

**BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 45 DB 2015
Petitioner	:	
	:	File No. C3-13-439
v.	:	
	:	Attorney Registration No. 66368
DAVID J. SELINGO	:	
Respondent	:	(Luzerne County)

**PUBLIC REPRIMAND**

David J. Selingo, you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline.

Mr. Selingo, the case against you was opened based on notification from the Pennsylvania Lawyers Fund for Client Security that there was an overdraft on your IOLTA Account. In correspondence with the Fund, you acknowledged that you were not diligent in balancing and reconciling your IOLTA Account and that to cover the overdraft, you deposited earned fees from legal services into the IOLTA Account in excess of the overdraft amount.

Upon review of the IOLTA records, it was determined that in three clients' matters, you engaged in a course of conduct wherein you would disburse clients' settlement funds prior to the resolution of Department of Public Welfare ("DPW") or Medicare liens.

In these matters, following receipt of clients' settlement funds, you would immediately disburse attorney's fees to your firm, transfer an estimated amount of the lien to the firm's operating account, rather than holding the amount of the lien in your IOLTA Account, and disburse the remainder to the client. Following resolution of the amount owed to DPW or Medicare, you would pay the lien from one of the firm's IOLTA or operating accounts and distribute any remaining funds from the settlement amount to the client. In some instances, you would transfer funds from the operating account into the IOLTA Account in order to pay the lien.

You provided copies of executed client fee agreement letters to Office of Disciplinary Counsel wherein you advised clients of this practice and explained that this was a way for you to distribute settlement funds to clients prior to waiting for the resolution of the lien. Although you explained that your practice of handling such funds in this manner was a way to remain "competitive" in the legal market by disbursing settlement funds quickly prior to the resolution of the liens and having the firm assume any and all liabilities, you have acknowledged that this practice involves impermissible commingling and puts DPW's lien in jeopardy. You have further indicated that you will cease this practice of disbursing funds until liens are resolved.

In another client matter, you committed misconduct when you held approximately \$30,000 of a settlement for a minor in cash form in your office, instead of placing such funds in a trust account as required by court order.

In October 2011, Cesar Santana and Francisca Perdomo retained you to represent them in a personal injury claim involving their minor child. DPW notified you in January 2012 of a lien on any settlement award. Following agreement of the parties to a resolution, the parties executed a settlement agreement and the Court issued an

Order on April 30, 2012, approving the settlement. The Order decreed that, among other things, the amount of \$33,160.84 was to be placed in a structured settlement account for the benefit of the minor and the amount of \$33,160.83 was to be held in trust until the DPW lien was satisfied, at which point the net amount held in trust was to be deposited into an insured bank account.

On May 14, 2012, you deposited the settlement proceeds in the amount of \$66,839.16 into the IOLTA account at M & T. Bank. Subsequently, you transferred \$33,678.33 to the M & T Operating Account, as legal fees, leaving a balance of the minor's funds in your IOLTA account in the amount of \$33,160.83. These funds were to be held in trust, pursuant to the court order, pending settlement of the lien. Contrary to the order, you withdrew \$28,000 from the IOLTA Account over a three-month period in varying amounts, by four checks all made payable to you. This money was used by you in your practice.

By check dated October 17, 2012, made payable to DPW in the amount of \$894.92, you resolved the DPW lien on the minor's behalf. The remaining funds were to be deposited in an insured bank account, pursuant to court order. A Citizens Bank Account for the minor was eventually opened on or around October 3, 2013. Throughout Office of Disciplinary Counsel's investigation of this matter, it made numerous requests via letter and emails to you for an explanation of where the minor's funds were held prior to their final placement in the Citizens Bank Account. You used the following language to describe where you held the minor's funds prior to resolution of the DPW lien: "cash trust account"; "trust account"; and "dedicated non-IOLTA cash account." Disciplinary Counsel repeatedly requested bank statements and the identity

of bank accounts, in the belief that the funds were held in a bank account. You finally admitted to Disciplinary Counsel that you had held the money in cash at your law firm.

It turns out that you entered into an impermissible business transaction with Cesar Santana concerning the minor's funds, wherein you personally held the funds in your office, with a rate of return of 1%. Although Mr. Santana was aware of certain terms of the arrangement, you did not fully disclose the terms in writing and obtain written informed consent to those terms, and you failed to advise Mr. Santana to seek independent counsel regarding the transaction. Your records of the agreement with Mr. Santana consisted of a hand-written sheet with numbers evidencing amounts you used, but no dates or payees. Your depiction of this agreement as an "investment vehicle" is not accurate, as this was a mutually beneficial arrangement wherein you had at your disposal approximately \$30,000 to use for office expenses etc., which you did use.

After the account was opened for the minor child on October 3, 2013, by Motion filed on October 10, 2013, you petitioned the Court for permission to move the minor's funds from its current saving account at Citizens Bank to an FDIC Insured J.P. Morgan CD which would provide a better rate of rerun. In that Motion, you stated that: "[t]he balance of \$32,312.47 is currently held at Citizens Bank, in savings account number xxxxxxxxxxx079 which was properly established pursuant to this court's Order dated April 30, 2012..." This was not true because the money was used by you, rather than being held in trust.

You mishandled client funds, and although no client funds were lost, your actions are troubling and constitute misconduct.

Your conduct in this matter has violated the following Rules of Professional Conduct:

1. RPC 1.8(a)(1-3) – A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent in writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
2. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.
3. RPC 1.15(h) – A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.
4. RPC 1.15(c) – Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary

relationship or after distribution or disposition of the property, whichever is later.

5. RPC 8.1(b) - A lawyer in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter.
6. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

We note that you were admitted to the practice of law in Pennsylvania in 1992 and have no record of professional discipline.

Mr. Selingo, your conduct in this matter is now fully public. This Public Reprimand is a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to abide by the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction will subject you to disciplinary action.

This Public Reprimand shall be posted on the Disciplinary Board's website at [www.padisciplinaryboard.org](http://www.padisciplinaryboard.org).



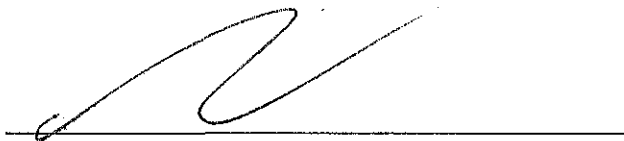
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Designated Member  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on June 11, 2015.

**ACKNOWLEDGMENT**

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at the District I Office located at 1601 Market Street, Suite 3320, Philadelphia, PA on June 11, 2015.



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David J. Selingo