking account on January 3, 2017;

xx. a January 1, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey, which posted against Ms. Fauntleroy's checking account on January 3, 2017;

yy. a January 2, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey, which posted against Ms. Fauntleroy's checking account on January 3, 2017;

zz. a January 4, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

aaa. a January 6, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

bbb. a January 9, 2017 ATM withdrawal in the amount of two hundred four dollars and ninety-nine cents (\$204.99) at Parx Casino in Bensalem, Pennsylvania;

ccc. a January 11, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

ddd. a January 14, 2017 ATM withdrawal in the amount of sixty-four dollars and ninety-nine cents (\$64.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on January 17, 2017;

eee. a January 18, 2017 ATM withdrawal in the amount of two hundred four dollars and ninety-nine cents (\$204.99) at Parx Casino in Bensalem, Pennsylvania;

fff. a January 19, 2017 ATM withdrawal in the amount of two hundred four dollars and ninety-nine cents (\$204.99) at Parx Casino in Bensalem, Pennsylvania;

ggg. a January 20, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

hhh. a January 24, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

iii. a January 26, 2017 ATM withdrawal in the amount of one hundred forty dollars (\$140.00) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

jjj. a January 27, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

kkk. a February 1, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

lll. a February 4, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on February 6, 2017;

mmm. a February 13, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

nnn. a February 19, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in

Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on February 21, 2017;

ooo. a February 20, 2017 ATM withdrawal in the amount of two hundred four dollars and ninety-nine cents (\$204.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on February 21, 2017;

ppp. a February 25, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey, which posted against Ms. Fauntleroy's checking account on February 27, 2017;

qqq. a February 27, 2017 ATM withdrawal in the amount of two hundred four dollars and ninety-nine cents (\$204.99) at Parx Casino in Bensalem, Pennsylvania;

rrr. a March 1, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

sss. a March 3, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania;

ttt. a March 7, 2017 ATM withdrawal in the amount of one hundred forty-four dollars and ninety-nine cents (\$144.99) at Parx Casino in Bensalem, Pennsylvania;

uuu. a March 11, 2017 ATM withdrawal in the amount of two hundred sixty-four dollars and ninety-nine cents (\$264.99) at Parx Casino

in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on March 13, 2017;

vvv. an additional March 11, 2017 ATM withdrawal in the amount of twenty-four dollars and ninety-nine cents (\$24.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on March 13, 2017;

www. a March 13, 2017 ATM withdrawal in the amount of one hundred four dollars and ninety-nine cents (\$104.99) at Parx Casino in Bensalem, Pennsylvania;

xxx. an additional March 13, 2017 ATM withdrawal in the amount of one hundred four dollars and ninety-nine cents (\$104.99) at Parx Casino in Bensalem, Pennsylvania;

yyy. a March 26, 2017 ATM withdrawal in the amount of one hundred four dollars and ninety-nine cents (\$104.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on March 27, 2017;

zzz. an additional March 26, 2017 ATM withdrawal in the amount of twenty-four dollars and ninety-nine cents (\$24.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on March 27, 2017; and

aaaa. an April 1, 2017 ATM withdrawal in the amount of three hundred four dollars and ninety-nine cents (\$304.99) at Parx Casino in Bensalem, Pennsylvania, which posted against Ms. Fauntleroy's checking account on April 3, 2017.

bbbb. an August 24, 2016 transaction in the amount of five hundred thirty-five dollars (\$535.00) at Parx Casino in Bensalem, Pennsylvania;

cccc. an August 25, 2016 transaction in the amount of five hundred thirty-five dollars (\$535.00) at Parx Casino in Bensalem, Pennsylvania;

dddd. an August 29, 2016 transaction in the amount of five hundred seventeen dollars and seventy cents (\$517.70) at Parx Casino in Bensalem, Pennsylvania;

eeee. an August 30, 2016 transaction in the amount of five hundred seventeen dollars and ninety-five cents (\$517.95) at SugarHouse Casino in Philadelphia, Pennsylvania;

ffff. a September 1, 2016 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

gggg. a September 1, 2016 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

hhhh. a September 2, 2016 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

iiii. a September 2, 2016 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

jjjj. a September 6, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

kkkk. a September 6, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

llll. a September 8, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

mmmm. a September 8, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

nnnn. a September 9, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

oooo. a September 12, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

pppp. a September 13, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

qqqq. a September 13, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

rrrr. a September 14, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

ssss. a September 14, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

tttt. a September 22, 2016 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

uuuu. a September 22, 2016 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

vvvv. a September 23, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

wwww. a September 23, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

xxxx. a September 27, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

yyyy. a September 27, 2016 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania;

zzzz. a September 30, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

aaaaa. a September 30, 2016 transaction in the amount of five hundred seventeen dollars and seventy cents (\$517.70) at Parx Casino in Bensalem, Pennsylvania;

bbbbb. an October 5, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

ccccc. an October 5, 2016 transaction in the amount of five hundred seventeen dollars and seventy cents (\$517.70) at Parx Casino in Bensalem, Pennsylvania;

ddddd. an October 7, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

eeeee. an October 11, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

fffff. an October 11, 2016 transaction in the amount of one thousand two hundred thirty-eight dollars and thirty-five cents (\$1,238.35) at Parx Casino in Bensalem, Pennsylvania;

ggggg. an October 17, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

hhhhh. an October 18, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

iiii. an October 18, 2016 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

jjjj. an October 18, 2016 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania;

kkkk. an October 19, 2016 transaction in the amount of one thousand six hundred fifty dollars and fifteen cents (\$1,650.15) at Parx Casino in Bensalem, Pennsylvania;

llll. an October 19, 2016 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania;

mmmm. an October 21, 2016 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

nnnn. an October 21, 2016 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

oooo. an October 21, 2016 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

ppppp. an October 21, 2016 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

qqqqq. an October 24, 2016 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

rrrrr. an October 24, 2016 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

sssss. an October 24, 2016 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

ttttt. an October 24, 2016 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

uuuuu. an October 26, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

vvvvv. an October 26, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

wwwww. an October 27, 2017 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

xxxxx. an October 31, 2016 transaction in the amount of five hundred seventeen dollars and seventy cents (\$517.70) at Parx Casino in Bensalem, Pennsylvania;

yyyyy. an October 31, 2016 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania;

zzzzz. a November 4, 2016 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

aaaaa. a November 4, 2016 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

bbbbb. a November 14, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

ccccc. a November 14, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

ddddd. a November 22, 2016 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

eeeeee. a November 25, 2016 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania;

fffff. a November 28, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

ggggg. a December 1, 2016 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

hhhhh. a December 1, 2016 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

iiiiii. a December 6, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

jjjjj. a December 12, 2016 transaction in the amount of seven hundred twenty-three dollars and sixty cents (\$723.60) at Parx Casino in Bensalem, Pennsylvania;

kkkkk. a December 12, 2016 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

lllll. a December 29, 2016 transaction in the amount of five hundred seventeen dollars and seventy cents (\$517.70) at Parx Casino in Bensalem, Pennsylvania;

mmmmm. a December 29, 2016 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

nnnnnn. a January 3, 2017 transaction in the amount of one thousand forty-two dollars and ninety-five cents (\$1,042.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

oooooo. a January 3, 2017 transaction in the amount of eight hundred thirty-four dollars and ninety-five cents (\$834.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

pppppp. a January 3, 2017 transaction in the amount of one thousand two hundred fifty dollars and ninety-five cents (\$1,250.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

qqqqqq. a January 3, 2017 transaction in the amount of six hundred twenty-six dollars and ninety-five cents (\$626.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

rrrrrr. a January 3, 2017 transaction in the amount of six hundred twenty-six dollars and ninety-five cents (\$626.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

ssssss. a January 3, 2017 transaction in the amount of one thousand two hundred fifty dollars and ninety-five cents (\$1,250.95) at the Borgata Hotel Casino & Spa in Atlantic City, New Jersey;

tttttt. a January 4, 2017 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

uuuuuu. a January 4, 2017 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

vvvvvv. a January 6, 2017 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

wwwww. a January 11, 2017 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

xxxxxx. a January 13, 2017 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

yyyyyy. a January 17, 2017 transaction in the amount of one thousand thirty-two dollars and forty-five cents (\$1,032.45) at Parx Casino in Bensalem, Pennsylvania;

zzzzzz. a January 17, 2017 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

aaaaaaa. a January 20, 2017 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

bbbbbbb. a January 24, 2017 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

ccccccc. a February 2, 2017 transaction in the amount of eight hundred twenty-six dollars and fifty-five cents (\$826.55) at Parx Casino in Bensalem, Pennsylvania;

ddddddd. a February 10, 2017 transaction in the amount of five hundred seventeen dollars and seventy cents (\$517.70) at Parx Casino in Bensalem, Pennsylvania;

eeeeeee. a February 10, 2017 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania;

ffffff. a February 10, 2017 transaction in the amount of four hundred fourteen dollars and seventy-five cents (\$414.75) at Parx Casino in Bensalem, Pennsylvania;

ggggggg. a February 21, 2017 transaction in the amount of five hundred seventeen dollars and seventy cents (\$517.70) at Parx Casino in Bensalem, Pennsylvania;

hhhhhhh. a February 27, 2017 transaction in the amount of five hundred twenty-two dollars and ninety-five cents (\$522.95) at the Tropicana Casino & Resort in Atlantic City, New Jersey;

iiiiiii. a March 1, 2017 transaction in the amount of nine hundred twenty-nine dollars and fifty cents (\$929.50) at Parx Casino in Bensalem, Pennsylvania;

jjjjjjj. a March 1, 2017 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

kkkkkkk. a March 3, 2017 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania;

lllllll. a March 13, 2017 transaction in the amount of five hundred seventeen dollars and seventy cents (\$517.70) at Parx Casino in Bensalem, Pennsylvania;

mmmmmmm. an April 3, 2017 transaction in the amount of six hundred twenty dollars and sixty-five cents (\$620.65) at Parx Casino in Bensalem, Pennsylvania;

nnnnnnn. an April 3, 2017 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania;

ooooooo. an April 3, 2017 transaction in the amount of one hundred fifty-seven dollars and thirty-eight cents (\$157.38) at Parx Casino in Bensalem, Pennsylvania; and

ppppppp. an April 14, 2017 transaction in the amount of three hundred eleven dollars and eighty cents (\$311.80) at Parx Casino in Bensalem, Pennsylvania.

10. By letter to Ms. Fauntleroy dated May 1, 2017, Respondent enclosed:

- a. an accounting of Ms. Fauntleroy's funds; and
- b. a certified check in the amount of sixty-seven thousand seven hundred eight dollars and fifteen cents (\$67, 708.15).

11. Respondent represented in the accounting that he had paid himself a salary in the amount of nine thousand five hundred dollars (\$9,500.00).

12. By DB-7 Request for Statement of Respondent's Position dated November 8, 2017, Respondent was placed on notice of the allegations against him.

13. On December 11, 2017, Respondent answered the DB-7.

14. The transactions described at paragraph 9 were not for the benefit of Ms. Fauntleroy.

15. The aggregate amount of the transactions described at paragraph 9 is \$95,192.47.

#### Additional Findings

16. Sarah Fauntleroy is an elderly woman who resides alone and due to medical conditions, requires constant, round-the-clock caretaking at her home. N.T. 28

17. Ms. Fauntleroy's brother, Lorenzo Fauntleroy, recommended and introduced Respondent to Ms. Fauntleroy as an attorney to help her sort out her financial problems. N.T. 25, 26.

18. Ms. Fauntleroy placed trust in Respondent as an attorney to manage her personal finances and granted him a Power of Attorney. N.T. 22, 25.

19. During the time that Respondent was granted the Power of Attorney over Ms. Fauntleroy's financial affairs, Respondent discovered, identified, and claimed assets due to Ms. Fauntleroy and also paid her debts and personal expenses. N.T. 26, 29, 57, 58.

20. At some point after Respondent began managing Ms. Fauntleroy's finances, Lorenzo Fauntleroy wrote a check made payable to Ms. Fauntleroy in the amount of \$10,000. N.T. 45, 46.

21. Although Respondent deposited these monies into the 1496 Account, he testified that Mr. Fauntleroy intended these monies to be Respondent's legal fee. N.T. 116, 117, 129. Respondent made this claim notwithstanding that no writing ever was created between Lorenzo Fauntleroy and Respondent designating the \$10,000

check to be used for Respondent's fee. Respondent claimed that he deposited the \$10,000.00 into the 1496 Account because Ms. Fauntleroy "had no money at that time" and needed monies to pay her caretakers, so he "gave her the money or allowed her to use that money to pay her employees." N.T. 111-112.

22. When asked by the Committee what evidence Respondent had that the check Mr. Fauntleroy wrote payable to his sister was for Respondent, Respondent replied "Evidence I have is that that's what he wrote the check for. And I'm sure that if Mr. Fauntleroy was here, he would testify to that." N.T. 206-207. Mr. Fauntleroy was never called as a witness.

23. Using the Power of Attorney granted by Ms. Fauntleroy, during the period of August 16, 2016 through April 14, 2017, Respondent withdrew a total of \$95,192.47 of Ms. Fauntleroy's personal funds from the 1496 Account. ODC-1 and ODC-2.<sup>2</sup>

24. Respondent withdrew Ms. Fauntleroy's funds a total number of 172 times at various casinos, sometimes several times per day and multiple times per week, utilizing Ms. Fauntleroy's debit/credit card associated with the 1496 Account, to help fund his gambling. ODC-3B through ODC-3J.

25. Respondent claimed he had an oral agreement with Ms. Fauntleroy that allowed him to borrow the funds to gamble at multiple casinos, with the understanding that he would pay her back. N.T. 16, 69, 197, 111, 203-204.

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<sup>2</sup> By letter dated October 31, 2018 to Disciplinary Board Chair Brian J. Cali, filed with the Board on November 5, 2018, copies sent to Respondent and the Committee, Petitioner disclosed that sixteen transactions, in the aggregate amount of \$4,564.87, were unintentionally duplicated on ODC-1 and ODC-2 (Stipulations). The Board Report contains the correct transactions and aggregate dollar amount as explained in the October 31, 2018 letter.

26. Respondent testified that he had conversations with Ms. Fauntleroy in which she gave him permission to use her debit card at various casinos. N.T. 179 - 180.

27. Respondent testified that he had permission from Ms. Fauntleroy to use her 1496 Account debit/credit card only at casinos, and for no other purposes. N.T. 207.

28. Respondent was unable to provide any details of these conversations, such as how many times they occurred or when they occurred. N.T. 179-180.

29. Respondent testified that he did not envision a time when anyone would question him about the fact that he used Ms. Fauntleroy's debit card at a casino. N.T. 186-187.

30. Respondent did not obtain informed consent from Ms. Fauntleroy in writing or otherwise memorialize their conversations wherein he claims he received permission to use her account funds at casinos. 186-187.

31. Respondent testified to his belief that Ms. Fauntleroy filed a complaint against him with Office of Disciplinary Counsel and accused him of using her account without permission because he made one of her caretakers pay income taxes. N.T. 180-181.

32. Respondent's testimony is not credible.

33. At the disciplinary hearing, Ms. Fauntleroy testified that she was unaware of the transactions set forth in Paragraph 9 above, at the time Respondent executed them. N.T. 22.

34. Ms. Fauntleroy testified that she did not authorize or otherwise approve the transactions set forth in Paragraph 9. N.T. 22, 23.

35. Ms. Fauntleroy's testimony is credible.

36. On August 16, 2016, Respondent withdrew \$200.00 from an ATM located at 2999 Street Road, Bensalem, PA 19029, the address of Parx Casino. This transaction required Ms. Fauntleroy's account to incur fees totaling: \$8.49 (\$3.99 for the ATM use; \$2.00 for a balance inquiry; and \$2.50 fee charged by Wells Fargo for use of a non-Wells Fargo ATM). ODC-3B. These amounts were not stipulated to in ODC-1 or ODC-2.

37. Beginning on August 23, 2016, Respondent began transferring Ms. Fauntleroy's funds from her investment and savings accounts to the 1496 Account a total of 33 times. ODC-3B, ODC-3C; ODC-3D; ODC-3E; ODC-3G.

38. Respondent transferred these funds so he could continue to withdraw funds for his personal use. During this time, other receipts from Ms. Fauntleroy's pension payments and various cash deposits were deposited into the 1496 Account. Funds from this account were also used to pay Ms. Fauntleroy's living expenses, including her caretakers. ODC-3A through ODC-3J.

39. From December 28, 2016 through April 21, 2017, cash was deposited into the 1496 Account a total of 21 times totaling \$22,700.00. ODC-3A through ODC-3J.

40. The cash deposits of \$22,700.00 were not shown on Respondent's Accounting. RS-5.

41. Respondent claims that these cash deposits starting December 28, 2016 reflect partial repayment to Ms. Fauntleroy. It is unclear whether these cash

deposits were Ms. Fauntleroy's funds, proceeds from Respondent's gambling, or his personal funds deposited into the subject account in order to maintain a positive balance. ODC-3F through ODC3I, N.T. 68, 127.

42. When Respondent created the 1496 Account, he obtained overdraft protection. Numerous checks were returned due to non-sufficient funds, which required the account to incur numerous overdraft fees. ODC-3E through ODC-3I.

43. When Respondent exhausted the overdraft protection on the checking account, checks were returned for non-sufficient funds starting on March 21, 2017. ODC-3F; ODC-3 G; ODC3H; ODC3I.

44. Beginning on March 21, 2017, checks written to Ms. Fauntleroy's personal caretakers were returned for non-sufficient funds. Before this, checks to the caretakers were covered by the overdraft protection on the account.

45. When the checks were returned, Ms. Fauntleroy's caretakers notified Ms. Fauntleroy of the problem. ODC-31; N.T. 80-81.

46. Ms. Fauntleroy revoked the Power of Attorney on April 27, 2017. ODC-5.

47. Seth P. Maltzman, Esquire, credibly testified at the disciplinary hearing that Ms. Fauntleroy was capable of making knowing and intelligent decisions on April 27, 2017, when he assisted her in revoking the Power of Attorney that she had executed in Respondent's favor on July 29, 2016. N.T. 88-89.

48. Respondent testified that after Ms. Fauntleroy revoked the Power of Attorney on April 27, 2017, he went to see her on April 28, 2017, and found her to be "non-respondent," yet he also testified that previously when Ms. Fauntleroy orally agreed to allow him to use her debit card at the casinos, she was "fine." N.T. 192-193.

49. After Ms. Fauntleroy revoked the Power of Attorney, Respondent repaid a portion of the funds owed to Ms. Fauntleroy by certified check dated May 1, 2017, in the amount of \$67,708.15. ODC-1(12b).

50. Respondent claimed that Ms. Fauntleroy received more than she was entitled, but he failed to provide evidence to support his claim. N.T. 148, 200.

51. Respondent failed to fully reimburse Ms. Fauntleroy for the improper transactions set forth in Paragraph 9 above.

52. Respondent owed Ms. Fauntleroy more monies due to the fact that he required her account to incur numerous balance inquiry fees, non-Wells Fargo ATM fees, draft protection fees, overdraft fees, and loss of income from her savings and investment accounts. ODC-3A-J.

53. Respondent testified there was no written fee agreement with Ms. Fauntleroy. N.T. 194 -196.

54. Respondent attempted to conceal his 172 withdrawals from Ms. Fauntleroy's debit/credit card by failing to include them on an accounting he provided to Ms. Fauntleroy. N.T. 144. Although Respondent marked the accounting as RS-4, he did not submit it into evidence.

55. Respondent has not acknowledged any wrongdoing, has not accepted responsibility for his actions and did not demonstrate remorse for his misconduct.

56. Respondent has a record of prior public discipline. Respondent was suspended for a period of nine months by Order of the Supreme Court of Pennsylvania dated April 11, 2006, as a result of, *inter alia*, his failure to promptly disburse funds in two

client matters. ***Office of Disciplinary Counsel v. John Kelvin Conner***, No. 165 DB 2004 (D. Bd. Rpt. 1/19/2006) (S. Ct. Order 4/11/2006). ODC-8

57. The Internal Revenue Service holds two open and outstanding liens against Respondent in the total amount of \$47,180.75. ODC 9A-B.

58. The Pennsylvania Department of Revenue holds four open and outstanding liens against Respondent in the total amount of \$6,903.40. ODC-9C-F.

59. The Ford Motor Credit Company, LLC holds an open and outstanding default judgment against Respondent in the amount of \$5,226.40. ODC-9G.

### III. CONCLUSIONS OF LAW

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

1. RPC 8.4 (b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.

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

### IV. DISCUSSION

Petitioner charged Respondent with violating Rules of Professional Conduct 8.4(b) and 8.4(c) by using funds of Sarah Fautleroy for his personal use without Ms. Fautleroy’s knowledge or permission. Respondent filed an Answer and denied violating the charged rules. Petitioner has the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v.***

**John T. Grigsby, III**, 425 A.2d 730, 732 (Pa. 1981). Petitioner satisfied its burden by way of the parties' stipulations, Petitioner's exhibits, and the testimony of Ms. Fauntleroy, Mr. Maltzman and Respondent, which demonstrates that Respondent engaged in misconduct in violation of RPC 8.4(b) and 8.4(c). Based on the evidentiary record, and for the reasons stated herein, we recommend that Respondent be disbarred from the practice of law.

Respondent stipulated that on July 29, 2016, Ms. Fauntleroy executed a General Durable Power of Attorney in Respondent's favor, and that in connection therewith, Respondent executed an Acknowledgment Executed by Agent, in which Respondent acknowledged that in the absence of a specific provision to the contrary in the power of attorney or in 20 Pa.C.S. (sic), when acting as agent, Respondent would, *inter alia*, "exercise the powers for the benefit of the principal" (Ms. Fauntleroy). By virtue of the Power of Attorney, Respondent had access to Ms. Fauntleroy's funds in the 1496 Account. Respondent stipulated that during the approximately nine-month period that he served as Ms. Fauntleroy's power of attorney, he executed 172 transactions against the 1496 Account at various casinos, in the aggregate of \$95,192.47. None of the 172 transactions were for the benefit of Ms. Fauntleroy. There is no evidence that Ms. Fauntleroy ever accompanied Respondent to a casino. By executing these 172 transactions, Respondent intentionally dealt with the funds in the 1496 Account as his own and failed to dispose of them in a way that benefitted Ms. Fauntleroy.

Respondent funded the 1496 Account with various forms of income, including Ms. Fauntleroy's pension payments, deposits in cash, and numerous transfers from Ms. Fauntleroy's savings and investment accounts. During the period of August 23, 2016 through January 25, 2017, when it appeared that the balance in the 1496 Account was low, Respondent transferred Ms. Fauntleroy's other funds from her savings and

investment accounts into the 1496 Account. Respondent transferred funds at least 33 different times in the months that he had control over the 1496 Account. Respondent's scheme ended in March 2017, when the Wells Fargo overdraft protection on the account was exceeded and paychecks to Ms. Fauntleroy's personal caretakers were returned for non-sufficient funds. On April 27, 2017, Ms. Fauntleroy revoked the Power of Attorney.

Respondent testified that he had an oral agreement with Ms. Fauntleroy that permitted him to use her funds, which he obtained by using her debit card, for his benefit at various casinos, and that he planned to repay her. N.T. 69, 147, 203-204. Respondent claims that he had this agreement with Ms. Fauntleroy despite the unambiguous language of his Acknowledgment Executed by Agent, whereby he was required to exercise his power granted in the power of attorney for the benefit of Ms. Fauntleroy. Respondent further testified that the oral agreement was strictly for him to use Ms. Fauntleroy's debit card at casinos, and not for any other transactions. N.T. 207. Respondent maintains that he and Ms. Fauntleroy had "several conversations about this." N.T. 179-180. Respondent was unable to tell the Committee any details of these conversations, such as when they occurred and how many occurred. N.T. 188-190. However, Respondent conceded that he never asked Ms. Fauntleroy to sign a document authorizing his use of her debit card associated with the 1496 Account at the casinos and he did not memorialize his alleged conversations with Ms. Fauntleroy in any way. N.T. 186-187. In his defense, Respondent expressed his belief that Ms. Fauntleroy filed a complaint against him with Office of Disciplinary Counsel and falsely accused him of using her account without permission because Respondent made one of her caretakers pay income taxes. N.T. 180-181. Respondent's testimony is not credible and is not supported by any documentary evidence. The evidence supports the finding that Respondent did not have Ms.

Fauntleroy's permission to use her debit card to access funds in her account and gamble at casinos.

At the disciplinary hearing, Ms. Fauntleroy credibly and unequivocally testified that she did not know Respondent was using her debit card to access funds in her 1496 Account to gamble at casinos, and she clearly denied that she ever authorized Respondent to use her funds at a casino. Other than his own self-serving testimony, Respondent offered no evidence to contradict Ms. Fauntleroy's testimony.

Respondent claims that in any event, he returned Ms. Fauntleroy's funds to her in full. Respondent's position is once again self-serving and does not change the underlying fact that he committed a criminal act when he used her funds without permission. In May 2017, Respondent repaid Ms. Fauntleroy funds in the amount of \$67,708.15 after he was caught and after Ms. Fauntleroy revoked her Power of Attorney. While Respondent claims that the \$67,708.15 was actually more than Ms. Fauntleroy was entitled to receive, he presented no documentary evidence to support his claim. We conclude, based on the evidence of record, that Respondent's payment constituted a portion of what he took from Ms. Fauntleroy's account and was not a payment in full.

RPC 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. The finding of a violation of RPC 8.4(b) does not require a criminal conviction. *Office of Disciplinary Counsel v. Edwin London*, Nos. 119 & 171 DB 2014 (D. Bd. Rpt. 8/25/2015) (S. Ct. Order 10/22/2015). Although Respondent was not criminally prosecuted<sup>3</sup>, his unauthorized use of Ms. Fauntleroy's

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<sup>3</sup>We take judicial notice of Respondent's February 4, 2019 conviction in the United States District Court for the Eastern District of Pennsylvania of 19 counts of wire fraud in violation of 18 U.S.C. §1343 and one count of false statements in violation of 18 U.S.C. §1001.

funds violated 18 Pa.C.S. 3927(a), which provides that “[a] person who obtains property upon agreement, or subject to a known legal obligation, to make specified payments or other disposition, whether from such property or its proceeds or from his own property to be reserved in equivalent amount is guilty of theft if he intentionally deals with the property obtained as his own and fails to make the required payment or disposition. “

Respondent’s deceptive and unauthorized use of Ms. Fauntleroy’s funds and his attempt to conceal these transactions also violated RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

The misconduct in this matter is aggravated by several factors, which demonstrate Respondent’s unfitness to practice law.

Respondent failed to express sincere remorse, a significant aggravating factor. See, **Office of Disciplinary Counsel v. Thomas Allen Crawford, Jr.**, 160 DB 2014 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 11/4/2017); **Office of Disciplinary Counsel v. John Andrew Klamo**, No. 90 DB 2015 (D. Bd. Rpt. 12/23/2016) (S. Ct. Order 3/13/2017). Intrinsic to the concept of remorse as an expression of deep regret or guilt is the ability to acknowledge wrongdoing. Respondent refused to acknowledge his misconduct, and failed to demonstrate any regret for his actions. An aggravating factor underscoring Respondent’s lack of repentance is his failure to make full restitution to Ms. Fauntleroy. We further note that the partial payment made by Respondent occurred after he had been caught. See **Office of Disciplinary Counsel v. Anonymous (Ronald L. Muha)** No. 121 DB 1999 (D. Bd. Rpt. 11/3/2000) (S. Ct. Order 3/23/2001) (Muha’s misappropriation was “compounded by the fact that [Muha] never reimbursed his client for any of the funds he converted.”).

Respondent has a history of public professional discipline that involves mishandling client funds. In 2006, Respondent was suspended for a period of nine months due to financial misconduct in two separate client matters. **Office of Disciplinary Counsel v. John Kelvin Conner**, No. 165 DB 2004 (D. Bd. Rpt. 1/19/2006) (S. Ct. Order 4/11/2006). In the first client matter, Respondent was retained to collect outstanding funds and obtained a judgment on his client's behalf for the sum of \$5,356.56. Respondent received a partial check for \$4,112.57 toward the amount due, which he deposited into his personal business account. Although the client agreed to let Respondent hold that check until the balance was collected, the client was unable to contact Respondent for several months, despite multiple attempts to inquire about the outstanding balance. It was not until approximately five months later when the client sent a certified letter indicating it would file a complaint with the Disciplinary Board that Respondent took any action. Respondent finally disbursed a check for the balance of the funds approximately one month after the deadline set in the client's certified letter.

In the second client matter at No. 165 DB 2004, Respondent inappropriately deposited into his business account the amount of \$7,545.00 pertaining to his representation of an insurance company's subrogation interest. Respondent alleged that he mistakenly thought the funds were for legal fees owed him. Respondent then claimed he learned that the funds were incorrectly withheld from the insurance company when Office of Disciplinary Counsel conducted a review of his financial records, after which Respondent reimbursed the insurance company.

Notably, the Committee in the instant matter found Respondent's testimony to be not credible, and we give great deference to this finding, as the Committee had first-hand observation of Respondent's testimony. The Board has found that a respondent-

attorney's failure to provide credible testimony is an aggravating factor. See **Office of Disciplinary Counsel v Glenn D. McGogney**, No. 194 DB 2009 (D. Bd. Rpt. 2/25/2011) (S. Ct. Order 3/28/2012). Respondent's testimony was at times incoherent, contradictory, and nonsensical, as he attempted to convince the Committee that an elderly woman who was concerned about her finances and paying her caretakers, and who entrusted the care of her personal finances to Respondent, would authorize him to use her funds at casinos on 172 occasions.

Respondent's fiscal irresponsibility is an aggravating factor. He has multiple open and outstanding liens against him: two from the United States Internal Revenue Service totaling \$47,180.75; and four from the Pennsylvania Department of Revenue, totaling \$6,903.40. Further, there is a default judgment against Respondent for the Ford Motor Credit Company, LLC in the amount of \$5,226.40. See **Office of Disciplinary Counsel v. Anthony Dennis Jackson**, No. 145 DB 2007 (D. Bd. Rpt. 11/21/2008) (S. Ct. Order 4/3/2009) (Jackson was deemed "unable to effectively manage his personal affairs and professional matters" because of default judgments, unsatisfied judgments, and open liens entered against him; the Board treated this as an aggravating factors); **Office of Disciplinary Counsel v. Raymond Quaglia**, 78 DB 2015 (D. Bd. Rpt. 11/15/2016) (S. Ct. Order 1/30/2017) (The Board considered as aggravating Quaglia's history of failing to pay taxing authorities, which resulted in the imposition of interest, penalties, open liens, and the listing of his former law office for a Sheriff's sale).

Other factors that aggravate this matter are the significant number of unauthorized transactions and the large amount of funds taken from Ms. Fauntleroy's account. Our review of the record indicates there are no mitigating factors.

Having concluded that Respondent violated the rules, this matter is ripe for the determination of discipline. After reviewing the Committee's Report and recommendation for disbarment, and considering the parties' briefs and oral argument, and after considering the nature and gravity of the misconduct as well as the presence of aggravating factors and the absence of mitigation, **Office of Disciplinary Counsel v. Gwendolyn Harmon**, 72 Pa. D. & C. 4<sup>th</sup> 115 (2004), we recommend that Respondent be disbarred from the practice of law.

Respondent's actions constitute egregious misconduct. Respondent abused his position as Ms. Fauntleroy's agent and used her funds without her knowledge and permission for his own benefit. Respondent's belief that his repayment of the funds somehow absolved him of any wrongful activity underscores his basic lack of understanding and knowledge of his professional duties.

While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and suggest disbarment. **Office of Disciplinary Counsel v. Robert Lucarini**, 472 A.2d 186, 189-91 (Pa. 1983). See **Office of Disciplinary Counsel v. Daniel J. Evans**, No. 152 DB 2000, 69 Pa. D. & C. 4<sup>th</sup> 265 (2003) (Evans, acting as both executor and attorney for an estate, misappropriated approximately \$90,000.00 from the estate; Evans disbarred despite having no record of discipline, making restitution, and stipulating to many of the facts, including that he had used funds belonging to the estate); **Office of Disciplinary Counsel v. Patricia M. Renfroe a/k/a Patty M. Renfro and Patty Michelle Renfroe**, No. 122 DB 2004 (D. Bd. Rpt. 8/30/2005) (S. Ct. Order 11/1/2005) (Renfroe disbarred for misappropriating more than \$155,000 from a client which was in the form of an unauthorized transfer; Renfroe had no record of discipline and the client was made financially whole but without Renfroe's assistance); **Office of Disciplinary Counsel v.**

**Melvin T. Sharpe, Jr.**, No. 98 DB 2010 (D. Bd. Rpt. 11/18/2011) (S. Ct. Order 9/28/2012) (Sharpe disbarred for converting \$31,000.00 in connection with two client matters: in the first matter, Sharpe represented the executor of an estate and stole \$21,000.00 from the estate account after learning that the beneficiary had died; Sharpe told Office of Disciplinary Counsel he had invested the money, but later admitted that he misappropriated the funds; in the second matter, Sharpe represented a company with a sale of property and held \$10,000.00 in escrow until completion of the sale; Sharpe deposited the monies into his personal checking account and spent the monies on personal items; Sharpe did not repay the funds).

The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system. **Office of Disciplinary Counsel v. Anthony C. Cappuccio**, 48 A.3d 1231, 1238-39 (Pa. 2012). The evidence produced by Petitioner convincingly proved that Respondent is a danger to the public and the profession itself. Respondent's unauthorized use of his client's funds, prior discipline for mishandling client funds and lack of remorse signify that severe discipline must be imposed. The Board is cognizant that disbarment is an extreme sanction which must be imposed only in the most egregious cases, because it represents a termination of the license to practice law without a promise of its restoration at any future time. **Office of Disciplinary Counsel v. John J. Keller**, 506 A.2d 872, 879 (Pa. 1986). Disbarment is warranted to comply with the guiding decisions reviewed above.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, John Kelvin Conner, be Disbarred from the practice of law in this Commonwealth.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

By: John F. Cordisco / JFC  
John F. Cordisco, Member

Date: 4/2/19