

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2666 Disciplinary Board No. 3
: :
Petitioner : No. 53 DB 2019
: :
v. : Attorney Registration No. 57247
: :
LEWIS P. HANNAH, III, : (Philadelphia)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 26th day of November, 2019, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Lewis P. Hannah, III is suspended on consent from the Bar of this Commonwealth for a period of three years. He shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 11/26/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 53 DB 2019
v. :
: Atty. Reg. No. 57247
LEWIS P. HANNAH, III, :
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Esquire, Chief Disciplinary Counsel, and by Richard Hernandez, Esquire, Disciplinary Counsel, and Respondent, Lewis P. Hannah, III, who is represented by Vaughn A. Booker, Esquire, file this Joint Petition In Support of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement ("the Joint Petition") and respectfully represent that:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings

FILED
10/10/2019
The Disciplinary Board of the
Supreme Court of Pennsylvania

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Lewis P. Hannah, III, was born in 1957, was admitted to practice law in the Commonwealth on December 7, 1989, lists an office address at 1420 Walnut Street, Suite 815, Philadelphia, Pennsylvania 19102, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

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

4. On March 21, 2019, Petitioner filed a Petition for Discipline against Respondent with the Board Prothonotary.

5. On May 16, 2019, Respondent, through his counsel, filed an Answer to the Petition for Discipline with the Board Prothonotary.

**SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED**

6. Respondent has agreed to enter into a joint recommendation for consent discipline.

7. Respondent stipulates that the factual allegations set forth below are true and correct and that he violated the charged Rules of Professional Conduct as set forth herein.

CHARGE

Factual summary and overview of misappropriation charges.

8. During the period that Respondent represented Mr. Kenneth Orville Bender, Jr., an incarcerated inmate, and Mr. Bender's daughter, Ms. Heather Bender, Respondent misappropriated funds belonging to Mr. Bender by using Respondent's authority as Mr. Bender's agent under two separate power of attorney forms, which allowed Respondent to gain access to and to exercise control over Mr. Bender's bank and retirement accounts.

9. Respondent had provided ODC with documentation in which Respondent claimed to have earned fees and incurred expenses on behalf of Mr. Bender and Ms. Heather Bender.

a. As of July 31, 2012, Respondent had misappropriated \$44,647.90, an amount determined after ODC gave Respondent credit for the fees he claimed he earned and the expenses he claimed he incurred on behalf of Mr. Bender and Ms. Heather Bender as of that date.

b. By April 2014, when Respondent ceased providing services to Mr. Bender and Ms.

Heather Bender, Respondent's misappropriation of funds belonging to Mr. Bender had been reduced to \$19,859.84, an amount determined after ODC gave Respondent additional credit for claimed fees and expenses on behalf of Mr. Bender and Ms. Heather Bender between August 1, 2012 and April 2014.

10. Commencing in the summer of 2011, Respondent began representing Mr. Bender, and became Mr. Bender's agent pursuant to a document titled "GENERAL LIMITED POWER OF ATTORNEY" ("the first POA").

a. Respondent's representation subsequently expanded to include Ms. Heather Bender.

11. In September 2012, Mr. Bender revoked the first POA; however, on November 2, 2012, Mr. Bender executed a second Power of Attorney ("the second POA"), which again designated Respondent as Mr. Bender's agent.

12. Using the first POA and the second POA, Respondent was able to obtain access to and exercise control over accounts that contained funds belonging to Mr. Bender, as enumerated below:

a. Mr. Bender's checking account with Harleysville National Bank ("Harleysville")

(which was subsequently acquired by First Niagara Bank, N.A. ("First Niagara")), which had an account number of xxxxxx6061 ("**the first Bender checking account**");

- b. a checking account at First Niagara, titled "KENNETH ORVILLE BENDER C/O LEWIS HANNAH," account number xxxxxx7862 ("**the second Bender checking account**"), which account Respondent had opened approximately one year after commencement of the representation using the first POA; and
- c. a voluntary investment plan account that Mr. Bender had through his prior employment with the Boeing Company, which investment plan was administered by State Street ("**the State Street investment account**").

13. The first and second Bender checking accounts were funded by Mr. Bender's monthly retirement and disability benefits.

14. During the period that Respondent represented Mr. Bender and acted as Mr. Bender's agent, Respondent had several checking accounts, as follows:

- a. a checking account with PNC Bank, titled "Lewis P. Hannah, PC," account number xxxxxx7807 (**"the PNC Hannah account 7807"**);
- b. a checking account at PNC Bank, titled "Rashad S. Hannah DBA The Green Tree," account number xxxxxx4007 (**"the PNC Hannah Green Tree account"**); and
- c. a checking account with PNC Bank, titled "Lewis P. Hannah, PC," account number xx-xxxx-4480 (**"the PNC Hannah account 4480"**).

15. The PNC Hannah account 7807, the PNC Hannah Green Tree account, and the PNC Hannah account 4480 were not accounts used by Respondent to hold fiduciary funds.

16. On November 12, 2011, Respondent transacted check number 5907, in the amount of \$100,000.00, made payable to Respondent, drawn on the first Bender checking account, at a branch of First Niagara, and received in return six teller checks, in denominations of \$25,000.00 (three teller checks), \$10,000.00 (two teller checks) and \$5,000.00 (one teller check).

17. Between November 14, 2011 and January 23, 2012, Respondent deposited \$75,000.00 worth of teller checks (two \$25,000.00, two \$10,000.00, and the \$5,000.00) into the PNC

Hannah Green Tree account.

18. In January 2012, Respondent opened a checking account at TD Bank, titled "Lewis P Hannah," account number xxx-xxx4099 ("**the TD Hannah account 4099**"); this account received a total of \$20,000.00 of funds that were derived from the two \$25,000.00 teller checks that Respondent had deposited into the PNC Hannah Green tree account.

- a. The \$20,000.00 was comprised of three bank checks issued by PNC at Respondent's direction.
- b. On January 19, 2012, Respondent made an initial deposit of \$15,000.00, comprised of a \$10,000.00 bank check and a \$5,000.00 bank check.
- c. On February 8, 2012, Respondent deposited a \$5,000.00 bank check.

19. On March 7, 2012, Respondent deposited into the PNC Hannah Green Tree account a \$36,353.67 check issued at Respondent's request by State Street, which check represented Mr. Bender's proceeds from the State Street investment account.

20. On May 14, 2012, Respondent deposited the remaining \$25,000.00 teller check into the PNC Hannah account 7807.

21. As of May 14, 2012, Respondent had deposited a total of **\$136,353.67** of Mr. Bender's funds into the following two accounts:

- a. \$75,000.00 (¶17, *supra*) and \$36,353.67 (¶19, *supra*) into the PNC Hannah Green Tree account (for a total deposit of \$111,353.67); and
- b. \$25,000.00 (¶20, *supra*) into the PNC Hannah 7807 account.

22. After Respondent completed the above transactions, Respondent made withdrawals from the PNC Hannah Green Tree account and the PNC Hannah 7807 account and received in return cash and bank checks issued by PNC Bank.

23. Financial records show that as of July 31, 2012, Respondent had used all but **\$8,273.46** of the \$136,353.67.

24. Based on the financial records, and the information and documents supplied by Respondent, Respondent can claim that as of July 31, 2012, he was entitled to **\$83,432.31** from the \$136,353.67 as earned fees or reimbursement for expenses incurred on behalf of Mr. Bender and Ms. Heather Bender.

25. As of July 31, 2012, Respondent had taken, but not earned, **\$44,647.90** of funds belonging to Mr. Bender ($\$136,353.67 - \$8,273.46 = \$128,080.21$; $\$128,080.21 - \$83,432.31 = \$44,647.90$).

26. Mr. Bender was unaware that Respondent had taken, but not earned, \$44,647.90 of funds belonging to Mr. Bender.

27. Respondent's taking of fees for his own use in advance of providing services, without Mr. Bender's knowledge and consent, constituted a misappropriation of funds.

28. Respondent's misappropriation of Mr. Bender's funds was knowing.

29. According to Respondent, he ceased providing services to Mr. Bender by March 2014, and to Ms. Heather Bender by April 2014.

30. Based on the financial records, and the information and documents supplied by Respondent, Respondent can claim that when he ceased providing services to Mr. Bender and Ms. Heather Bender, Respondent's earned fee and incurred expenses had grown to **\$182,363.69**.

31. The financial records for the first and second Bender checking accounts, the PNC Hannah account 7807, the PNC Hannah Green Tree account, the PNC Hannah account 4480, and the TD Hannah account 4099, show that Respondent received and used funds belonging to Mr. Bender that totaled **\$202,223.53** when Respondent ceased providing services to Mr. Bender and Ms. Heather Bender.

32. After Respondent ceased providing services to Mr. Bender and Ms. Heather Bender, Respondent was unable to account for **\$19,859.84** of funds belonging to Mr. Bender ($\$202,223.53 - \$182,363.69 = \$19,859.84$).

33. Respondent's misappropriation of Mr. Bender's funds was knowing.

Misappropriation and improprieties pertaining to funds belonging to Kenneth Orville Bender, Jr., failure to provide fee agreements to Mr. Bender, and one instance of neglect.

34. On April 14, 2011, Mr. Bender pled guilty to two counts of involuntary deviate sexual intercourse, as well as several other charges, in a criminal case filed in the Chester County Court of Common Pleas, said case captioned ***Commonwealth of Pennsylvania v. Kenneth Orville Bender, Jr.***, docket number CP-15-CR-0004063 ("the criminal case").

35. Mr. Bender was incarcerated while the criminal case was pending and remained incarcerated while he awaited sentencing.

a. On October 12, 2011, Mr. Bender was sentenced.

36. Sometime in the summer of 2011, Respondent met with Mr. Bender at his place of incarceration at Chester County Prison.

37. Mr. Bender retained Respondent at the time to, *inter alia*, handle the following matters on his behalf:

- a. to recover money belonging to Mr. Bender from Mr. Robert Bender and Ms. Penny Bender, Mr. Bender's brother and sister-in-law, who reside in Perryville, Maryland;
- b. to pay all expenses necessary for the upkeep of Mr. Bender's residence located at 309 South Sandy Hill Road, Coatesville, Pennsylvania 19320 ("the Bender property"), including, but not limited to, heat, electric, and property taxes; and
- c. to provide financial assistance to Ms. Heather Bender.

38. During Respondent's initial visit, Respondent told Mr. Bender that Respondent required a retainer of \$2,500.00.

- a. Mr. Bender agreed to Respondent's request.

39. On or about August 15, 2011, Respondent visited Mr. Bender at Chester County Prison.

40. During this visit, Respondent, *inter alia*:

- a. presented to Mr. Bender a Retainer Agreement and a document titled "GENERAL LIMITED POWER OF ATTORNEY" ("the first POA"), in which

Respondent was designated as the agent to act on behalf of Mr. Bender;

- b. explained to Mr. Bender that the first POA would, *inter alia*, allow Respondent to access Mr. Bender's accounts with First Niagara in order to write himself a check for Respondent's \$2,500.00 retainer and to have monies available to handle the matters that Mr. Bender had retained Respondent to address; and
- c. presented to Mr. Bender a fee engagement letter dated August 15, 2011.

41. Mr. Bender signed the first POA.

42. Mr. Bender signed the fee engagement letter.

43. The "NOTICE" that was part of the first POA stated, *inter alia*, the following: "YOUR AGENT MUST KEEP YOUR FUNDS SEPARATE FROM THEIR FUNDS." (uppercase in original)

44. The fee engagement letter, *inter alia*:

- a. identified the legal matter as regarding "**Commonwealth v. Kenneth Bender**" (bold in original);
- b. listed Respondent's billing rate for the legal matter as \$300.00 per hour;

- c. provided that Respondent was to receive a \$2,500.00 retainer **"to be considered as payment on the account of services rendered or to be rendered"** (bold in original); and
- d. stated that **"[b]illings and accountings for [Respondent's] services and costs will be submitted monthly (or at other regular intervals). Statements shall be payable upon receipt unless we agree otherwise."** (bold in original)

45. During the period that Respondent represented Mr. Bender, Respondent:

- a. failed to communicate to Mr. Bender, in writing, the basis or rate of Respondent's fee for any other legal services Respondent rendered to him;
- b. failed to communicate to Mr. Bender, in writing, the basis or rate of Respondent's fee for any legal services Respondent rendered to Ms. Heather Bender that were paid from funds belonging to Mr. Bender; and
- c. failed to communicate to Mr. Bender, in writing, the basis or rate of Respondent's fee

for any non-legal services Respondent rendered to Ms. Heather Bender.

46. During the period that Respondent represented Mr. Bender, Respondent failed to send to Mr. Bender a bill and/or accounting for Respondent's services and costs on a monthly basis or at regular intervals, as required by the fee engagement letter.

47. By letter dated August 17, 2011, addressed to Ms. Penny Bender, Respondent, *inter alia*:

- a. enclosed the first POA;
- b. stated that he represented Mr. Bender and that the first POA authorized Respondent to act on Mr. Bender's behalf;
- c. requested that Ms. Penny Bender forward to Respondent "all banking and all other financial information to [Respondent's] office immediately upon receipt of [Respondent's] letter"; and
- d. asked that Respondent be provided with "accounts and a list of all expenses [of Ms. Penny Bender] ... or [expenses that had] been paid on Mr. Bender's behalf."

48. By letter dated August 25, 2011, sent by Alan J. Jarvis, Esquire, to Respondent, Mr. Jarvis, *inter alia*:

- a. advised that Mr. Robert Bender and Ms. Penny Bender had twice met with him regarding Respondent's letter;
- b. stated that Mr. Robert Bender and Ms. Penny Bender were willing to provide Respondent with "bank account information and the keys" to the Bender property once they received a "Revocation" of the Power of Attorney that Mr. Bender had previously executed so that they could act as Mr. Bender's agents;
- c. advised that Mr. Robert Bender and Ms. Penny Bender had previously transferred funds belonging to Mr. Bender into accounts in Maryland, but that as of August 25, 2011, Mr. Bender's funds had been redeposited into Mr. Bender's account with First Niagara;
- d. stated that Mr. Bender's account with First Niagara had a present balance of \$113,556.69, from which was being deducted \$920.00 that was owed to Mr. Jarvis;

e. advised that Mr. Robert Bender and Ms. Penny Bender had used \$16,264.34 of funds belonging to Mr. Bender, and that they were willing to sign a "Judgment Note obliging themselves to the repayment of this amount at \$200.00 per month"; and

f. requested that Respondent send him the revocation and that Respondent direct all future communications to him.

49. Respondent received this letter.

50. By letter dated August 31, 2011, sent by Robert C. Jefferson, Esquire (then Respondent's employee and now former employee), to Mr. Jarvis, Mr. Jefferson, *inter alia*:

a. acknowledged receipt of Mr. Jarvis's August 25, 2011 letter;

b. enclosed a document titled "Revocation of Power of Attorney"; and

c. inquired when Mr. Bender's keys, "bankbooks and other possessions" could be retrieved.

51. Sometime in September 2011, Respondent obtained the keys to the Bender property and Mr. Bender's checkbook, which had blank checks that would permit funds to be withdrawn from the first Bender checking account.

52. As of August 31, 2011, the balance in the first Bender checking account was \$112,527.45.

53. On a monthly basis, the first Bender checking account received four separate direct deposits.

- a. One direct deposit was a retirement benefit that Mr. Bender received from the Boeing Company in the amount of \$1,200.33.
- b. A second direct deposit was a retirement benefit from the United States Army; the amount of the monthly direct deposit was \$580.25 through the end of 2011, and increased to \$608.43 beginning in February 2012, which amount remain unchanged throughout 2012.
- c. A third direct deposit was a disability benefit issued by the United States Department of Veteran Affairs ("VA disability benefit"); the amount of the monthly disability benefit was \$924.00 in September 2011, \$974.00 from October 2011 through December 2011, and \$1,009.00 beginning in January 2012, which amount remain unchanged throughout 2012.
- d. The fourth direct deposit was a social security benefit in the amount of \$1,911.00;

this direct deposit ceased commencing in January 2012.

54. Using the first POA, between September 2, 2011 and February 21, 2012, Respondent wrote and transacted four checks on the first Bender checking account that were made payable to him for attorney fees (check numbers 5901, 5902, 5906, and 5925); these checks totaled \$8,200.00.

55. Using the first POA, Respondent wrote check number 5927 on the first Bender checking account, dated March 8, 2012, in the amount of \$600.00, payable to him, which contained no information on the "MEMO" section; this check was deposited into the PNC Hannah account 7807 and the proceeds were used by Respondent.

56. Based on the notations Respondent made to the "MEMO" section of check numbers 5901, 5902, 5906, and 5925, and the fact that check number 5927 was deposited into the PNC Hannah account 7807 and the proceeds from that check were used by Respondent, Respondent issued those checks to compensate himself for legal services that he had rendered to Mr. Bender; the total amount that Respondent received from those checks was \$8,800.00.

57. Using the first POA, Respondent wrote check number 5907 on the first Bender checking account, dated November 12,

2011, in the amount of \$100,000.00, made payable to him; no information was placed on the "MEMO" section of the check by Respondent as to the reason for issuing that check.

58. Respondent transacted the \$100,000.00 check at a branch of First Niagara on November 12, 2011.

59. When Respondent transacted check number 5907, he requested that he be issued six teller checks, each made payable to Respondent.

60. Respondent received the following six teller checks:

- a. Teller Check No. 5545569944, in the amount of \$25,000.00;
- b. Teller Check No. 5545569945, in the amount of \$25,000.00;
- c. Teller Check No. 5545569946, in the amount of \$25,000.00;
- d. Teller Check No. 5545569947, in the amount of \$10,000.00;
- e. Teller Check No. 5545569948, in the amount of \$10,000.00; and
- f. Teller Check No. 5545569949, in the amount of \$5,000.00.

61. Respondent had signature authority for the PNC Hannah Green Tree account.

62. On November 14, 2011, Respondent deposited into the PNC Hannah Green Tree account Teller Check No. 5545569949, in the amount of \$5,000.00.

63. Prior to this deposit, the balance in the PNC Hannah Green Tree account was \$685.46.

a. Respondent commingled his funds with funds belonging to Mr. Bender.

64. On December 13, 2011, Respondent deposited into the PNC Hannah Green Tree account Teller Check No. 5545569947, in the amount of \$10,000.00.

65. Prior to this deposit, the balance in the PNC Hannah Green Tree account was \$44.80.

a. Respondent commingled his funds with funds belonging to Mr. Bender.

66. On December 20, 2011, Respondent deposited into the PNC Hannah Green Tree account Teller Check No. 5545569948, in the amount of \$10,000.00.

67. Prior to this deposit, the balance in the PNC Hannah Green Tree account was \$1,791.55.

a. Respondent commingled his funds with funds belonging to Mr. Bender.

68. On January 10, 2012, Respondent deposited into the PNC Hannah Green Tree account Teller Check No. 5545569946, in the amount of \$25,000.00.

69. Prior to this deposit, the balance in the PNC Hannah Green Tree account was \$991.27.

- a. Respondent commingled his funds with funds belonging to Mr. Bender.

70. On January 23, 2012, Respondent deposited into the PNC Hannah Green Tree account Teller Check No. 5545569944, in the amount of \$25,000.00.

71. Prior to this deposit, the balance in the PNC Hannah Green Tree account was \$2,732.78.

- a. Respondent commingled his funds with funds belonging to Mr. Bender.

72. On March 7, 2012, Respondent deposited into the PNC Hannah Green Tree account a \$36,353.67 check issued by State Street, made payable to Mr. Bender, and to Respondent, as Mr. Bender's "POA."

- a. Mr. Bender, through his prior employment with the Boeing Company, had contributed to a voluntary investment plan, which was administered by State Street.

- b. Respondent used the first POA to have State Street close the State Street investment account and mail to Respondent a check for the proceeds in that account.
- c. The \$36,353.67 check represented Mr. Bender's proceeds from the State Street investment account.

73. Prior to this deposit, the balance in the PNC Hannah Green Tree account was \$3,971.01.

- a. Respondent commingled his funds with funds belonging to Mr. Bender.

74. Respondent failed to advise Mr. Bender that Respondent had:

- a. obtained six teller checks worth \$100,000.00 by transacting check number 5907, drawn on the first Bender checking account, in the amount of \$100,000.00;
- b. deposited five teller checks worth \$75,000.00 into the PNC Hannah Green Tree account;
- c. received the \$36,353.67 check issued by State Street that represented Mr. Bender's proceeds from the State Street investment account; and

d. deposited the \$36,353.67 check into the PNC Hannah Green Tree account.

75. On April 11, 2012, the end-of-the-day balance in the PNC Hannah Green Tree account was \$241.57.

76. On May 14, 2012, the end-of-the-day balance in the PNC Hannah Green Tree account was \$72.76.

77. On January 12, 2012, Respondent withdrew \$12,000.00 from the PNC Hannah Green Tree account.

78. When Respondent made that withdrawal, Respondent received \$2,000.00 in cash and used the remaining funds to obtain PNC Bank Cashier's Check No. 4036777, in the amount of \$10,000.00, made payable to Heather Bender.

79. On January 18, 2012, Respondent withdrew \$6,000.00 from the PNC Hannah Green Tree account.

80. When Respondent made that withdrawal, Respondent received \$1,000.00 in cash and used the remaining funds to obtain PNC Bank Cashier's Check No. 4025352, in the amount of \$5,000.00, made payable to Heather Bender.

81. On January 19, 2012, Respondent opened at TD Bank the TD Hannah account 4099.

a. Respondent had sole signature authority for the TD Hannah account 4099.

82. In opening the TD Hannah account 4099, the initial deposit consisted of PNC Bank Cashier's Checks Nos. 4036777 and 4025352, resulting in an opening balance of \$15,000.00.

83. On January 30, 2012, Respondent withdrew \$5,000.00 from the PNC Hannah Green Tree account.

84. When Respondent made that withdrawal, he received PNC Bank Cashier's Check No. 3956237, in the amount of \$5,000.00, made payable to Heather Bender.

85. On February 8, 2012, Respondent deposited into the TD Hannah account 4099 PNC Bank Cashier's Check No. 3956237.

86. On May 11, 2012, Respondent wrote and transacted check number 111 on the TD Hannah account 4099, in the amount of \$750.00; Respondent hand-wrote on the "MEMO" section of the check that it was issued as payment of Respondent's "Atty Fee."

87. Based on the notation Respondent made to the "MEMO" section of check number 111, and the fact that check number 111 was deposited into the PNC Hannah account 7807 and the proceeds from that check were used by Respondent, Respondent issued this check to compensate himself for legal services that he had rendered to Ms. Bender.

88. On March 24, 2012, Respondent withdrew \$20,000.00 from the PNC Hannah Green Tree account.

89. When Respondent made that withdrawal, Respondent used the funds to obtain three PNC Bank Cashier's Checks as follows:

- a. PNC Bank Cashier's Check No. 4055272, in the amount of \$10,000.00, made payable to Respondent;
- b. PNC Bank Cashier's Check No. 4055273, in the amount of \$5,000.00, made payable to Respondent; and
- c. PNC Bank Cashier's Check No. 4055274, in the amount of \$5,000.00, made payable to Respondent.

90. On April 9, 2012, Respondent went to a branch of PNC Bank and negotiated PNC Bank Cashier's Check No. 4055273, in the amount of \$5,000.00.

- a. Respondent received \$4,000.00 in cash, \$2,000.00 in \$100.00 bills and \$2,000.00 in \$50.00 bills.
- b. Respondent deposited \$500.00 into the PNC Hannah account 7807.
- c. Respondent deposited \$500.00 into the PNC Hannah account 4480.

91. Respondent did not distribute the cash proceeds from PNC Bank Cashier's Check No. 4055273 to or on behalf of Mr. Bender or Ms. Heather Bender.

92. Respondent did not distribute the \$500.00 deposited into the PNC Hannah account 7807 to or on behalf of Mr. Bender or Ms. Heather Bender.

93. Respondent did not distribute the \$500.00 deposited into the PNC Hannah account 4480 to or on behalf of Mr. Bender or Ms. Heather Bender.

94. On April 11, 2012, Respondent went to a branch of PNC Bank and negotiated PNC Bank Cashier's Check No. 4055274, in the amount of \$5,000.00.

- a. Respondent received \$2,500.00 in cash, in \$100.00 bills.
- b. Respondent made two separate deposits of cash into the PNC Hannah account 7807, the first in the amount of \$1,000.00 and the second in the amount of \$500.00.
- c. Respondent made two separate deposits of cash into the PNC Hannah account 4480, with each deposit being in the amount of \$500.00.

95. Respondent did not distribute the cash proceeds from PNC Bank Cashier's Check No. 4055274 to or on behalf of

Mr. Bender or Ms. Heather Bender.

96. Respondent did not distribute the \$1,500.00 deposited into the PNC Hannah account 7807 to or on behalf of Mr. Bender or Ms. Heather Bender.

97. Respondent did not distribute the \$1,000.00 deposited into the PNC Hannah account 4480 to or on behalf of Mr. Bender or Ms. Heather Bender.

98. On April 27, 2012, Respondent went to a branch of PNC Bank and negotiated PNC Bank Cashier's Check No. 4055272, in the amount of \$10,000.00.

- a. Respondent received \$2,500.00 in cash, \$2,000.00 in \$100.00 bills and \$500.00 in \$50.00 bills;
- b. Respondent deposited \$1,000.00 into the PNC Hannah Green Tree account.
- c. Respondent deposited \$1,000.00 into the PNC Hannah account 7807.
- d. Respondent deposited \$500.00 into the PNC Hannah account 4480.
- e. Respondent obtained PNC Bank Cashier's Check No. 4051334, in the amount of \$5,000.00, made payable to Respondent.

99. Respondent did not distribute the cash proceeds from PNC Bank Cashier's Check No. 4055272 to or on behalf of Mr. Bender or Ms. Heather Bender.

100. Respondent did not distribute the \$1,000.00 deposited into the PNC Hannah Green Tree account to or on behalf of Mr. Bender or Ms. Heather Bender.

101. Respondent did not distribute the \$1,000.00 deposited into the PNC Hannah account 7807 to or on behalf of Mr. Bender or Ms. Heather Bender.

102. Respondent did not distribute the \$500.00 deposited into the PNC Hannah account 4480 to or on behalf of Mr. Bender or Ms. Heather Bender.

103. Respondent transacted PNC Bank Cashier's Check No. 4051334, in the amount of \$5,000.00.

104. Respondent did not distribute the proceeds from PNC Bank Cashier's Check No. 4051334 to or on behalf of Mr. Bender or Ms. Heather Bender.

105. In total, Respondent deposited into the PNC Hannah Green Tree account \$75,000.00 worth of teller checks (which Respondent obtained from transacting check number 5907, in the amount of \$100,000.00, drawn on the first Bender checking account) and the \$36,353.67 check issued by State Street, which represented Mr. Bender's proceeds from the State Street

investment account.

- a. These deposits totaled \$111,353.67.

106. On May 14, 2012, Respondent deposited into the PNC Hannah account 7807 Teller Check No. 5545569945, in the amount of \$25,000.00.

107. Prior to this deposit, the balance in the PNC Hannah account 7807 was \$1,220.50.

- a. Respondent commingled his funds with funds belonging to Mr. Bender.

108. On May 15, 2012, Respondent withdrew \$22,000.00 from the PNC Hannah account 7807.

109. When Respondent made that withdrawal, he:

- a. received \$1,500.00 in cash;
- b. deposited \$500.00 into the PNC Hannah account 4480;
- c. received PNC Bank Cashier's Check No. 4051372, in the amount of \$5,000.00, made payable to Respondent;
- d. received PNC Bank Cashier's Check No. 4051373, in the amount of \$5,000.00, made payable to Respondent;
- e. received PNC Bank Cashier's Check No. 4051374, in the amount of \$5,000.00, made payable to

Respondent; and

- f. received PNC Bank Cashier's Check No. 4051375, in the amount of \$5,000.00, made payable to Respondent.

110. On May 23, 2012, Respondent went to a branch of PNC Bank and negotiated PNC Bank Cashier's Check No. 4051375, in the amount of \$5,000.00.

- a. Respondent received \$438.00 in cash.
- b. Respondent received PNC Bank Cashier's Check No. 4051388, in the amount of \$4,562.00, made payable to "JEWELL ASHTON AND HER ATTY EDWIN P. SMITH."

111. Respondent used PNC Bank Cashier's Check No. 4051388, in the amount of \$4,562.00, to settle a legal malpractice case that had been filed against Respondent on April 18, 2011, in the Philadelphia Court of Common Pleas by Edwin P. Smith, Esquire, on behalf of Ms. Jewell Ashton, said case captioned the **Jewell Ashton vs. Louis [sic] Hannah, III**, docket number 110401922 ("the Ashton malpractice case").

112. On June 4, 2012, Respondent went to a branch of PNC Bank and negotiated PNC Bank Cashier's Check No. 4051372, in the amount of \$5,000.00.

- a. Respondent received \$3,500.00 in cash, \$2,000.00 in \$100.00 bills, \$1,000.00 in \$50.00 bills, and \$500.00 in \$20.00 bills.
- b. Respondent deposited \$500.00 into the PNC Hannah Green Tree account.
- c. Respondent deposited \$500.00 into the PNC Hannah account 7807.
- d. Respondent deposited \$500.00 into the PNC Hannah account 4480.

113. On July 6, 2012, Respondent went to a branch of PNC Bank and negotiated PNC Bank Cashier's Check No. 4051374, in the amount of \$5,000.00.

- a. Respondent received \$3,500.00 in cash, with the entire amount given to him in \$100.00 bills.
- b. Respondent deposited \$500.00 into the PNC Hannah Green Tree account.
- c. Respondent deposited \$1,000.00 into the PNC Hannah account 7807.

114. On July 27, 2012, Respondent went to a branch of PNC Bank and negotiated PNC Bank Cashier's Check No. 4051373, in the amount of \$5,000.00.

- a. Respondent received \$4,000.00 in cash, \$3,800.00 in \$50.00 bills and \$200.00 in \$20.00 bills.
- b. Respondent deposited \$500.00 into the PNC Hannah account 7807.
- c. Respondent deposited \$500.00 into the PNC Hannah account 4480.

115. Respondent failed to advise Mr. Bender that Respondent had deposited into the PNC Hannah account 7807 a \$25,000.00 teller check that was derived from funds belonging to Mr. Bender.

116. By July 27, 2012, Respondent had transacted the \$100,000.00 worth of teller checks and the \$36,353.67 check issued by State Street.

- a. These amounts totaled \$136,353.67.

117. As of July 31, 2012, Respondent had misappropriated \$44,032.90 of funds belonging to Mr. Bender.

118. Respondent provided ODC with an itemized bill for services (legal and non-legal) rendered to Mr. Bender for the period of July 29, 2011 through March 10, 2014, which totaled \$80,520.00, based on 268.4 hours expended, billed at an hourly rate of \$300.00.

119. Respondent's itemized bill shows that as of July 31, 2012, Respondent had billings for services rendered to Mr. Bender that totaled \$62,400.00.

120. As of July 31, 2012, Respondent had received attorney fee payments of \$8,800.00 from the first Bender checking account.

121. ODC adjusted Respondent's billings for services rendered to Mr. Bender based on the earlier fee payments of \$8,800.00 received by Respondent; consequently, as of July 31, 2012, Respondent's billings for services rendered to Mr. Bender totaled \$53,600.00 ($\$62,400.00 - \$8,800.00 = \$53,600.00$).

122. Respondent provided ODC with a payment ledger and other documentation to support his claim that he had paid expenses on behalf of Mr. Bender that totaled \$38,793.61; however, a substantial portion of these claimed expenses was paid from the first Bender checking account or a subsequent account that Respondent opened at First Niagara, which accounts were funded by Mr. Bender's monthly retirement and disability benefits.

123. Based on the documentation that Respondent provided to ODC concerning expenses that Respondent claims he paid on behalf of Mr. Bender, and after ODC adjusted Respondent's

claimed expenses due to certain of those expenses having been paid from the first Bender checking account, as of July 31, 2012, Respondent paid expenses on behalf of Mr. Bender that totaled \$6,213.36.

124. Respondent provided ODC with an itemized bill for services (legal and non-legal) rendered to Ms. Heather Bender for the period of October 15, 2011 through April 22, 2014, which totaled \$29,940.00, based on 99.80 hours expended, billed at an hourly rate of \$300.00.

125. Respondent's itemized bill shows that as of July 31, 2012, Respondent had billings for services rendered to Ms. Heather Bender that totaled \$12,900.00.

126. As of July 31, 2012, Respondent had received an attorney fee payment of \$750.00 from the TD Hannah account 4099.

127. ODC adjusted Respondent's billings for services rendered to Ms. Heather Bender based on the earlier fee payment of \$750.00 received by Respondent; consequently, as of July 31, 2012, Respondent's billings for services rendered to Ms. Heather Bender totaled \$12,150.00 ($\$12,900.00 - \$750.00 = \$12,150.00$).

128. Respondent provided ODC with a payment ledger and other documentation to support his claim that he had paid

expenses on behalf of Ms. Heather Bender that totaled \$18,979.97; virtually all of these claimed expenses were paid from the TD Hannah account 4099.

129. Based on the documentation that Respondent provided to ODC concerning expenses that Respondent claims he paid on behalf of Ms. Heather Bender from funds drawn from the TD Hannah account 4099, as of July 31, 2012, Respondent paid expenses on behalf of Ms. Heather Bender that totaled \$11,468.95.

130. As of July 31, 2012, the total of Respondent's adjusted billings for services rendered to, and adjusted expenses paid on behalf of, Mr. Bender and Ms. Heather Bender totaled \$83,432.31.

131. As of July 31, 2012, the end-of-the-day balance in the PNC Hannah account 7807 was negative \$150.78.

132. As of July 31, 2012, the end-of-the-day balance in the PNC Hannah account 4480 was \$234.11.

133. As of July 31, 2012, the end-of-the-day balance in the PNC Hannah Green Tree account was \$258.30.

134. As of July 31, 2012, the end-of-the-day balance in the TD Hannah account 4099 was \$7,781.05.

135. As of July 31, 2012, the end-of-the-day balances in the PNC Hannah account 4480, the PNC Hannah Green Tree

account, and the TD Hannah account 4099 totaled \$8,273.46.

136. As discussed above in paragraph 116, by July 27, 2012, Respondent had received and transacted checks derived from funds belonging to Mr. Bender that totaled \$136,353.67.

137. As discussed above in paragraph 130, by July 31, 2012, Respondent's adjusted billings for services rendered to, and adjusted expenses paid on behalf of, Mr. Bender and Ms. Heather Bender totaled \$83,432.31.

138. Respondent can claim that as of July 31, 2012, he had taken \$83,432.31 from the \$136,353.67 as payment of his earned fees and expenses incurred on behalf of Mr. Bender and Ms. Heather Bender; there is \$52,921.36 remaining after deducting \$83,432.31 from the figure of \$136,353.67.

139. The figure of \$52,921.36 represents fiduciary funds belonging to Mr. Bender that Respondent had not yet earned or expended on behalf of Mr. Bender and Ms. Heather Bender; therefore, as of July 31, 2012, Respondent should have been holding on behalf of Mr. Bender in a trust account the amount of \$52,921.36.

140. As of July 31, 2012, Respondent was only holding \$8,273.46, not \$52,921.36, from the \$136,353.67 that represented funds belonging to Mr. Bender.

141. After deducting \$8,273.46 from the figure of \$52,921.36, Respondent had taken, but not earned, \$44,647.90 of funds belonging to Mr. Bender.

142. Respondent abused his authority under the first POA by transacting \$100,000.00 in teller checks and the \$36,353.67 check issued by State Street, and by misappropriating funds that belonged to Mr. Bender.

143. Respondent knowingly misappropriated funds that belonged to Mr. Bender.

144. Respondent failed to advise Mr. Bender that Respondent had misappropriated funds that belonged to Mr. Bender.

145. Mr. Bender did not authorize Respondent to make personal use of \$44,647.90 of funds belonging to Mr. Bender.

146. Sometime in early September 2012, Mr. Bender sent to Respondent a certified mailing in which he enclosed a document titled "REVOCATION OF POWER OF ATTORNEY" ("the Revocation"), which was signed by Mr. Bender.

a. The first POA was voided as a result of the Revocation.

147. Respondent received the certified mailing on September 17, 2012.

148. By letter dated October 26, 2012, sent by Respondent to Mr. Bender, Respondent, *inter alia*:

- a. informed Mr. Bender that Respondent had spoken with Mr. Bender's counselor and had arranged to meet with Mr. Bender on November 2, 2012; and
- b. requested that Mr. Bender place Respondent's name on the list of visitors so that Respondent could "bring papers for [him] to sign."

149. On November 2, 2012, Respondent met with Mr. Bender at his place of incarceration, SCI Mahanoy.

150. During the November 2, 2012 meeting, Respondent, *inter alia*, requested that Mr. Bender sign several documents, among them a second Power of Attorney ("the second POA") so that Respondent could continue to represent Mr. Bender in his legal matters and to handle his financial affairs.

151. Mr. Bender signed the second POA.

152. On or about February 13, 2013, Mr. Bender mailed to Respondent a document titled "REVOCATION OF POWER OF ATTORNEY" ("the second Revocation"), which was signed by Mr. Bender and dated February 13, 2013.

- a. The second POA was no longer in effect by operation of the second Revocation.

153. On August 2, 2012, while the first POA was in effect, Respondent used the first POA to open the second Bender checking account.

- a. Respondent had sole signature authority for the second Bender checking account.
- b. Respondent withdrew \$3,155.89 from the first Bender checking account and used those funds as the initial deposit to open the second Bender checking account.

154. On a monthly basis, commencing on March 1, 2013, the second Bender checking account received two separate monthly direct deposits.

- a. The first direct deposit was the retirement benefit that Mr. Bender received from the Boeing Company in the amount of \$1,200.33; this direct deposit ceased after the June 3, 2013 direct deposit was made into this account.
- b. The second direct deposit was the VA disability benefit, which at that time was in the amount of \$1,026.00; this direct deposit

ceased after the November 29, 2013 direct deposit was made into this account.

155. Between April 18, 2013 and October 9, 2013, Respondent wrote the following checks on the second Bender checking account:

- a. check number 1017, in the amount of \$504.15, made payable to "Lancaster Co. Domestic Relations," with a hand-written notation on the check that it was for "Heather Bender/Support";
- b. check number 1018, in the amount of \$500.00, made payable to Respondent;
- c. check number 1019, in the amount of \$1,500.00, made payable to Respondent;
- d. check number 1020, in the amount of \$1,200.00, made payable to Respondent, with a hand-written notation on the check as to the reason for issuing the check, but the notation is not legible;
- e. check number 1021, in the amount of \$1,500.00, made payable to Respondent, with a hand-written notation on the check that \$600.00 was purportedly for "Bender," and the remaining

- balance was to pay Respondent's attorney fee;
- f. check number 1022, in the amount of \$500.00, made payable to "Etlis Property Management, LLC," with a hand-written notation on the check that it was for "Storage 5 months";
 - g. check number 1023, in the amount of \$500.00, made payable to "Green Tree Services," with a hand-written notation on the check that it was for "Invoice for Services at House";
 - h. check number 1024, in the amount of \$750.00, made payable to Respondent, with a hand-written notation on the check that the check was purportedly for "Legal Fees"; and
 - i. check number 1025, in the amount of \$800.00, made payable to Respondent, with a hand-written notation on the check that an unspecified portion was purportedly for Respondent's legal services and another unspecified portion was for Mr. Bender.

156. Respondent transacted check numbers 1018, 1019, 1020, 1021, 1023, and 1024; First Niagara did not transact check number 1025.

157. On May 10, 2013, Respondent made a teller withdrawal from the second Bender checking account in the amount of \$1,500.00.

158. On May 24, 2013, Respondent made a teller withdrawal from the second Bender checking account in the amount of \$500.00.

159. Respondent failed to advise Mr. Bender that between April 18, 2013 and October 9, 2013, Respondent had written checks that were drawn on, and Respondent had made withdrawals from, the second Bender checking account.

160. From July 2011 through October 2013, Respondent received and used funds belonging to Mr. Bender that totaled \$202,223.53.

161. Respondent's itemized bill for services (legal and non-legal) rendered to:

- a. Mr. Bender for the period of July 29, 2011 through March 10, 2014, totaled \$80,520.00; and
- b. Ms. Heather Bender for the period of October 15, 2011 through April 22, 2014, totaled \$29,940.00.

162. The total amount of Respondent's claimed fees for services provided to Mr. Bender and Ms. Heather Bender is

\$110,460.00.

163. The maximum amount of expenses that Respondent can claim he paid on behalf of Mr. Bender during the period covering September 2011 through August 2013, is \$47,275.93.

164. The maximum amount of expenses that Respondent can claim he paid on behalf of Ms. Heather Bender during the period covering December 2011 through April 2014, is \$24,627.76.

165. The total amount of Respondent's claimed expenses paid on behalf of Mr. Bender and Ms. Heather Bender is \$71,903.69.

166. Respondent can claim that when he ceased providing services to Mr. Bender and Ms. Heather Bender, he had taken \$182,363.69 from the \$202,223.53 as payment of his earned fees and expenses incurred on behalf of Mr. Bender and Ms. Heather Bender; after deducting \$182,363.69 from the figure of \$202,223.53, the unaccounted for balance is \$19,859.84.

167. The figure of \$19,859.84 represents fiduciary funds belonging to Mr. Bender that Respondent had not earned or expended on behalf of Mr. Bender and Ms. Heather Bender.

168. When Respondent's representation of Mr. Bender and Ms. Heather Bender ceased, Respondent should have been holding on behalf of Mr. Bender in a trust account the amount

of \$19,859.84, which amount Respondent should have tendered to Mr. Bender.

169. Respondent abused his authority under the first POA and second POA by misappropriating funds that belonged to Mr. Bender.

170. Respondent knowingly misappropriated funds that belonged to Mr. Bender.

171. Respondent failed to advise Mr. Bender that Respondent had misappropriated funds that belonged to Mr. Bender.

172. Mr. Bender did not authorize Respondent to make personal use of funds belonging to Mr. Bender.

173. Respondent failed to maintain complete records that would show Respondent's receipt, maintenance, and disposition of funds that belonged to Mr. Bender.

Failure to respond to Mr. Bender's written inquiries.

174. By letter dated January 20, 2012, sent to Respondent by Mr. Bender by regular mail, Mr. Bender, *inter alia*:

- a. advised that he had not heard from Respondent since their meeting in December 2011 while Mr. Bender was incarcerated at SCI Graterford;

- b. stated that Respondent had told Mr. Bender that Respondent had arranged to have forwarded to Respondent any mail sent to the Bender property;
- c. explained that he had mailed a letter to Ms. Bender addressed to the Bender property because Respondent said that Respondent would deliver such letters to Ms. Bender, but the letter was returned to Mr. Bender after having been forwarded to Mr. Bender's brother's address;
- d. inquired whether his mail was continuing to be forwarded; and
- e. requested that Respondent update him on the status of Respondent's efforts to retrieve Mr. Bender's money and personal property from his brother and that Respondent contact Mr. DeStefano to ascertain the status of the forfeiture action.

175. Respondent received this letter.

176. Respondent failed to respond to this letter.

177. By letter dated February 7, 2012, sent to Respondent by Mr. Bender by regular mail, Mr. Bender, *inter alia*:

- a. stated that he had not received a reply from Respondent to the January 20, 2012 letter;
- b. reiterated that he had not heard from Respondent since they had met while Mr. Bender was incarcerated at SCI Graterford;
- c. stated that Respondent had told Mr. Bender that Respondent had arranged to have forwarded to Respondent any mail sent to the Bender property;
- d. inquired generally as to what "was going on out there" and specifically inquired about the forfeiture action and Ms. Bender; and
- e. requested that Respondent send him an additional \$600.00.

178. Respondent received this letter.

179. Respondent failed to respond to this letter.

180. By letter dated February 25, 2012, sent to Respondent by Mr. Bender by regular mail, Mr. Bender, *inter alia*:

- a. informed Respondent that Mr. Bender had been transferred to SCI Mahanoy;
- b. thanked Respondent for sending him \$300.00, but said he had requested \$600.00 so he could acquire a television;
- c. asked that Respondent send him an additional \$300.00;
- d. advised that he was waiting for Respondent to respond to the last four letters Mr. Bender had sent Respondent; and
- e. inquired generally as to what "was going on...."

181. Respondent received this letter.

182. Respondent failed to respond to this letter.

183. By letter dated April 16, 2012, sent to Respondent by Mr. Bender by regular mail, Mr. Bender, *inter alia*:

- a. stated that he had not heard from Respondent since the meeting at SCI Graterford and that Respondent had not answered the four or five letters he had sent to Respondent; and
- b. inquired if he still owned the Bender property.

184. Respondent received this letter.

185. Respondent failed to respond to this letter.

186. From time to time from May 2012 through August 2012, Mr. Bender mailed to Respondent letters inquiring about the status of the matters that Respondent was handling on Mr. Bender's behalf.

187. Respondent received Mr. Bender's letters.

188. Respondent failed to respond to Mr. Bender's letters.

Failure to provide Mr. Bender with an itemized bill.

189. On June 7, 2013, Respondent met with Mr. Bender at SCI Mahanoy.

190. During this meeting:

- a. Mr. Bender requested that Respondent provide Mr. Bender with an itemized bill; and
- b. Respondent told Mr. Bender that Respondent would send Mr. Bender an itemized bill.

191. By letter dated June 19, 2013, sent to Respondent by certified mail, return receipt requested, Mr. Bender, *inter alia*:

- a. summarized what transpired during the June 7, 2013 meeting;

- b. stated that Respondent had failed to comply with Mr. Bender's request to provide Mr. Bender with an itemized bill for the services Respondent had rendered;
- c. stated that Respondent had not complied with Mr. Bender's prior requests to provide Mr. Bender with an itemized bill, the first and second POAs, a status report on the retrieval of Mr. Bender's personal property from his brother, and documented proof that Respondent was paying the necessary expenses to maintain the Bender property; and
- d. requested that Respondent, *inter alia*, send to Mr. Bender the remainder of Mr. Bender's funds in the form of a bank check, arrange for the VA disability benefits and the retirement checks to be sent to Mr. Bender and to terminate Respondent's future receipt of those payments, and forward to Mr. Bender all personal documents Respondent possessed that concern Mr. Bender, including, but not limited to, his bank accounts, his retirement and

disability benefits, his real estate holdings,
and his case files.

192. Respondent received this letter on June 24, 2013.

193. Respondent failed to respond to this letter.

194. By letter dated July 17, 2013, sent to Respondent by regular mail, Mr. Bender, *inter alia*, reiterated his request for an itemized bill.

195. Respondent received this letter.

196. Respondent failed to respond to this letter.

197. By letter dated October 14, 2013, sent to Respondent by certified mail, return receipt requested, Mr. Bender, *inter alia*:

- a. expressed his dissatisfaction with Respondent's services and decisions that Respondent had made on Mr. Bender's behalf using the first POA and the second POA, such as terminating Mr. DeStefano's services; and
- b. requested that within fourteen days from Respondent's receipt of the letter, Respondent, *inter alia*, provide Mr. Bender with an itemized bill, and an explanation that justified Respondent's decision to terminate Mr. DeStefano's services.

198. Respondent received this letter on October 21, 2013.

199. Respondent failed to respond to this letter.

200. By his conduct as alleged in paragraphs 8 through 199 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.2(a), which states that subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify;

- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- d. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- e. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- f. RPC 1.5(b), which states that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation;
- g. RPC 1.15(b), which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property

shall be identified and appropriately safeguarded;

- h. RPC 1.15(c) [effective 9-20-08], which states that complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(1): (1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks, deposited items and records of electronic transactions; and (2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each

transaction. (3) The records required by this rule may be maintained in electronic or hard copy form. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device;

- i. RPC 1.15(d), which states that upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment;
- j. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the

client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment;

- k. RPC 1.15(1), which states that all Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds;
- l. RPC 1.16(d), which states that upon termination of representation, a lawyer shall take steps to

the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law; and

- m. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

201. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of three years.

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

acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

203. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a three-year suspension;
- c. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a three-year suspension; and
- d. Respondent has no record of discipline in Pennsylvania since his admission to practice law thirty years ago.

204. There is one aggravating circumstance, which is Respondent's failure to make restitution to Mr. Bender.

205. There are four disciplinary cases that support the recommendation that Respondent be suspended for three years.

In *Office of Disciplinary Counsel v. James A. Bolden*, No. 165 DB 2003 (D.Bd. Rpt. 1/25/05) (S.Ct. Order 4/19/05), Respondent Bolden was suspended for three years for misappropriating estate funds, commingling estate funds with Respondent Bolden's firm's funds, failing to keep accurate and complete records of services he provided as executor to the estate and as counsel, and failing to account. Respondent Bolden's position as executor of the estate gave Respondent Bolden the means to misappropriate funds belonging to the estate. Respondent Bolden had provided services to the estate but he was unable to produce accurate and complete records of receipts and disbursements, liabilities and income, and expenses he incurred and paid on behalf of the estate. The Board stated that while "Respondent did perform services for the estate, he withdrew from estate funds well in excess of legitimate fees, while failing to account for and distribute funds to the heirs" and that the amount he withdrew "was taken well before Respondent could have known the amount of work involved in the administration of the estate." Bd. Rpt. 23. The heirs filed a lawsuit against Respondent Bolden in Philadelphia Orphans' Court. The parties settled that lawsuit, with Respondent Bolden agreeing to pay the estate approximately \$160,000.00. *Id.* 20. Respondent Bolden had

paid \$120,000.00. *Id.* The Board identified as mitigating factors Respondent Bolden's lack of a disciplinary record, military service, distinguished work history, expressions of remorse, and cooperation. *Id.* 24.

In ***Office of Disciplinary Counsel v. David Louis Bargeron***, No. 130 DB 2005 (Recommendation of the Three-Member Panel of the Disciplinary Board 9/14/05) (S.Ct. Order 10/24/05), the Court approved a Joint Petition in Support of Discipline on Consent ("Consent Petition") and suspended Respondent Bargeron for three years for misappropriating \$11,082.75 of settlement proceeds belonging to a client. In addition, Respondent Bargeron had: failed to deposit the settlement check into a trust account; made misrepresentations on two Attorney Annual Fee Forms regarding the account he used to hold fiduciary funds; failed to provide truthful and accurate information to the client; and failed to provide an accounting. The mitigating factors were admission of misconduct, remorse, and cooperation. Consent Petition, p. 7. The aggravating factors were lack of restitution and a prior informal admonition. *Id.* p. 6.

In ***Office of Disciplinary Counsel v. Robert Louis Frey***, No. 211 DB 2010 (Recommendation of the Three-Member Panel of the Disciplinary Board 3/10/11) (S.Ct. Order 5/23/11), the

Court approved a Joint Petition in Support of Discipline on Consent ("Consent Petition") and suspended Respondent Frey for three years for misappropriating \$14,598.15 from a \$15,000.00 retainer that Respondent Frey had received from a client. Respondent Frey also failed to: hold a portion of the retainer in a trust account; diligently pursue the client's legal matter; communicate with the client; provide the client with truthful information about the status of the client's legal matter; provide the client with a written fee agreement; and refund any portion of the retainer to the client after Respondent Frey was terminated. Several mitigating circumstances were listed in the Consent Petition: no record of discipline; admission of misconduct; cooperation; remorse; and Respondent Frey was a recently admitted attorney at the time of the misconduct. Consent Petition, pp. 18-19. The absence of restitution was treated as an aggravating factor. *Id.* p. 19. Of particular note, the Consent Petition discussed six disciplinary cases (not listed herein) that resulted in attorneys being suspended for three years for having misappropriated fiduciary funds as support for the sanction recommendation. *Id.* pp. 21-22.

In ***Office of Disciplinary Counsel v. Mark B. Peduto***, No. 75 DB 2015 (S.Ct. Order 2/24/17), the Court approved a Joint

Petition in Support of Discipline on Consent ("Consent Petition") and suspended Respondent Peduto for three years for misappropriating over \$70,000.00 in estate funds from an estate, failing to hold an advance payment of his fees and expenses separate from his own funds until earned, failing to pay the inheritance tax, failing to maintain required records that would show the purpose of disbursements by checks made payable to "cash" so as to demonstrate that the funds were spent for the benefit of the estate, and failing to provide an accurate accounting. Because of the manner in which Respondent Peduto handled the estate funds, ODC could not determine the precise amount that he owed to the estate. The mitigating factors were admission of misconduct, cooperation, remorse, and restitution of a portion of the amount owed to the estate. Consent Petition, pp. 19-20. The aggravating factors were a prior informal admonition, a failure to timely comply with ODC's request for required records, and a lack of complete restitution. *Id.* pp. 20-21.

Based on the foregoing cases, a suspension of three years is sufficiently lengthy to advance the goals of attorney discipline. Those goals are protecting the public, maintaining the integrity of the courts and the legal profession, and specific and general deterrence. See **Office**

of Disciplinary Counsel v. Keller, 506 A.2d 872, 875 (Pa. 1986); *In re Iulo*, 766 A.2d 335, 338-339 (Pa. 2001).

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., the Three-Member Panel of the Disciplinary Board review and approve the above Joint Petition In Support Of Discipline On Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court enter an Order that Respondent receive a suspension of three years, and that Respondent comply with all of the provisions of Rule 217, Pa.R.D.E.; and
- b. Pursuant to Pa.R.D.E. 215(i), the Three-Member Panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter, and that under Pa.R.D.E. 208(g)(1) all expenses be paid by Respondent within 30 days after the notice of the taxed expenses is sent to Respondent.

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

October 10, 2019
Date

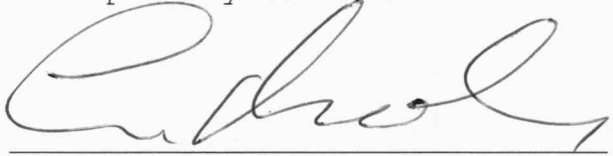
By



Richard Hernandez
Disciplinary Counsel

10/9/19
Date

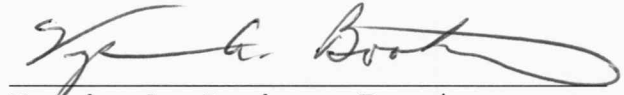
By



Lewis P. Hannah, III
Respondent

10/10/19
Date

By



Vaughn A. Booker, Esquire
Respondent's Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 53 DB 2019
v. :
: Atty. Reg. No. 57247
LEWIS P. HANNAH, III, :
Respondent : (Philadelphia)

VERIFICATION

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

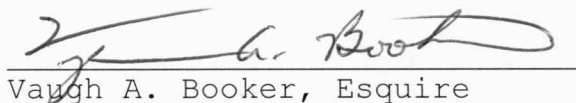
October 10, 2019
Date


Richard Hernandez
Disciplinary Counsel

10/9/19
Date


Lewis P. Hannah, III
Respondent

10/10/19
Date


Vaughn A. Booker, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
 Petitioner :
 : No. 53 DB 2019
 v. :
 : Atty. Reg. No. 57247
LEWIS P. HANNAH, III, :
 Respondent : (Philadelphia)

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

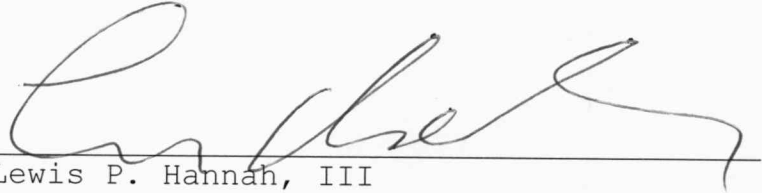
Respondent, Lewis P. Hannah, III, hereby states that he consents to the imposition of a suspension of three years as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline on Consent and further states that:

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

2. He is aware that there is presently pending a disciplinary proceeding at 53 DB 2019 involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

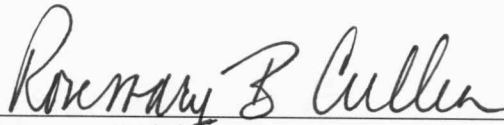
3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He consents because he knows that if charges pending at No. 53 DB 2019 continued to be prosecuted, he could not successfully defend against them.

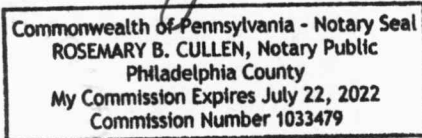


Lewis P. Hannah, III
Respondent

Sworn to and subscribed
before me this 9th
day of October, 2019.



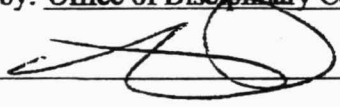
Notary Public



CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature:  _____

Name: Richard Hernandez, Disciplinary Counsel

Attorney No. (if applicable): 57254