

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2656 Disciplinary Docket No. 3
: :
Petitioner : No. 66 DB 2017
: :
v. : Attorney Registration No. 63209
: :
ANTHONY CHARLES MENGINE, : (Allegheny County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 26th day of November, 2019, upon consideration of the Report and Recommendations of the Disciplinary Board, Anthony Charles Mengine is suspended for two years from the practice of law in this Commonwealth, with nine months to be served. The remaining fifteen months of the suspension are stayed, and Respondent is placed on probation for fifteen months, subject to the following conditions:

1. Respondent shall continue to maintain the services of YourCFO or another qualified professional to manage bookkeeping responsibilities;
2. Respondent shall continue to maintain all required books and records, accessible for review by Office of Disciplinary Counsel within 20 days of a request without the necessity for issuance of a subpoena, see Pa.R.P.C. 1.15(c); and
3. Respondent shall submit quarterly reports to Office of Disciplinary Counsel attesting to his compliance with the Rules of Professional Conduct.

Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

Justice Wecht did not participate in the consideration or decision of this matter.

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

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 66 DB 2017
Petitioner	:	
	:	
v.	:	Attorney Registration No. 63209
	:	
ANTHONY CHARLES MENGINE	:	
Respondent	:	(Allegheny County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on April 25, 2017, Petitioner, Office of Disciplinary Counsel, charged Respondent, Anthony Charles Mengine, with violation of the Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) related to his misappropriation of client funds. On May 11, 2017, Respondent filed a Motion to Defer Answer and Stay Hearing Pending

Respondent's Surgery and Medical Clearance with Disciplinary Board.¹ On that same date, Petitioner filed a letter with the Board advising that it did not object to Respondent's Motion. On May 12, 2017, the Board issued an Order granting Respondent's Motion. Respondent filed an Answer to Petition for Discipline on May 31, 2018.

Following the Board's assignment of a District IV Hearing Committee to this matter, the Committee Chair held a prehearing conference on July 25, 2018. The Committee conducted a disciplinary hearing on September 27, 2018. At that time, Administrative Exhibits I through VIII were offered and admitted into evidence. Petitioner offered and had admitted Petitioner's Exhibits 1 and 2. Petitioner did not present any witness testimony. Respondent offered and had admitted Respondent's Exhibits 1 and 2. Respondent called four witnesses to testify and testified on his own behalf. At the conclusion of the hearing on September 27, 2018, the record in this matter was closed.

On November 13, 2018, Petitioner filed a brief to the Committee.

On January 2, 2019, Respondent filed a brief to the Committee.

The Committee filed a Report on March 4, 2019 and concluded that Respondent violated the rules as charged in the Petition for Discipline. A majority of the Committee recommended that Respondent be suspended for a period of four years, the entirety of the suspension stayed, with probation for a period of four years, subject to conditions. The dissenting member recommended that Respondent be suspended for a period of one year.

¹ Respondent sustained serious injuries in a car accident on March 15, 2017 and requested additional time to recover from his injuries and participate in the preparation of the Answer.

On March 22, 2019, Petitioner filed a Brief on Exceptions to the Committee's Report and requested that the Board reject the Committee's recommendation and recommend to the Court that Respondent be disbarred.

On April 12, 2019, Respondent filed a Brief Opposing Petitioner's Exceptions and requested that the Board reject Petitioner's exceptions and affirm the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on July 19, 2019.

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, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the 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 the aforesaid Rules.

2. Respondent is Anthony Charles Mengine, born in 1966 and admitted to practice law in the Commonwealth of Pennsylvania in 1991. Respondent's attorney registration mailing address is 603 Stanwix Street, Two Gateway Center, Ste. 1228, Pittsburgh, PA 15222. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

4. Prior to January 2014, Respondent was a member of the law firm of Chiurazzi & Mengine, LLC. Administrative Exhibit ("AE") III ¶ 4.

5. The practice was operated as an LLC composed of two members, which were corporations, Wayne M. Chiurazzi Law, Inc. and Anthony C. Mengine Law, Inc. AE III ¶ 5.

6. The Chiurazzi & Mengine LLC entity maintained an IOLTA Account with PNC Bank captioned "Chiurazzi & Mengine LLC IOLTA Account," (hereinafter, Chiurazzi & Mengine LLC IOLTA Account). AE III ¶ 6.

7. The Chiurazzi & Mengine LLC entity also maintained an Escrow Account with PNC Bank "Chiurazzi & Mengine LLC, Escrow Account," (hereinafter, Chiurazzi & Mengine LLC Escrow Account). AE III ¶ 7.

8. Respondent and Attorney Wayne Chiurazzi maintained separate Attorney-at-Law accounts. AE III ¶ 8.

9. On or about January 6, 2014, Respondent ended his business relationship with Wayne Chiurazzi and left the law firm of Chiurazzi & Mengine, LLC. AE III ¶ 9.

10. Thereafter, Respondent was part of the law firm Kontos Mengine Law Group. AE III ¶ 10.

11. All of Respondent's misconduct that is the subject of this proceeding occurred during the time Respondent was at the Chiurazzi & Mengine, LLC.

12. Following the filing of a complaint against Respondent, on October 30, 2014, Petitioner issued a DB-7 Request for Statement of Respondent's Position. Therein,

Petitioner asserted 56 paragraphs of factual allegations against Respondent. Respondent filed a verified Response to the DB-7 on December 31, 2014, admitting to the factual allegations in 54 of the 56 paragraphs. AE IV.

13. On March 5, 2015, Petitioner issued a supplemental DB-7 Request for Statement of Respondent's Position containing an additional 168 paragraphs of factual allegations against Respondent. Respondent answered on May 18, 2015 and admitted the factual allegations contained in 161 of the 168 paragraphs. AE VII. Respondent submitted an additional response on November 25, 2015. AE VIII.

14. Petitioner filed a Petition for Discipline on April 25, 2017 containing 186 paragraphs of factual allegations against Respondent. AE 1.

15. The parties entered into an extensive Stipulation, wherein Respondent admitted to the vast majority of the allegations against him. The below findings at ¶¶ 16 - 189 are stipulated to by the parties. AE III ¶¶ 11-186.

Ash

16. On July 25, 2013, Respondent provided his client, Erica Ash, with a Settlement Sheet regarding her civil matter against Francis E. and April D. Maczka which indicated, among other things, that:

- a. The settlement amount was \$34,000;
- b. Attorney's fees (40%) were \$13,600.00;
- c. Expenses were \$442.49;
- d. Unpaid medical bills were \$12,474.23; and,

e. The amount due to Ms. Ash was \$7,483.28.

Respondent subsequently learned that there was an accounting error in the initial Settlement Sheet provided to the client in that the amount owed to West Penn was actually \$425.25, not \$261.00. West Penn withdrew its offer to reduce the lien to \$261.00 as indicated on the initial Settlement Sheet, thus requiring Respondent to pay the full \$425.25 and update the Settlement Sheet. Respondent paid West Penn \$425.25 on June 12, 2014 by check #3775, in conjunction with the payment to AGH. Because Ms. Ash had already received her settlement funds at that point, Respondent paid the difference without requesting reimbursement from the client. In addition, upon further investigation into the Ash matter to locate cancelled checks to furnish to the Board, Respondent learned that there had been an inadvertent oversight with regard to the payment of isolated medical bills. Respondent previously believed that all such medical bills were paid, and no provider had contacted Respondent with regard to any outstanding balances. However, upon learning of the discrepancies, on January 23, 2015, Respondent paid the following providers: (a) Radiologic Consultants in the amount of \$170.00, by check #3830; (b) Brandon Schooley, M.D. in the amount of \$272.00, by check #3833; (c) Mark Wallace, D.O. in the amount of \$103.34, by check #3832; and (d) Excela Physical Therapy in the amount of \$561.99, by check #3831. Although the amount previously paid to Ms. Ash in settlement was not affected, Ms. Ash was fully apprised of the situation and asked to sign an updated Settlement Sheet, which she executed on April 15, 2015.

17. As of July 25, 2013, Respondent had not received the settlement funds in Ms. Ash's case, although a settlement had been reached between the parties.

18. By check number 10825, dated July 24, 2013, and drawn on the Chiurazzi & Mengine LLC IOLTA Account and annotated "Escrow/Med Lien-Bills (Ash)," Respondent transferred \$20,400.00 to the Chiurazzi & Mengine LLC Escrow Account.

19. By check number 1106, dated July 25, 2013, in the amount of \$20,400.00, made payable to "Anthony C. Mengine Law, Inc., Client Expense," drawn on Respondent's Chiurazzi & Mengine LLC Escrow Account, and annotated "Ash (Med-lien-bills)- cost," Respondent transferred \$20,400.00 from the Chiurazzi & Mengine LLC Escrow Account to his PNC Bank Account number 1019298147, captioned "Anthony C. Mengine Law, Inc., Client Expense Account" (hereinafter, Client Expense Account).

20. That \$20,400.00 was actually money entrusted to Respondent on behalf of clients other than Ms. Ash.

21. Respondent transferred the \$20,400.00 in funds from the Chiurazzi & Mengine LLC IOLTA and Escrow Accounts to his Client Expense Account before he received the settlement funds in regard to Ms. Ash's matter.

22. Respondent misappropriated at least \$20,400.00 of client funds with which he was entrusted.

23. Wayne Chiurazzi did not have signatory authority over the Client Expense Account.

24. Respondent's Client Expense Account was not a trust account pursuant to Rule of Professional Conduct 1.15(a)(11).

25. Respondent's Client Expense Account is not listed on Respondent's PA Attorney's Annual Fee Form Statements for 2013-2014 and 2014-2015 as an account in which he held funds of clients or third parties.

26. On July 31, 2013, the balance in Respondent's Client Expense Account was only \$349.50.

27. At that time, Respondent also maintained PNC Bank Account number 1017614716 (hereinafter, Law Inc. Account), captioned "Anthony C. Mengine Law Inc."

28. Wayne Chiurazzi did not have signatory authority over the Law Inc. Account.

29. Respondent's Law Inc. Account was not a trust account pursuant to Rule of Professional Conduct 1.15(a)(11).

30. Respondent's Law Inc. Account was not listed on Respondent's PA Attorney's Annual Fee Form Statements for 2013-2014 and 2014-2015 as an account in which he held funds of clients or third parties.

31. On July 30, 2013, the balance in Respondent's Law Inc. Account was only \$311.38.

32. By check dated August 13, 2013, in the amount of \$34,000.00, and made payable to "Erica Ash and Chiurazzi and Mengine LLC, Her Attorney," State Farm Mutual Automobile Insurance Company settled Ms. Ash's civil matter against their insured, Francis E. and April D. Maczka.

33. On August 20, 2013, the proceeds of the \$34,000.00 check were deposited into the Chiurazzi & Mengine LLC IOLTA Account.

34. By check number 3647, dated August 23, 2013, in the amount of \$7,483.28, made payable to Ms. Ash, drawn on Respondent's Law Inc. Account, and annotated "Full/Final Settlement," Respondent disbursed to Ms. Ash her portion of the settlement that was due her from her civil action.

35. By check number 3653, dated September 6, 2013, in the amount of \$6,000.00, made payable to "Center for Emergency Medicine," drawn on Respondent's Law Inc. Account, and annotated "Erica Ash/Satisfaction of Medical Bills," Respondent disbursed funds with which he was entrusted on behalf of Ms. Ash.

36. By check number 3703, dated October 30, 2013, in the amount of \$1,381.90, made payable to "Ali Aboosi, M.D.," drawn on Respondent's Law Inc. Account, and annotated "Ash Bills," Respondent disbursed funds with which he was entrusted on behalf of Ms. Ash.

37. By check number 3775, dated June 12, 2014, in the amount of \$4,149.25, made payable to "Credit Management Company," drawn on Respondent's Law Inc. Account, and annotated "Satisfaction Erica Ash," Respondent disbursed funds with which he was entrusted on behalf of Ms. Ash.

38. Respondent in January 2015 disbursed the remaining funds with which he was entrusted on behalf of Ms. Ash.

Cole

39. By check dated March 15, 2013, in the amount of \$30,000.00, and made payable to "Stephen Cole and Chiurazzi & Mengine, His Attorneys," Erie Insurance Exchange settled Mr. Cole's civil action against their insured, Christy Salisbury.

40. On March 18, 2013, Respondent deposited or caused to be deposited the proceeds of the \$30,000.00 check and another unrelated settlement check, in the amount of \$47,500.00, into the Chiurazzi & Mengine LLC IOLTA Account.

41. By check number 10671, dated April 24, 2013, in the amount of \$16,798.00, made payable to "Chiurazzi & Mengine LLC Escrow," drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Cole liens," Respondent transferred funds from the Chiurazzi & Mengine LLC IOLTA Account to the Chiurazzi & Mengine LLC Escrow Account.

42. On April 24, 2013, Respondent deposited or caused to be deposited the proceeds of the \$16,798.00 check into the Chiurazzi & Mengine LLC Escrow Account.

43. By check number 1097, dated April 25, 2013, in the amount of \$16,796.00, made payable to "Anthony C. Mengine Law, Inc. Client Expense" and annotated "Cole Lien," Respondent transferred money from the Chiurazzi & Mengine LLC Escrow Account to his Client Expense Account.

44. On April 26, 2013, Respondent transferred \$15,341.46 of the funds with which he was entrusted on behalf of Mr. Cole from his Client Expense Account to his Law Inc. Account.

45. As a result of disbursements which were not made to or on behalf of Mr. Cole, on May 13, 2013, the balance in Respondent's Law Inc. Account was a negative \$187.98, which was \$16,796.00 below his entrustment on behalf of Mr. Cole.

46. Respondent misappropriated \$16,796.00 of the funds with which he was entrusted on behalf of Mr. Cole.

47. The Settlement Sheet dated November 4, 2013 regarding Mr. Cole's settlement indicated, among other things, that:

- a. The settlement amount was \$30,000.00;
- b. Respondent's attorney's fees at 40% were \$12,000.00;
- c. The subtotal was \$18,000.00;
- d. Blue Cross lien was \$3,000.00;
- e. Total expenses were \$202.00; and,
- f. Amount due to Mr. Cole was \$14,798.00.

48. By check number 3715, dated November 15, 2013, in the amount of \$14,798.00, made payable to Stephen Cole, drawn on Respondent's Law Inc. Account, and annotated "Full and Final Settlement," Respondent disbursed funds with which he had been entrusted on behalf of Mr. Cole.

49. By check number 3758, dated March 14, 2014, in the amount of \$3,000.00, made payable to Blue Cross Blue Shield, drawn on Respondent's Law Inc. Account, and annotated "Stephen Cole," Respondent disbursed funds with which he had been

entrusted on behalf of Mr. Cole. Respondent successfully negotiated a reduction in Mr. Cole's medical lien from \$6,907.11 to \$3,000. Mr. Cole was adamant, however, that he wanted to pay nothing on the lien, leading to efforts by Respondent to determine if the lien might be reduced further. Respondent was unsuccessful in obtaining any further reduction and therefore paid the lien in the full amount of the originally negotiated reduction (i.e., \$3,000).

Garner

50. In about July of 2013, Respondent settled a civil action on behalf of Mechella Garner (hereinafter, Ms. Garner) against Bernard Merida.

51. The Settlement Sheet for Ms. Garner dated July 20, 2013 indicated, among other things, that:

- a. The settlement amount was \$10,068.91;
- b. Total expenses were \$337.50;
- c. Subtotal was \$9,731.41;
- d. Attorney's Fees of 1/3 were \$3,243.80;
- e. Worker's Compensation Lien 1/3 was \$3,243.80; and,
- f. Amount due to Mechella Garner was \$3,243.81.

52. On August 12, 2013, Respondent deposited the proceeds from the \$10,068.91 settlement check that he received on behalf of Ms. Garner into the Chiurazzi & Mengine LLC Escrow Account.

53. By check number 10850, dated August 19 2013, in the amount of \$3,243.81, drawn on the Chiurazzi and Mengine IOLTA Account, and annotated "Full/Final Settlement," Respondent paid to Ms. Garner her portion of her settlement.

54. At that time, Respondent had not deposited any funds from the \$10,068.91 settlement check into the Chiurazzi & Mengine LLC IOLTA Account.

55. Respondent misappropriated other entrusted funds unrelated to Ms. Garner by issuing check number 10850 in the amount of \$3,243.81 to Ms. Garner from the Chiurazzi & Mengine LLC IOLTA Account.

56. By check number 1108, dated September 5, 2013, in the amount of \$25,068.91, made payable to Chiurazzi and Mengine IOLTA Account, and annotated "Garner/Wise," Respondent transferred entrusted funds from the Chiurazzi & Mengine LLC Escrow Account.

57. By check number 3802, dated July 25, 2014, in the amount of \$3,243.80, made payable to AmeriHealth Casualty, drawn on Respondent's Law Inc. Account, and annotated "Garner-WC Lien," Respondent disbursed the funds with which he had been entrusted on behalf of Ms. Garner.

Geyer

58. In about June of 2011, Respondent settled a civil action on behalf of Antoinette Geyer against University of Pittsburgh Medical Center.

59. The Settlement Sheet for Ms. Geyer dated June 27, 2011 indicated, among other things, that:

- a. The settlement amount was \$112,000.00;
- b. Attorney's fees at 36% were \$40,320.00;
- c. Subtotal was \$71,680.00;
- d. Total expenses were \$3,316.34; and,
- e. Amount due to Ms. Geyer was \$68,363.66.

60. An Addendum to Ms. Geyer's Settlement Sheet indicated that the prior balance due to Ms. Geyer was \$68,363.66, a tax payment in the amount of \$3,622.80 was made, and the adjusted balance to Ms. Geyer was \$64,740.86.

61. By letter dated September 14, 2012, Respondent informed Ms. Geyer, among other things, that:

- a. After Respondent spoke with her yesterday, he thought it would be a good idea to provide her with an accounting of his escrowed amount of \$21,602.10 (as of January 1, 2012);

- b. In this correspondence, Respondent was including his original correspondence to her of September 20, 2011 where he informed her that he was escrowing \$21,602.12;

- c. Since that time, Respondent's firm had written checks to her or on her behalf in the amount of \$5,500.00 which were listed in his correspondence;

- d. The remainder of the monies that had been taken from her account reflected billings for various matters that Respondent had worked on her behalf;

e. Respondent had enclosed his up to date bill in this regard; and,

f. She would see that Respondent had \$13,702.10 remaining as of today.

62. As of September 14, 2012, Respondent was entrusted with \$13,702.10 on behalf of Ms. Geyer.

63. On October 31, 2012, the balance in Respondent's Law Inc. Account was a negative \$103.26.

64. By check number 3429, dated November 30, 2012, in the amount of \$1,000.00, made payable to Ms. Geyer, and drawn on Respondent's Law Inc. Account, Respondent disbursed part of the funds with which he was entrusted on her behalf.

65. By check number 3480, dated January 22, 2013, in the amount of \$500.00, made payable to "Michael Kalocay," drawn on Respondent's Law Inc. Account, and annotated "Geyer," Respondent disbursed funds with which he had been entrusted on behalf of Ms. Geyer.

66. By check number 3512, dated March 1, 2013, in the amount of \$1,000.00, made payable to Ms. Geyer, and drawn on Respondent's Law Inc. Account, Respondent disbursed funds with which he had been entrusted on behalf of Ms. Geyer.

67. By check number 3532, dated March 22, 2013, in the amount of \$1,000.00, made payable to "Chris Geyer," and drawn on Respondent's Law Inc. Account, Respondent disbursed funds with which he had been entrusted on behalf of Ms. Geyer.

68. By check number 3550, dated April 16, 2013, in the amount of \$2,000.00, made payable to "Chris Geyer," and drawn on Respondent's Law Inc. Account, and annotated "Geyer Distribution," Respondent disbursed funds with which he had been entrusted on behalf of Ms. Geyer.

69. By check number 3597, dated June 18, 2013, in the amount of \$1,000.00, made payable to Ms. Geyer, and drawn on Respondent's Law Inc. Account, and annotated "Escrowed funds," Respondent disbursed funds with which he had been entrusted on behalf of Ms. Geyer.

70. By check number 3659, dated September 12, 2013, in the amount of \$1,000.00, made payable to Ms. Geyer, drawn on Respondent's Law Inc. Account, and annotated "Draw from Escrow," Respondent disbursed funds with which he had been entrusted on behalf of Ms. Geyer.

71. By check number 3723, dated November 26, 2013, in the amount of \$600.00, made payable to "Chris Geyer," and drawn on Respondent's Law Inc. Account, Respondent disbursed funds with which he had been entrusted on behalf of Ms. Geyer.

72. By check number 3748, dated January 16, 2014, in the amount of \$277.00, made payable to Ms. Geyer, drawn on Respondent's Law Inc. Account, and annotated "Escrow," Respondent disbursed funds with which he had been entrusted on behalf of Ms. Geyer.

73. By check number 3760, dated April 2, 2014, in the amount of \$430.00, made payable to Ms. Geyer, drawn on Respondent's Law Inc. Account, and annotated "Geyer-Escrowed funds," Respondent disbursed funds with which he had been entrusted on

behalf of Ms. Geyer. A final disbursement of \$170.11 was made on August 4, 2014 bringing the total held in escrow on behalf of Ms. Geyer to \$0.

Guldner

74. By check dated November 7, 2013, in the amount of \$100,000.00, and made payable to "Tiphani Marie Guldner and Chiurazzi & Mengine LLC," Nationwide Insurance settled Ms. Guldner's claim against their insured, Roy Denjen.

75. On November 14, 2013, Respondent deposited or caused to be deposited the proceeds of the \$100,000.00 settlement check into the Chiurazzi & Mengine LLC IOLTA Account.

76. The Settlement Sheet dated November 18, 2013, in regard to Ms. Guldner's settlement against Roy Denjen indicated, among other things, that:

- a. The settlement amount was \$100,000.00;
- b. Attorney's fees (0) were \$0.00;
- c. Total expenses were \$143.24;
- d. Healthcare liens to Rawlings Company, in the amount of \$38,137.68 and to Healthcare Recoveries, in the amount of \$1,108.42;
- e. Various unpaid bills; and,
- f. Amount due to Ms. Guldner was blank.

77. The Settlement Sheet regarding Ms. Guldner's matter dated November 18, 2013 against GEICO (UIM) indicated, among other things, that:

- a. The settlement amount was \$25,000.00;
- b. Attorney's fees (33.3%) were \$8,333.33; and,
- c. Amount to Ms. Guldner was \$16,666.67.

78. An undated Settlement Sheet regarding Ms. Guldner's matter against Roy Denjen indicated, among other things, that:

- a. The settlement amount was \$100,000.00;
- b. Attorney's fees (0) were \$0.00;
- c. Expenses were \$143.24;
- d. There were two healthcare liens listed of \$24,610.74 and \$4,475.00;
- e. The unpaid bills totaled \$11,537.72; and,
- f. The amount due to Ms. Guldner was \$59,399.12.

The November 18, 2013 Settlement Sheet does not reflect the final disposition of the settlement funds. By way of explanation, Ms. Guldner's civil matter against Roy Denjen settled for \$100,000, the full policy limits, wherein Respondent agreed that he would not take a fee. Respondent worked to negotiate and/or have waived the substantial liens and unpaid medical bills on behalf of Ms. Guldner. Respondent was first able to have the healthcare liens substantially reduced, and Ms. Guldner was therefore initially

paid \$59,399.12 (It appears that a slight mathematical error exists in the Settlement Sheet. Ms. Guldner should have been paid a lesser figure, \$59,233.30, not \$59,399.12, a difference of \$165.82 in Ms. Guldner's favor.) Thereafter, Respondent further negotiated various medical bills, and on April 14, 2014, was able to pay Ms. Guldner an additional \$9,574.88. In the interim, Respondent settled Ms. Guldner's UIM Claim for the UIM limits of \$25,000 and took a 33.3% fee from that settlement only. After payment of a referral fee and Respondent's partner's share, Respondent was paid \$4,055.55 on the total of \$125,000 in settlement funds received on behalf of Ms. Guldner.

79. Shortly after November 18, 2013, Respondent issued Ms. Guldner a check, in the amount of \$59,399.12, for her portion of her settlement against Roy Denjen.

80. On December 30, 2013, Respondent deposited the proceeds of check number 11095, dated December 27, 2013, in the amount of \$11,371.90, made payable to "Anthony C. Mengine Law, Inc. Client Expense," drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Guldner 3rd P & UIM Expense," into Respondent's Client Expense Account.

81. As a result of disbursements which were not made to or on behalf of Ms. Guldner, on January 27, 2014, the balance in Respondent's Client Expense Account was a negative \$350.00.

82. On January 30, 2014, Ms. Guldner was paid \$16,666.67 from the Chiurazzi & Mengine LLC IOLTA Account, representing payment of the UIM Settlement.

83. As a result of disbursements which were not made to or on behalf of Ms. Guldner, on March 18, 2014, the balance in Respondent's Law Inc. Account was a negative \$293.69, which was \$11,371.90 below his entrustment on behalf of Ms. Guldner.

84. Respondent thus misappropriated at least \$11,371.90 of the funds with which Respondent had been entrusted on behalf of Ms. Guldner.

85. By check number 3761, dated April 14, 2014, in the amount of \$9,574.88, made payable to Ms. Guldner, drawn on Respondent's Law Inc. Account, and annotated "Remaining settlement," Respondent disbursed funds with which he had been entrusted on behalf of Ms. Guldner.

Kennedy

86. By letter dated August 18, 2011, Respondent informed Roger Kennedy, among other things, that:

a. Respondent had enclosed the Settlement Sheet regarding the case Respondent recently settled;

b. Respondent was already in receipt of a check for \$100,000.00;

c. He would see that Respondent escrowed \$50,000.00 to pay Mr. Kennedy's medical bills; and,

d. As Respondent informed him at their recent meeting, Respondent was confident that he would be able to have bills paid for under the \$50,000 and be able to provide Mr. Kennedy with additional funds.

87. The Settlement Sheet regarding Mr. Kennedy's matter against Jocelyn Nahhas dated August 23, 2011 indicated, among other things, that:

- a. The settlement amount was \$250,000.00;
- b. Respondent's attorney's fees at 40% were \$100,000.00;
- c. The subtotal was \$150,000.00;
- d. Medical Liens and Medicare Liens (escrowed) were \$50,000.00;

and,

- e. Amount to Mr. Kennedy was \$100,000.00.

88. By check number 1044, dated November 28, 2011, in the amount of \$15,029.12, made payable to "Anthony C. Mengine Law Inc.- Client Expense," drawn on the Chiurazzi & Mengine LLC Escrow Account, and annotated "Kennedy lien," Respondent transferred funds to his Client Expense Account on behalf of Mr. Kennedy.

89. At that time Respondent had misappropriated at least \$15,029.12 of the funds with which he had been entrusted on behalf of Mr. Kennedy.

90. By letter dated September 17, 2013, Respondent informed Mr. Kennedy, among other things, that:

- a. As Respondent had discussed with him, Respondent has held \$15,029.12 in Respondent's escrow account pending resolution of the Medicare lien;

b. When Respondent spoke with him the other day, Respondent informed him that Respondent felt comfortable releasing \$3,000.00 of this money to Mr. Kennedy at this time; and,

c. With that said, Respondent now had \$12,029.12 left in escrow.

91. By check number 3669, dated September 17, 2013, in the amount of \$3,000.00, made payable to Mr. Kennedy, drawn on Respondent's Law Inc. Account, and annotated "Partial Settlement," Respondent disbursed part of the funds with which he had been entrusted on behalf of Mr. Kennedy to him.

92. As a result of disbursements which were not made to or on behalf of Mr. Kennedy, on October 17, 2013, the balance in Respondent's Law Inc. Account was \$250.59 which was \$11,778.53 ($\$12,029.12 - \250.59) below Respondent's entrustment on behalf of Mr. Kennedy.

93. By letter dated November 15, 2013, Respondent informed Mr. Kennedy, among other things, that:

a. As Respondent and he previously discussed, Respondent held \$15,029.12 in Respondent's escrow account pending resolution of the Medicare lien;

b. When Respondent and he last spoke Respondent informed him that Respondent felt comfortable releasing \$3,000.00 of this money to him at that time;

c. With that said this left \$12,029.12 in escrow;

d. At this time, Respondent was releasing an additional \$3,000.00;
and,

e. This would leave the escrow account at \$9,029.12.

94. By check number 3719, dated November 15, 2013, in the amount of \$3,000.00, made payable to Mr. Kennedy, drawn on Respondent's Law Inc. Account, and annotated "Partial settlement," Respondent disbursed funds with which he had been entrusted on behalf of Mr. Kennedy.

95. By check number 3813, dated August 26, 2014, in the amount of \$4,633.99, made payable to "Medicare," drawn on Respondent's Law Inc. Account, and annotated "236660348A," Respondent disbursed funds with which he had been entrusted on behalf of Mr. Kennedy. The \$4,633.99 payment to Medicare was greater than the \$3,884.88 figure attributed to the Medicare lien on the Settlement Sheet signed by Mr. Kennedy on August 31, 2014. The difference was due to a penalty assessed in the amount of \$749.11 which Respondent paid without requesting reimbursement from Mr. Kennedy.

96. By check number 3814, dated August 26, 2014, in the amount of \$5,144.24, made payable to Mr. Kennedy, drawn on Respondent's Law Inc. Account, and annotated "Final Settlement," Respondent disbursed the remaining funds with which he had been entrusted on behalf of Mr. Kennedy.

Lewis

97. Prior to October of 2012, Respondent provided Kimberly Lewis with a Settlement Sheet in regard to her civil action against Linda Hudak which indicated, among other things, that:

- a. The settlement amount was \$90,000.00;
- b. Attorney's fees were 33% or \$30,000.00;
- c. The subtotal was \$60,000.00;
- d. Total expenses were \$989.88;
- e. Workers Compensation Lien was \$22,084.80; and,
- f. Amount due to Ms. Lewis was \$36,925.32.

98. Prior to October 24, 2012, Respondent:

- a. Distributed the funds from Ms. Lewis's settlement due to her in the amount of \$36,925.32; and,
- b. Transferred at least \$22,084.80 in entrusted funds on behalf of Ms. Lewis from Respondent's Chiurazzi & Mengine LLC IOLTA Account to Respondent's Client Expense Account.

99. As a result of disbursements which were not made to or on behalf of Ms. Lewis, on October 24, 2012, the balance in Respondent's Client Expense Account was \$413.67.

100. Respondent misappropriated at least \$21,671.13 (\$22,084.80 - \$413.67) of the funds with which he had been entrusted on behalf of Ms. Lewis.

101. On October 25, 2012, Respondent deposited the proceeds of a check, in the amount of \$52,607.36, into Respondent's Client Expense Account in regard to another client matter involving Victoria McGinnis.

102. On October 25, 2012, the balance in Respondent's Client Expense Account was \$53,212.03.

103. The funds that Respondent deposited into his Client Expense Account on behalf of Victoria McGinnis were not in any way related to Respondent's entrustment on behalf of Ms. Lewis.

104. By check number 4154, dated October 25, 2012, in the amount of \$22,084.80, made payable to "Pacific Employers Ins. Co.," drawn on Respondent's Client Expense Account, and annotated "cl: #494C1338260 - "Kim Lewis," Respondent disbursed the remaining funds on behalf of Ms. Lewis with which he had been entrusted.

McGinnis

105. By check dated October 16, 2012, in the amount of \$95,000.00, made payable to "Victoria McGinnis and Chiurazzi & Mengine, LLC, Her Attorney," State Farm Mutual Automobile Insurance settled Ms. McGinnis' civil action against their insured, Cheri West.

106. On October 22, 2012, Respondent deposited or caused to be deposited the proceeds of the \$95,000.00 check in addition to two other checks into the Chiurazzi & Mengine LLC IOLTA Account.

107. Previously, by check number 10156, dated October 15, 2012, in the amount of \$5,327.80, made payable to "Anthony C. Mengine Law, Inc. Client Exp.," drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Med. Lien/McGinnis," Respondent transferred funds to his Client Expense Account in regard to his entrustment on behalf of Ms. McGinnis.

108. By check number 10202, dated October 25, 2012, in the amount of \$52,607.36, made payable to "Anthony C. Mengine Law, Inc. Client Expense," drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Medicare Escrow/McGinnis," Respondent transferred funds to his Client Expense Account in regard to his entrustment on behalf of Ms. McGinnis.

109. As a result of disbursements which were not made to or on behalf of Ms. McGinnis, on October 31, 2012, the balance in Respondent's Law Inc. Account was a negative \$103.26.

110. Respondent misappropriated \$57,196.73 ($\$52,607.36 + \$5,327.80$) of the funds with which he had been entrusted on behalf of Ms. McGinnis.

111. As a result of disbursements which were not made to or on behalf of Ms. McGinnis, on November 19, 2012, the balance in Respondent's Client Expense Account was \$738.43.

112. By check number 3428, dated December 6, 2012, in the amount of \$2,307.49, made payable to the "Pennsylvania Dept. of Public Welfare," drawn on Respondent's Law Inc. Account, and annotated "McGinnis Lien #002058497," Respondent disbursed funds with which he had been entrusted on behalf of Ms. McGinnis.

113. By check number 3443, dated December 18, 2012, in the amount of \$10,000.00, made payable to Ms. McGinnis, and drawn on Respondent's Law Inc. Account, Respondent disbursed funds with which he had been entrusted on behalf of Ms. McGinnis.

114. By check number 3448, dated December 19, 2012, in the amount of \$10,000.00, made payable to Ms. McGinnis, and drawn on Respondent's Law Inc. Account, Respondent disbursed other funds with which he had been entrusted on behalf of Ms. McGinnis. The \$10,000 payment by Respondent to Ms. McGinnis is not reflected on the January 25, 2013 Settlement Sheet or the updated April 28, 2015 Settlement Sheet. The sum of \$10,000 was inadvertently paid to Ms. McGinnis in excess of the \$95,000 settlement.

115. By check number 3466, dated January 10, 2013, in the amount of \$10,000.00, and made payable to Ms. McGinnis, drawn on Respondent's Law Inc. Account, and annotated "Partial Settlement," Respondent disbursed funds with which he had been entrusted on behalf of Ms. McGinnis.

116. By check number 3483, dated January 25, 2013, in the amount of \$20,000.00, made payable to Ms. McGinnis, drawn on Respondent's Law Inc. Account,

and annotated "Partial Settlement," Respondent disbursed funds with which he had been entrusted on behalf of Ms. McGinnis.

117. On January 25, 2013, Respondent provided Ms. McGinnis with a Settlement Sheet in regard to her civil action which indicated, among other things, that:

- a. Settlement amount was \$95,000.00;
- b. Attorney's Fees at 33% were \$31,666.66;
- c. Subtotal was \$63,333.34;
- d. Total expenses were \$2,070.38;
- e. Total liens and expenses were \$10,767.87;
- f. The amount owed to Ms. McGinnis was \$52,565.47;
- g. Advance payment of \$10,000.00 on December 18, 2012;
- h. Advance payment of \$10,000.00 on January 10, 2013;
- i. Advance payment of \$20,000.00 on January 25, 2013; and,
- j. Amount remaining to Ms. McGinnis was \$12,565.47.

118. By check number 3605, dated July 5, 2013, in the amount of \$12,565.47, made payable to Ms. McGinnis, drawn on Respondent's Law Inc. Account, and annotated "Full/Final Settlement," Respondent disbursed settlement funds to Ms. McGinnis. After confirming that there was no remaining Medicare lien, Respondent, by check number 1001, dated April 27, 2015, in the amount of \$6,390.00, made payable to Ms. McGinnis,

drawn on Respondent's Anthony C. Mengine Law Inc. IOLTA Account ending in 7545, and annotated "Full/Final Settlement/Medicare letter received[sic]," Respondent disbursed the remaining settlement funds in Ms. McGinnis' matter.

McGregor

119. In about December of 2009, Respondent settled a civil action on behalf of Lori McGregor.

120. The Settlement Sheet in regard to Ms. McGregor's matter dated December 26, 2009 indicated, among other things, that:

- a. Settlement amount was \$175,000.00;
- b. Attorney's fees (33 1/3%) were \$58,333.33;
- c. Expenses were \$467.74;
- d. Escrowed amount for Medicare set-aside (Difference will be returned to Lori McGregor) was \$40,000.00; and,
- e. Amount to Lori McGregor was \$76,198.93.

121. By letter dated April 15, 2011, Respondent informed Ms. McGregor, among other things, that:

- a. Enclosed was a check in the amount of \$10,000;
- b. As she knew, initially, after her settlement, Respondent escrowed \$40,000;

c. Respondent advised her that Respondent needed to settle the Medicaid/Medicare issues with respect to her case;

d. As Respondent was comfortable that the Liens in this matter would be below \$30,000.00, Respondent was issuing this check today;

e. Respondent looked forward to resolving the remainder of the Lien in the near future; and,

f. Respondent would provide her with a full breakdown and send her whatever difference there was with respect to the remaining \$30,000.

122. By check number 3470, dated April 15, 2011, in the amount of \$10,000, drawn on Respondent's Client Expense Account, and made payable to Ms. McGregor, Respondent disbursed part of the funds with which he had been entrusted on her behalf.

123. By check number 3199, dated March 2, 2012, in the amount of \$5,000.00, made payable to Ms. McGregor, drawn on Respondent's Law Inc. Account, and annotated "Partial Payment from Lien Escrow," Respondent disbursed other funds with which he had been entrusted on behalf of Ms. McGregor.

124. By letter dated October 5, 2012, Respondent informed Ms. McGregor that:

a. Per her request, enclosed please find a check in the amount of \$1,000.00; and,

b. Please be advised that the balance of her escrowed funds was now \$13,000.00.

125. By check number 3380, dated October 4, 2012, in the amount of \$1,000.00, made payable to Ms. McGregor, drawn on Respondent's Law Inc. Account, and annotated "Balance/\$13,000/," Respondent disbursed other funds with which he had been entrusted on behalf of Ms. McGregor.

126. As of October 4, 2012, Respondent was entrusted with \$13,000 on behalf of Ms. McGregor.

127. On October 31, 2012, the balance in Respondent's Law Inc. Account was a negative \$103.26.

128. By facsimile dated November 27, 2012, Nancy Swiger with the Tort Recovery Unit with the Ohio Office of Medical Assistance informed Respondent, among other things, that the amount recommended for the state was \$14,178.83 but with a 1/3 reduction it would be \$9,452.55.

129. By letter dated December 10, 2012, Respondent informed Ms. McGregor that:

a. Respondent was writing to her today to inform her that Respondent had \$12,000.00 available in Respondent's Escrow Account regarding the potential Medical Assistance lien with the State of Ohio; and,

b. It was Respondent's expectation that she would not receive any monies from this escrow amount as the amount being requested by the State of Ohio was close to \$15,000.00 and Respondent was trying to obtain a reduction so that the \$12,000.00 would satisfy her lien requirement.

130. Respondent made various attempts to satisfy Ms. McGregor's lien with the Ohio Office of Medical Assistance and ultimately satisfied the lien in August 2015.

Morgret

131. By check dated November 21, 2012, in the amount of \$29,641.00, and made payable to "Timothy E. Morgret and Attorney(s) Chiurazzi & Mengine, LLC," Allstate Insurance Company settled Mr. Morgret's civil action against their insured, Louis Daddea.

132. On November 27, 2012, Respondent deposited or caused to be deposited the proceeds of the \$29,641.00 check and other unrelated miscellaneous checks into Respondent's Chiurazzi & Mengine, LLC IOLTA Account.

133. The undated Proposed Settlement Sheet in regard to Mr. Morgret's matter indicated, among other things, that:

- a. Settlement amount was \$29,641.00;
- b. Amount to Anthony Mengine for attorney fees at 33% was \$9,880.33;
- c. Total costs advanced were \$1,224.50, to be absorbed by Respondent rather than reimbursed;
- d. Amount to PMA Insurance (workers compensation lien) was \$9,880.33; and,
- e. Amount to Mr. Morgret was \$9,880.34.

134. By letter dated December 20, 2012, Brittani R. Agona, Esquire of Chiurazzi and Mengine, LLC informed Mr. Morgret that enclosed was a check, in the amount of \$5,000.00, representing an advance of partial settlement funds.

135. By check number 10332, dated December 20, 2012, in the amount of \$5,000.00, made payable to Mr. Morgret, drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Partial Settlement," Respondent made a partial distribution to Mr. Morgret in regard to his settlement.

136. By check number 10336, dated December 21, 2012, in the amount of \$13,536.17, made payable to "Chiurazzi & Mengine, LLC Escrow Account," drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Morgret," Respondent deposited or caused to be deposited those funds as well as another check (unrelated to the Morgret matter) into the Chiurazzi & Mengine LLC Escrow Account.

137. By check number 1089, dated January 22, 2013, in the amount of \$13,536.17, made payable to Anthony C. Mengine Law, Inc., drawn on the Chiurazzi & Mengine LLC Escrow Account, and annotated "Morgret," Respondent deposited funds with which Respondent was entrusted on behalf of Mr. Morgret and another check unrelated to the Morgret matter to Respondent's Law Inc. Account.

138. As a result of disbursements which were not made to or on behalf of Mr. Morgret, on February 27, 2013, the balance in Respondent's Law Inc. Account was \$179.24, which was \$13,356.93 (\$13,536.17 - \$179.24) below Respondent's entrustment on behalf of Mr. Morgret.

139. At that time, Respondent had misappropriated at least \$13,536.17 of the funds with which he had been entrusted on behalf of Mr. Morgret.

140. By letter dated August 19, 2013, Respondent informed Mr. Morgret that:

a. Enclosed was a check in the amount of \$2,500.00 representing further partial settlement proceeds; and,

b. To date, the total amount advanced was \$7,500.00.

141. By check number 3642, dated August 19, 2013, in the amount of \$2,500.00, made payable to Mr. Morgret, drawn on Respondent's Law Inc. Account, and annotated "Partial Settlement," Respondent disbursed additional funds to Mr. Morgret with which he had been entrusted on behalf of Mr. Morgret.

142. By check number 3810, dated August 25, 2014, in the amount of \$2,380.34, made payable to Mr. Morgret, drawn on Respondent's Law Inc. Account, Respondent disbursed additional funds to Mr. Morgret with which he had been entrusted on behalf of Mr. Morgret.

143. By check number 3817, dated September 6, 2014, in that amount of \$9,880.33, made payable to "PMA Companies," drawn on Respondent's Law Inc. Account, and annotated "Morgret W.C. Lien," Respondent disbursed the remaining funds with which he had been entrusted on behalf of Mr. Morgret.

Stennet

144. In September 2011, while still a member of Chiurazzi & Mengine, LLC, Respondent began representing Jeffrey Stennet in regard to an injury that he had sustained in a motor vehicle accident involving Paul Nye.

145. In January of 2013, Mr. Stennet agreed to settle the third-party claim for \$25,000.00.

146. In January of 2013, Respondent deposited or caused to be deposited the proceeds from the \$25,000.00 settlement into the Chiurazzi & Mengine LLC IOLTA Account.

147. After the deduction of Respondent's attorney's fees and costs, there was \$15,042.05 to be escrowed in regard to a workers' compensation lien in the approximate amount of \$107,000.00 and a lien from Oasis Legal Finance, LLC, in the amount of \$3,820.00.

148. By check number 10432, dated January 25, 2013, in the amount of \$15,042.05, made payable to Chiurazzi & Mengine LLC Escrow Account, drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Escrow/Stennet (3P)," Respondent transferred the \$15,042.05 to the Chiurazzi & Mengine LLC Escrow Account.

149. On February 22, 2013, Respondent deposited or caused to be deposited check number 1094, dated February 22, 2013, in the amount of \$15,042.05, made payable to "Anthony C. Mengine Law, Inc. Client Expense," drawn on the Chiurazzi & Mengine LLC Escrow Account, and annotated "Stennet," into his Client Expense Account.

150. At that time, Respondent had misappropriated at least \$15,042.05 of the funds with which he was entrusted on behalf of Mr. Stennet.

151. Subsequently, on or about February 25, 2013, Respondent made three transfers totaling \$14,243.31 from his Client Expense Account to his Law Inc. Account, consisting of the amounts of \$5,293.46, \$1,965.00 and \$6,984.85.

152. As a result of disbursements which were not made to or on behalf of Mr. Stennet, on February 27, 2013, the balance in Respondent's Law Inc. Account was \$179.24.

153. By check number 3540, dated April 4, 2013, in the amount of \$1,000.00, made payable to Mr. Stennet, drawn on Respondent's Law Inc. Account, and annotated "Advance-Uim," Respondent disbursed funds to Mr. Stennet with which he had been entrusted on his behalf.

154. On April 4, 2013, after check number 3540 cleared Respondent's Law Inc. Account, Respondent was entrusted with \$14,042.05 on behalf of Mr. Stennet.

155. By check number 3768, dated May 23, 2014, in the amount of \$13,002.05, made payable to "Chiurazzi and Mengine, LLC Escrow Account" (the payee was originally left blank), drawn on Respondent's Law Inc. Account, and annotated "Stennet (wc-lien)," Respondent disbursed funds to Mr. Chiurazzi with which he had been entrusted on behalf of Mr. Stennet.

Warfield

156. By check number 10998, dated November 12, 2013, in the amount of \$26,176.16, made payable to "Chiurazzi & Mengine Escrow Account," drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Escrow-WC Lien/Warfield," Respondent transferred funds to the Chiurazzi & Mengine LLC Escrow Account.

157. By check number 1111, dated November 15, 2013, in the amount of \$26,176.16, made payable to "Anthony C. Mengine Law, Inc. Client Expense," drawn on the Chiurazzi & Mengine LLC Escrow Account, and annotated "Warfield lien," Respondent deposited or caused to be deposited funds into his Client Expense Account.

158. At that time, Respondent had misappropriated at least \$26,176.16 of client funds with which he was entrusted.

159. When Respondent transferred the \$26,176.16 to Respondent's Client Expense Account and annotated that the funds were related to Ms. Warfield's matter, Respondent had not yet received any settlement funds in her case although a settlement had been reached.

160. On November 18 and November 20, 2013, Respondent transferred a total of \$23,000.00 to his Law Inc. Account from his Client Expense Account.

161. On December 2, 2013, the balance in Respondent's Client Expense Account was \$583.29.

162. On December 2, 2013, the balance in Respondent's Law Inc. Account was \$24.15.

163. By check dated December 4, 2013, in the amount of \$47,300.00, and made payable to "Mozella Warfield and Chiurazzi & Mengine LLC," Nationwide Insurance Company of America settled Ms. Warfield's civil matter.

164. On December 9, 2013, Respondent deposited or caused to be deposited the proceeds of the \$47,300.00 check into the Chiurazzi & Mengine LLC IOLTA Account.

165. By letter dated December 12, 2013, Respondent informed Ms. Warfield that:

a. Respondent was enclosing a check in the amount of \$10,000.00 representing partial settlement in her matter; and,

b. Respondent was working on resolving the workers' compensation lien and once Respondent had, Respondent would get back in touch with her regarding further settlement.

166. By check number 11003, dated November 12, 2013, in the amount of \$10,000.00, made payable to Ms. Warfield, drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Settlement," Respondent disbursed to Ms. Warfield part of the funds with which he had been entrusted on her behalf.

167. The Settlement Sheet dated May 27, 2014 regarding Ms. Warfield's matter indicated, among other things, that:

- a. Settlement amount was \$47,300.00;
- b. Attorney's fees (22.48%) were \$10,634.69;
- c. Total expenses were \$489.15;

d. Liens that were escrowed for worker's compensation were \$26,176.16;

e. Payment to Ms. Warfield on May 27, 2014 was \$840.71;

f. Remaining in escrow was \$25,335.45; and,

g. Amount to Ms. Warfield was \$10,840.71.

168. By check number 101, dated May 27, 2014, in the amount of \$840.71, made payable to Ms. Warfield, drawn on the K&M Law Group Escrow Account, number 2673752452, and annotated "Additional Settlement Funds," Respondent disbursed funds with which he had been entrusted on behalf of Ms. Warfield.

169. By check number 3807, dated August 12, 2014, in the amount of \$20,000.00, made payable to "Liberty Mutual Insurance Company", drawn on Respondent's Law Inc. Account, and annotated "Warfield," Respondent disbursed the funds with which Respondent had been entrusted on behalf of Ms. Warfield in regard to a workers' compensation lien that had been placed against her settlement.

170. By check number 3812, dated August 25, 2014, in the amount of \$5,335.45, made payable to Ms. Warfield, drawn on Respondent's Law Inc. Account, and annotated "Full settlement/work comp lien satisfied," Respondent disbursed to Ms. Warfield the remaining funds with which he had been entrusted on her behalf.

171. By Settlement Sheet dated August 26, 2014, regarding Ms. Warfield's matter, Respondent accounted for all the funds that Respondent had received and disbursed on her behalf.

Yurkovich

172. In June of 2012, Respondent settled a civil action on behalf of Amy Yurkovich against William Hantstann, et al for the amount of \$25,000.

173. On July 2, 2012, Respondent deposited the settlement check into Respondent's Chiurazzi & Mengine LLC IOLTA Account.

174. On December 20, 2012, Respondent deposited or caused to be deposited check number 10327, dated December 19, 2012, in the amount of \$15,616.74, made payable to "Chiurazzi & Mengine, LLC Escrow," drawn on Respondent's Chiurazzi & Mengine LLC IOLTA Account, and annotated "Yurkovich lien," to the Chiurazzi & Mengine LLC Escrow Account.

175. By check number 1088, dated January 27, 2012, in the amount of \$12,079.94, made payable to "Anthony C. Mengine Law, Inc.," drawn on the Chiurazzi & Mengine LLC Escrow Account, and annotated "Yurkovich," Respondent transferred funds with which he had been entrusted on behalf of Ms. Yurkovich to his Law Inc. Account.

176. As a result of disbursements which were not made to or on behalf of Ms. Yurkovich, on February 27, 2013, the balance in Respondent's Law Inc. Account was \$179.24, which was \$10,633.07 (\$10,812.31 - \$179.24) below Respondent's entrustment on behalf of Ms. Yurkovich.

177. At that time, Respondent had misappropriated \$10,812.31 (\$4,058.80 lien and \$6,753.51 owed to client) of the funds with which he had been entrusted on behalf of Ms. Yurkovich.

178. On about August 23, 2013, Respondent deposited or caused to be deposited a second settlement check, in the amount of \$25,000.00, on behalf of Ms. Yurkovich received as settlement in her civil action against Progressive Insurance, into the Chiurazzi & Mengine LLC IOLTA Account.

179. By check number 10881, dated September 6, 2013, in the amount of \$22,449.82, made payable to "Chiurazzi & Mengine Escrow Account," drawn on the Chiurazzi & Mengine LLC IOLTA Account, and annotated "Yurkovich-Lien," Respondent transferred funds with which he had been entrusted on behalf of Ms. Yurkovich to the Chiurazzi & Mengine LLC Escrow Account.

180. By check number 1109, dated September 6, 2013, in the amount of \$15,000.00, drawn on the Chiurazzi & Mengine LLC Escrow Account, made payable to "Anthony C. Mengine Law, Inc. Client Expense," and annotated "Yurkovich," Respondent deposited funds to his Client Expense Account.

181. By check number 1110, dated September 19, 2013, in the amount of \$7,449.82, made payable to "Anthony C. Mengine Law, Inc. Client Expense," drawn on the Chiurazzi & Mengine LLC Escrow Account, and annotated "Yurkovich," Respondent transferred funds to his Client Expense Account.

182. At that time, Respondent had misappropriated \$22,449.82 (\$15,000.00 + \$7,449.82) of the funds with which he had been entrusted on behalf of Ms. Yurkovich.

183. In September of 2013, Respondent transferred approximately \$22,000.00 from his Client Expense Account to his Law Inc. Account in regard to Respondent's entrustment on behalf of Ms. Yurkovich.

184. As a result of disbursements which were not made to or on behalf of Ms. Yurkovich, on December 2, 2013, the balance in Respondent's Law Inc. Account was \$24.15, which was \$28,534.65 (\$28,558.80 - \$24.15) below Respondent's entrustment on behalf of Ms. Yurkovich.

185. The Settlement Sheet dated February 11, 2014, in regard to Ms. Yurkovich's first civil action, against William Hantstann, et al., indicated, among other things, that:

- a. The settlement amount was \$25,000.00;
- b. Attorney's fees were \$7,253.50;
- c. Subtotal was \$17,746.50;
- d. Total expenses were \$390.00;
- e. Lien was in the amount of \$4,058.80;
- f. Total paid bills were \$6,544.19; and,
- g. Amount to Ms. Yurkovich was \$6,753.51.

186. By Settlement Sheet dated February 11, 2014, in regard to Ms. Yurkovich's second civil action, involving Progressive Insurance, it indicated among other things, that:

- a. Settlement amount was \$25,000.00;
- b. Attorney's fees were \$7,253.51;
- c. Amount to Ms. Yurkovich was \$17,746.49; and,

d. Total amount of settlement funds to Ms. Yurkovich was \$24,500.00.

187. By check number 3755, dated February 12, 2014, in the amount of \$24,500.00, made payable to Ms. Yurkovich, drawn on Respondent's Law Inc. Account, and annotated "Full/Final settlement/3rd Party & UIM," Respondent disbursed funds with which he had been entrusted on behalf of Ms. Yurkovich to her.

188. Respondent learned that the lien holder in Ms. Yurkovich's matter, Cover Colorado, was defunct and he was not able to find a successor in interest. Consequently, Respondent paid the balance of settlement funds totaling \$4,058.80 to Ms. Yurkovich directly by check dated July 28, 2015 and advised her that she would be responsible for any subsequent payment due.

189. For the separate client matters as set forth above, Respondent misappropriated entrusted funds totaling at least approximately \$235,000. The largest amount by which Respondent ever was out of trust was approximately \$89,000, on July 30, 2013.

Additional Findings

190. The majority of the clients involved in this matter have either remained clients of Respondent or referred other people to Respondent for legal service. N.T. 83-84.

191. All of the clients and lien holders set forth in the Stipulation received the full amount of funds to which they were entitled.

192. Respondent made full distribution in eleven of thirteen client matters before Petitioner filed its first DB-7 in October 2014, and funds in the other two matters were fully disbursed by the end of 2015. AE III.

193. No client filed a complaint against Respondent with Petitioner.

194. Upon leaving Chiurazzi & Mengine, LLC, Respondent formed Kontos Mengine Law Group ("KMLG"), a plaintiff's personal injury firm, with Attorney George Kontos. N.T. 72, 90.

195. Respondent and Mr. Kontos hold administrative meetings regarding the operations of KMLG every two weeks, which typically last approximately three hours. N.T. 152.

196. KMLG obtained a \$350,000 line of credit which is paid off at the end of every year. N.T. 87, 104.

197. KMLG hired and employs a third-party bookkeeping firm, YourCFO, to handle KMLG's financial books and records. N.T. 92.

198. Karen Smith of YourCFO serves as KMLG's bookkeeper and visits KMLG's offices once per week, maintains the books and records, manages expenses, makes payment on the line of credit, and administers the payroll with Respondent's direction. N.T. 92-93.

199. Ms. Smith meets with Respondent every time she comes to KMLG's offices to review the financial books and records and is available by email when she is not in the office. N.T. 96-98.

200. Ms. Smith manages and reconciles the four bank accounts maintained by KMLG: operational, payroll, escrow, and IOLTA. N.T. 97-98.

201. Ms. Smith regularly runs reports on KMLG's escrow and IOLTA accounts, which she provides regularly to both Respondent and Mr. Kontos. N.T. 100-103.

202. There have never been financial improprieties at KMLG since its inception in January 2014. N.T. 105.

203. George Kontos, Esquire credibly testified as both a fact and character witness.

204. Mr. Kontos testified that in June or July 2014, Respondent informed him that Respondent suspected he may be subject to discipline for his conduct regarding his handling of client funds at Respondent's old firm. This time frame was approximately six months before Petitioner filed its DB-7 request for Respondent's position in this matter. N.T. 144-145.

205. Respondent expressed remorse to Mr. Kontos for his actions, which Mr. Kontos believed was sincere and genuine. *Id.*

206. Mr. Kontos chose to remain partners with Respondent notwithstanding the instant disciplinary matter, testifying that Respondent remained the kind of person Mr. Kontos wanted to practice with because of Respondent's compassion, work ethic and earnestness. N.T. 143-147.

207. Mr. Kontos does not regret his decision to remain partners with Respondent. N.T. 146.

208. Respondent presented character witness testimony from David Spear, Esquire; David White, Esquire; and Gary Hunt, Esquire.

209. Each of these attorneys has known Respondent for more than ten years, and as long as three decades. N.T. 20-21, 34, 47-48.

210. Mr. Spear, Mr. White, and Mr. Hunt credibly testified that Respondent has an excellent reputation in the community for honesty and practices with a high level of competency and respect for clients and opposing counsel. N.T. 24-25, 37-38, 43, 49-51, 56.

211. Respondent voluntarily revealed to Attorneys White and Spear his involvement with the disciplinary authorities and the content of the charges made against him. N.T. 26-27, 38-39.

212. All three attorneys continued to refer clients to Respondent notwithstanding the charges of attorney misconduct against him. N.T. 30, 40-41, 50.

213. Respondent expressed his remorse and regret to Mr. White, Mr. Spear, and Mr. Hunt. N.T. 28, 39-40, 52-54.

214. Respondent testified credibly at the disciplinary hearing.

215. Respondent testified that: "It happened, quite frankly, because I was having severe financial difficulties, and it doesn't excuse the conduct one bit, but that's why it happened, and that's the only reason it happened." N.T. 81-82.

216. Respondent obtained a line of credit to address financial pressures relative to the Chiurazzi & Mengine firm, then "drained" his retirement account. Eventually Respondent depleted these funds and was in a financial bind. N.T. 86-87.

217. Respondent has been married for twenty years and he and his wife have three minor children. N.T. 73.

218. Respondent performs extensive volunteer and charitable work in his community. He serves on the board of directors for the Chamber of Commerce for the South Side of Pittsburgh; the Blue Heron Ridge Homeowners' Association; the Western Pennsylvania Trial Lawyers' Association; and the Brad Mar Pine Baseball Association.

Respondent volunteers his time to Tickets for Kids (an autism charity); the Lupus Foundation; the Kidney Foundation; the Women's Law Project; the Pine Richland Baseball Boosters; North Pittsburgh Youth Hockey; and the University Of Pittsburgh School Of Law Alumni Association. In addition, Respondent has volunteered his time as an attorney to set up the Haitian Relief Project foundation. N.T. 109-118.

219. In 2008, Respondent was inducted into the Allegheny County Academy of Trial Lawyers. N.T. 31, 38, 56.

220. Respondent repeatedly accepted responsibility for the actions which led to these disciplinary proceedings. N.T. 82-83, 84, 87, 125, 133, 138.

221. Respondent informed many people in the legal community about his disciplinary matter because he wanted to be transparent and tell people what was happening. Respondent acknowledged that telling people about his conduct was hard and embarrassing. N.T. 132-133.

222. Respondent expressed sincere and genuine remorse and appeared truly upset and ashamed by his misconduct.

223. Respondent cooperated with Petitioner.

III. CONCLUSIONS OF LAW

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

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, involving 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 1.15(f) – When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.

4. RPC 1.15(m) – All Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account.

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

6. Pa.R.D.E. 219(d)(1)(iii) – On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall file with the Attorney Registration Office a signed or electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures: The form shall set forth the name of each Financial Institution as defined in Pa.R.P.C. 1.15(a)(4), within or outside 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 attorney held 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 Consultant License need not request the information required by this subparagraph.

IV. DISCUSSION

This matter is before the Board for consideration following the issuance of the Committee's Report and Recommendation, containing majority and dissenting recommendations of discipline; Petitioner's exceptions thereto; and Respondent's opposition to Petitioner's exceptions. Petitioner initiated disciplinary proceedings against Respondent by way of a Petition for Discipline filed on April 25, 2017, which charged Respondent with violating multiple Rules of Professional Conduct in thirteen separate matters. 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). Petitioner satisfied its burden by way of the parties' Stipulation and related exhibits. Based on the evidentiary record, and for the reasons stated herein, we recommend that Respondent be suspended for a period of two years, with nine months of that period served and the remaining fifteen months stayed with probation, subject to the conditions that Respondent continue using the services of an outside bookkeeper and that he file quarterly reports with the Office of Disciplinary Counsel that he is in compliance with RPC 1.15(c).

Respondent's ethical misconduct spanned a period of nearly two years and involved thirteen separate client matters. Respondent failed to hold client funds separate; failed to promptly deliver funds to clients and third parties; failed to promptly distribute funds; failed to properly maintain an IOLTA account; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and failed to disclose on his attorney registration form all accounts holding entrusted funds. Generally, in all thirteen matters, Respondent, after depositing settlement checks into his IOLTA account, improperly disbursed entrusted funds to non-IOLTA accounts and used those funds for purposes other than payment of clients and/or third-party lien holders. These other purposes encompassed business-related obligations Respondent needed to meet but was unable to meet, resulting in his decision to use entrusted funds, in violation of his ethical responsibilities.

Respondent admitted that he engaged in misconduct while he was a partner at the firm of Chiurazzi & Mengine, LLC. Respondent described his financial predicament as the result of certain disagreements with his then-partner regarding fee splits and a line of credit, along with other points of contention, which led to Respondent's self-described financial difficulties. Respondent testified that in order to meet his business

obligations, he used a personal line of credit and “drained” his retirement account. Ultimately, and to his detriment, Respondent chose to use entrusted funds to meet these business-related obligations.

Respondent explained that he accomplished this unethical application of client funds for business purposes by depositing settlement monies into his corporation’s non-trust accounts, or transferring lien monies from settlements from the trust accounts in which the funds should have properly remained, and then using those funds for the short term. When it came time for a lien to be paid, Respondent paid those monies directly from his own business account. In every case, all clients and lien holders were timely notified of the receipt of settlement funds, all clients were fully paid their share of the settlement proceeds, and all lien holders were paid in reasonably prompt fashion.

Respondent’s mitigation evidence is weighty and meaningful. Even before Petitioner’s involvement, Respondent took affirmative steps to cease his misconduct and make his clients and third parties whole. Of the thirteen matters set forth in the Stipulation, Respondent made full distribution in eleven matters before Petitioner filed its first DB-7 on October 30, 2014, and funds in the other two matters were fully disbursed by the end of 2015, well before Petitioner filed its Petition for Discipline in 2017.

Upon establishing KMLG in January 2014 with Attorney Kontos, Respondent, in partnership with Mr. Kontos, was proactive in assuring that the new firm’s clients were protected and that the practice remained solvent. These steps included retaining an outside bookkeeping service, Your CFO, to maintain financial books and records, manage expenses, make payments on a line of credit, and administer payroll. Additionally, Respondent and Mr. Kontos conduct regular partnership meetings to review the firm’s accounts, have the bookkeeper run the escrow and IOLTA accounts and submit

regular reviews, and maintain a significant line of credit, which is paid off annually. The record establishes that there have been no financial improprieties since the inception of the firm. By his actions with KMLG, Respondent took steps to remediate the misconduct he engaged in at his former firm and to prevent future misconduct.

Respondent's character testimony is significant as Mr. Kontos and three other Pittsburgh-area attorneys testified on Respondent's behalf that he is sincerely remorseful for his actions and understands his significant wrongdoing. Mr. Kontos credibly testified that in the summer of 2014, approximately six months after he and Respondent had started KMLG and at least six months before Petitioner filed its first DB-7, Respondent apprised him of the possibility that Respondent could face disciplinary action due to his conduct at his former law firm, and expressed sincere remorse to Mr. Kontos. Despite this knowledge, Mr. Kontos chose to align his professional interests with Respondent and remain his partner, as he believes Respondent is a competent and compassionate lawyer with a strong work ethic. Three attorneys from the Pittsburgh legal community testified credibly that Respondent has a very good reputation in the community as an honest, trustworthy individual, and described Respondent as an excellent lawyer who treats the profession with respect.

Respondent's testimony is sincere and genuine, in that he is truly chastened by his experience, takes responsibility for his wrongdoing, and feels great remorse and shame for his actions. Respondent demonstrated his remorse and recognition of wrongdoing through his early efforts to reimburse monies and his cooperation with Petitioner by admitting to the vast majority of the allegations and entering into the Stipulation.

In addition to his remorse and cooperation, Respondent presented other significant mitigating factors. Respondent has practiced law since 1991 and has an unblemished history of discipline prior to the instant matter. Respondent has been an active, involved member of his community for many years, lending his time and talents to multiple non-profit organizations and youth activities, as well as to professional organizations. Respondent's activities through the years demonstrate his interest in giving back to and enriching the community where he lives and works.

The Committee, considering these facts, issued a Report, wherein the majority concluded that Respondent engaged in ethical misconduct that warrants a four-year stayed suspension with probation. Petitioner takes exception to the Committee's conclusions and contends that disbarment is warranted.

While there is no *per se* discipline in Pennsylvania, we are mindful of precedent and the need for consistency. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 189-91 (Pa. 1983). Our review of this matter must account for the totality of the circumstances, with appropriate weight given to aggravating and mitigating factors. *Id.*

Misappropriation of client or third-party funds is a serious offense that may warrant the sanction of disbarment, due to the severe breach of trust brought about by the attorney's misconduct. ***Office of Disciplinary Counsel v. Robert Monsour***, 701 A.2d 556 (Pa. 1997). Disbarment is an extreme sanction that is imposed for only the most egregious ethical violations, as 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. Harry Jackson***, 637 A.2d 615 (Pa.1994). Upon review of matters where disbarment was the consequence of an attorney's misappropriation of entrusted funds, we conclude

that the instant matter is distinguishable from the cited cases and does not warrant disbarment.

In ***Monsour***, in addition to misappropriating client funds over a two-year period, Monsour disobeyed a court order regarding the handling of funds for minor clients, did not fully cooperate with Petitioner's investigation, and only paid back his clients after Petitioner began its investigation. In ***Office of Disciplinary Counsel v. Suber Lewis***, 426 A.2d 1138 (Pa. 1981), Lewis deposited misappropriated funds into his personal accounts for personal use, retained client funds as legal fees without clients' consent, misrepresented to clients that he had paid medical bills when he in fact had not done so, failed to properly represent a client, had a history of discipline, and only made restitution to clients after Petitioner's investigation. In ***Office of Disciplinary Counsel v. James Knepp***, 441 A.2d 1197 (Pa. 1982), Knepp mishandled client monies and held insufficient funds in his escrow account over a four-year period. Knepp failed to return the client funds until Petitioner initiated an investigation.

In ***Office of Disciplinary Counsel v Raymond J. Quaglia***, No. 78 DB 2015 (D. Bd. Rpt. 11/15/2016)(S. Ct. Order 1/30/2017), Quaglia misappropriated and misapplied funds in three separate matters. He failed to deposit entrusted funds into a trust account and instead, deposited entrusted funds into his attorney operating account and converted the funds, in addition to which he wrote checks to himself from an estate account and failed to diligently administer the estate. Numerous aggravating factors persuaded the Board to recommend disbarment, which the Court imposed. These factors included Quaglia's contempt of court at the state and federal levels; filing a false attorney registration form stating he had been granted an IOLTA exemption; failing to pay taxing

authorities which resulted in liens and penalties; and failing to show any remorse and recognition of wrongdoing. The sole mitigation was Quaglia's lack of prior discipline.

In ***Office of Disciplinary Counsel v. Peter James Quigley***, 161 A.3d 800 (Pa. 2017), the Court disbarred Quigley for misconduct that involved misappropriation of entrusted funds in five separate client matters over a three-year period. Quigley made full restitution to four of five clients or third parties only after disciplinary proceedings were initiated. Quigley began taking the monies from his IOLTA account on an as-needed basis in order to run his law practice and to avoid detection from the Internal Revenue Service. Quigley attributed his mishandling of funds to a conflation of personal circumstances, such as his longtime bookkeeper leaving his employment, the disintegration of a romantic relationship, and a decline in business due to a misprint of his office telephone number in an advertisement.

Our review of these cases demonstrates that they are distinguishable from the instant matter, predominantly because Respondent in the instant matter demonstrated a level of mitigation that is absent in the cited cases, particularly Respondent's restitution of client funds prior to the commencement of a disciplinary investigation.

Unlike the cited cases, the instant Respondent made restitution of funds in eleven of thirteen cases prior to Petitioner's involvement and reimbursed funds in the remaining two matters by 2015, two years prior to the filing of the Petition for Discipline in 2017. While the unauthorized use of client or third party funds is inexcusable even when accompanied by an intent to return them, restitution of such funds may properly be considered in mitigation. ***Office of Disciplinary Counsel v. George J. Kanuck***, 535 A.2d 69 (Pa. 1987).

Respondent's reimbursement of funds independent of any disciplinary intercession demonstrates his remorse and appreciation of wrongdoing. Likewise, Respondent's concerted efforts to organize his new law firm to provide oversight and accountability of financial matters underscores his remorse, recognition of wrongdoing and intent to avoid wrongdoing in the future. Respondent exhibited a full understanding of the steps he needed to take to align his conduct with professional standards. Since KMLG's inception in January 2014, there have been no financial improprieties. We further note that the misconduct at hand occurred in 2012 and 2013. During the six-plus years that have passed, there has been no evidence of further improprieties.

Respondent's lack of prior discipline, cooperation, expressions of genuine remorse, compelling character evidence and significant community service are other persuasive and weighty mitigating factors that help distinguish the instant matter from the cited disbarment cases.

There are numerous instances of discipline less than disbarment imposed in matters involving misappropriation, with the sanctions varying in degree of severity due to the nuances of each matter. The Committee cites cases ranging from public reprimand to lengthy suspension with probation to support its recommendation of a four-year stayed suspension with four years of probation. Upon review, we conclude that the suspension matters are more applicable to the instant matter, due to the number of clients and duration of the misconduct.

Although each of the following precedents could be distinguished from Respondent's matter for one or more reasons, these precedents provide some insight into the appropriate length of suspension. "As is often the case with attorney disciplinary matters, there is no case precedent that is precisely on all fours... ." **Office of**

Disciplinary Counsel v. Anthony C. Cappuccio, 48 A.3d 1231, 1240 (Pa. 2012). See, e.g. ***Office of Disciplinary Counsel v. Marvin F. Galfand***, No. 25 DB 2004 (D. Bd. Rpt. 10/19/2005) (S. Ct. Order 2/7/2006) (Suspension for one year and one day; engaged in a fifteen-month pattern of commingling and converting client funds; repeatedly lied to clients regarding the status and receipt of their settlement funds; failed to make distribution in one case until the client retained other counsel; expressed remorse; reimbursed funds; no prior discipline); ***Office of Disciplinary Counsel v. Robert P. Maizel***, No. 26 DB 2014 (S. Ct. Order 11/20/2014) (Suspension on consent for two years; commingled personal and entrusted funds for a period of six months; misappropriated entrusted funds to pay business and personal expenses by transferring monies from IOLTA account into personal checking account; failed to maintain required records; made restitution after Petitioner's investigation commenced; mitigating factors included no prior discipline, remorse, cooperation, personal problems).

In some misappropriation matters, suspension was imposed with a period of probation. In ***Office of Disciplinary Counsel v. Andrew Wilson Barbin***, 176 DB 2017 (S. Ct. Order 4/9/2018), the Court suspended Barbin on consent for one year and one day with the suspension stayed in its entirety, and placed Barbin on probation for a corresponding period with conditions. Barbin's misconduct primarily consisted of IOLTA improprieties wherein he made withdrawals from his IOLTA account over 18 months in 35 separate transactions for his personal use, and maintained no records relating to the withdrawals. While Barbin was out of trust in at least four client matters, all clients were promptly paid the full amount they were due. Petitioner's investigation showed that Barbin had not properly handled the entrusted funds, but had not misappropriated such funds.

In the matter of ***Office of Disciplinary Counsel v. Anthony Marshall Moody***, No. 198 DB 2017 (S. Ct. Order 10/3/2018) the Court suspended Moody on consent for one year and one day and stayed the entirety of the suspension, with probation for a corresponding period. In two matters, Moody failed to hold client funds separate from personal funds and deposited entrusted funds into his business checking account, rather than properly placing the funds in an IOLTA or trust account. One client gave Moody funds to be used as payment on a Chapter 13 bankruptcy plan; however, Moody deposited all of the funds into his business checking account and more than one year following his retention by the client, he still had not filed a bankruptcy action. After the client sought another attorney, Moody returned the funds. Moody had no prior discipline.

In the matter of ***Office of Disciplinary Counsel v. Ronald S. Pollack***, No. 17 DB 2016 (S. Ct. Order 8/10/2016), the Court suspended Pollack on consent for a period of four years, with the suspension stayed in its entirety and probation imposed for four years with conditions. Pollack failed to maintain his IOLTA account and was significantly out of trust at various points over a period of years. Petitioner's investigation revealed eight client matters where misappropriation of funds or financial problems had occurred. Pollack used client funds to make payroll and pay office expenses. In a case where his clients were in bankruptcy proceedings, Pollack took his fee without approval from the bankruptcy judge. Pollack presented mitigating evidence that he had no prior history of discipline, cooperated with Petitioner, and had experienced a multitude of personal problems and health issues. Pollack's psychologist concluded that the stress Pollack experienced from these many problems negatively impacted his memory and actions.

Upon review of the totality of the circumstances, the case law and the Committee's majority and dissenting recommendations, we conclude that the appropriate sanction to address Respondent's misconduct must require him to serve a portion of his suspension, in recognition of the seriousness of the misconduct and the unacceptability of Respondent's actions in using client and third party funds in thirteen matters totaling at least approximately \$235,000 over a period of nearly two years to meet business expenses. Respondent's meaningful and weighty mitigation supports a period of probation, which will enable Respondent to practice law subject to his ability to meet certain conditions.

The primary function of the attorney disciplinary system is not punitive in nature but is to determine the fitness of an attorney to continue the practice of law and maintain the integrity of the legal system. *Cappuccio*, 48 A.3d at 1238-39. The goals of the attorney disciplinary system include protecting the public from unfit attorneys, maintaining the integrity of the bar, and upholding respect for the legal system. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Considering all of the facts and circumstances, we conclude that the recommended discipline of a two-year period of suspension, nine months served and fifteen months stayed with probation, sufficiently meets the goals of the disciplinary system. Requiring Respondent to continue maintaining the services of an outside bookkeeper and to file quarterly reports with Office of Disciplinary Counsel affirming his compliance with RPC 1.15(c) during his period of probation will ensure the protection of the public. The sanction is consistent with both the misconduct and the specific mitigation in this case.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, Anthony Charles Mengine, be Suspended for two years from the practice of law in this Commonwealth, with nine months to be served. The Board further recommends that the remaining fifteen months of the suspension be stayed and Respondent be placed on probation for fifteen months, subject to the following conditions:

1. Respondent shall continue to maintain the services of YourCFO or other qualified professional to manage bookkeeping responsibilities;
2. Respondent shall continue to maintain all required books and records, accessible for review by Office of Disciplinary Counsel within 20 days of a request without the necessity for issuance of a subpoena, see Pa.R.P.C. 1.15(c); and
3. Respondent shall submit quarterly reports to Office of Disciplinary Counsel attesting to his compliance with the Rules of Professional Conduct.

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: 
P. Brennan Hart, Member

Date: 9/24/2019