

[J-2-2019]
IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2485 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 56 DB 2016
	:	
	:	Attorney Registration No. 90137
v.	:	
	:	(Philadelphia)
JOSEPH Q. MIRARCHI,	:	
	:	
Respondent	:	ARGUED: March 5, 2019

ORDER

PER CURIAM

DECIDED: MARCH 18, 2019

Upon consideration of the Report and Recommendations of the Disciplinary Board and following oral argument, Joseph Q. Mirarchi is disbarred from the Bar of this Commonwealth and he shall comply with the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 03/18/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 56 DB 2016
Petitioner	:	
	:	
v.	:	Attorney Registration No. 90137
	:	
JOSEPH Q. MIRARCHI	:	
Respondent	:	(Philadelphia)

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

On November 4, 2016, Petitioner, Office of Disciplinary Counsel (“ODC”) filed a Petition for Discipline against Respondent, Joseph Q. Mirarchi, charging him with violating multiple Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) in five matters. Respondent filed an Answer to Petition on November 29, 2016.

At the January 18, 2017 prehearing conference, the Committee Chair established February 9, 2017 as the deadline for, among other things, Respondent’s

counsel to advise Petitioner if Respondent would be presenting mitigation evidence in the form of psychiatric testimony and the names of Respondent's witnesses. The Chair also directed that if Respondent determined to present psychiatric testimony, a second hearing would be scheduled and Respondent would be required to provide Petitioner with the expert report and treatment notes three weeks prior to that second hearing.

A disciplinary hearing was held on March 27, 2017, before a District I Hearing Committee, at which Petitioner presented its case. Before recessing, the Committee Chair established April 3, 2017, as the deadline for the parties to exchange names of witnesses, to identify whether the witnesses were character or fact witnesses, and to exchange any additional proposed exhibits. The hearing reconvened on April 10, 2017. Respondent did not provide the expert reports and treatment notes to Petitioner as directed by the Committee. Petitioner requested that the Committee preclude Respondent from presenting any expert testimony. The Committee ruled that Respondent must provide Petitioner with an expert report and treatment notes two weeks prior to the next scheduled hearing date.

The parties reconvened on June 27, June 28, and June 29, 2017. Respondent did not provide an expert report and treatment notes as directed by the Committee. At the June 27 hearing, the Committee denied Respondent's request to obtain an expert report and list the matter for an additional hearing date.

Petitioner introduced Joint Stipulations of Fact, Law and Exhibits, and Petitioner's Exhibits ODC-1 through ODC-174. Petitioner introduced the testimony of four witnesses and a rebuttal witness. Respondent appeared at all five days of hearing and was represented by Stuart L. Haimowitz, Esquire. Respondent introduced Respondent's

Exhibit R-1. Respondent testified on his own behalf and introduced the testimony of 14 witnesses.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 20, 2017, concluding that Respondent violated the rules as charged in the Petition for Discipline and recommending that Respondent be disbarred from the practice of law.

On January 11, 2018, Respondent filed a Brief on Exceptions to the Committee's Report and recommendation and requested oral argument before the Board.

On January 16, 2018, Respondent's counsel withdrew his appearance.

On January 30, 2018, Petitioner filed a Brief Opposing Exceptions.

On January 30, 2018, Petitioner filed a Motion to Strike the Reports and Curricula Vitae of Dr. Paul J. Sedacca and Dr. Kirk Heilbrun Attached to Respondent's Brief on Exceptions.

On February 14, 2018, Respondent filed a Reply Brief and Response to Petitioner's Motion to Strike.

On March 29, 2018, a three-member Board panel held oral argument.

The Board adjudicated this matter on April 11, 2018.

By Order dated May 2, 2018, after review of Petitioner's Motion to Strike the Reports and Curricula Vitae attached to Respondent's Brief on Exceptions and Respondent's Response, the Board granted the Motion to Strike.

II. FINDINGS OF FACT

The Board makes the following findings:

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 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 brought in accordance with the various provisions of said Rules of Disciplinary Enforcement. Stipulation (“S”) -1.

2. Respondent, Joseph Q. Mirarchi, was born in 1967, was admitted to practice law in Pennsylvania in 2002, has a public access address at 1717 Arch Street, Suite 3640, Philadelphia, PA 19103, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. S-2.

CHARGE I: The ODC Matter

3. At all times relevant hereto, Respondent maintained an IOLTA account for holding fiduciary funds with TD Bank (IOLTA 1 account”). S-3.

4. At all times relevant hereto, Respondent maintained an operating account for the private practice of law with TD Bank (“the operating account”). S-8.

**INSTANCES OF MISAPPROPRIATION OF FUNDS HELD IN THE IOLTA 1
ACCOUNT THAT WERE OWED TO CLIENTS AND THIRD PARTIES**

Diane Vanmeter Case

5. By letter dated February 3, 2011, sent by Joseph Longo, Esquire, to Respondent, Mr. Longo confirmed that they had spoken and referred a personal injury case involving Ms. Diane Vanmeter to Respondent. N.T.IV¹ 304-305; ODC-153.

6. By letter dated October 4, 2011, sent by Mr. Longo to Respondent, Mr. Longo confirmed that they had spoken about Ms. Vanmeter's personal injury case and the information that Respondent had provided to Mr. Longo about that matter. N.T.IV 305; ODC-154.

7. On November 30, 2011, Respondent deposited a \$15,000.00 settlement check relating to Diane Vanmeter and Daniel Vanmeter's personal injury case into the IOLTA 1 account.

8. In connection with that personal injury case, Respondent owed a referral fee of \$1,665.00 to Joseph Longo, Esquire.

9. Respondent failed to pay Mr. Longo a referral fee when Respondent received the \$15,000.00 settlement check. N.T.IV 305-306; ODC-1, 3; S-10.

10. On January 5, 2012, the IOLTA 1 account balance was \$3.83. S-9.

11. As of January 5, 2012, the amount of funds that Respondent was required to hold in trust in the IOLTA 1 account on behalf of Mr. Longo was no less than \$1,665.00, which was the amount of the referral fee that Respondent owed to Mr. Longo. S-11.

¹ Notes of testimony of the June 28, 2017 hearing.

12. As of January 5, 2012, the balance in the IOLTA 1 account was \$1,661.17 below the amount of funds that Respondent was required to hold in trust on behalf of Mr. Longo. ODC-1; S-12.

13. Mr. Longo did not authorize Respondent to use any funds belonging to Mr. Longo. S-13.

14. Respondent knowingly misappropriated \$1,661.17 of funds belonging to Mr. Longo.

Augustine Matticola Case

15. On February 28, 2012, Respondent deposited a \$15,000.00 settlement check relating to Augustine Matticola's personal injury case into the IOLTA 1 account.

16. In connection with that personal injury case, Respondent owed a referral fee of \$1,569.09 to Mr. Longo. ODC-1, 4; S-14.

17. Respondent failed to pay Mr. Longo a referral fee when Respondent received the \$15,000.00 settlement check. N.T.IV 308-309; ODC-1, 4; S-14.

Anne E. Loisch Case

18. On March 20, 2012, Respondent deposited a \$15,000.00 settlement check relating to Anne E. Loisch's personal injury case into the IOLTA 1 account. ODC-1.

19. In connection with that personal injury case, Ms. Loisch was entitled to the sum of \$7,991.16. ODC-1, 5; S-15.

20. Respondent immediately took his \$6,000.00 fee from the settlement proceeds for Ms. Loisch's personal injury case. N.T.IV 311-312, 316; ODC-1, 6.

21. Although Respondent knew when he took his fee that Ms. Loisch was entitled to \$7,991.16 from her settlement proceeds, Respondent failed to promptly distribute any funds to her. N.T.IV 312, 316-317; ODC-1, 9.

Money Owed to Longo and Loisch

22. As of March 20, 2012, the amount of funds that Respondent was required to hold in trust in the IOLTA 1 account in the above matters was no less than \$11,225.25, which were the amounts of the two referral fees that Respondent owed to Mr. Longo and Ms. Loisch's share of the proceeds from the settlement of her personal injury case. S-16.

23. Commencing on April 23, 2012, and continuing through July 25, 2012, the balance in the IOLTA 1 account was below the amount of funds that Respondent was required to hold in trust on behalf of Mr. Longo and Ms. Loisch; the deficit ranged from \$3,579.65 (6/4/12) to \$11,202.88 (7/13/12). N.T.IV 313; ODC-1; S-16-18.

24. Ms. Loisch did not authorize Respondent to use any funds belonging to her. S-19.

25. Between May 2012 and July 2012, Mr. Longo called Respondent and left messages with Respondent's assistant because Mr. Longo had not received payment of the referral fees that Mr. Longo was owed in the matters involving Ms. Vanmeter and Ms. Matticola; Respondent failed to return Mr. Longo's messages. N.T.IV 306-308; ODC-155.

26. Based on Respondent's withdrawals from, transfers to and from, and checks written on, the IOLTA 1 account during the period of January 1, 2012 through March 22, 2013, it is evident that Respondent was continuously aware of the balance in

the IOLTA 1 account and was taking care to ensure that he did not become overdrawn on that account. N.T.IV 317-323, ODC-1

27. Respondent knowingly misappropriated \$10,593.50 of funds belonging to Mr. Longo and Ms. Loisch, which funds Respondent used to:

a. honor check number 509, in the amount of \$9,237.86, made payable to Respondent's client, Augustine Matticola, which represented her share of settlement proceeds and which cleared the IOLTA 1 account on April 20, 2012;

b. make several transfers of funds to the operating account between April 27 and May 10, 2012; and

c. make withdrawals to have monies for Respondent's own personal use. ODC-1, 7; S-10-20.

28. By letter dated July 16, 2012, sent by Mr. Longo to Respondent, Mr.

Longo:

a. noted that Respondent had agreed to pay referral fees to Mr. Longo for the matters involving Ms. Vanmeter and Mr. Matticola, that "both matters had been resolved for some time now," and that he had not been paid any referral fees;

b. stated that he had "called [Respondent] for the past two (2) months to discuss these matters, and left several messages with [Respondent's] assistant, but to date, have not received a returned call"; and

c. advised that he was “making one (1) last effort to contact [Respondent] prior to taking legal action against [Respondent].” N.T.IV 306-308; ODC-155.

29. After Respondent received Mr. Longo’s July 16, 2012 letter, and more than seven months after depositing the Vanmeter funds and more than four months after depositing the Matticola funds, Respondent issued two separate checks to Mr. Longo, drawn on the IOLTA 1 account, in payment of the referral fees that Respondent owed to Mr. Longo. N.T.IV 306-311; ODC-8; S-21-22.

30. On September 11, 2012, almost six months after Respondent received and used Ms. Loisch’s settlement funds, Respondent issued a check to Ms. Loisch, drawn on the IOLTA 1 account, in payment of Ms. Loisch’s share of the settlement proceeds. ODC-9; S-23.

J.S. Case

31. On July 16, 2012, Respondent deposited into the IOLTA 1 account a \$5,000.00 first party benefits check that he received on behalf of J. S., a minor. N.T.IV 327; ODC-10; S-24.

32. Under 75 Pa.C.S.A. § 1798(a), an attorney is prohibited from charging and collecting a contingent fee for any services provided in connection with obtaining first party benefits on behalf of a client. ODC-11; S-25.

33. Respondent was familiar with 75 Pa.C.S.A. § 1798(a) because he had performed legal work in the areas of first party insurance benefits and personal injury law. N.T.IV 50-51.

34. The proceeds from the \$5,000.00 first party benefits check that Respondent received on behalf of J. S. could be used either to satisfy J. S.'s medical bills or, absent any unpaid medical bills, to compensate J. S. S-26.

35. Between July 16, 2012, and April 12, 2013, Respondent did not make payments to either J. S.'s medical providers or to J. S. from funds drawn from the IOLTA 1 account. S-27.

36. At the hearing, Respondent claimed that he believed that the \$5,000.00 first party benefits check was actually a third party benefits check (despite the front of that check stating it was issued to satisfy a healthcare lien) and that the proceeds from that check could be apportioned between him and J. S. N.T.IV 328-329; ODC-10.

37. Respondent knew that in connection with J. S.'s personal injury case, Respondent had to file a petition for minor's compromise and obtain court approval of that petition before: any settlement he negotiated could be consummated; and any proceeds from that settlement could be distributed, including distribution for attorney's fees. N.T.IV 329-330.

38. On July 20, 2012, the balance in the IOLTA 1 account was \$2,377.10. ODC-1; S-28.

39. Between July 17, 2012, and July 20, 2012, Respondent used \$2,622.90 of the \$5,000.00 he was entrusted to hold in the IOLTA 1 account on behalf of either J. S. or his medical providers by making:

a. withdrawals to have monies for Respondent's own personal use; and

b. electronic payments of Respondent's telephone bills. N.T.IV 331; ODC-12; S-29.

40. On April 12, 2013, Respondent closed the IOLTA 1 account and had the remaining balance of \$4.83 transferred to a new IOLTA account. ODC-1; S-30-31.

41. As of April 12, 2013, the balance in the IOLTA 1 account was \$4,995.17 below the amount of funds that Respondent was required to hold in trust on behalf of either J. S.'s medical providers or J. S. ODC-1; S-32.

42. Respondent was not authorized to use any funds belonging to J. S. S-33-34.

43. Respondent knowingly misappropriated \$4,995.17 of funds belonging to either J. S.'s medical providers or to J. S. N.T.IV 337, 359-360.

Theresa Ingargiola Tooley Case

44. On August 2, 2012, Respondent deposited a \$7,250.00 settlement check relating to Theresa Ingargiola Tooley's personal injury case into the IOLTA 1 account.

45. In connection with that personal injury case, Respondent owed Ms. Tooley the sum of \$3,077.18. N.T.IV 354; ODC-14-15; S-35.

46. On November 14, 2012, Respondent deposited a \$12,500.00 settlement check relating to Ms. Tooley and her husband, James Tooley's personal injury case into the IOLTA 1 account.

47. In connection with that personal injury case, Respondent owed Mr. and Ms. Tooley the sum of \$5,714.05. N.T.IV 353; ODC-17-18; S-37.

48. After Respondent received the two settlement checks for Mr. and Ms. Tooley's personal injury cases, he immediately took his fees from those settlement proceeds. N.T.IV 338-339, 344-348; ODC-1, 15, 156-157.

49. Although Respondent knew when he took his fees that Mr. and Ms. Tooley were entitled to their shares of the settlement proceeds from their personal injury cases, Respondent failed to promptly distribute any funds to Mr. and Ms. Tooley. N.T.IV 339-340, 343, 350, 358-359; ODC-1, 15, 156-157.

50. Respondent also knew he had to use a portion of the settlement proceeds to satisfy Mr. and Ms. Tooley's medical providers' bills; however, Respondent failed to promptly distribute to those medical providers their shares from the settlement proceeds. N.T.IV 343, 352-353; ODC-15, 18.

51. As of November 14, 2012, the amount of funds that Respondent was required to hold in trust in the IOLTA 1 account on behalf of Mr. and Ms. Tooley was no less than \$8,791.23. S-38.

52. As of November 14, 2012, the amount of funds that Respondent was required to hold in trust in the IOLTA 1 account on behalf of the Tooleys' medical providers was \$3,914.52. ODC-15, 18.

53. Between December 24, 2012, and January 14, 2013, Respondent used \$8,541.65 of the \$8,791.23 he was entrusted to hold in the IOLTA 1 account on behalf of Mr. and Ms. Tooley by making:

- a. electronic debits to pay loans;
- b. several transfers of funds to Respondent's personal checking account; and
- c. a rental payment of \$3,774.81 to The Arden Group by check number 530, which cleared the IOLTA 1 account on January 14, 2013. ODC-1, 19; S-39-40.

54. As of January 18, 2013, the balance in the IOLTA 1 account was \$8,700.65 below the amount of funds that Respondent was required to hold in trust on behalf of Mr. and Ms. Tooley. ODC-1, 19, S-41-42.

55. Mr. and Ms. Tooley did not authorize Respondent to use any funds belonging to them. S-43.

56. Respondent knowingly misappropriated \$8,700.65 of funds belonging to Mr. and Ms. Tooley.

57. Respondent knowingly misappropriated the funds he had been holding on behalf of Mr. and Ms. Tooley's medical providers.

58. Ms. Tooley received check number 520 from Respondent, drawn on the IOLTA 1 account and dated September 16, 2012, in the amount of \$3,077.18.

a. This payment represented the proceeds that Ms. Tooley was owed in connection with the \$7,250.00 settlement of her personal injury case.

b. Ms. Tooley transacted check number 520 on February 25, 2013. N.T.IV 358; ODC-16; S-36.

59. Mr. and Ms. Tooley received a cashier's check from Respondent in the amount of \$5,714.05 on March 15, 2013. S-44.

60. This payment represented the proceeds that Mr. and Ms. Tooley were owed in connection with the \$12,500.00 settlement of their personal injury case. N.T.IV 358-359; S-44.

61. On or about March 15, 2013, Respondent paid Mr. and Ms. Tooley's medical providers' bills from the IOLTA 1 account. N.T.IV 356-359.

Respondent's Endorsement of Clients' Checks

62. Respondent had a pattern and practice of placing his clients' endorsements on the settlement checks that he received on behalf of his clients. N.T.IV 332, 334.

63. Respondent claimed that the fee agreements he entered into with his clients authorized him to place his clients' endorsements on their settlement checks; however, Respondent's fee agreements did not explicitly or implicitly authorize him to endorse his clients' signatures on their settlement checks. N.T.IV 332-337.

64. Respondent's misappropriation of fiduciary funds was facilitated by Respondent's practice of placing his clients' endorsements on their settlement checks without their authorization because Respondent's clients, such as Ms. Loisch, were unaware as to when Respondent received their settlement proceeds and whether Respondent had failed to promptly distribute their proceeds. (*Id.*)

INSTANCES OF COMMINGLING IN THE IOLTA 1 ACCOUNT

65. Between June 1, 2012 and March 7, 2013, Respondent engaged in a pattern of commingling his personal funds with fiduciary funds belonging to clients and third parties that were held in the IOLTA 1 account. N.T.IV 300-301; ODC-1, 20-23; S-45-46.

INSTANCES OF MAKING DEPOSITS OF NON-FIDUCIARY FUNDS INTO THE IOLTA 1 ACCOUNT

66. Between May 14, 2012 and March 5, 2013, Respondent engaged in a pattern of making deposits of non-fiduciary funds into the IOLTA 1 account. ODC-1, 24-39; S-47, 48.

FAILURE TO MAINTAIN RECORDS

67. Beginning no later than January 1, 2012, and continuing through April 12, 2013, Respondent failed to maintain complete records for the IOLTA 1 account, such as a check register or separately maintained ledger, which lists the payee, date and amount of each check, each withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction. S-49.

FAILURE TO IDENTIFY IOLTA ACCOUNT

68. At all times relevant hereto, Respondent maintained an IOLTA account for holding fiduciary funds with TD Bank (the IOLTA 2 account"). N.T.IV 361-362; ODC-158; S-50.

69. On or before July 1, 2013, Respondent completed and filed the 2013-2014 PA Attorney's Annual Fee Form ("the Annual Fee Form"). N.T.IV 360; ODC-40; S-51.

70. Respondent failed to identify the IOLTA 2 account on the Annual Fee Form. N.T.IV 361-362; S-53.

71. In submitting the Annual Fee Form, Respondent certified that:

a. "...EACH TRUST ACCOUNT HAS BEEN IDENTIFIED AS SUCH TO THE ELIGIBLE INSTITUTION IN WHICH IT IS MAINTAINED";

and

b. "...THE INFORMATION PROVIDED IS TRUE. IF ANY STATEMENT MADE ON THIS FORM IS FALSE, I REALIZE I AM SUBJECT TO DISCIPLINE BY THE SUPREME COURT." S-54.

FAILURE TO RESPOND TO THE DB-7A LETTER

72. Following Petitioner's initial DB-7 Letter dated May 27, 2014, to which Respondent timely filed a response, Respondent received a DB-7A Supplemental

Request for Statement of Respondent's Position ("the DB-7A letter") dated August 8, 2016, in which ODC notified Respondent:

- a. of supplemental allegations relating to ODC's complaint; and
- b. that the failure to respond to the DB-7A letter without good cause would be an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7). ODC-41; S-55-57.

73. Respondent failed to:

- a. submit to ODC a response to the DB-7A letter; or
- b. present to ODC evidence that he had good cause for not responding to the DB-7A letter. S-58.

CHARGE II: The Elizabeth Majors Matters

THE \$85,488.92 SETTLEMENT CHECK

74. On July 2, 2009, Mr. Aniello Joseph Leone ("decedent"), a Philadelphia resident, died testate. S-60-61.

75. Ms. Elizabeth Majors was decedent's cousin. S-62.

76. Sometime in and around January 2010, Respondent contacted Ms. Majors and advised her that: he had a copy of an executed Will dated February 15, 2006 that he had prepared on behalf of decedent; and the Will designated Ms. Majors to serve as Executrix and to receive a 50% share of decedent's estate.

77. The Will provided that decedent's sister-in-law, Helen Tomasetta, would also receive a 50% share of decedent's estate and that decedent's friend, Mr. Roy Peffer, would receive \$5,000.00 before Ms. Major and Ms. Tomasetta received their shares of decedent's estate. S-63.

78. Ms. Majors retained Respondent to represent her in administering the decedent's estate. S-64.

79. In or about January 26, 2010, Respondent filed a Petition for Citation to Show Cause Why a Photocopy of the Will of Aniello Joseph Leone Should Not be Admitted to Probate ("the Probate Petition"), won behalf of Ms. Majors with the Register of Wills for Philadelphia County ("the Register"). S-65.

80. Decedent's grandson, Mr. Jason Buck, decided to challenge the Probate Petition and retained Benjamin L. Jerner, Esquire. S-66-68.

81. By Decree dated August 27, 2010, the Deputy Register granted the Probate Petition. S-69-70.

82. On August 31, 2010, the Register granted Letters Testamentary to Ms. Majors. S-71.

83. Respondent and Ms. Majors opened an account for decedent's estate at Citizens Bank ("the estate account"); Respondent maintained the checkbook. S-72-73.

84. In October 2010, Mr. Buck filed an appeal from the August 27, 2010 Decree with the Orphans' Court Division of the Court of Common Pleas of Philadelphia County ("the Will contest"). ODC-42; S-74.

85. On August 21, 2011, Respondent filed with the Pennsylvania Department of Revenue an inheritance tax return with respect to decedent's estate. ODC-43; S-77.

86. According to the information contained in that inheritance tax return, Ms. Majors' share of the estate would have been a little over \$240,000.00. N.T.V² 62-64; ODC-43.

87. Judge Herron, by Decree and Opinion dated February 8, 2012, sustained Mr. Buck's appeal from the August 27, 2010 Decree and set aside the Decree of probate and grant of letters testamentary to Ms. Majors. ODC-44; S-75-76, 78.

88. After Ms. Majors' filed exceptions to the February 8, 2012 Decree and Opinion and Mr. Buck filed cross-exceptions, Judge Herron, by Decrees and Opinion dated May 7, 2012, *inter alia*:

- a. denied Ms. Major's exceptions;
- b. granted Mr. Buck's cross-exceptions;
- c. amended the February 8, 2012 Decree to state that the August 27, 2010 Decree of probate and grant of letters testamentary was vacated; and
- d. directed the Register to issue letters of administration to Mr. Buck. ODC-45; S-79-80.

89. On June 8, 2012, Respondent filed on behalf of Ms. Majors a Notice of Appeal with the Superior Court of Pennsylvania ("the Majors appeal"). ODC-46; S-81.

90. On June 15, 2012, Mr. Buck, Ms. Majors, Mr. Peffer, and Mr. Joseph Venezia, in his capacity as Personal Representative of the estate of Ms. Tomasetta, entered into a Settlement Agreement & Release ("the Settlement Agreement"). ODC-47; S-82.

² Notes of testimony of the June 29, 2017 hearing.

91. The Settlement Agreement provided that decedent's estate would pay, *inter alia*, Ms. Majors and the estate of Ms. Tomasetta \$115,669.15, less any adjustments found to be necessary upon Mr. Buck's completion of the administration of decedent's estate, as specified in the Settlement Agreement. ODC-47; S-83.

92. On July 2, 2012, Respondent filed a praecipe for discontinuance of the Majors appeal. S-84.

93. Respondent provided to Mr. Jerner the legal file that Respondent maintained for decedent's estate, as well as the checkbook, checkbook register, and financial records related to the estate account. S-85.

94. By August 4, 2011, Respondent had received fee payments totaling \$35,439.25, in addition to reimbursement of Respondent's expenses, for representing Ms. Majors.

95. Respondent also paid Karen Deanna Williams a total of \$6,290.00 for legal services that she had provided. N.T.V 64-65; ODC-48; S-86.

96. On July 10, 2012, the Register issued Letters of Administration to Mr. Buck; thereafter, Mr. Jerner assisted Mr. Buck in administering decedent's estate. S-87-89.

97. In August 2012, Ms. Majors' son died and Ms. Majors lacked the funds to pay for her son's funeral expenses. N.T.³ 21-22; N.T.V 72; ODC-173.

98. Between August 2, 2012 and August 4, 2012, Respondent sent a series of email messages to Mr. Jerner in which Respondent, *inter alia*:

³ Notes of testimony of the March 27, 2017 hearing.

a. requested on behalf of Ms. Majors an \$8,500.00 advance of her share of the settlement proceeds to pay for her son's funeral because she "is on SSI and has not funds available for this emergency"; and

b. described Ms. Majors as not being "computer literate." N.T.V 71-72, 74; ODC-173.

99. Mr. Buck advanced Ms. Majors the \$8,500.00 by sending her a check; Ms. Majors cashed the check and used the proceeds to pay for her son's funeral expenses. N.T. 22-25; ODC-50-51, 119.

100. By letter dated May 21, 2013, sent via e-mail to Respondent and counsel for Mr. Venezia and Mr. Peffer, Mr. Jerner, *inter alia*:

a. advised that Mr. Buck had prepared three checks, one of which was made payable to Respondent and Ms. Majors, in the amount of \$85,488.92;

b. explained that adjustments were made to the amounts to be paid to Ms. Majors, Mr. Peffer, and the estate of Ms. Tomasetta in accordance with the Settlement Agreement;

c. requested that Ms. Majors, Mr. Peffer, and Mr. Venezia sign the letter and that Respondent and counsel return the signed copies to Mr. Jerner; and

d. stated that upon receipt of the signed copies he would forward the checks. ODC-50; S-90.

101. On May 23, 2013, Ms. Majors signed Mr. Jerner's May 21, 2013 letter and expected to receive her share of the settlement proceeds sometime thereafter. N.T. 29-30, 58-59; ODC-51; S-91.

102. On May 28, 2013, Respondent arranged to pick up the \$85,488.92 check (“the settlement check”) from Mr. Jerner’s office. S-92.

103. The settlement check was dated May 20, 2013, and made payable to Respondent and Ms. Majors. ODC-53; S-93.

104. On May 28, 2013, Respondent received an e-mail from Mr. Jerner in which he requested that Respondent not deposit the settlement check until May 30, 2013, because Mr. Buck had been advised by Wells Fargo that funds would not be available until that date to honor the settlement check. N.T.V 88-89; ODC-52; S-94.

105. Respondent advised Ms. Majors that he had received the settlement check and that she would receive her share of the proceeds from the settlement check after the settlement check had “cleared.” N.T. 31; S-95.

106. On May 28, 2013, Respondent sent an e-mail to Mr. Jerner in which Respondent:

- a. acknowledged receipt of the settlement check; and
- b. stated that Ms. Majors was “okay with holding the check until

Thursday, being 5/30/13.” N.T.V 88-89; ODC-52; S-96.

107. Respondent informed Ms. Majors that he would be taking an additional fee of \$6,000.00 from the settlement check, which in combination with the prior fee payments received by Respondent, compensated him fully for the time he had expended in representing her. N.T. 31-32, 86; N.T.V 65-66.

108. Respondent endorsed the back of the settlement check. N.T.V 82; ODC-53.

109. Respondent placed Ms. Majors’ endorsement on the back of the settlement check. N.T. 30; N.T.V 82; ODC-53.

110. Respondent failed to obtain Ms. Majors' authority and consent to endorse her name on the back of the settlement check. N.T. 30, 79.

111. On May 31, 2013, Respondent deposited the settlement check into an IOLTA account that he maintained with TD Bank ("IOLTA 3 account"). ODC-53, 126; S-97.

112. Based on Respondent's statement to Ms. Majors that Respondent was taking an additional fee of \$6,000.00 from the settlement check, Ms. Majors' share of the settlement check was \$79,488.92. N.T. 31; N.T.V 65; ODC-53.

113. Respondent failed to provide Ms. Majors with her share of the proceeds from the settlement check. N.T. 32-33; ODC-126-128.

114. Respondent knowingly misappropriated to Respondent's own use \$79,488.92 of settlement funds belonging to Ms. Majors; by December 9, 2013, Respondent had completely expended Ms. Majors' funds. N.T. 132-139, 141; ODC-126-128.

115. On or about August 29, 2014, Respondent:

a. obtained and presented to Ms. Majors a \$7,343.90 Cashier's Check issued by Wells Fargo Bank, made payable to Ms. Majors;

b. obtained a \$2,653.10 Cashier's Check issued by Wells Fargo Bank, made payable to the City of Philadelphia, which listed "2620 S. Mildred," the street address for Ms. Majors' residence, on the "Memo" section of the Cashier's Check; and

c. represented to Ms. Majors that the Cashier's Checks were a portion of Ms. Majors' "money from the estate." N.T. 34-36; N.T.V 100-101; ODC-124-125; S-98.

116. Respondent obtained the two Cashier's Checks by borrowing funds from Respondent's sister, Nancy Mirarchi, and Respondent's brother, Eric Mirarchi. N.T.IV 205, 213-214; N.T.V 101-104.

117. Respondent had not previously borrowed money from family members in order to "gift" a client a sum of money; Respondent did so on behalf of Ms. Majors to appease Ms. Majors, who had been asking Respondent for money from her settlement proceeds. N.T. 34-36, 42, 63; N.T.V 101, 103-104.

118. From time to time over the course of 2014, 2015, and early 2016, Ms. Majors frequently asked Respondent for financial assistance either in person or by text message in order to pay her real estate taxes and bills, to purchase gifts for her daughter, and to have money for Christmas; on occasion, Respondent gave Ms. Majors money. N.T. 33, 36-37, 41-42, 44-46, 63, 88; N.T.V 101, 105-108, 110-115, 129-132; ODC-55, 151; S-102-105)

119. Ms. Majors asked Respondent for money because she knew he had received her settlement proceeds and she was seeking her money from the estate. N.T. 36-37, 42, 63.

120. From time to time, Respondent would tell Ms. Majors that he would obtain the rest of the money that he owed her from his sister, Nancy Mirarchi. N.T. 46-47; 127-128.

121. During Petitioner's investigation of the ODC matter, which principally involved a review of financial records pertaining to the IOLTA 1 account, Petitioner sent a September 17, 2014 letter to Respondent in which Petitioner requested certain information and documents from Respondent. N.T.V 117-118; ODC-156.

122. In the September 17, 2014 letter, Petitioner had requested certain information and documents that related to the IOLTA 3 account, in which Respondent had deposited the settlement check. N.T.V 118-119; ODC-126, 156.

123. When Petitioner sent the September 17, 2014 letter to Respondent, Ms. Majors had yet to file a disciplinary complaint with Petitioner. N.T. 81-83.

124. Respondent had Ms. Majors sign a document that falsely claimed that Ms. Majors had gifted to Respondent her share of the proceeds from the settlement check, which document Respondent presented to Petitioner the day after Ms. Majors signed that document. N.T.V 118-122; ODC-54, 156-157.

125. Respondent carried out his scheme by calling Ms. Majors on February 11, 2015, and explaining to her that he was coming to her house to have her sign a document so that Respondent would not get into “trouble” with the “Bar Association.” N.T. 38-39; N.T.V 119; ODC-54.

126. On February 11, 2015, Respondent appeared at Ms. Majors’ residence with a one-page document titled “AFFIDAVIT” that he had prepared and wanted Ms. Majors to sign. N.T. 39-40, 124-125; N.T.V 119, 128-129; ODC-54; S-99.

127. Ms. Kathleen Postiglione, Ms. Majors’ first cousin, was present during Respondent’s visit. N.T. 123-124, N.T.V 128-129.

128. When Respondent presented the AFFIDAVIT to Ms. Majors, he:
- a. directed Ms. Majors to sign the AFFIDAVIT;
 - b. informed Ms. Majors he needed her to sign the AFFIDAVIT so that Respondent would not get into “trouble” with the “Bar Association”;
 - c. did not review the contents of the AFFIDAVIT with Ms. Majors;
 - d. did not provide Ms. Majors with a copy of the AFFIDAVIT;

e. was in a hurry and did not give Ms. Majors an opportunity to review the AFFIDAVIT. N.T. 39-41, 64-65, 67-68, 88, 123-126.

129. Paragraph 10 of the AFFIDAVIT represented that Ms. Majors “told [Respondent] to keep the settlement because he work [sic] so many hours and fought so hard that [Ms. Majors] thought he earned it.” ODC-54; S-100.

130. When Ms. Majors signed the AFFIDAVIT, she:

a. relied on the explanation that Respondent told her as to Respondent’s reason for wanting Ms. Majors to sign the AFFIDAVIT;

b. was not acting on the advice of independent counsel;

c. was on medication after having been recently released from the hospital; and

d. had not read the document and was inattentive to what was contained therein. N.T. 40-41, 64-65, 67-68, 125-126, 129-130; S-101.

131. Respondent held a position of trust with Ms. Majors as not only her lawyer, but her close friend. N.T. 46-47, 50-52, 60-61, 88; N.T.IV 116-117, 122-123.

132. Respondent knew when he requested that Ms. Majors sign the AFFIDAVIT that she was extremely reliant on his advice and guidance because she had a history of serious mental illness that required her to take medication and that had previously resulted in her being hospitalized. N.T. 89-90; N.T.V 77-81.

133. Both the AFFIDAVIT and Respondent’s February 12, 2015 answer to Petitioner’s question 8 in the September 17, 2014 letter that dealt with the recent IOLTA account omitted information concerning:

a. the amount of Ms. Majors’ settlement proceeds that Ms. Majors purportedly gifted to Respondent; and

b. when Ms. Majors made the purported monetary gift to Respondent. N.T.V 120-121, 123; ODC-54, 156-157.

134. Respondent's February 12, 2015 answer to Petitioner's question 8 in the September 17, 2014 letter did not disclose the amount of Ms. Majors' share of the settlement proceeds and misleadingly characterized Ms. Majors' approximately \$80,000.00 share of those proceeds as "a small percentage of the intended bequest." N.T.V 124-126; ODC-156-157.

135. In 2014, Respondent met with Ms. Postiglione at the residence she shares with Ms. Majors so that Respondent could discuss an employment issue with Ms. Postiglione. N.T. 126-127; N.T.V 109.

136. Ms. Majors was present when Respondent came to meet with Ms. Postiglione. N.T. 127; N.T.V 109-110.

137. After Respondent finished his meeting with Ms. Postiglione, Respondent told Ms. Majors not to worry, that he was "going to get that money from [Respondent's] sister." N.T. 127-128.

138. Respondent's claim is not credible that shortly after Ms. Majors entered into the Settlement Agreement, she expressed to Respondent that she was unhappy with the amount of the settlement and wanted Respondent to have her share of the settlement check because of the legal work that he had performed on her behalf because:

a. Ms. Majors testified that she had not told Respondent that she was gifting to him her share of the settlement check;

b. Ms. Majors has been unemployed since 2000 and has meager financial resources, in that for years she and her husband's sole

sources of monthly income are monthly federal and state disability payments that total slightly over \$1,000.00;

c. Ms. Majors needed to use an advanced portion of her settlement proceeds to pay for her son's funeral;

d. after Ms. Majors had purportedly disclaimed any interest in the settlement proceeds, Respondent apprised Ms. Majors that he had received the settlement check, that she would receive her share of the proceeds when the settlement check had "cleared," and that Mr. Jerner had requested that Respondent wait until May 30, 2013, before depositing the settlement check;

e. after Respondent had received Ms. Majors' settlement proceeds, Ms. Majors was frequently asking Respondent for money, which Ms. Majors testified was due to Respondent having received the settlement check;

f. Respondent provided intermittent financial assistance to Ms. Majors after he received and misappropriated her proceeds from the settlement check, having gone so far as to borrow \$10,000.00 from his brother and sister to obtain two Cashier's Checks for the benefit of Ms. Majors;

g. Respondent took no action to memorialize Ms. Majors' purported monetary gift until Petitioner began making inquiries into the IOLTA 3 account as part of Petitioner's investigation of Respondent's manner of handling fiduciary funds; and

h. Ms. Majors filed a disciplinary complaint against Respondent with Petitioner after she contacted Mr. Jerner and explained to him that she had not received her share of the proceeds from the settlement check. N.T. 18-19, 24-28, 43, 59-60, 82-83, 89; N.T.IV 119, 121; N.T.V 68-70, 75-77, 87-91, 100-104, 127-128, 130-131; ODC-50-55, ODC-104, 121-125, 173; S-95-96)

THE OCTOBER 18, 2014 SLIP AND FALL ACCIDENT

139. During Respondent's handling of the estate matter, Ms. Majors retained Respondent to represent her for any claims she had arising from a slip and fall accident that occurred on October 18, 2014. ODC-56; S-106-108.

140. On February 6, 2016, Ms. Majors sent Respondent a text message and advised Respondent that he was discharged. ODC-58; S-110.

141. Thereafter, Ms. Majors called Respondent to request that he provide her with a copy of the legal file that he maintained for her slip and fall case; Respondent failed to provide Ms. Majors with a copy of the legal file for her slip and fall case in response to her calls. N.T. 43-44; S-114.

142. Ms. Majors retained Leonard P. Haberman, Esquire, to represent her in the slip and fall case. S-111.

143. By letter dated September 2, 2016, which was sent by regular mail and drafted on the stationery of Mr. Haberman's law firm, Ms. Majors requested that Respondent release the legal file for her slip and fall case to Mr. Haberman. ODC-59; S-112.

144. On September 9, 2016, Mr. Haberman filed a lawsuit on behalf of Ms. Majors (“the Majors lawsuit”). ODC-60; S-113.

145. During the week of March 6, 2017, Respondent provided Mr. Haberman with the legal file for Ms. Majors’ slip and fall case. S-114.

CHARGE III: Administrative Suspension and Unauthorized Practice of Law

146. Pennsylvania Continuing Legal Education Board (“the CLE Board”) assigned Respondent to Compliance Group 3; therefore, Respondent has a deadline of December 31st to comply with the Pennsylvania Continuing Legal Education (“CLE”) requirements. S-116.

Administrative Suspension in 2012

147. From September 2011 through September 2012, Respondent maintained an office for the practice of law at the North American Building, 121 S. Broad Street, Suite 1010, Philadelphia, PA 19107 (“the NAB address”). N.T. 220; ODC-140-148.

148. Respondent received a September 30, 2011 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

a. notified Respondent that he had yet to comply with the CLE requirements due by December 31, 2011; and

b. informed Respondent that if he failed to complete the CLE requirements by the compliance deadline, he would be assessed a \$100 late fee and he would be subject to having his law license administratively suspended. N.T.IV 220-221; ODC-140.

149. Respondent received a February 24, 2012 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

a. notified Respondent that he had failed to comply with the CLE requirements due by December 31, 2011;

b. advised Respondent that he had sixty days from the date of that notice to complete the CLE requirements and to pay any outstanding late fees and that Respondent's failure to do so would result "in the assessment of a second \$100 late fee and [Respondent's] name being included on a non-compliant report to the Supreme Court of Pennsylvania." N.T.IV 222-223; ODC-141.

150. Respondent received a May 30, 2012 letter addressed to him at the NAB address from the CLE Board, in which the CLE Board, *inter alia*:

a. notified Respondent that the letter served as a second notification that he was non-compliant with the CLE requirements due on December 31, 2011;

b. advised Respondent that if he failed to complete the CLE requirements and pay any outstanding late fees by 4:00 p.m. on June 29, 2012, Respondent's name would be included on a non-compliant report for submission to the Supreme Court of Pennsylvania; and

c. informed Respondent that upon receipt of that non-compliant report, the Supreme Court of Pennsylvania would issue an Order to "administratively suspend [Respondent's] license to practice law in the Commonwealth of Pennsylvania and a third \$100 late fee [would] be assessed." N.T.IV 224-225; ODC-142.

151. By Order dated August 2, 2012 (“the 2012 Order”), the Supreme Court of Pennsylvania placed Respondent on administrative suspension for having failed to comply with the CLE requirements. ODC-143.

152. By letter dated August 2, 2012, sent to Respondent by certified mail, return receipt requested, at the NAB address, Suzanne E. Price, Attorney Registrar, *inter alia*:

a. enclosed a copy of the 2012 Order and one page of the attachment, which contained Respondent’s name;

b. advised that Respondent was to be administratively suspended effective September 1, 2012, for having failed to comply with the CLE requirements by December 31, 2011;

c. enclosed a written guidance for administratively suspended lawyers, a copy of Pa.R.D.E. 217, and various forms for Respondent to use to comply with the 2012 Order; and

d. notified Respondent that in “order to resume active status, [Respondent] must comply with the PA.C.L.E. Board before a request for reinstatement to the Disciplinary Board will be considered.” N.T.IV 225-230; ODC-143-144.

153. Respondent failed to claim this letter when he was notified by the United States Postal Service that he had been sent correspondence via certified mail; however, Respondent received this letter when the Attorney Registration Office sent this letter to Respondent at the NAB address by first class mail on September 7, 2012. N.T.IV 226-228; ODC-144.

154. Respondent filed a 2012-2013 PA Attorney Registration Form with the Attorney Registration Office. N.T.IV 230-231; ODC-145.

155. Sometime after the effective date of the 2012 Order, Respondent complied with the CLE requirements and Ms. Price was notified of that fact by letter dated September 17, 2012, sent by the CLE Board; Respondent was copied on that letter. N.T.IV 236-237; ODC-146.

156. By letter dated September 17, 2012, sent to, and received by, Respondent at the NAB address, Ms. Price, *inter alia*:

a. stated that the CLE Board had certified that Respondent had complied with the CLE requirements;

b. informed Respondent that he had to comply “with Rule 219(h) of the Pennsylvania Rules of Disciplinary Enforcement”;

c. notified Respondent that to be reinstated, he had to submit the Attorney’s Annual Fee Form and a Statement of Compliance, and payment of the current annual fee, the annual fee due if he had not been administratively suspended, any late payment penalty, and a reinstatement fee of \$300.00; and

d. requested that Respondent submit payment of the \$300.00 reinstatement fee and file the Statement of Compliance. N.T.IV 237-242; ODC-147.

157. After Respondent received Ms. Price’s September 17, 2012 letter, he paid the \$300.00 reinstatement fee and filed a Statement of Compliance; Respondent was thereafter reinstated to active status. N.T. 241-242; ODC-147-148.

Administrative Suspension in 2015

158. Respondent knew from his experience with having been administratively suspended in 2012 that if he were administratively suspended in the future, he:

a. had to cease and desist from the practice of law until he resumed active status; and

b. had to comply with the CLE requirements, file certain paperwork with the Attorney Registration Office, and pay certain fees before he would be reinstated to active status. N.T.IV 239-243.

159. Between October 2014 and early August 2015, Respondent had an office for the practice of law at 1806 S. Broad Street, Floor 1, Philadelphia, PA 19145 (“the law office address”). S-117

160. Between October 3, 2014 and early 2015, Respondent received letters from the Attorney Registration Office and the CLE Board identical to those letters he received related to his 2012 administrative suspension, advising him of his CLE obligations and the consequences for failing to fulfill those obligations. ODC-61; S-118, 127; ODC-62; S-119, 127; ODC-63; S-120, 127.

161. By Order dated July 15, 2015 (“the Order”), the Supreme Court of Pennsylvania placed Respondent on administrative suspension for having failed to comply with the CLE requirements. ODC-64; S-121.

162. Between July 15, 2015 and early August 2015, Respondent received letters and emails from the Attorney Registration Office and the CLE Board identical to those letters he received related to his 2012 administrative suspension, notifying him of his administrative suspension and obligations pursuant thereto. N.T. IV 254, 256, 258-

261, 262-263; N.T. V 234-235; ODC-65, 66, 67; S-122, 123, 124, 125, 127.

163. Pursuant to the letters and emails, Respondent knew that as of August 14, 2015, he was administratively suspended. N.T.II⁴ 150; N.T.IV 262-263; S-127.

164. Respondent knew that he was ineligible to practice law in Pennsylvania by virtue of:

- a. the letters and e-mails that he received from the CLE Board;
 - b. Ms. Price's July 15, 2015 letter and enclosures;
 - c. the expiration of Respondent's Pennsylvania attorney's license on July 1, 2015; and
 - d. Respondent's failure to obtain a Pennsylvania attorney license after July 1, 2015. N.T.IV 251-253; PFOF 154-156, 158-162; S-127.
- b. Respondent violated Pa.R.D.E. 217(e), in that he did not timely file a verified Statement of Compliance (Form DB-25(a)) with the Disciplinary Board Secretary. S-128.

Instances of Unauthorized Practice

165. On August 14, 2015, Respondent was counsel of record for the defendant in ***Commonwealth of Pennsylvania v. William J. Janisheck***, MC-51-CR-0009263-2014, a criminal case that was pending in the Philadelphia Municipal Court ("the Janisheck criminal case"). ODC-68; S-129.

166. Respondent failed to advise Mr. Janisheck that:
- a. he had been administratively suspended; and
 - b. he could not represent Mr. Janisheck. S-130.

⁴ Notes of testimony of the April 10, 2017 hearing.

167. Respondent failed to advise the judge and opposing counsel assigned to the Janisheck criminal case that Respondent had been administratively suspended. S-131.

168. Respondent failed to withdraw from the Janisheck criminal case. S-132.

169. In the Janisheck criminal case, Respondent engaged in the unauthorized practice of law by representing Mr. Janisheck at a September 11, 2015 bench trial before the Honorable William Austin Meehan. N.T.IV 269-270; ODC-68; S-133.

170. On August 14, 2015, in the following civil cases that were pending in the Philadelphia Court of Common Pleas, Respondent was counsel of record for:

a. the defendants in the case of ***Tambar Washington vs. Stephanie Mancini, et al.***, docket number 120203153;

b. the plaintiff in the case of ***Ercole Mirarchi vs. Richmond and Hevenor, Attorneys at Law, et al.***, docket number 150303429 (“the Mirarchi I case”);

c. the plaintiff in the case of ***Ercole Mirarchi vs. Richmond and Hevenor, Attorneys at Law, et al.***, docket number 150303942 (“the Mirarchi II case”); and

d. the defendant, Tristate Property, LLC, in the case of ***Dana O’Neill et al. vs. David L. Heckenberg, et al.***, docket number 150702250. N.T.IV 270-271; ODC-69-72; S-134.

171. On August 14, 2015, Respondent was counsel of record for the appellee, Ercole Mirarchi, in an appellate case pending in the Superior Court of

Pennsylvania, said case captioned ***Richmond and Hevenor, Attorneys at Law v. Ercole Mirarchi***, docketed at 2102 EDA 2015. ODC-73; S-135.

172. Respondent failed to advise Respondent's clients in the aforementioned civil and appellate cases that:

- a. he had been administratively suspended; and
- b. he could not represent them in their legal matters. S-136.

173. Respondent failed to advise the judges and opposing counsel who participated in the aforementioned civil and appellate cases that he had been administratively suspended. S-137.

174. Respondent failed to withdraw Respondent's representation of his clients in the aforementioned civil and appellate cases. ODC-69-73; S-138.

175. In the Mirarchi I case, Respondent engaged in the unauthorized practice of law by filing a Reply to New Matter & Crossclaim on August 25, 2015. N.T.IV 270-271; S-139.

176. Sometime in early August 2015, Respondent had moved his office to 2000 Market Street, Suite 2925, Philadelphia, PA 19103 ("the new law office address"). S-140.

CLE Compliance and Resumption of Practice

177. By letter dated August 28, 2015, Mr. Ilgenfritz certified to Ms. Price that "since the effective date of the Supreme Court's order on 8/14/2015," Respondent had complied with the CLE requirements. ODC-74; S-141.

178. By letter dated August 28, 2015, sent to, and received by, Respondent via electronic submission, Mr. Ilgenfritz, *inter alia*:

a. enclosed a copy of the August 28, 2015 letter he sent to Ms. Price;

b. stated that the “Disciplinary Board has mailed out the necessary paperwork to [Respondent] in order to remove the administrative suspension”; and

c. advised Respondent that upon “receipt of the form(s) and fee(s), the Disciplinary Board will authorize [Respondent’s] reinstatement.” N.T.IV 273-275; ODC-75; S-142-143.

179. By letter dated August 28, 2015, sent to, and received by, Respondent at the new law office address, Ms. Price, *inter alia*:

a. stated that the CLE Board had certified that Respondent had complied with the CLE requirements;

b. informed Respondent that he had to comply “with Rule 219(h) of the Pennsylvania Rules of Disciplinary Enforcement”;

c. listed the procedure Respondent had to follow to be reinstated;

d. advised Respondent that her office’s “records show that [Respondent had] not paid the current license fee”; and

e. requested that Respondent “submit a U.S. check, money order or cashier’s check in the amount of \$650.00 (payable to Attorney Registration).” (N.T.IV 276-279; ODC-76; S-144-145)

180. Between August 14, 2015, and September 15, 2015, Respondent continued to maintain an office for the practice of law and to hold himself out as eligible

to practice law, through the use of letterhead, business cards, and Respondent's LinkedIn profile. N.T.II 150-153; N.T.IV 147, 153, 265-266; ODC-78; S-151.

181. On September 16, 2015, the Attorney Registration Office received from Respondent the 2015-2016 Status Change Form and a \$650.00 payment. ODC-117; S-146.

182. On September 16, 2015, the Attorney Registration Office received from Respondent a Statement of Compliance that was dated September 15, 2015. ODC-77; S-147.

183. Respondent signed the Statement of Compliance and certified that "under the penalties provided by 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) that the foregoing statements are true and correct and contain no misrepresentations or omissions of material fact." N.T.IV 279-280; ODC-77; S-149.

184. In the Statement of Compliance, Respondent misrepresented that he had:

a. complied with the Order and the Pennsylvania Rules of Disciplinary Enforcement; and

b. "ceased and desisted from using all forms of communication that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania...." ODC-77; N.T.II 150-153; N.T.IV 281-284; S-148.

185. On September 16, 2015, Respondent was reinstated to active status in the Commonwealth of Pennsylvania. S-150.

186. Respondent falsely testified at the disciplinary hearing that while he was administratively suspended, he "did not work on any cases." N.T.IV 147, 153, 266-267.

187. Based on Respondent's prior administrative suspension in 2012, and the correspondence he received from the CLE Board and the Attorney Registration Office in July, August, and September 2015, Respondent knew that to resume active status, he had to comply with the CLE requirements *and* file certain forms and pay certain fees.

188. Respondent knowingly engaged in the unauthorized practice of law and disregarded the Order.

Failure to Respond to DB-7 Letter

189. Respondent received a DB-7 Request for Statement of Respondent's Position ("the DB-7 letter") dated February 4, 2016, in which ODC notified Respondent:

a. of allegations relating to Respondent's unauthorized practice while administratively suspended, as set forth above, and The Joseph Gargano Matter (Charge V, *infra*); and

b. that the failure to respond to the DB-7 letter without good cause would be an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7). ODC-79; S-152-154.

190. Respondent failed to:

a. submit to ODC a response to the DB-7 letter; or

b. present to ODC evidence that he had good cause for not responding to the DB-7 letter. S-155.

CHARGE IV: The Linda Sacchetti Matter

191. On December 6, 2008, Linda Sacchetti, a/k/a Kai Mui Yau, participated in a marriage ceremony with Mario Sacchetti ("decedent"). S-160.

192. On June 22, 2011, Mario Sacchetti died; his will named a nephew, Charles Sacchetti, as executor. S-157.

193. Linda Sacchetti and Charles Sacchetti became involved in a dispute over decedent's estate, at the conclusion of which the Orphan's Court declared, *inter alia*, that the purported marriage between Ms. Sacchetti and decedent was null and void, and that all bequests made to Ms. Sacchetti in decedent's will were to be treated as part of the residue of decedent's estate. S-163.

194. Subsequently, Ms. Sacchetti retained Respondent to prosecute an appeal from the Orphan's Court order, paying him \$15,000.00. S-166-170.

195. Respondent timely filed a notice of appeal, but on February 6, 2014, the Superior Court dismissed the appeal for Respondent's failure to file a Docketing Statement. Upon Respondent's motion, the Court reinstated the appeal, and permitted Respondent to file a Docketing Statement. S-171-180.

196. After being granted a 30-day extension within which to file a brief for Ms. Sacchetti in the Superior Court, respondent failed to file a brief. Upon Ms. Sacchetti's *pro se* motion for an extension of time, and Charles Sacchetti's motion to dismiss the appeal, on November 14, 2014, the Superior Court ordered Respondent to either file a brief within 14 days or file a motion to withdraw as counsel. S-187, 191-194, 205-213.

197. Respondent failed to comply with the Superior Court's Order. S-214, 215.

198. By letter dated November 17, 2014, Ms. Sacchetti stated that she had learned that Respondent had failed to file a brief on her behalf, terminated Respondent's representation and requested a return of the retainer paid to him.

Respondent failed to answer the letter, refund any portion of the retainer, provide Ms. Sacchetti with her file, or withdraw his appearance. S-216, 219.

199. On July 3, 2014, Ms. Sacchetti was arrested after Charles Sacchetti accused her of stealing decedent's personal property. S-182.

200. While representing Ms. Sacchetti in the estate matter, Respondent agreed to represent Ms. Sacchetti in the criminal case for a fee of \$2,000.00; he subsequently agreed to accept a partial payment of \$750.00, and the balance over time, and entered his appearance. S-184-186, 188, 190.

201. Respondent was granted continuances of the criminal case on two occasions, but took no other action in the case, and on November 18, 2014, was removed as counsel and replaced by appointed counsel. S-220-222.

202. Ms. Sacchetti was born in China; she moved to Hong Kong when she was 21 and lived there from 1974 through 2000. Ms. Sacchetti grew up speaking Taiwanese and Mandarin, and began speaking Cantonese after she moved to Hong Kong. N.T. 94.

203. Ms. Sacchetti is not fluent in the English language in that she has a limited ability to speak the English language and to understand when spoken to in the English language. N.T. 95, 97-100, 102-6, 112, 115; N.T.V 137-140, 156-162; ODC-89, 149.

204. Ms. Sacchetti used the assistance of others to draft checks to Respondent in payment of Respondent's fee, to communicate with Respondent, and to prepare motions and correspondence filed with the Superior Court of Pennsylvania. N.T. 97-100, 102-106, 119-120.

205. When Ms. Sacchetti met with Respondent on November 20, 2013, she was accompanied by an interpreter. N.T. 98-99.

206. Ms. Sacchetti met with Respondent after she was arrested on July 3, 2014; Ms. Sacchetti's daughter attended this meeting and served as an interpreter. N.T. 101, 119-120; S-182, 184-185; N.T.V 157-158.

207. The meeting between Respondent, Ms. Sacchetti, and Ms. Sacchetti's daughter lasted about one hour. N.T. 101.

208. After Respondent exchanged emails with Ms. Sacchetti on October 16, 2014, Respondent ceased communicating with Ms. Sacchetti and no longer responded to Ms. Sacchetti's inquiries about the appeal and the criminal case. N.T. 103-6; N.T.V 145-150; ODC-99, 102-104; S-202-204, 207-211, 216-217, 219.

209. Respondent failed to refund to Ms. Sacchetti the \$750.00 that he had received to represent her in the criminal case. N.T. 107; N.T.V 149.

210. During the period that Respondent represented Ms. Sacchetti in the appeal of the estate case, Ms. Sacchetti called Respondent from time to time to inquire about the status of that matter. S-226.

211. Respondent failed to return the messages left for him by Ms. Sacchetti. N.T. 107.

212. During the period that Respondent represented Ms. Sacchetti in the appeal of the estate case, Ms. Sacchetti went to Respondent's office from time to time to inquire about the status of that matter. S-227.

213. On those occasions that Ms. Sacchetti went to Respondent's office, Respondent was not present. N.T. 107-108.

214. On June 26, 2015, Petitioner served Respondent with a DB-7 letter concerning allegations relating to Ms. Sacchetti's complaints about Respondent's representation. S-229, 230; ODC-106.

215. Respondent had received the Sacchetti DB-7 letter and knew from his counsel that a response was due. N.T.V 152-154; ODC-106, 150; S-229-230.

216. Respondent failed to:

- a. submit to ODC a response to the Sacchetti DB-7 letter; or
- b. present to ODC evidence that he had good cause for not

responding to the DB-7 letter. N.T.V 153-154.

CHARGE V: The Joseph Gargano Matter

217. On June 25, 2014, Respondent, having been retained by Joseph Gargano, filed a lawsuit on Mr. Gargano's behalf captioned ***Joseph Gargano v. Index Realty, Inc., D.B.A. Le Castagne*** ("Gargano lawsuit"), in the Court of Common Pleas of Philadelphia County. ODC-107.

218. The Gargano lawsuit was listed for an arbitration hearing on March 26, 2015, at the Arbitration Center; neither Respondent nor Mr. Gargano appeared, and so the Honorable Idee Fox approved a judgment of *non pros*, which was entered on the docket the following day. ODC-107.

219. On March 29, 2015, Respondent sent a text message to Mr. Gargano stating, *inter alia*, that he had to file a motion to "fix a dismissal" of the Gargano lawsuit. ODC-110.

220. Respondent did not file a petition to open the judgment of *non pros* of the Gargano lawsuit until May 19, 2016, more than one year after the *non pros* was entered; the motion was denied. ODC-107.

221. By letter dated August 14, 2015, Daniel J. Siegel, Esquire, informed Respondent that he was representing Mr. Gargano on a claim that Respondent had failed properly to represent Mr. Gargano, requested that Respondent put his malpractice carrier on notice, and advised Respondent to preserve all items relating to the claim. ODC-111.

222. On August 24, 2015, the defendants in the Gargano lawsuit filed an action against Respondent and Mr. Gargano, alleging a violation of the Dragonetti Act. ODC-112.

223. On October 19, 2015, Mr. Gargano advised Respondent by text message that Mr. Siegel would represent Mr. Gargano on all matters, stated that he was aware that Respondent had refused to give Mr. Gargano his legal file, and told Respondent to make Mr. Gargano's legal file available. ODC-113.

224. That same day, Respondent answered Mr. Gargano's message by text message in which he refused to release the legal file unless he was reimbursed for his costs, and stated that he had told Mr. Gargano's father that he was preparing a petition to open the case. ODC-113.

225. Mr. Gargano responded to Respondent's text message as follows: "LOL 7 months later to file petition now I'm being sued for your mistake," to which Respondent texted, in part: "You can laugh all you want. If I don't fix it, you and they get nothing out of me. I'm broke." ODC-114.

226. Despite additional requests by Mr. Siegel, Respondent failed to provide him or Mr. Gargano with the contents of Mr. Gargano's legal file, which included documents given by Mr. Gargano to Respondent. ODC-115; N.T.IV 6-10.

227. In his 2014-2015 PA Attorney's Annual Fee Form and 2015-2016 Administrative Change in Status from Administrative Suspension Form, Respondent represented that he maintained professional liability insurance. ODC-116,117.

228. Respondent received notice of the scheduled March 26, 2015 arbitration hearing. ODC-167, ¶3, ODC-168, pp. 2, 4, 10.

229. Respondent failed to inform Mr. Gargano of the date, time, and location of the arbitration hearing. ODC-167, ¶5, ODC-168, p. 11.

230. Mr. Gargano failed to appear for the March 26, 2015 arbitration hearing because he was unaware of the date, time, and location of the arbitration hearing. ODC-167, ¶5, ODC-168, p. 11.

231. Respondent failed to take prompt action to have the judgment of *non pros* vacated and the Gargano lawsuit reinstated. N.T.V 172-174; ODC-167-168.

232. When Respondent sent Mr. Gargano an October 19, 2015 text message that stated that Respondent was "working on a Petition," Respondent made a misrepresentation to Mr. Gargano because Respondent was not preparing a petition at that time. N.T.V 171-173; ODC-114, 167-168.

233. In May 2016, fourteen months after the Gargano lawsuit was dismissed, and seven months after Respondent claimed that he was "working on a Petition," Respondent filed in the Gargano lawsuit a Petition to Open the Judgment by Default ("the Petition to Open") in order to have the judgment of *non pros* vacated and the Gargano lawsuit reinstated. N.T.V 171-174; ODC-114, 167-168.

234. By Order dated June 14, 2016, Judge Fox:

a. denied the Petition to Open; and

b. stated that the Petition to Open failed “to provide a reasonable explanation for the fourteen month delay in filing the Petition to Open the Non Pros” and “to state a reasonable excuse for Plaintiff’s failure to attend the Arbitration and/or why a request for a continuance was not made.” ODC-169.

235. Respondent’s mishandling of the Gargano lawsuit and failure to provide Mr. Siegel with the documents that Respondent received from Mr. Gargano prejudiced Mr. Gargano in that:

a. Mr. Gargano was unable to fully litigate his meritorious claims against the defendants in the Gargano lawsuit;

b. the manner in which the Gargano lawsuit was dismissed afforded defendants a basis to allege a violation of the Dragonetti Act by Mr. Gargano and Respondent;

c. Mr. Gargano had to retain and pay Mr. Siegel to represent him in the Index Realty lawsuit; and

d. when Mr. Siegel filed on behalf of Mr. Gargano a crossclaim asserting legal malpractice by Respondent, Mr. Siegel was unable to establish the extent of Mr. Gargano’s damages, thereby precluding Mr. Gargano from obtaining a recovery. N.T.IV 8-12, 20-22; N.T.V 174-175; ODC-112, 115, 167, ¶6, ODC-168, p. 11.

236. Respondent’s October 19, 2015 text messages to Mr. Gargano indicated that Respondent did not maintain professional liability insurance. ODC-114.

237. Respondent testified that in October 2015, he learned that he no longer had professional liability insurance. N.T.IV 291.

238. Sometime before October 2015, Respondent ceased maintaining professional liability insurance because he was unable to pay for such insurance. N.T.IV 291; N.T.V 164-165.

239. Respondent was unable to state when his professional liability insurance lapsed and for how long he was without such insurance. N.T.IV 295-297; N.T.V 167-168, 170.

240. Respondent failed to notify the Attorney Registration Office within 30 days after he ceased maintaining professional liability insurance that he no longer maintained professional liability insurance. N.T.V 169-170; S-254-258.

241. After Respondent ceased maintaining professional liability insurance, Respondent failed to inform:

- a. Respondent's new clients that he did not maintain professional liability insurance; and
- b. Respondent's existing clients that his professional liability insurance had terminated. N.T.V 170-171.

AGGRAVATING AND MITIGATING FACTORS

Liens

242. In March 2012, July 2012, and December 2015, the IRS filed three liens against Respondent in the amounts of \$22,732.47, \$10,527.68, and \$10,753.72, respectively. ODC-129-130, 132.

a. The IRS liens were based on Respondent having failed to pay federal taxes on behalf of Respondent's employees for the years 2008, 2011, 2012, and 2013. N.T.V 52-55; ODC-129-130, 132.

b. In August 2012, Respondent had satisfied the IRS lien in the amount of \$22,732.47; the other two IRS liens remain unsatisfied. (*Id.*)

243. In April 2013, the Commonwealth of Pennsylvania filed a lien against Respondent in the amount of \$1,213.76 for non-payment of state taxes on behalf of Respondent's employees for the year 2011; this lien remains unsatisfied. N.T.V 56-57; ODC-131.

Civil Suit Against Respondent for Nonpayment of Bill

244. In December 2015, a civil case was filed against Respondent in the Philadelphia Municipal Court by ADR Options, Inc. ("ADR"), in which ADR sought payment of its bill in the amount of \$3,000.00 for having provided private arbitration services to Respondent. N.T.V 60-61; ODC-138.

a. On March 30, 2016, ADR obtained a default judgment against Respondent in the amount of \$4,464.50. (*Id.*)

b. On May 4, 2016, ADR took action to execute on the default judgment. (*Id.*)

c. On or about June 10, 2016, Respondent satisfied the default judgment. (*Id.*)

Bankruptcy

245. In August 2012, Respondent had filed a Chapter 11 bankruptcy petition on behalf of his incorporated solo law practice in the United States Bankruptcy Court for the

Eastern District of Pennsylvania due to the debt that the law practice had accumulated.
N.T.V 61-62, 205; ODC-139

246. At the request of the assigned United States Trustee, the bankruptcy case was dismissed without the entry of an order granting the bankruptcy petition. ODC-139.

Lawsuit Based on Respondent's Failure to Comply with Notification Requirements of Loan

247. In August 2013, Lawyers Funding Group, LLC ("LFG") filed a lawsuit against Respondent and his law firm in the Philadelphia Court of Common Pleas ("the LFG lawsuit"). N.T.V 31; ODC-136.

248. The Complaint in the LFG lawsuit alleged that Respondent had:

- a. breached two agreements that, in essence, resulted in LFG loaning Respondent the total sum of \$20,000.00, which loan was secured by Respondent's anticipated fees in certain specified personal injury cases;
- b. failed to notify LFG that he had received attorney's fees in several of the personal injury cases; and
- c. failed to use those attorney's fee to satisfy Respondent's obligation to LFG. N.T.V 10-11, 32, 34-37, 45, 209-210; ODC-136.

249. On January 23, 2012, Respondent and LFG entered into the first agreement ("the January 2012 agreement"), which involved LFG loaning Respondent \$15,000.00. N.T.V 9-10; ODC-1, ODC-136, Exhibit "A".

- a. Respondent obtained the \$15,000.00 because he was in need of money. N.T.V 11-12, 20; ODC-1.

b. Among Respondent's personal injury cases identified in the January 2012 agreement were one of the two lawsuits involving Ms. Tooley and the lawsuit involving J. S. N.T.V 38-39; ODC-136, Exhibit "A".

c. The January 2012 agreement also identified two personal injury cases that Respondent was handling on behalf of Glenn Bozzacco, one lawsuit having been filed in May 2010 ("the 2010 Bozzacco lawsuit") and the second lawsuit having been filed in June 2011 ("the 2011 Bozzacco lawsuit"). N.T.V 38-39; ODC-136, Exhibit "A" and "E".

250. On July 16, 2012, Respondent and LFG entered into the second agreement ("the July 2012 agreement"), which was treated as an amendment to the January 2012 agreement. N.T.V 43-44; ODC-136, Exhibit "D".

a. The July 2012 agreement documented LFG's loan to Respondent of an additional \$5,000.00, secured by Respondent's anticipated fees in the same personal injury cases identified in the January 2012 agreement. (*Id.*)

b. Respondent obtained the \$5,000.00 loan because he was in need of money due Respondent's landlord having filed an eviction complaint against Respondent. N.T.V 20, 45-46; ODC-136, Exhibit "F".

251. When Respondent received his attorney's fees for the personal injury case involving Ms. Tooley, Respondent: failed to notify LFG that he had received the settlement proceeds in that matter; and converted to his own use the attorney's fees that LFG was entitled to receive. N.T.V 42, 46-47, 209-210; ODC-1, 136.

252. Respondent settled the 2010 Bozzacco lawsuit for the sum of \$14,000.00 and the 2011 Bozzacco lawsuit for the sum of \$15,000.00. N.T.V 18-20; ODC-1, ODC-160-162.

253. Knowing that Respondent had financial problems, Mr. Bozzacco allowed Respondent to use Mr. Bozzacco's shares of the settlement proceeds. N.T.II 22, 27-29, 33-36; N.T.V 18-20, 22.

254. On November 13, 2012, Respondent deposited into the IOLTA 1 account the \$14,000.00 settlement check for the 2010 Bozzacco lawsuit and used all of the proceeds from that check for his own benefit. N.T.V 18-20; ODC-1, 157.

255. On June 14, 2013, Respondent deposited into the IOLTA 2 account the \$15,000.00 settlement check for the 2011 Bozzacco lawsuit and used a substantial portion of the proceeds from that check for his own benefit. N.T.V 20-22; ODC-158, 160.

256. In August 2013, Respondent used \$20,000.00 of funds that he had misappropriated from Ms. Majors' share of the settlement check to repay Mr. Bozzacco the monies that he had borrowed from Mr. Bozzacco. ODC-126-127, 158; N.T. 135-138; N.T.V 27-30.

a. In connection with the 2010 Bozzacco lawsuit, Respondent forewent his contingent fee and only deducted his costs, resulting in Mr. Bozzacco receiving a check in the amount of \$9,435.98 that was drawn on the IOLTA 2 account. N.T.V 42; ODC-161.

b. In connection with the 2011 Bozzacco lawsuit, Respondent reduced his contingent fee from 33.3% to 25% and deducted his costs, resulting in Mr. Bozzacco receiving a check in the amount of \$10,239.00 that was drawn on the IOLTA 2 account. N.T.V 42; ODC-162.

257. Respondent: failed to notify LFG that he had received the settlement proceeds for the 2010 Bozzacco lawsuit and the 2011 Bozzacco lawsuit; failed to obtain LFG's permission to forego on the one lawsuit, and to reduce on the second lawsuit, the attorney's fees that Respondent was entitled to receive for representing Mr. Bozzacco; and converted to his own use the fees that LFG was entitled to receive in connection with the settlement of the 2011 Bozzacco lawsuit. N.T.V 42; ODC-1, 136.

258. On September 27, 2013, LFG obtained a default judgment against Respondent in the amount of \$50,531.29. N.T.V 34-35; ODC-136.

259. Respondent paid an agreed-upon compromised amount to satisfy the default judgment; Respondent entered into this agreement with LFG after LFG had taken action to execute on the default judgment and had scheduled a Sheriff's sale of Respondent's property. N.T.V 47-51; ODC-136, Exhibit "F," 165-166.

Financial Situation

260. During the period that Respondent had misappropriated fiduciary funds belonging to his clients and third parties, Respondent's financial circumstances were dire as evidenced by: his testimony; his witnesses' testimony; his inability to pay for office staff; his non-payment of rent for several office locations and his eviction from one office location; his inability to pay taxes owed to federal and state authorities; his borrowing of funds from Mr. Bozzacco; his borrowing of funds from LFG; his asking Ms. Majors for a \$500.00 loan after misappropriating approximately \$80,000.00 of her settlement funds; his text messages to clients; his failed business venture; and his having become overdrawn on his operating accounts on multiple occasions, which resulted in one of the operating accounts being closed for deficient funds. N.T. 35; N.T.II 22, 28, 33-

34, 61, 63-64, 140-141; N.T.IV 78-80, 85-86, 90-92, 94, 126-127, 147, 166-167, 190, 310; N.T.V 12-17, 205; ODC-55, 114, 128, 151, 163-164.

Failure to Comply with Court Orders and Procedures

261. In March 2015, Respondent filed in the Philadelphia Court of Common Pleas a legal malpractice lawsuit (referred to under Charge III as “the Mirarchi I case,” *supra*) on behalf of his brother, Ercole Mirarchi, and against Kenneth W. Richmond, Esquire, William E. Hevenor, Esquire, and Richmond and Hevenor, Attorneys at Law (“R&H firm”). N.T.V 176; ODC-135.

262. In the Mirarchi I case, Respondent filed several Certificates of Merit as to Mr. Richmond, Mr. Hevenor, and the R&H firm, in which Respondent had certified the following:

[A]n appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant in the treatment, practice or work that is the subject of the complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. N.T.V 177-178; ODC-135.

263. The Certificates of Merit filed by Respondent in the Mirarchi I case were false because Respondent had not obtained a written statement from an appropriate licensed professional before filing the lawsuit. N.T.V 181-190; ODC-70, 135, 170, 174; R-1.

264. During an October 5, 2016 hearing that was held in the Mirarchi I case on a Motion for Sanctions filed by Mr. Richmond, Respondent withdrew those counts in the Complaint that were based on a theory of legal malpractice. N.T.V 189; ODC-70, 135, 170.

265. In August 2011, Respondent filed a lawsuit on behalf of J. S. in the Philadelphia Court of Common Pleas. N.T.V 192; ODC-171.

266. In connection with that lawsuit:

a. the Honorable John W. Herron had issued an Order dated September 10, 2012, which dismissed a Petition for Leave to Compromise a Minor's Action that Respondent had filed and directed Respondent to refile a Petition that provided for immediate distribution of the sums due to J. S.;

b. Respondent failed to promptly comply with Judge Herron's Order; and

c. the Honorable Marlene F. Lachman issued an Order dated May 1, 2014, which, *inter alia*, found that Respondent had failed to comply with Judge Herron's Order, determined that Respondent was solely responsible for a nineteen-month delay in resolving that lawsuit, and imposed a monetary sanction on Respondent. N.T.V 193-195; ODC-171.

Miscellaneous

267. Respondent's hearing testimony was not credible.

268. Respondent never made restitution to Ms. Majors.

269. Respondent failed to exhibit sincere remorse for his misconduct or acknowledge his wrongdoing.

270. Respondent's character evidence was not weighty and compelling.

271. Ten witnesses who offered character testimony had no information regarding Respondent's admitted and alleged misconduct, while four other witnesses had incomplete information. N.T. II 38-39, 48, 57, 64, 70-71, 79-80, 101-104, 134-135, 146-148, 172, 181-182, 199-200; N.T.III⁵ 43-44, 48-49; N.T.IV 32-36, 210)

272. Respondent has no record of discipline.

⁵ Notes of testimony of the June 27, 2017 hearing.

III. CONCLUSIONS OF LAW

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

THE ODC Matter

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 1.15(c)[effective 9/20/08] – 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(i): (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 (3) 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 the records are kept only in electronic form, then such record shall be backed up at least monthly on a separate electronic storage device.

3. RPC 1.15(c)[effective 2/28/15] – 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 writing required by Rule 1.15(b) and the records identified in Rule 1.15(c). A lawyer shall also 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(l): 1) all transactions records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks in whatever form, deposited items and records of electronic transactions; and (2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were distributed, and the dates of all deposits, transfers, withdrawals and disbursements. (3) The records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up on a separate electronic storage device at least at the end of any day on which entries have been entered into the records. These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or demand by either agency made pursuant to the Pennsylvania Rules of Disciplinary

Enforcement, the Disciplinary Board Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.

4. RPC 1.15(c)(2)[effective 9/20/08] – 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(l) ... (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.

5. RPC 1.15(c)(2)[effective 2/28/15] – A lawyer shall also 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(l)...(2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.

6. RPC 1.15(e) - 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.

7. RPC 1.15(h) – A lawyer shall not deposit the lawyer’s own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.

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

9. Pa.R.D.E. 203(b)(7) - Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules, §87.7(b), for a statement of the respondent-attorney’s position, shall be grounds for discipline.

10. Pa.R.D.E. 203(b)(3) - via 219(d)(1)(iii)[superseded effective 2/28/15], which states that on or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Attorney Registration Office a signed form prescribed by the Attorney Registration Office in accordance with the following procedures: (1) The form shall set forth: (iii) The name of each financial institution in this Commonwealth in which the attorney on May 1 of the current year or at any time during the preceding 12 months held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The form shall include the name and account number for each account in which the lawyer holds such funds, and each IOLTA Account shall be identified as such. The form provided to a person holding a Limited In-

House Corporate Counsel License or a Foreign Legal Consultant License need not request the information required by this subparagraph.

The Elizabeth Majors Matters

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 1.15(e) – 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.

3. RPC 1.16(d) – 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.

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

Administrative Suspension and Unauthorized Practice of Law

1. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.

2. RPC 7.1 – A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's service. A communication is false or misleading if it contains a material misrepresentation of act or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

3. RPC 8.1(a) – An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.

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

5. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

6. Pa.R.D.E. 203(b)(3) – Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline via Pa.R.D.E. 217(a), 217(b), 217(c)(1), 217(c)(2), 217(d)(2), 217(e)(1), 217(j)(3), 217(j)(4)(ii), 217(j)(4)(iv), 217(j)(4)(v), 217(j)(4)(vi), 217(j)(4)(vii), and 217(j)(4)(ix).

7. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, §87.7(b) for a statement of the respondent-attorneys' position, shall be grounds for discipline.

The Linda Sacchetti Matter

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
2. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.
3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.
4. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
5. RPC 1.15(e) – 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.
6. RPC 1.16(a)(3) – Except as stated in paragraph(c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.
7. RPC 1.16(d) – 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.

8. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

9. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rule §87.7(b), for a statement of the respondent-attorneys position, shall be grounds for discipline.

The Joseph Gargano Matter

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

4. RPC 1.4(c) – A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

5. RPC 1.16(d) – 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.

6. RPC 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

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

8. Pa.R.D.E. 203(b)(3) – Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline, via Pa.R.D.E. 219(d)(1)(viii) and 219(d)(3).

IV. DISCUSSION

Petitioner instituted disciplinary proceedings against Respondent by way of a Petition for Discipline filed on November 4, 2016, which charged Respondent with violating multiple Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement in five separate matters. Respondent filed an Answer, in which he denied violating many of the charged rules. Petitioner has the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. *Office of Disciplinary Counsel v. John Grigsby*, 425 A.2d 730, 732 (Pa. 1981). The evidence overwhelmingly proved that Respondent violated all of the rules charged in the Petition.

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge I, between November 2011 and April 2013, Respondent: failed to maintain inviolate fiduciary funds he was holding in an IOLTA account on behalf of client and third parties; misappropriated over \$24,000 in fiduciary funds and commingled Respondent's personal funds with fiduciary funds that were held in the IOLTA account; deposited funds that belonged to Respondent into the IOLTA Account; failed to maintain certain required records relating to the IOLTA Account; failed to identify an IOLTA Account on his 2013-2014 annual attorney registration form; and failed, without good cause, to respond to a DB-7A letter.

Respondent knowingly and intentionally misappropriated funds belonging to Mr. Longo, Ms. Loisch, J.S., and Mr. and Mrs. Tooley. Respondent conceded that he used funds belonging to those individuals, but claimed that he did so unintentionally due to inadequate staffing. N.T. IV 309-310, 314, 316, 331. Respondent's testimony was contradicted by: the letters that Mr. Longo sent to Respondent, which alerted Respondent to Respondent's obligation to pay referral fees to Mr. Longo; Respondent's failure to fulfill that obligation; Respondent using Mr. Longo's funds; Respondent's knowledge that he had received proceeds belonging to Ms. Loisch, J.S., and the Tooleys; Respondent's taking of his fees from the proceeds that he received on behalf of Ms. Loisch and the Tooleys, without making a corresponding distribution to those individuals; Respondent's knowledge that he could not distribute any funds on behalf of J.S., a minor, without obtaining court approval; the records for the IOLTA 1 account, which showed that Respondent was aware of the balance in that account; Respondent's witness, Renata D'Angelo-Ginansante, who testified that she was hired by Respondent to handle bookkeeping duties for Respondent's law practice, but her duties did not extend to

Respondent's trust accounts because Respondent had sole responsibility for the trust accounts; and Respondent's dire financial circumstances. N.T. II 207-208; N.T. IV 300-301.

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge II, in May 2013, Respondent misappropriated approximately \$80,000.00 in settlement funds that belonged to Ms. Majors, and failed to comply with Ms. Majors' request that Respondent provide her with a copy of her legal file for a personal injury case.

Respondent claimed that Ms. Majors gave her share of the settlement proceeds to Respondent due to Respondent's hard work on her behalf and her unhappiness with the settlement. Respondent's claim is wholly unsupported by the record. The evidence established that Ms. Majors was living in straitened financial circumstances and not in a position to relinquish almost \$80,000 because she was "unhappy" with the amount of the settlement. In fact, Ms. Majors repeatedly requested financial assistance from Respondent because she had not received her share of the proceeds from him. Respondent's claim that Ms. Majors made a "gift" to him was an attempt to conceal his misappropriation of her funds.

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge III, Respondent: engaged in the unauthorized practice of law and continued to maintain an office for the practice of law from August 14, 2015 through September 15, 2015, after he was administratively suspended for failing to satisfy Continuing Legal Education requirements; failed to promptly notify his clients, the courts, and opposing counsel of his administrative suspension; used letterhead, business cards and a professional website profile that made it appear that Respondent was eligible to

practice law; failed to timely file a verified statement of compliance with the Secretary of the Disciplinary Board and made misrepresentations on that statement; and failed, without good cause, to respond to a DB-7 letter.

When Respondent learned that he was administratively suspended in 2015, he continued to practice law, even though his status as a formerly admitted attorney prohibited him from doing so. He claimed that he believed he had resumed active status after he made up the deficiency in his Continuing Legal Education requirements. We find this claim to be not credible. Respondent was aware from a previous administrative suspension in 2012 that merely rectifying the CLE deficiency would not result in his instantaneous resumption of active status. Respondent received correspondence from the Attorney Registration Board and the CLE Board advising him that he was required to file paperwork and pay certain fees before reinstatement to active status. Respondent's testimony indicated that he was aware that he had to pay certain fees but did not do so because he "was broke." N.T. IV 278; N.T.V 214-215. Even if Respondent was found to be credible on this point, this would not excuse his misconduct because the Board has found that "it is not unreasonable to expect an attorney to be continuously aware of the status of his privilege to practice law." *Office of Disciplinary Counsel v. Steven Clark Forman*, No. 70 DB 2001 (D. Bd. Rpt. 11/13/2002) (S. Ct. Order 1/31/2003).

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge IV, in 2014, Respondent failed to: file an appellate brief on behalf of Linda Sacchetti and appear for a preliminary hearing in Ms. Sacchetti's criminal case; advise his client as to the status of her appellate case; respond to his client's written and telephonic inquiries concerning the appellate case; refund the fees that he received to represent Ms. Sacchetti; withdraw his appearance in the appellate case after he was

discharged; comply with two orders issued by the Superior Court of Pennsylvania; and respond to a DB-7 letter, without good cause.

The stipulations, Petitioner's exhibits and Respondent's testimony proved that as to Charge V, in 2015, Respondent: failed to appear for an arbitration hearing for a lawsuit that he filed on behalf of Joseph Gargano; failed to advise his client about the date, time, and location of the arbitration hearing; misrepresented to Mr. Gargano that Respondent would have the lawsuit reopened; failed to advise Mr. Gargano about the actual status of the lawsuit; failed to return to Mr. Gargano the original documents that Respondent had received from Mr. Gargano; failed to advise the Attorney Registration Office within 30 days after he ceased maintaining professional liability insurance; and allowed the Disciplinary Board to continue to misinform the public that Respondent maintained professional liability insurance when that was no longer true.

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

Notably, the Hearing Committee found Respondent's testimony to be not credible, and we give great deference to this finding, as the Committee had first hand observation of Respondent's testimony. The Board has found that a respondent's failure to provide credible testimony is an aggravating factor. See ***Office of Disciplinary Counsel v Glenn D. McGogney***, No. 194 DB 2009 (D. Bd. Rpt. 2/25/2011) (S. Ct. Order 3/28/2012).

Respondent failed to express sincere remorse, a significant aggravating factor. See, ***Office of Disciplinary Counsel v. Thomas Allen Crawford, Jr.***, 160 DB 2014 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 11/4/2017); ***Office of Disciplinary Counsel v. John Andrew Klamo***, No. 90 DB 2015 (D. Bd. Rpt. 12/23/2016) (S. Ct. Order

3/13/2017). Intrinsic to the concept of remorse as an expression of deep regret or guilt is the ability to acknowledge wrongdoing. Respondent fell far short of acknowledging the most serious of his disciplinary violations, and exhibited little understanding of what steps he must take to bring his conduct into alignment with ethical requirements. An aggravating factor underscoring Respondent's lack of repentance is his failure to make restitution to Ms. Majors. *See Office of Disciplinary Counsel v. Anonymous (Ronald L. Muha)* No. 121 DB 1999 (D. Bd. Rpt. 11/3/2000) (S. Ct. Order 3/23/2001) (Muha's misappropriation was "compounded by the fact that [Muha] never reimbursed his client for any of the funds he converted.").

Respondent has a history of fiscal irresponsibility as shown by the civil cases filed against him seeking payment of debts, the unsatisfied tax liens entered against him, and the borrowing of funds from a client and third party. *See Office of Disciplinary Counsel v. Anthony Dennis Jackson*, No. 145 DB 2007 (D. Bd. Rpt. 11/21/2008) (S. Ct. Order 4/3/2009) (Jackson was deemed "unable to effectively manage his personal affairs and professional matters" because of default judgments, unsatisfied judgments, and open liens entered against him; the Board treated this as an aggravating factors); *Office of Disciplinary Counsel v. Raymond Quaglia*, 78 DB 2015 (D. Bd. Rpt. 11/15/2016) (S. Ct. Order 1/30/2017) (The Board considered as aggravating Quaglia's history of failing to pay taxing authorities, which resulted in the imposition of interest, penalties, open liens, and the listing of his former law office for a Sheriff's sale.)

Respondent presented character evidence; however, this evidence was not weighty and sufficiently compelling because the character witnesses either had no information or had incomplete information regarding Respondent's misconduct. *See, Office of Disciplinary Counsel v. John J. Koresko, V*, No. 119 DB 2013 (D. Bd. Rpt.

6/1/2015) (S. Ct. Order 9/4/2015) (“nominal weight” afforded to Koresko’s character evidence because witnesses were not aware of the factual basis for the disciplinary charges against Koresko.) Respondent presented character testimony from fourteen witnesses; ten of the witnesses had no information concerning the disciplinary charges filed against Respondent and the remaining four witnesses had incomplete information regarding some, but not all, of the disciplinary charges. This evidence fails to overcome the substantial evidence of Respondent’s misdeeds, and cannot serve to reduce the need for severe sanction. **Office of Disciplinary Counsel v. Julia Passyn**, 644 A.2d 699, 705 (Pa. 1994).

Following the close of the record of the proceeding before the Hearing Committee on June 29, 2017, Respondent attempted to introduce mitigating evidence *de hors* the record by attaching expert reports and curricula vitae to his Brief on Exceptions to the Hearing Committee Report, filed on January 11, 2018. Following oral argument before a Board panel on Petitioner’s Motion to Strike the reports and curricula vitae, by Order dated May 2, 2018, the Board granted Petitioner’s Motion, based on our conclusion that Respondent waived his opportunity to present expert evidence by having failed to comply with earlier Hearing Committee orders setting deadlines for Respondent to provide Petitioner with such expert reports, and by having failed to file a petition with the Hearing Committee, pursuant to Disciplinary Board Rules §89.251(a), requesting permission to reopen the proceedings for the purpose of taking additional evidence.

Respondent was admitted to practice law in 2002 and has no record of discipline. While this factor is appropriate to consider in mitigation, **Office of Disciplinary Counsel v Sharmil Donzella McKee**, No. 29 DB 2016 (D. Bd. Rpt. 7/7/2017) (S. Ct. Order 10/18/2017), upon this record, we conclude that Respondent’s lack of prior

discipline is insufficiently weighty in light of the serious misconduct and significant aggravating factors.

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

Respondent's actions constitute egregious misconduct. While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and suggest disbarment when, as here, an attorney's lengthy and consistent practice of misappropriation of client funds, failure to comply with fiduciary obligations, unauthorized practice of law, dishonesty, neglect of clients' matters, and failure to respond to Petitioner's requests for information would likely pose a danger to the public if he continued to practice law. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 189-91 (Pa. 1983).

Having determined that Respondent misappropriated approximately \$80,000.00 from his client, Ms. Majors, precedent supports disbaring Respondent based solely on his knowing misappropriation. See ***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 over \$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. Thomas Louie***, No. 108 DB 2002 (D. Bd. Rpt. 10/10/2003) (S. Ct. Order 12/29/2003) (Louie disbarred for misappropriating over \$108,000.00 from an estate while serving as attorney for the executors; no restitution and no record of discipline); ***Muha***, No. 121 DB 1999 (D. Bd. Rpt. 11/3/2000) (S. Ct. Order 3/23/2001) (Muha disbarred for taking \$18,000 of a client's settlement funds; no record of discipline and no restitution).

Respondent's misconduct extends beyond his misappropriation. When evidence of his theft is viewed in conjunction with the additional evidence of Respondent's repeated use of funds from his trust account for his own purposes, dishonesty to his clients and others, his unauthorized practice of law while administratively suspended, his neglect of client matters, and his failure to respond to Petitioner's DB-7 letters, the need for severe sanction proves unavoidable. *See Office of Disciplinary Counsel v. John Campbell*, 345 A.2d 616, 622 (Pa. 1975) ("Isolated instances of misconduct may be individually insufficient to support disbarment. However, a number of such instances, although unrelated, when considered together, can demonstrate complete disregard for professional standards that disbarment is necessitated.")

The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system. ***Office of Disciplinary Counsel v. Anthony C. Cappuccio***, 48 A.3d 1231, 1238-39 (Pa. 2012). The evidence produced by Petitioner convincingly proved that Respondent is a

danger to the public and the profession itself. The Board is cognizant that disbarment is an extreme sanction which must be imposed only in the most egregious cases, because it represents a termination of the license to practice law without a promise of its restoration at any future time. ***Office of Disciplinary Counsel v. John J. Keller***, 506 A.2d 872, 879 (Pa. 1986). Disbarment is warranted to comply with the guiding decisions reviewed above.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Joseph Q. Mirarchi, 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: 

Brian J. Cali, Member

Date: May 21, 2018