

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2541 Disciplinary Docket No. 3
: :
Petitioner : No. 56 DB 2018
: :
v. : Attorney Registration No. 25619
: :
DOMINIC A. PENNA, : (Montgomery County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 22nd day of March, 2019, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Dominic A. Penna is suspended on consent from the Bar of this Commonwealth for a period of five years. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 03/22/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

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

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2541 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 56 DB 2018
v.	:	
	:	Attorney Reg. No. 25619
DOMINIC A. PENNA	:	
Respondent	:	(Montgomery County)

**JOINT PETITION IN SUPPORT
OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215(d)¹**

Petitioner, the Office of Disciplinary Counsel (“ODC”) by Paul J. Killion, Chief Disciplinary Counsel, and Krista K. Beatty, Disciplinary Counsel and Dominic A. Penna, Esquire (“Respondent”), by and through his counsel, James C. Schwartzman, Esquire, respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement (“Pa.R.D.E.”) 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania 17106, 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

¹ By Order dated December 21, 2018, the Supreme Court of Pennsylvania denied the parties’ Joint Petition recommending a four-year suspension, and cited *ODC v. Howell*, 1635 DD No. 3 (November 4, 2010) (imposing five-year suspension) and *ODC v. McGogney*, 1713 DD No. 3 (March 28, 2012) (imposing disbarment). For the reasons set forth herein, ODC and Respondent resubmit this Joint Petition recommending a five-year suspension. *See supra* at pp. 14-17.

FILED 01/22/2019 The Disciplinary Board of the Supreme Court of Pennsylvania

accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent, Dominic A. Penna, was born June 26, 1950 was admitted to practice law in the Commonwealth on October 13, 1977. Respondent is on active status, and his last registered address is Penna Grabois & Associates LLC, 166 E. Butler Ave., Ambler, Montgomery County, Pennsylvania 19002.

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

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

4. Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline is attached hereto as Exhibit "A."

5. Respondent represented Kathryn E. Balme and, in connection with that representation, prepared Ms. Balme's will nominating himself as Executor of Ms. Balme's estate.

6. Ms. Balme signed a General Power of Attorney naming Respondent as her agent, on or about June 14, 2006.

7. Ms. Balme executed a will on November 12, 2013, leaving her entire estate to her cousin, Betty Jane Belli.

Joint Bank Account

8. On or about November 12, 2013, Respondent added his name to two PNC bank accounts owned by Ms. Balme, specifically, her PNC checking account and her PNC money market account. Respondent changed the address on Ms. Balme's PNC Bank checking account to his own office address at 166 E. Butler Ave., Ambler, PA 19002.

9. On or about November 12, 2013, Respondent arranged for new checks to be printed on Ms. Balme's PNC Bank checking account. The new checks contained the names, "Kathryn E. Balme, Dominic A. Penna Esq." and include Respondent's office address. The new checks did not reflect that Respondent is a power of attorney only.

10. Respondent did not disclose to Ms. Balme in writing the terms on which he acquired the interest in her checking account or money market account, nor did Respondent advise Ms. Balme in writing that it was desirable she seek advice of independent legal counsel before adding his name to her accounts.

11. Ms. Balme did not give informed consent in a writing signed by her to:

- the essential terms of the transaction,
- Respondent's role in the transaction, and
- whether Respondent represented her in pursuing a joint account.

12. In adding his name to Ms. Balme's accounts, Respondent knowingly acquired an ownership interest adverse to Ms. Balme because although he purported to act under a power of attorney, he also had ownership rights to the money in the account. Converting Ms. Balme's account to a joint account gave Respondent full access to Ms. Balme's funds, putting his client at risk of him depleting her assets, and exposing her assets to potential claims by Respondent's creditors. Converting Ms. Balme's account to a joint account benefitted Respondent's personal interests at the expense of Ms. Balme.

13. On December 3, 2013, December 18, 2013 and January 14, 2014, Respondent wrote checks to himself for \$3,975.00, \$2,541.00 and \$5,608.00, respectively, drawn on Ms. Balme's PNC Bank checking account, for legal fees.

14. Ms. Balme died on January 15, 2014.

15. On January 22, 2014, the Register of Wills granted Letters Testamentary to Respondent as the Executor of Ms. Balme's estate.

Conflicts and Self-Dealing

16. Ms. Balme's estate consisted of cash, personal property and real estate located at 1408 Sunnyside Pike, Lower Gwynedd, Pennsylvania (the "Property").

17. As the Executor, Respondent owed fiduciary duties to Ms. Belli, the sole beneficiary, to act in her best interest.

18. On or about January 22, 2014, Respondent opened an estate account for Kathryn E. Balme, at PNC Bank ("Estate Account").

19. Between January 2014 and August 2014, Respondent wrote checks from Balme's Estate Account to several of his relatives, and businesses owned by his relatives.

20. Between March 2014 and August 2014, Respondent wrote checks from the Estate Account to "Frank Penna" and/or "Frank Penna Landscaping" totaling \$7,483.00. Frank Penna is Respondent's brother.

21. On April 7, 2014 and April 22, 2014, Respondent wrote checks from the Estate Account to "Pure Medical Solutions" totaling \$3,698.00 for "disinfection." Pure Medical Solutions is a company owned by Respondent's son, Brian Penna.

22. Between January 2014 and August 2014, Respondent authorized repairs and replacements to the HVAC system on the Property, including installing a new furnace, and installing central air conditioning which had not previously been there.

23. Between January 2014 and August 2014, Respondent authorized waterproofing in the basement of the Property.

24. In May or June 2014, Ms. Belli asked Respondent about transferring the Property to her grandson. Respondent Penna told Ms. Belli that transferring the property to her grandson would incur 15% inheritance tax.

25. On or about June 13, 2014, Respondent executed an Agreement of Sale for the Property. The buyer was Adele Bova, her husband, Francesco Bova, their son, Frank Bova, and Frank's wife Jaclyn Bova ("Buyers"). Adele Bova is Respondent's sister, and is a secretary/paralegal in Respondent's law office.

26. The Agreement of Sale states an agreed upon purchase price for the home of \$260,000, with a \$10,000 seller assist for a net purchase price of \$250,000. At that time, the Property was appraised for \$260,000.

27. The Agreement of Sale did not indicate any Inspection Contingencies; however, after the Agreement of Sale was signed, on or about June 17, 2014, Respondent and Buyers executed an Addendum to the Agreement of Sale whereby Respondent granted Buyers various Inspection Contingencies, permitting Buyers until July 22, 2014 to perform inspections.

28. On August 1, 2014, Respondent and the Buyers signed an Addendum to the Agreement of Sale which stated the following:

FOR AND IN CONSIDERATION for the Buyers to go to Settlement on the property on August 19, 2014.

The Seller hereby agrees to pay all costs necessary for the installation of the sewer lateral and Seller will place in Escrow \$24,960.00 with the Title Company towards the payment of the installation of the sewer. There will be additional fees for permits and Engineering and they will be the responsibility of the Seller.

29. Settlement on the Property took place August 19, 2014.

30. At settlement on the Property, on August 19, 2014, Respondent deposited \$207,910.18 into the Estate Account, representing proceeds from sale of the Property, after an

amount of \$24,960.00 was deducted from seller proceeds and placed into an escrow account for work to connect the property to public sewer; an amount of \$15,600.00 was paid from seller proceeds to the real estate broker for commissions on the sale of the Property; and an amount of \$10,000 was credited from the seller to Buyer, representing a seller assist.

31. After closing on the Property, Respondent authorized additional payment of funds from the Estate Account to Lower Gwynedd Township Municipal Authority, for connecting the Property to municipal sewer lines, including:

- a. On or about August 21, 2014, two days after settlement on the Property, Respondent wrote a check from the Estate Account to Lower Gwynedd Municipal Authority in the amount of \$5,000.00, representing "escrow fees."
- b. On or about August 22, 2014, three days after settlement on the Property, Respondent wrote a check from the Estate Account to Lower Gwynedd Municipal Authority in the amount of \$4,213.00, representing an "EDU tapping fee."
- c. On or about December 19, 2014, four months after settlement of the Property, Respondent wrote a check from the Estate Account to "Lower Gwynedd Twp Munic Auth" in the amount of \$2,000.00, representing "Escrow for Sewer."
- d. On or about January 28, 2015, March 3, 2015 and April 6, 2015, Respondent wrote checks from the Estate Account to Lower Gwynedd Twp Municipal Authority in the amounts of \$340.00, \$135.00 and \$604.13 for "Inspection Fee 1408 Sumneytown", "inspection fee balance due" and "sewer," respectively.

32. Total amounts paid from the Estate Account to Lower Gwynedd Township Municipal Authority for "Sewer" and "escrow" outside of closing on the Property was \$12,292.13.

33. The \$12,292.13 amount was in addition to the \$24,960.00 that had been escrowed at closing.

Excessive Fees

34. Respondent and his law firm acted as both Executor and Attorney to the Estate and charged fees in both capacities, unnecessarily double billing the Estate.

35. The total fees sought by Respondent for work allegedly performed in both capacities are in excess of those customarily charged for comparable work and far in excess of the amount warranted for a simple estate such as Ms. Balme's.

36. In addition, Respondent paid himself \$7,235.70 for fees due for work as "power of attorney." On February 14, 2014, Respondent transferred this amount directly from the Estate Account into a PNC Bank Account held in the name of "Dominic Penna Karen L Penna Attorney at law" (the "Joint Performance Checking Account").

37. On September 17, 2014, Respondent electronically transferred \$40,000.00 from the Estate Account to his law firm operating account, held in the name of "Penna Grabois & Assoc." ("Firm Operating Account").

38. On October 10, 2014, Respondent electronically transferred \$19,159.90 from the Estate Account to the Joint Performance Checking Account, with a memo notation, "Executors Commission."

39. On October 14, 2014, Respondent wrote a check in the amount of \$4,412.32 drawn on the Estate Account, and deposited the funds in his Firm Operating Account with a memo notation, "Final Costs" for administration.

40. On October 28, 2014, Respondent electronically transferred \$7,000.00 from the Estate Account to his PNC Bank Joint Performance Checking Account.

Conversion of Estate Assets

41. After Ms. Balme's death in January 2014, on or about April 7, 2014 and July 8, 2014, Wells Fargo Shareowner Services ("Wells Fargo") mailed checks to the attention of Ms. Balme, representing gross dividends on her 1422 shares of Merck & Co., Inc. ("Merck") common stock. Wells Fargo Bank was listed as the disbursing agent for the account. Respondent deposited the checks into the PNC Bank Estate Account.

42. On or about August 7, 2014, Respondent received a letter from Wells Fargo regarding Ms. Balme's Merck Acct., stating they received a change of address notice from the U.S. Postal Service, and changed Ms. Balme's account address to 166 E. Butler Ave, Ambler, PA which is Respondent's office.

43. On or about October 7, 2014, Wells Fargo mailed a check payable to Kathryn E. Balme to Respondent's 166 E. Butler Ave office address, representing gross dividends paid on her 1,422 shares of Merck common stock. Respondent deposited the check into the Estate Acct.

44. On October 14, 2014, Respondent filed with the Montgomery County Register of Wills, the first REV-1500 Inheritance Tax Return for the Balme Estate, but did not list the Merck Acct. as an estate asset on the REV-1500.

45. On October 23, 2014, Respondent wrote to Merck Shareowner Services/Wells Fargo Bank, advising them of Ms. Balme's death, enclosing a recent statement for the Merck Acct., Ms. Balme's death certificate, and a short certificate. Respondent's letter asked Merck/Wells Fargo to mail him appropriate forms to liquidate Ms. Balme's Merck Acct. In an undated generic

letter, Wells Fargo, thanked Respondent for advising them of Ms. Balme's death and enclosed appropriate forms describing how to transfer Ms. Balme's shares.

46. On February 27, 2015, Respondent sent Wells Fargo appropriate documents for liquidating Ms. Balme's Merck Acct, which he signed as Executor for the Balme Estate. Merck/Wells Fargo complied with Respondent's request, completed transfer of funds from Balme's Merck Acct. to the Merck Estate Account, and then liquidated the Merck Estate Account.

47. On March 11, 2015, Wells Fargo issued a cashier's check #334779 in the amount of \$81,058.50, made payable to "Dominic A. Penna, Executor, *Estate of Kathryn E. Balme.*" The check was mailed to Respondent at his law office address. Check #334779 represented the liquidated amount of Ms. Balme's Merck Account.

48. Respondent did not deposit this check into the Balme Estate Acct.

49. Respondent did not include these funds in his estate account "recapitulation."

50. On or about May 6, 2015, Respondent deposited check #334779 in the amount of \$81,058.50 into his PNC Bank Joint Performance Checking account.

51. Statements on the PNC Bank Joint Performance Checking account list the account owners as "Dominic A. Penna, Karen L. Penna, Attorney at Law."

52. On or about May 7, 2015, Respondent opened a PNC Premium Money Market Account in the name of "Dominic A. Penna Esq. Karen L. Penna." ("Premium Joint MMA")

53. On or about May 13, 2015, Respondent transferred \$81,000 from the PNC Bank Joint Performance Checking Account into the Premium Joint MMA.

54. On June 9, 2015, Respondent electronically transferred \$5,500.00 from the Estate Account to the PNC Premium Joint MMA.

55. On June 10, 2015, Respondent filed a Supplemental REV-1500 Inheritance Tax Return with the Montgomery County Register of Wills. The Merck Account is not listed as an estate asset on the June 10, 2015 REV-1500.

56. The Merck Account, \$81,058.51 estate asset, is not listed on any estate form between March 2015 and September 2015.

57. On June 11, 2015, Respondent withdrew \$85,066.86 from the PNC Premium Joint MMA.

58. Concerned by Respondent's apparent self-dealing, Ms. Belli engaged attorney Cynthia Yurchak, Esquire ("attorney Yurchak") to review the handling of this estate matter in or about August 2015.

59. On September 17, 2015, attorney Yurchak wrote to Respondent seeking a number of relevant documents, which he provided by letter dated October 6, 2015. Included among those documents was a "REV-1500 Inheritance Tax Return" Respondent prepared, which was received in the Montgomery County Register of Wills just one day before, on October 5, 2015.

60. On REV-1500 EX Page 3, Respondent checked the box "no" in response to the question "If death occurred after Dec. 12 1982, did decedent transfer property within one year of death without receiving adequate consideration?"

61. After reviewing Respondent's October 6, 2015 response, attorney Yurchak wrote to Respondent again, on October 20, 2015 asking specific questions, including with regard to the Merck stock, and requested a full accounting.

62. Respondent responded to attorney Yurchak's letter the following day -- October 21, 2015-- by letter addressed to Ms. Belli (not her counsel) claiming to have determined there were excessive funds in the Estate, and offering to release a third distribution. Respondent sought

to have Ms. Belli sign a third distribution agreement which contained a release, waiver and indemnity agreement beneficial to Respondent and his law firm, and which would have permitted him to avoid answering attorney Yurchak's questions.

63. By letter dated October 23, 2015, attorney Yurchak wrote to Respondent attaching a renunciation, and requested Respondent to sign. Respondent did not sign the renunciation.

64. After receiving the October 23, 2015 letter, Respondent consulted with attorney William Morrow, and engaged him on or about November 3, 2015.

65. On October 27, 2015, Respondent electronically transferred \$74,573.82 from his PNC Joint Performance Checking Account, to the Estate Account. Respondent's PNC Joint Performance Checking Account is not an IOLTA account or other trust account.

66. On November 3, 2015, Respondent electronically transferred \$6,484.68 from his PNC Joint Performance Checking Account, to the Estate Account.

67. The funds from the October 27, 2015 and November 3, 2015 transfers total \$81,058.50, the exact amount of the Merck check drawn to the Estate of Kathryn E. Balme on March 11, 2015.

68. On January 4, 2016, attorney Morrow sent a letter to Ms. Yurchak, enclosing a draft First and Final Account for the estate.

69. Respondent then retaliated against Ms. Belli for questioning his improper handling of the Estate. Respondent threatened to file a supplemental Pennsylvania Inheritance Tax Return, reporting monetary transfers made to Ms. Belli's daughter and granddaughter by Ms. Balme during her last year of life. In doing so, Respondent breached his fiduciary duties and once again engaged in a conflict of interest.

70. Respondent had the information necessary to question the monetary transactions contemporaneously or immediately following Ms. Balme's death, but he did not do so and instead certified on the October 2015 REV-1500 and all previous REV-1500 forms that no property transfers occurred without adequate consideration.

71. Respondent admits the fees charged to the Estate were not reasonable.

Specific Rules of Professional Conduct Violated

72. Respondent violated the following Rules of Professional Conduct:

A. RPC 1.1 which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.

C. RPC 1.7 (a)(1) which states that except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client.

D. RPC 1.7(a)(2) which states that except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

E. RPC 1.8(a) which states that a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest

adverse to a client unless the transaction and terms are fair and reasonable, and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client, the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction, and the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction including whether the lawyer is representing the client in the transaction.

F. RPC 1.15(b) which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

G. RPC 1.15(e) which states in pertinent part that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property.

H. RPC 1.15(h) which states that 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.

I. RPC 1.16(a)(1), which states that 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 representation will result in violation of the rules of professional conduct or other law.

J. RPC 4.2, which states that in representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be

represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

K. RPC 5.7(a) which states that a lawyer who provides nonlegal services to a recipient that are not distinct from legal services provided to that recipient is subject to the Rules of Professional Conduct with respect to the provision of both legal and nonlegal services.

L. RPC 8.4(a), which states that 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 acts of another.

M. RPC 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honest, trustworthiness or fitness as a lawyer in other respects.

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

O. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

**SPECIFIC RECOMMENDATION FOR DISCIPLINE CONSISTING OF A
FIVE-YEAR LICENSE SUSPENSION**

102. Petitioner and Respondent jointly recommend the appropriate discipline for Respondent's admitted misconduct is a five-year suspension.

103. Petitioner and Respondent previously submitted a Joint Petition in this matter, recommending a four-year suspension.

104. On December 21, 2018, this Court denied the Joint Petition, citing *ODC v. Howell*, 1635 DD No. 3 (November 4, 2010) (imposing five-year suspension) and *ODC v. McGogney*, 1713 DD No. 3, 194 DB 2009 (March 28, 2012) (imposing disbarment).

105. Similar to the instant matter, *Howell* and *McGogney* involved incidents wherein respondents saw an opportunity and took advantage of an elderly client/beneficiary, by converting and misappropriating assets.

106. Two relevant factors distinguish *Howell* and *McGogney* from the current case. First, unlike the instant matter, *Howell* and *McGogney* were fully and extensively litigated over three days of disciplinary hearings and in the case of *Howell*, after “thousands of pages of documentary evidence.” *Id.*, 1635 DD No. 3 at p. 20. In each case, the time from ODC’s filing the Petition for Discipline until imposition of discipline spanned over two years. In contrast, Respondent Penna has agreed to forego a disciplinary hearing and consent to suspension, saving countless hours and resources and, if approved, ensuring Respondent’s suspension and removal from the list of actively licensed attorneys in a significantly shorter period of time.

107. Second, Respondent Penna expresses remorse for his actions. Contrarily, neither *Howell* nor *McGogney* exhibited any remorse. *See ODC v. Howell*, 1635 DD No.3 at p. 19 (Disciplinary Board observing “Respondent [Howell] expressed no remorse, no regret and no recognition that he engaged in any misconduct”); *ODC v. Glenn McGogney*, 1713 DD3, 194 DB 2009 at ¶116, p. 20 (“Respondent [McGogney] expressed no remorse and offered no evidence in mitigation”).

108. If approved, Respondent’s five-year suspension will commence within 30 days and many months sooner than were Respondent to proceed through a fully litigated hearing.

109. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule Pa.R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Rule 215(d)(1) through (4) Pa.R.D.E.

110. Petitioner and Respondent jointly recommend that as mitigation for Respondent's agreement to waive disciplinary hearing and consent to discipline, a suspension of five years, rather than disbarment, is warranted.

111. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that the following mitigating circumstances are also present:

- a) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b) Respondent has cooperated with Petitioner in connection with this Petition, as evidenced by Respondent's admissions herein and his consent to receiving a five-year suspension;
- c) Respondent expresses remorse for his misconduct and understands he should be disciplined, as evidenced by his consent to receiving a five-year suspension;
- d) Respondent has practiced law for over forty years and has no record of discipline.

112. The parties agree that in totality, Respondent's misconduct was very serious and warrants a suspension of five years. Respondent converted estate funds for his personal use,

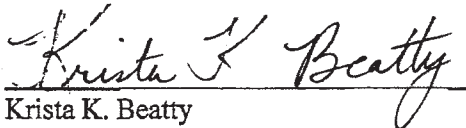
charged excessive fees, violated his fiduciary duties to the estate beneficiary and engaged in conflicts of interest and self-dealing.

The primary role of our system of attorney discipline is to “determine the fitness of an attorney to continue to practice of law, and maintain the integrity of the legal system.” *ODC v. Quigley*, at p. 11, quoting *ODC v. Cappuccio*, 48 A.3d 1231, 1238-39 (Pa. 2012). “The objective is to protect the public and courts from attorneys unfit to practice law.” *Id.* Under the circumstances of this particular case, a five-year suspension on consent ensures that Respondent will be promptly removed from the practice of law and serve a lengthy suspension without significant delay.

WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e), 215(g) and 215(i), a three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent receive a five-year suspension.

Respectfully submitted,
OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION,
Attorney Registration No. 20955
Chief Disciplinary Counsel

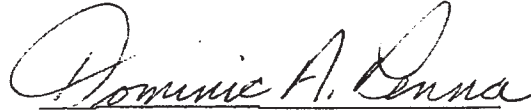
1/22/19
DATE



Krista K. Beatty
Disciplinary Counsel
Attorney Registration No. 75211
Office of Disciplinary Counsel
Suite 170, 820 Adams Avenue
Trooper, PA 19403

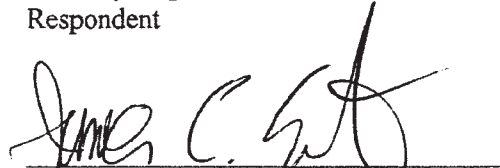
(610) 650-8210

1-15-19
DATE



Dominic A. Penna, Esquire
Attorney Registration No. 25619
Respondent

1/21/19
DATE



James C. Schwartzman, Esquire
Counsel for Respondent

VERIFICATION

The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

1/22/19
DATE

Krista K. Beatty
Krista K. Beatty
Disciplinary Counsel

1-15-19
DATE

Dominic A. Penna
Dominic A. Penna, Esquire
Respondent

1/21/19
DATE

James C. Schwartzman
James C. Schwartzman, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 56 DB 2018
Petitioner :
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v. :
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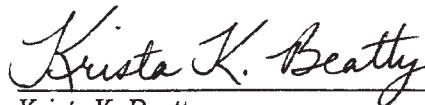
CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class and Overnight Mail, as follows:

James C. Schwartzman, Esquire
Stevens & Lee, P.C
1818 Market Street, 29th Floor
Philadelphia, PA 19103

Dated: 1/22/19



Krista K. Beatty
Disciplinary Counsel
Attorney Registration No. 75211
Office of Disciplinary Counsel
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650- 8210

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

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 56 DB 2018
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	:	
v.	:	
	:	Attorney Reg. No. 25619
DOMINIC A. PENNA	:	
Respondent	:	(Montgomery County)

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

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF MONTGOMERY:

Dominic A. Penna, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of a five-year suspension in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 13, 1977.
2. He desires to submit a Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d).
3. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress, and he is fully aware of the implications of submitting this affidavit.
4. He is aware that there is presently pending a proceeding into allegations that he has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d) to which this affidavit is attached.

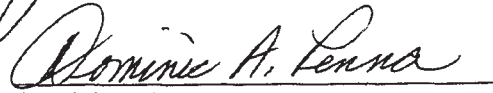
5. He acknowledges that the material facts set forth in the Joint Petition are true.

6. He submits the within affidavit because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted and acted upon the advice of counsel James C. Schwartzman, Esquire, in connection with his decision to execute the within Joint Petition.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 15 day of January 2019.


Dominic A. Penna

Sworn to and subscribed

before me this 15 day

of January 2019.


Notary Public

Commonwealth of Pennsylvania - Notary Seal
ADELE P. BOVA, Notary Public
Montgomery County
My Commission Expires December 10, 2021
Commission Number 1014991

CERTIFICATE OF COMPLIANCE

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

Submitted by: _____

Signature: Krista K. Beatty

Name: Krista K. Beatty

Attorney No. (if applicable): 75211