IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2710 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 45 DB 2019
	:	
v.	:	Attorney Registration No. 88378
	:	
ANTHONY S. RACHUBA, IV,	:	(Bucks County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 3rd day of June, 2020, upon consideration of the Report and Recommendations of the Disciplinary Board, Anthony S. Rachuba, IV, is disbarred from the Bar of this Commonwealth. Respondent shall comply with all the provisions of Pa.R.D.E. 217, and shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 06/03/2020

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 45 DB 2019
v.	:	Attorney Registration No. 88378
ANTHONY S. RACHUBA, IV Respondent	:	(Bucks 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 March 14, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent, Anthony S. Rachuba, IV, with violations of the Rules of Professional Conduct arising out of allegations that Respondent misappropriated entrusted funds through forgery and attempted to conceal his actions. Respondent filed an Answer to Petition for Discipline on April 15, 2019.

A prehearing conference was held on May 31, 2019, at which Respondent was represented by counsel but did not himself appear. On July 1, 2019, Respondent's

counsel withdrew his appearance. On August 8, 2019, a District II Hearing Committee (the "Committee") conducted a disciplinary hearing. Respondent acknowledged receipt of notice of the proceedings, but failed to appear. Petitioner offered into evidence Exhibits ODC-1 through ODC-49; the Committee accepted ODC- 1 through ODC-46 and ODC-49. Petitioner presented the testimony of five witnesses. At the conclusion of the hearing, the record in this matter was closed.

On September 6, 2019, Petitioner filed a brief to the Committee and recommended that Respondent be disbarred from the practice of law. Respondent did not file a brief.

By Report dated November 25, 2019, the Committee concluded that Respondent violated the rules as charged in the Petition for Discipline and recommended that he be disbarred.

The parties did not file exceptions to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on January 16, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106 is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the

Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Anthony S. Rachuba, IV, born in 1976 and admitted to practice law in the Commonwealth of Pennsylvania in 2001. He maintains his office at 196 W. Ashland St., Suite 110, Doylestown, Bucks County, PA 18901.

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

4. Respondent has no prior record of discipline.

5. At all times relevant to these proceedings, Respondent was employed by Fitzpatrick, Lentz & Bubba, P.C., ("FLB"), having been employed initially as an associate attorney in 2008 and working in the capacity as a non-voting shareholder since 2015. Petition for Discipline ("P for D"), Respondent's Answer ("RA") 4.

6. On August 25, 2009, Peggy M. Conway died in Lehigh County, Pennsylvania. P for D, RA 5.

7. On or about April 16, 2010, Jack W. Conway, Jr., Patty J. Conway, and Brenda L. Conway, the Executors of Mrs. Conway's will and Successor Co-Trustees of the Conway Family Revocable Living Trust, engaged Respondent and FLB to assist in the administration of Mrs. Conway's Estate and Trust. P for D, RA 6; ODC-1.

8. Respondent was the responsible attorney and billing attorney in connection with the Conway Estate matters. N.T. 40, 62, 87.

9. On May 17, 2010, Respondent caused to be filed the death certificate, will, estimated value of estate, and petition for grant of letters of administration of the Conway Estate with the Lehigh County Register of Wills. P for D, RA 8; ODC-2, ODC-3.

10. Letters of Administration were granted and the Estate was assigned Case Number 2010-0818 on the Lehigh County Docket. P for D, RA 9; ODC-2, ODC-3.

11. On July 28, 2010, Respondent issued a letter notifying all beneficiaries of the Conway Estate of FLB's representation of the Executors and Successor Co-Trustees of the Conway Estate. P for D, RA 11; ODC-4.

12. FLB's paralegal Erica Wellington, provided legal services and worked with Respondent on the Conway Estate until Ms. Wellington left the firm's employ on January 27, 2011, at which time Karen Allender worked with Respondent on the Estate. N.T. 34-35, 40-41, 61-62.

13. On February 16, 2011, a checking account was opened at Wells Fargo Bank under the name of "The Peggy M. Conway Revocable Trust U/A/D 04/18/2002 As Amended, Peggy [sic] & Brenda & Jack Conway Co Trustees" ("Trust Account"). P for D, RA 14; ODC-32 p. 1; N.T. 41.

14. Monthly statements on the Trust account were mailed to FLB's address in Center Valley, Pennsylvania. P for D, RA 15.

15. Respondent was not a signatory on the Trust account. P for D, RA 16; ODC-32 p. 1; N.T. 42.

16. The only individuals authorized to sign checks to withdraw funds from the Trust account were Jack Conway, Jr. and Patty Conway. P for D, RA 17; ODC-32 p.1; N.T. 41.

17. The physical checkbook for the Trust account was maintained in FLB's office. P for D; RA 18; N.T. 42.

18. Edward Lentz, Esquire, a principal in the FLB firm, credibly testified at the disciplinary hearing that FLB never had a policy for the "pre-signing" of checks for estate

administration and, in fact, Mr. Lentz testified that "we've been open for thirty-one years almost. And in those thirty-one years I have never, ever seen a pre-signed check in one of our estate files." N.T. 86.

19. Mr. Lentz further testified that if he had ever witnessed an employee of the firm have blank checks signed in a file, the employee would have been fired. N.T. 87.

20. When a bill related to the Conway Estate (or any other estate) was received, a FLB employee would document the same, and prepare a letter with an unsigned check to be sent to the client for authorization, signing, and forwarding of payment. N.T. 64-65.

21. Erica Wellington credibly testified at the disciplinary hearing that during her tenure as a paralegal at FLB, she could not remember a specific instance where a trustee or executor pre-signed checks in an estate or trust matter, and believed that such practice would have been highly irregular. N.T. 36

22. Ms. Wellington did not recall witnessing Jack Conway pre-signing blank checks for a trust account. N.T. 35.

23. Karen Allender credibly testified at the disciplinary hearing. When Ms. Allender received a bill in connection with the Conway Estate, she filled out the necessary information and sent a letter and the unsigned check to the client with a request that the client sign the check and forward it for payment. N.T. 64; ODC-35 – 39.

24. Ms. Allender testified that she was very familiar with the Conway Estate file and never observed any pre-signed checks in the file. She also testified that she had never witnessed Mr. Conway pre-sign checks nor had she ever provided checks to him that did not have the payee identified on the check. N.T. 64, 74.

25. Jack W. Conway, Jr. credibly testified at the disciplinary hearing that he never pre-signed any checks. N.T. 43.

26. On September 13, 2011, the Successor Co-Trustees met with Respondent at the FLB office and, among other things, signed a check for attorney's fees payable to FLB in the amount of $52,500.00. P for D, RA 19; ODC-7.

27. On or about September 14, 2011, Respondent caused the $52,500.00 check payable to FLB to be deposited into FLB's general operating account. P for D, RA 20.

28. Mr. Conway confirmed that no additional legal fees were paid in the Conway Estate beyond the $52,500.00 paid in September 2011 to FLB. N.T. 59.

29. As of May 18, 2016, $86,097.35 was in the Trust account. P for D, RA 26; ODC-32 pp. 193-197.

30. On or about December 23, 2016, check number 1060 was drawn against the Trust account, made payable to "Anthony S. Rachuba" in the amount of $600.00, and Respondent negotiated the check, withdrawing $600 from the Trust Account. P for D, RA 28; ODC-12.

31. On or about December 27, 2016, check number 1061 was drawn against the Trust account, made payable to "Anthony S. Rachuba" in the amount of $700.00, and Respondent negotiated the check, withdrawing $700.00 from the Trust account. P for D, RA 30; ODC-13.

32. On or about December 31, 2016, check number 1062 was drawn against the Trust account, made payable to "Anthony S. Rachuba" in the amount of $1,500.00, and Respondent negotiated the check, withdrawing $1,500 from the Trust account. P for D, RA 32, 33; ODC-14.

33. On or about January 4, 2017, check number 1063 was drawn against the Trust account, made payable to "Anthony S. Rachuba" in the amount of $1,200.00, and

Respondent negotiated the check, withdrawing $1,200 from the Trust account. P for D, RA 36, 37.

34. On January 6, 2017, a check drawn against the Trust Account in the amount of $3,800.00 and made payable to "Anthony S Rachuba" was presented for cashing by Respondent to the Wells Fargo branch located in Coopersburg, Pennsylvania. At that time:

a. The bank teller contacted Mr. Conway and advised Mr. Conway that Respondent was attempting to cash the check and appeared "very jittery and nervous";

b. The bank teller inquired if Mr. Conway had authorized the $3,800 check;

c. Mr. Conway advised the teller that he had not authorized the check and instructed the teller to lock the account; and

d. Wells Fargo refused payment to Respondent and retained the $3,800.00 check.

P for D, RA 38; N.T. 49-50.

35. Although checks number 1060 through 1063 appeared to be signed by Jack Conway, Jr., Mr. Conway did not sign his name on the checks. N.T. 56-58, 97-100.

36. Mr. Conway testified unequivocally that he did not give permission to Respondent or anyone else to sign his name on the checks or take the monies drawn on those checks. N.T. 56-58.

37. Petitioner presented the uncontested expert testimony of Khody R. Detwiler, a forensic document examiner, who offered expert opinions as to the

handwriting and signatures on the checks from the Trust account made payable to Respondent.

38. Mr. Detwiler testified that he performed an examination of the purported signatures on checks 1060 through 1063 and rendered an opinion to "the highest degree of confidence. Which means that I'm essentially absolutely convinced of the opinion" that Mr. Conway did not sign the checks. ODC-31; ODC-49; N.T. 97-100.

39. Sometime after leaving the Wells Fargo bank on January 6, 2017, Respondent authored an email that he then attempted to send to Jack Conway:

> Jack, I apologize for any confusion, it appears my paralegal (not Karen) had 5 signed checks in [sic] file, which did not include any payee. My paralegal mistakenly wrote out the checks to pay the 5 outstanding separate monthly invoices due. As you can see from the attached Schedule of Distribution, the total amount due is $17,000.00. Believing that the checks were simply made payable to the wrong payee, I figured I would take [sic] to bank then transfer to firm as payment for a portion of the outstanding legal fees. The bank informed me tonight, that there was an issue with the checks. At this time, tomorrow morning, I will deposit the funds back into the Estate/Trust account and will send to either you, Patty or Brenda, a new unsigned check for the remaining legal fees. Due to the mistake on our part, as a courte3sy [sic] to all of the beneficiaries, I will provide a $5,000.00 discount on the remaining fees, which makes the new total legal fees due $12,000 and not $17,000...Again, I apoloigize [sic] for this mistake on our part, and will redeposit the funds in the account and send as [sic] new check to one of the 3 of you for signature to pay the discounted amount of $12,000. In all, there will be 11 checks sent to one of you, Patty and Brenda for signature...
>
> P for D, RA 44; ODC-16.

40. The email was never received by Mr. Conway because it was "undeliverable" as Respondent utilized the wrong email address for Mr. Conway. P for D, RA 45.

41. On the evening of January 6, 2017, Mr. Conway received a series of text messages from Respondent. P for D, RA 46; ODC-18; N.T. 50-51.

42. In the text messages to Mr. Conway, Respondent stated the following:

> I apologize for any confusion, it appears we had 5 pre-signed checks in file, which did not include the name of any payee. My assistant mistakenly wrote out the checks to pay the 5 outstanding separate monthly invoices due. I was under the impression these checks were signed and sent to us by you and were for legal fees. As you can see from the attached Schedule of Distribution, the total amount of legal fees due is $17,000. Since they were mistakenly made payable to me I figured it would be easiest to take to bank then transfer to my firm as payment for a portion of the outstanding legal fees. The bank informed me tonight, that there was an issue with the checks. The good need [sic] is I have not transferred to my firm as I planned to do so next week, so tomorrow morning I can deposit the funds back into the Estate/Trust account and will then send to either you, Patty or Brenda, a new unsigned check for the remaining legal fees due...
>
> [Schedule of Distribution reflecting, in part, "Additional attorneys' fees for administration" $17,000.00]
>
> Two additional thoughts, one, typically at the beginning of an estate administration, we have the executor(s) sign checks without inserting the name of the payee. This may be the case but I will have to find out on Monday when I speak to Karen and my assistant.
>
> Two, if you wish to reach me over the weekend, you can do so at []. If I do not hear from you I will deposit the funds tomorrow morning and reach out to you next week with Karen to decide how best to proceed with distribution and the status of the real property at 1410 Van Vegan Way...
>
> P for D, RA 47; ODC-18.

43. Respondent's representation in his text messages that his "assistant mistakenly wrote out the checks to pay the 5 outstanding separate monthly invoices due"

was false, and Respondent knew it to be false, because Respondent had personally and intentionally written the checks payable to himself. P for D, RA 48.

44. Respondent's representation in his text messages that the checks "were mistakenly made payable to [Respondent]" was false, and Respondent knew it to be false, because Respondent had personally and intentionally written the checks payable to himself. P for D, RA 49.

45. Respondent's representation in his text messages that "typically at the beginning of an estate administration, we have the executor(s) sign checks without inserting the name of the payee" was false, and Respondent knew it to be false, because it never was FLB's practice to have estate checks pre-signed without inserting the name of the payee. N.T. 36, 63-64, 86-67.

46. Respondent's representation in his text messages that "typically at the beginning of an estate administration, we have the executor(s) sign checks without inserting the name of the payee" was a knowing misrepresentation intended to deceive Mr. Conway because Respondent had forged, or caused to be forged, Mr. Conway's signature on checks numbered 1060-1063.

47. Respondent misappropriated and/or attempted to misappropriate the funds from the Trust account when he deposited and/or attempted to deposit the checks with the forged Jack Conway signatures.

48. On or about January 9, 2017, Respondent prepared a purported "Statement of Legal Fees Due," and placed it in the case file. N.T. 69-71; ODC-19.

49. The concocted "Statement of Legal Fees Due" reflected Total Fees Payable of $17,000, referred to the five checks Respondent had drawn against the Trust account and made payable to himself, and represented the following with respect to those checks:

> *The above checks were mailed to ASR [Anthony S. Rachuba] by one of the three co-executors/co-trustees, unfortunately, the checks were mistakenly made payable to ASR, and not FLB. Instead of mailing new checks, ASR took to bank to obtain funds for the purpose of turning over to FLB. When taking the fifth check to the bank on January 6, 2017, the teller said something didn't look right with the checks. Therefore, the teller held onto the check in the amount of $3,800, but did not explain.
>
> ODC-19.

50. Respondent's representation in the "Statement of Legal Fees Due" that "[t]he above checks were mailed to ASR by one of the three co-executors/co-trustees..." was false and Respondent knew it to be false.

51. Respondent's representation in the "Statement of Legal fees Due" that "the checks were mistakenly made payable to ASR and not FLB" was false, and Respondent knew it to be false, because Respondent had personally and intentionally written the checks payable to himself and had forged Mr. Conway's signature.

52. The undelivered January 6, 2017 email, the January 6, 2017 text messages, and the "Statement of Legal Fees Due" contained knowing misrepresentations by Respondent, which were designed to mislead and conceal his actions and obstruct attempts to ascertain the truth of the matter.

53. On January 11, 2017, Mr. Conway met with representatives of Wells Fargo at the Coopersburg, Pennsylvania branch seeking information regarding Wells Fargo's investigation into the matters surrounding the checks drawn without the consent or knowledge of the signatories for the Trust account. N.T. 52-53.

54. On March 27, 2017, approximately three months after the events at issue, Wells Fargo sent information related to the results of its fraud investigation to FLB. ODC-20; N.T. 67.

55. Ms. Allender opened the Wells Fargo correspondence on April 3 or 4, 2017. She immediately conducted an investigation that included looking through the physical file, looking through the firm's document management system, and obtaining statements from Wells Fargo. N.T. 67-69.

56. At some point on the day that the correspondence arrived from Wells Fargo, Ms. Allender placed the paperwork on Respondent's desk. He saw the paperwork and asked Ms. Allender if she had contacted the bank. N.T. 73.

57. Ms. Allender advised Respondent that she had not contacted the bank and, upon informing him, Ms. Allender testified that Respondent ordered her "not to do anything about [the fraud investigation], he was going to handle it. " N.T. 73.

58. After Ms. Allender completed her own investigation, she concluded that Respondent "had forged the signature and stole money from the client" and reported it to Edward Lentz. N.T. 68-72.

59. FLB looked into the matter and learned that Respondent had illicitly negotiated at least four Trust account checks, totaling $4,000.00, and unsuccessfully attempted to negotiate the fifth check for $3,800.00. P for D, RA 64.

60. On April 4, 2017, FLB's co-managing shareholders met with Respondent, at which time he admitted negotiating the checks, withdrawing funds from the Trust account, and not endorsing the checks over to FLB or otherwise transferring the funds to FLB. FLB terminated Respondent's employment. P for D, RA 64; N.T. 79-82.

61. On April 4, 2017, FLB notified Office of Disciplinary Counsel of Respondent's actions. P for D, RA 67; ODC-21.

62. In a letter to a FLB lawyer on April 6, 2017, Respondent expressed regret for his "momentary lapse in judgment." P for D, RA 68; ODC-22.

63. By deposit on April 7, 2017, FLB replaced the $4,000 Respondent had taken from the Trust account. N.T. 84; ODC-32 p. 233.

64. On April 7, 2017, FLB notified the Conway Estate Executors and Trustees of the circumstances surrounding Respondent's actions. ODC-23.

65. By letter of April 12, 2017, FLB demanded Respondent remit to the firm the amount of $1,529.16. The firm had redeemed and retained Respondent's share of non-voting stock of FLB valued at $2,470.84, and required an additional $1,529.16 payment from Respondent to fully reimburse the firm for the $4,000.00 it paid into the Trust account as reimbursement for the funds Respondent had converted. P for D, RA 74.

66. By email to the firm dated April 15, 2017, Respondent apologized for his actions and stated that if he could go back in time he would have "done things differently" and "would not let the mistake happen again." P for D, RA 75; ODC-26.

67. Respondent paid $1,529.16 to FLB by check dated April 14, 2017. P for D, RA 76; ODC-27.

68. By DB-7 Request for Statement of Respondent's Position dated May 2, 2017, Petitioner alleged, *inter alia,* that Respondent had forged Mr. Conway's signature on checks numbered 1060 through 1063. P for D, RA 77; ODC-41.

69. By letter dated June 21, 2017, Respondent responded to the DB-7 and verified that his statements were true and correct to the best of his knowledge, information and belief. P for D, RA 78; ODC-42.

70. In his response, Respondent specifically denied that he had forged Mr. Conway's signature and represented that "for administrative expediency purposes Mr. Conway had pre-signed several checks that were kept in the file." P for D, RA 79; ODC-42.

71. Respondent's representations were false.

72. By letter to Petitioner dated July 28, 2017, Respondent's counsel represented that "[w]hile Mr. Rachuba admitted that he filled out the payee information on the subject checks, he is adamant that he never signed Mr. Conway's signature on those checks" and further represented that Respondent "had five pre-signed checks in the file." P for D, RA 81; ODC-44.

73. Respondent's representations in the July 28, 2017 letter that he had not signed Mr. Conway's signature on the check in question and that there were five pre-signed checks in the file were false and Respondent knew them to be false.

74. On April 15, 2019, in response to the Petition for Discipline, Respondent filed a verified Answer in which he represented that he did not sign the checks in question and that Mr. Conway had pre-signed them in the presence of FLB paralegal, Ms. Wellington. These representations were false.

75. Respondent's counsel appeared at the prehearing conference on May 31, 2019, but Respondent did not appear. Respondent's counsel withdrew soon thereafter. Despite notice, Respondent failed to appear at the disciplinary hearing on August 8, 2019.

III. CONCLUSIONS OF LAW

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

1. 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;

2. 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; and

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

IV. DISCUSSION

In this matter, the Board considers the recommendation to disbar Respondent for misappropriating entrusted funds through forgery and repeatedly attempting to conceal his actions, in violation of RPC 1.15(b), 8.4(b), and 8.4(c). The Committee found that Respondent's misconduct "centered around repeated misconduct constituting fraud, forgery, misappropriation of funds, and, ultimately, aggravating circumstances reflected by his multiple attempts to cover-up his conduct, lack of contrition and defiance in the face of the disciplinary process." Hearing Committee Report 11/25/2019 at 20. The Committee unanimously recommended that Respondent be disbarred from the practice of law. Respondent did not appear at the disciplinary hearing and did not file exceptions to the Committee's conclusions and recommendation. Upon review of the record, we conclude that Respondent committed professional misconduct and we recommend that Respondent be disbarred.

Petitioner must prove ethical misconduct by a preponderance of evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730, 732 (Pa. 1981). The evidence, which consists of the testimony of Petitioner's witnesses and Petitioner's exhibits, clearly and satisfactorily proves that Respondent violated RPC 1.15(b), 8.4(b), and 8.4(c).

The events underlying Respondent's misconduct relate to his representation of the Peggy Conway Estate and Trust. A Trust account that was used to pay the Estate's expenses was opened, and the physical checkbook was maintained at FLB's office. Jack Conway and Patty Conway were the only authorized signers to the account. Starting in December 2016, and continuing over a two–week period, Respondent stole money from the Conway Trust account. On December 23, 2016, December 27, 2016, January 3, 2017, and January 4, 2017, Respondent cashed checks at banks and at a check cashing establishment, which checks he had illicitly made payable to himself and on which he had forged Jack Conway's signature. Respondent's attempt to cash a fifth check on January 6, 2017 was thwarted by a suspicious bank teller, who refused payment, retained the check, and called Mr. Conway, who instructed the bank to lock the account.

Following his confrontation with the bank teller, and realizing that his actions might soon be uncovered, Respondent immediately formulated a plan to hide his thievery. That evening, Respondent sent an email and a series of text messages to Mr. Conway, replete with misrepresentations as to the actual events. Respondent had knowingly written the checks out to himself and forged Mr. Conway's signature, but in his email and texts, he falsely accused a law firm paralegal of creating the controversy and claimed that she had mistakenly written the checks. Conveniently, the individual Respondent accused was no longer employed at FLB. To hide his forgery and divert attention, Respondent speculated in his communications that the checks had been pre-signed by Mr. Conway. In a blatant lie accusing his law firm of engaging in an imprudent practice, he informed Mr. Conway that FLB "typically" had the executor sign checks without inserting the name of the payee.

Several days after sending the email and text correspondence to Mr. Conway, Respondent concocted a fictitious "Statement of Legal Fees Due" that he placed in the

estate file. This Statement contained additional lies by Respondent to cover his criminal actions by falsely claiming that the checks had been mailed to him by one of the co-executors and had "mistakenly" been made payable to him.

Unbeknownst to Respondent, Mr. Conway asked Wells Fargo to conduct a fraud investigation, which the bank completed in late March 2017 and sent its findings to FLB, where they were received and reviewed by Ms. Allender. While Respondent may have believed for several months that he had duped Mr. Conway and had gotten away with his theft, he soon learned otherwise when Ms. Allender provided him with the paperwork from the bank. Although Respondent attempted to persuade Ms. Allender not to do anything and let him handle the matter, Ms. Allender's own investigation of the Estate file revealed Respondent's correspondence to Mr. Conway and the fictitious Statement of Legal Fees and led her to report the matter to Mr. Lentz. FLB swiftly confronted Respondent, during which meeting he admitted that he negotiated the checks and withdrew funds from the Trust account, and was terminated from his employment.

Throughout these events and the disciplinary proceedings, Respondent admitted he had converted client funds by inserting his name as payee on checks and negotiating them for his benefit. However, even in the face of overwhelming facts, he repeatedly denied forging Mr. Conway's signature. In his verified response to the DB-7 request for a statement of his position and in his verified Answer to the Petition for Discipline, Respondent denied forging Mr. Conway's signature and falsely claimed that Mr. Conway had pre-signed several checks "for administrative expediency" and that Mr. Conway had pre-signed checks in the presence of FLB's paralegal Erica Wellington.

Respondent's representations were false and he knew them to be false when he verified the documents. The evidence adduced at the disciplinary hearing confirmed that

Jack Conway had not signed the checks at issue. The evidence included the testimony of Ms. Allender explaining that it was not the policy of FLB to have pre-signed checks, the checks were used chronologically and sequentially, she would send the unsigned checks to the client for signature, she was very familiar with the Conway Estate file, and she never saw any pre-signed checks in the file; the testimony of Ms. Wellington and Mr. Lentz confirming the FLB policy against pre-signing checks; the testimony of the forensic expert opining to "the highest degree of confidence" that the questioned checks purportedly signed by Mr. Conway had not been signed by Jack Conway; and the unequivocal testimony of Mr. Conway confirming he never pre-signed any checks. Respondent did not appear at the hearing, and offered no evidence in support of his representations that the checks were pre-signed by Mr. Conway.

The evidence of record clearly and satisfactorily establishes that Respondent violated RPC 1.15(b) by intentionally misappropriating funds for his own use; violated RPC 8.4(b) and 8.4(c) by forging or causing to be forged, Mr. Conway's signature; and violating RPC 8.4(c) by engaging in misrepresentations and deception to his client and law firm in an effort to conceal his misconduct.

Respondent's reprehensible conduct is exacerbated by his submission of a falsely verified response to the DB-7 Request and a falsely verified Answer to the Petition for Discipline, as well as his ultimate failure to appear at the disciplinary hearing. Other than responding to the DB-7 and filing his Answer, in which he made false statements, Respondent did not participate in the disciplinary process and made no meaningful contribution. A failure to participate in disciplinary proceedings is an aggravating factor and indicates a disregard for the disciplinary system, and a lack of fitness to practice law.

Office of Disciplinary Counsel v. Michael Zachary Mandale, No. 37 DB 2012 (D. Bd. Rpt. 3/8/2013) (S. Ct. Order 6/19/2013).

In further aggravation, Respondent demonstrated no remorse and no acceptance of full responsibility, and in fact demonstrated quite the opposite by staunchly clinging to the falsity that the checks were pre-signed by Mr. Conway. While Respondent acknowledged that he converted client funds by inserting his name as payee on checks and negotiating the checks, he would only state that it was "a momentary lapse of judgment" and a mistake. The facts show otherwise, as Respondent's dishonest conduct was not a single isolated incident, but rather a series of four completed conversions and one unsuccessful attempt on five separate dates. Furthermore, his actions post-conversion were deliberate and showed forethought and planning, as he prepared correspondence and documents to cover his theft.

In mitigation, we find that Respondent has practiced law since 2001 and has no prior record of discipline. Considering the serious nature of the misconduct and the conspicuous aggravating factors, we accord little weight to Respondent's blemish-free disciplinary record and do not find it sufficiently compelling so as to relieve Respondent of the severe discipline that is warranted in this matter.

Following review of the facts and circumstances of this matter, we consider the appropriate sanction to address Respondent's misconduct.

"The primary purpose of our system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system." ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986). In determining the appropriate discipline, the Board examines precedent for the purpose of examining "the respondent's conduct against other similar transgressions." ***In re Anonymous No. 56 DB 1994 (Linda***

Gertrude Roback), 29 Pa. D. & C. 4th 398, 406 (1995). The Board considers any aggravating and mitigating circumstances. ***In re Anonymous No. 35 DB 1988 (Melvin V. Richardson)***, 8 Pa. D. & C. 4th 344, 355 (1990).

At heart, this is a simple matter. Respondent used his access to entrusted funds to steal them by forging checks and, not content with that extreme level of dishonesty, engaged in a series of deceptive acts to hide his reprehensible behavior. Unfortunately, this is not a novel situation in the legal profession. Misappropriation of entrusted client funds is one of the most egregious acts of attorney misconduct, as it represents a fundamental breach of the trust and confidence between attorney and client. With good reason, the Court has disbarred attorneys who engage in such flagrant misconduct.

In ***Keller***, *supra*, Keller forged the endorsement on a check made payable to a beneficiary and drawn on the account of an estate he represented. Keller deposited the check with the forged endorsement into his trust account and thereafter converted those proceeds to his own use. Keller misrepresented to his client, the estate administrator, the cause for the delay in the beneficiary's receipt of her inheritance. In a separate matter, Keller deposited the proceeds of a real estate transaction and then converted the funds to his own use. The Court explained its reasons for disbarring Keller as follows:

> Where an attorney converts and commingles entrusted funds, accomplishes this breach of trust by the use of forged documents, and employs misrepresentations to mask this covert activity, the magnitude of the derelictions and its impact upon the legal profession and the administration of justice requires the imposition of the most severe sanction at our command.
> *Id.* at 879.

In the matter of ***Office of Disciplinary Counsel v. Arlin Ray Thrush***, No. 160 DB 2011 (D. Bd. Rpt. 8/9/2012) (S. Ct. Order 1/10/2013), the Court disbarred Thrush

following his misappropriation of approximately $27,000 from two estates. Although Thrush reimbursed the funds and had no disciplinary record, he "expressed no remorse and did not provide any indication or assurance that he appreciated the seriousness of the misconduct." Board Report at 10. Similarly, the instant Respondent made restitution, which his employer forced upon him in the wake of his termination, and has no record of discipline. Although Thrush was found to have demonstrated no appreciation for his misconduct, Thrush did not flout the disciplinary process and appeared at his hearing. In contrast, Respondent was nothing short of cavalier in his conduct by failing to acknowledge his forgeries, and in fact making false statements in verified responses, and largely failing to participate in the disciplinary process.

We also note the following matters that resulted in disbarment: ***Office of Disciplinary Counsel v. Daniel J. Evans***, No. 152 DB 2000, 69 Pa. D. & C. 4th 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; Sharpe had a prior history of private discipline).

Cases where respondent-attorneys who engaged in forgery and theft were suspended instead of disbarred may be distinguished from the instant matter. In ***Office of Disciplinary Counsel v. Seymour Braun***, 533 A.2d 894 (Pa. 1989), Braun was suspended for a period of two years for engaging in a pattern of forging the signature of the executrix in order to withdraw for his own use, without her knowledge and consent, $1,962.94 from an estate. The Court found substantial mitigation that a psychiatric disorder was a causal factor in Braun's misconduct and noted that the misconduct "of course, would warrant the most severe sanction, disbarment, rather than suspension, unless significant mitigating factors impinge on the decision." *Id.* at 895.

We note other matters wherein the Court imposed suspension for misappropriation of entrusted funds, rather than disbarment. In ***Office of Disciplinary Counsel v. Daniel F. Zeigler***, 49 DB 2005 (D. Bd. Rpt. 3/17/2006) (S. Ct. Order 6/14/2006), Zeigler commingled estate funds in his operating account consistent with his office practice and despite having an IOLTA account. Zeigler converted $14,000.00 for his personal use that he was required to hold inviolate. In mitigation, Zeigler had practiced for thirty years without discipline. He appeared at his disciplinary hearing to represent himself. The Court suspended Zeigler for three years. In ***Office of Disciplinary Counsel v. John T. Olshock***, No. 28 DB 2002 (D. Bd. Rpt. 7/30/2003) (S. Ct. Order 10/24/2003), the Court

suspended Olshock for three years for misappropriating $22,093.00 from an estate. In mitigation, Olshock had no prior history of discipline, made prompt restitution in full, and expressed remorse.

While it is clear that not all instances of misappropriation result in disbarment, precedent strongly supports disbarment in the instant matter. Herein, Respondent's numerous deceitful acts to hide his theft, which included sending correspondence to his client chock full of misrepresentations and formulating a fictitious document to hide his trail of misappropriation, followed by falsities in his response to the DB-7 and in his Answer to the Petition for Discipline, establish Respondent's wholesale rejection of his duties to the profession and represent a damning indictment of his integrity.

Disbarment is the most severe form of sanction, only to be imposed in the most egregious matters, as disbarment represents a termination of the license to practice law without a promise of its restoration at any future time. ***Office of Disciplinary Counsel v. Douglas Kissel***, 442 A.2d 217 (Pa. 1982). The totality of the circumstances in the instant matter warrants imposition of this severe sanction, in order to protect the public from unscrupulous members of the profession and to preserve confidence in the courts and the profession. Consistent with the guiding decisional law, we recommend that Respondent be disbarred.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Anthony S. Rachuba, IV, 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, Member

Date: 3/10/20