

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1501 Disciplinary Docket No. 3
Petitioner :
v. : No. 74 DB 2008
: Attorney Registration No. 66377
PATRICIA L. DATSKO, :
Respondent : (Cambria County)

ORDER

PER CURIAM:

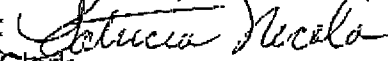
AND NOW, this 15th day of October, 2009 upon consideration of the Report and Recommendations of the Disciplinary Board dated June 24, 2009, the Petition for Review and responses thereto, It is hereby

ORDERED that Patricia L. Datsko is suspended from the Bar of this Commonwealth for a period of three years and she shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola

As of: October 15, 2009

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 74 DB 2008
Petitioner	:	
v.	:	Attorney Registration No. 66377
PATRICIA L. DATSKO	:	
Respondent	:	(Cambria 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

On May 15, 2008, Office of Disciplinary Counsel filed a Petition for Discipline against Patricia L. Datsko. Petitioner alleged that Respondent failed to competently attend to the representation of her clients; failed to properly account for fees or remit unpaid fees; commingled her own funds with client funds; failed to properly attend to and account for client funds or remit earmarked payments; failed to protect the client's interest on

termination of representation; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. The activities were alleged to have occurred over a more than two year period of time, from May 2003 through October 2005. Respondent filed an Answer to Petition for Discipline on July 2, 2008.

A pre-hearing conference was held on August 12, 2008. Respondent was not represented by counsel. Disciplinary hearings were held on September 24, October 6, and October 28, 2008, before a District IV Hearing Committee comprised of Chair Vicki Kuftic Horne, Esquire, and Members Evan E. Adair, Esquire, and Laura Cohen, Esquire. Respondent was represented by Thomas A. Crawford, Jr., Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on March 13, 2009, finding that Respondent engaged in professional misconduct and recommending that she be suspended for a period of three years.

Respondent filed a Brief on Exceptions on April 6, 2009 and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on April 20, 2009.

Oral argument was held on May 8, 2009, before a three member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on May 12, 2009.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 Patricia L. Datsko. She was born in 1967 and was admitted to practice law in the Commonwealth in 1992. Respondent's attorney registration mailing address is 415 W. Triumph Street, Ebensburg, PA 15931. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

Barnhart-Ceglar Matter

4. On November 2, 2003, Erma P. Sabo died testate, leaving a Last Will and Testament which provided that her niece, Andrea Barnhart-Ceglar be appointed as executrix.

5. Respondent met with Ms. Barnhart-Ceglar in late December 2003 to discuss Respondent's representation.

6. Respondent had not previously represented Ms. Barnhart-Ceglar. Respondent communicated to Ms. Barnhart-Ceglar verbally that she would not charge

more than a \$2,500 fee. She did not send a fee agreement engagement letter to Ms. Barnhart-Ceglar until March 19, 2004.

7. On January 14, 2004, Respondent and her client opened the Sabo Estate at the Register of Wills of Somerset County and Letters Testamentary were granted to Ms. Barnhart-Ceglar.

8. On February 23, 2004, Respondent and her client opened the estate checking account at First Commonwealth Bank. Both Respondent and her client were named on the estate account, both had signatory authority, and all bank statements were sent to Respondent.

9. Respondent was advised of or within a reasonable time should have discovered all of the assets of the decedent, which included a savings account in the amount of approximately \$38,000 (hereinafter First Commonwealth joint account), a savings account in the amount of approximately \$98,000 (hereinafter Ameriserv Financial Account), and a checking account in the amount of approximately \$1,400.

10. On February 23, 2004, pursuant to Ms. Barnhart-Ceglar's instructions, \$18,000 was deposited into the estate account, from a First Commonwealth Bank account which was a joint account that decedent had with Ms. Barnhart-Ceglar. The balance of the account was distributed directly to Ms. Barnhart-Ceglar.

11. On February 27, 2004, \$1,418.35 from decedent's account at Ameriserv Financial was deposited into the estate checking account.

12. On or about March 19, 2004, Ms. Barnhart-Ceglar signed the Pennsylvania Inheritance Tax Return for the estate which Respondent prepared.

13. The Inheritance Tax Return:

(a) Listed a joint account at First Commonwealth Bank as an individual account rather than as a joint account held by decedent and Ms. Barnhart-Ceglar;

(b) Paid inheritance tax on the entire balance of the joint account; and

(c) Distributed one-half of the balance of said account to the remainder heirs causing erroneous payment to the heirs in the amount of \$14,115.69.

14. The Pennsylvania Inheritance Tax Return did not list:

(a) A joint account at Ameriserv Financial held by decedent and Ms. Barnhart-Ceglar with a date of death value of \$98,847.94 resulting in interest due on the inheritance of at least \$669.97;

(b) The 2003 federal income tax refund as an asset of the estate, resulting in additional interest of \$7.50;

(c) The 2003 federal income tax as a debt paid from the estate proceeds, erroneously paying \$436.45 in income tax to the state; and

(d) Ms. Barnhart-Ceglar as a beneficiary of the estate.

15. There were further deficiencies in the preparation of the Pennsylvania Inheritance Tax Return:

(a) The dollar values inserted on the first and second pages of the Tax Return were not consistent;

(b) Respondent claimed pension income of the decedent and paid tax on the pension income when no income tax was due;

(c) Although Ms. Barnhart Ceglar signed the Tax Return in a timely manner on March 19, 2004, Respondent delayed filing the return for almost 11 months, on February 15, 2005, without updating the return (to include the payment of Pennsylvania Income tax), causing the return to be inaccurate and untimely and placing the estate in delinquent status;

(d) Respondent then paid \$5,531.28 for the Pennsylvania inheritance tax representing twice the amount due.

16. There were additional deficiencies in the administration of the Estate:

(a) Ms. Sabo's 2003 Pennsylvania Income Tax Return prepared by Respondent, showed tax due and paid in the amount of \$436.45, but incorrectly reported Ms. Sabo's retirement income, on which there was no Pennsylvania income tax due;

(b) Respondent delayed depositing estate funds, including a check for \$712 received by May 2004 that was not deposited until February 15, 2005;

(c) Respondent failed to deposit into either the estate account or her IOLTA account a check in the amount of \$2,797.42 sent by the Pennsylvania Department of Revenue on August 18, 2005 to Respondent representing the inheritance tax credit;

(d) Respondent failed to recognize that the savings account held by First Commonwealth Bank was a joint account held by decedent and Ms. Barnhart-Ceglar rather than an asset of the estate with the result that Respondent made inappropriate distribution to the heirs listed in the will;

(e) Respondent failed to ascertain or include in the estate assets that could have been discovered by reasonable inquiry including an Ameriserv account with a date of death value of approximately \$98,000.

17. On or about May 27, 2004, Respondent deposited the proceeds of two checks from the estate account, one in the amount of \$14,115.49 and the second in the amount of \$1,875.00 into her IOLTA account.

18. On May 27, 2004, Respondent made distributions from the IOLTA account of \$1,568.39 to each of nine heirs for a total of \$14,115.51.

19. During the course of representation, Respondent requested that the estate's executrix remit payment of \$1,845.87 to rectify a shortage of funds in the estate's checking account, which the executrix did. Respondent did not deposit the funds received in the estate checking account, but rather into her IOLTA account. As a result the checking

account was overdrawn, went into collections and by notice sent to Respondent on April 6, 2005, had incurred \$2,014.87 for overdraft charges.

20. On August 29, 2005, more than four months later and only after collection activities had been directed to Ms. Barnhart-Ceglar did Respondent finally satisfy from estate funds the \$2,014.87 in overdraft charges.

21. While the \$1,845.87 deposit may have been inadvertently deposited into Respondent's IOLTA account on July 28, 2004, the funds remained in that IOLTA account for almost three years, long after Respondent should have learned of and resolved the error.

22. On August 31, 2004, while Respondent was entrusted with at least \$1,845.87 in funds on behalf of the Sabo Estate and was holding those funds in error in her IOLTA account, the IOLTA account had a negative balance of -\$206.66.

23. This estate was not complicated.

24. By letter of November 14, 2005, Ms. Barnhart-Ceglar wrote to Respondent and, in part, stated that Respondent's services were no longer needed for the estate. Ms. Barnhart-Ceglar requested all pertinent documents related to the estate and a copy of the income tax return by November 23, 2005.

25. On January 16, 2005, a letter was sent by Theresa Homady, Esquire, replacement counsel for Ms. Barnhart-Ceglar, to Respondent requesting return of the estate file and making specific inquiries as to various estate issues.

26. It was not until February 21, 2006, after intervention by Attorney Homady, that Ms. Barnhart-Ceglar obtained the estate file from Respondent.

27. By letter dated April 29, 2006, Ms. Homady wrote to Respondent and, in part, stated that:

(a) Respondent charged the estate to prepare the 2003 state and federal income tax returns for the decedent but erroneously listed income that decedent received as a survivor annuity and paid \$436.45 in income taxes on the erroneously listed income;

(b) On or about May 27, 2004, Respondent received a cashier's check in the amount of \$1,845.87 from Ms. Barnhart-Ceglar which Respondent had requested and that the \$1,845.87 was the amount the estate account was overdrawn when Respondent finally paid the Pennsylvania inheritance tax more than nine months after she received the check;

(c) Respondent owed Ms. Barnhart-Ceglar the sum of \$2,014.87, which Respondent paid to a collection agency after Respondent failed to deposit the \$1,845.87 check into the estate account causing overdraft charges to the estate checking account;

(d) Respondent owed Ms. Barnhart-Ceglar the sum of \$61.24 which represented the interest paid on the Inheritance Tax Return which was filed late;

(e) Respondent's failure to recognize that the savings account held by First Commonwealth Bank was a joint account held by decedent and Ms. Barnhart-Ceglar rather than an asset of the estate cost Ms. Barnhart-Ceglar the sum of \$14,115.49, which Respondent had distributed to the heirs listed in the Will;

(f) Respondent failed to list the Ameriserv Financial savings account, a jointly held account between decedent and Ms. Barnhart-Ceglar which had a balance on the date of death of \$98,847.94, which cost Ms. Barnhart-Ceglar \$669.67 in additional interest;

(g) Respondent failed to claim the \$712 federal income tax refund as an asset of the estate, resulting in Ms. Barnhart-Ceglar owing an additional \$7.50 in tax;

(h) Ms. Homady was charging Ms. Barnhart-Ceglar \$1,000 to complete the estate; and

(i) Respondent should refund to Ms. Barnhart-Ceglar the total sum of \$17,868.77 no later than May 15, 2006.

28. Ms. Homady directed various follow-up communications to Respondent dated May 11, 2006, June 5, 2006 and June 22, 2006 without any substantive reply from Respondent until June 26, 2006, at which time Respondent advised she would be on vacation. By August 2, 2006, Respondent had neither met with nor communicated with Ms. Homady.

29. In her letter of May 11, 2006, Ms. Homady requested that Respondent expedite her review of the matter in that Ms. Homady would be filing a supplemental return on the estate no later than May 15, 2006 and the monies she was requesting from Respondent would be needed to pay the additional inheritance tax.

30. On or about December 19, 2006, Ms. Barnhart-Ceglar filed a legal malpractice action against Respondent in the Somerset County Court of Common Pleas on behalf of herself individually and as the Executrix of the Estate of Erma P. Sabo.

31. On or about November 29, 2007, the account was settled and discontinued, the terms of which settlement are confidential.

32. The remaining \$1,718.87 from the Sabo Estate remained in Respondent's IOLTA account until Respondent, by check dated April 23, 2007, remitted to Ms. Barnhart-Ceglar the amount of \$1,718.87. This check was issued 17 months after Respondent had been discharged as attorney for Ms. Barnhart-Ceglar.

The Pyles Matter

33. On January 12, 2006, Chris and Beth Pyles met with Respondent at her office to discuss her representation of them in connection with real estate the Pyles were considering purchasing.

34. Respondent performed services on behalf of the Pyles. At their initial meeting, Mr. and Mrs. Pyles gave Respondent a check dated January 16, 2006, in the amount of \$500, to finalize the real estate transaction.

35. The Pyles closed on the property on March 31, 2006.

36. By letter dated April 19, 2006, to Mr. and Mrs. Pyles, Respondent sent an invoice dated April 19, 2006 showing a credit balance of \$70 which the letter stated was enclosed with the correspondence. The \$70 check was not enclosed with the correspondence received by Mr. and Mrs. Pyles.

37. By letter dated April 24, 2006, Mr. and Mrs. Pyles wrote to Respondent, communicating their dissatisfaction with Respondent's services and invoice, noting that the \$70 refund check had not been enclosed with the April 19, 2006 letter and stating that if the matter was not resolved properly, they would seek recourse.

38. Other than her May 4, 2006 letter which indicated that she would review their letter and respond to them the following week, Respondent did not respond to the Pyles' communication.

39. In July 2006, Mr. and Mrs. Pyles filed a civil action against Respondent in Bedford County and obtained a default judgment which Respondent paid by check issued on December 12, 2006.

Office of Disciplinary Counsel Matter

40. A large portion of Respondent's law practice has involved real estate matters, including sales and purchase of property and mortgage refinancing.

41. Respondent was an approved attorney for Penn Attorneys Title Insurance Company from April 1998 until October 2005.

42. Respondent obtained what Penn Attorneys Title Insurance termed an "instant policy", which was issued prior to closing and became effective once the mortgage was recorded, the approved attorney completing the final policy documents with detail as to the document recording and effective date.

43. As an approved attorney, Respondent generally received payment by the buyer or borrower of the title insurance charges at the time of settlement, which charges were included on the HUD-1 Settlement statement.

44. Penn Attorneys Title Insurance Company established its "instant policy" system so that approved attorneys could simply fill in several blanks after recording of documents and the policies would become effective, with the premium due to be paid to Penn Attorneys.

45. By checks numbered 5587, 5588, 5589, 5590 and 5591 issued from her IOLTA account on August 30, 2004, Respondent paid to Penn Attorneys a total of \$1,534.50 in payment of premiums and other fees due for title insurance matters which had closed more than two years earlier.

46. Prior to payment of the August 30, 2004 checks to Penn Attorneys Title Insurance Company, the balance in Respondent's IOLTA account on August 31, 2004 was (negative) -206.66. As of that date Respondent, at a minimum, was entrusted with \$5,480.37 on behalf of three clients: \$1,845.87 in funds from Ms. Barnhart-Ceglar for the Sabo Estate; \$1,534.50 in funds paid by clients for the title insurance provided by Penn

Attorneys; and \$2,100.00 remaining as to funds received on behalf of another client, Bharat Patel.

47. Respondent received by wire a deposit of \$47,560.00 on behalf of a client, Gary P. Balog, which allowed the five checks issued on August 30, 2004 to Penn Attorneys to clear on September 3, 2004.

48. As of August 30, 2005, Respondent owed Penn Attorneys \$6,544 in premiums and other fees due as to policies issued and closings held as early as May 2003.

49. In October 2005, Penn Attorneys ceased doing business with Respondent because of ongoing problems in its receipt from Respondent of insurance documents and premium payments in a timely manner.

50. Respondent eventually paid to Penn Attorneys all outstanding premiums due.

51. Office of Disciplinary Counsel examined Respondent's IOLTA account bank records over an eight-month period beginning July 1, 2004 and ending February 28, 2005.

52. On or about July 1, 2004, Respondent received and deposited into her IOLTA account the sum of \$7,250.00 on behalf of Bharat Patel, whom she was representing in a real estate matter.

53. In October 2004 Respondent represented Scott and Karen Williams in connection with a mortgage refinancing and, in the course of her retention, received in her IOLTA account a wire transfer on behalf of Mr. and Mrs. Williams in the amount of

\$64,191.78. By October 14, 2004, Respondent had used from her IOLTA account eight checks in the total amount of \$4,367.48 on behalf of Mr. and Mrs. Williams which were paid by October 25, 2004.

54. In December of 2004, the sums of \$4,400 and \$34,288.93 were deposited into Respondent's IOLTA account on behalf of Curtis McConaughey, whom Respondent was representing in a real estate matter. Of this, \$400.00 was in the form of a check to TLC Mortgage, a firm which Respondent owned or was affiliated with.

55. On January 25 and 26, 2005, a wire transfer of \$44,473.64 and a check in the amount of \$3,380.13 were deposited into Respondent's IOLTA account on behalf of Daniel and Rodonna Fletcher, whom Respondent was representing in a real estate matter.

56. From July 1, 2004 to February 28, 2005, Respondent's IOLTA account was out of trust on 52 occasions, including but not limited to the following:

(a) August 30, 2004, after issuing the five checks to Penn Attorneys Title Insurance Company as discussed above;

(b) September 3, 2004, as proceeds deposited for the Balog matter allowed those checks previously issued to Penn Attorneys Title Insurance to be paid and clear the account;

(c) October 20, 2004, as to expenditures of \$2,100.00 for the Patel matter discussed above;

(d) October 29, 2004, as the \$49,909.25 balance in Respondent's IOLTA account that date was less than the amount of funds entrusted for the Sabo Estate and Williams matters alone;

(e) December 31, 2004, when the \$60,156.01 balance in Respondent's IOLTA account was \$20,505.04 less than the aggregate amount of money then entrusted to Respondent as to the Williams and McConaughy matters alone, without regard to the Sabo Estate funds still being entrusted;

(f) January 26, 2005, when Respondent was entrusted with \$80,829.49 but the balance in her IOLTA account was \$71,374.47;

(g) The dates from January 27, 2005 until February 11, 2005 when negative balances were maintained in Respondent's IOLTA account despite the Sabo Estate funds, at a minimum, still being entrusted to Respondent; and

(h) February 28, 2005, when the \$596.88 balance in Respondent's IOLTA account was less than the \$1,845.87 of the Sabo Estate then entrusted to Respondent, without regard to any other entrustments.

57. From July 1, 2004 to February 28, 2005, Respondent's IOLTA account had a negative balance on 20 occasions.

(a) The first instance was on June 17, 2004, when a check to Independent Mortgage in the amount of \$7,281.40 caused a negative balance of -\$2,352.19 prior to imposition of bank charges, resulting in the return of that check unpaid.

(b) The second instance occurred on August 31, 2004, when issuance of checks to Penn Attorneys Title Insurance produced a balance of -\$206.62 prior to imposition of bank charges.

(c) The third instance occurred on September 27, 2004, when issuance of a check to National City Mortgage in the amount of \$149,163.72 created a balance of -\$2,156.53 prior to return of that check unpaid due to non-sufficient funds.

(d) Issuance of a check to Greentree CDC in the amount of \$29,829.24 created a balance of -\$12,034.16 on January 11, 2005 prior to return of that check unpaid due to non-sufficient funds.

(e) An outgoing wire of funds in the amount of \$29,979.24 relating to the McConaughey matter created a balance of -\$359.64 on January 27, 2005 prior to imposition of bank charges.

(f) Checks to Attorney Greg Javardian, Rodonna Fletcher and TLC Home Mortgage created a balance of -\$5,859.04 on January 27, 2005 prior to assessment of bank charges, all three of these checks being returned unpaid due to non-sufficient funds.

(g) A negative balance continued in Respondent's IOLTA account until a cash deposit of personal funds was made on February 11, 2005.

(h) The \$3,380.13 check payable to Ms. Fletcher was returned unpaid a second time on February 7, 2005.

58. During the month of February 2005, Respondent issued to Penn Attorneys Title Insurance 16 checks from her IOLTA account in the total amount of \$4,339.00, all of these being issued for three to 24 months after closing on the transactions involved.

59. From September 30, 2004 to February 28, 2005 and exclusive of a \$4,000 deposit on September 14, 2004, Respondent deposited at least \$29,300.00 in personal funds into her IOLTA account, these including:

(a) \$5,000.00 from Nicholas and Cynthia Datsko, Respondent's parents, on September 30, 2004;

(b) \$13,000 from Cynthia Datsko on January 19, 2005;

(c) \$1,000 from Respondent on February 2, 2005;

(d) \$3,200 from Respondent on February 11, 2005;

(e) \$4,000 from Respondent on February 15, 2005;

(f) \$1,000 from Respondent on February 16, 2005; and

(g) \$1,300 from Respondent on February 28, 2005.

60. In December 2004, Respondent disbursed to herself funds from her IOLTA account in the aggregate amount of \$9,000.00 in five checks issued from her IOLTA account, none of which were related to any entrustment nor on behalf of any client or third person, these being checks numbered 5742 dated December 2, 2004 in the amount of \$2,050.00, 5744 dated December 16, 2004 in the amount of \$700.00, 5745 dated December 15, 2004 in the amount of \$3,000.00, 5747 dated December 23, 2004 in the amount of \$450.00 and 5748 dated December 23, 2004 in the amount of \$2,800.00.

61. Respondent misappropriated the proceeds of checks numbered 5742, 5744, 5747 and 5748 above which totaled \$9,000.00.

62. From July 1, 2004 to February 28, 2005, Respondent repeatedly used funds for purposes other than those purposes for which the funds had been entrusted by her clients.

63. Respondent testified at the disciplinary hearing.

64. Upon learning of overdrafts in the IOLTA account, Respondent asked her mother, a bookkeeper, to review records to discover the cause of the difficulties, but did not offer any evidence at the hearing regarding the review of the account.

65. Respondent believes that no one lost any money as a result of her handling of the IOLTA account. Respondent took no constructive measures after her IOLTA account first went out of trust to protect against repetition of the problem.

66. Although it took time to achieve, Respondent did pay or refund to Ms. Barnhart-Ceglar, Mr. and Mrs. Pyles, Penn Attorneys Title Insurance and other clients and third parties the monies due to them.

67. Respondent described physical ailments suffered by her minor daughter but did not provide a medical report or other specifics concerning her daughter's illness.

68. Respondent described neurological problems she experienced but offered no documentation regarding her doctor or her treatment.

69. Respondent offered the testimony of Judge Thomas Ling of the Bedford County Court of Common Pleas and Carol Ann Rose, Esquire, in support of her claims that her daughter's illness caused her professional misconduct.

70. Respondent revealed to Judge Ling that she was having some emotional problems, but he was not aware of problems with Respondent's daughter.

71. Ms. Rose was aware that Respondent had problems at home, but was not aware of any specifics.

72. Respondent did not acknowledge or accept responsibility for her misconduct.

III. CONCLUSIONS OF LAW

By her conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.15(a) – A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
4. RPC 1.15(b) – Upon receiving funds or other property in which a client or

third person has an interest, a lawyer shall promptly notify the client or third person. 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 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 such property.

5. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

6. Respondent did not violate RPC 8.4(c), as she did not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of a Petition for Discipline charging Respondent with numerous acts of professional misconduct relating to her mishandling of two client matters and her mishandling of her IOLTA account. Petitioner bears the burden of proving, by a preponderance of the evidence that is clear

and satisfactory, that Respondent's actions constitute professional misconduct. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000). The record demonstrates that Petitioner has met this burden of proof.

Three days of hearings were held, during which time the Hearing Committee considered Petitioner's 47 exhibits and the testimony of seven witnesses. Respondent, who was represented by counsel, testified on her own behalf and offered three witnesses and four exhibits.

The facts are set forth in detail above. Suffice it to say that Respondent's history of representation of Ms. Barnhart-Ceglar evidences a failure to attend to the affairs of the client in a competent, diligent, timely or professional manner. As found above, the estate was not a difficult or complicated matter. Reasonable diligence and attentiveness on Respondent's part should have closed the estate in a reasonable manner. Respondent's errors were not excusable, and indeed Respondent did not offer any justification for the inadequate way she handled the estate. The representation was fraught with sloppiness and culminated in Respondent's unwillingness to assume responsibility for her actions.

The Pyles matter was a situation wherein a prompt refund to the clients would have resolved the matter. While the failure to enclose the \$70 check may have been inadvertent, Respondent's continued retention of the funds after learning that the check had not been supplied to the clients was inexcusable.

Respondent's mismanagement of her IOLTA account is troubling. The facts support a finding that the account was out of trust on 52 occasions and had a negative balance on 20 occasions. In order to bring the account into trust, Respondent deposited at last \$29,300 in personal funds into the account. Even so, Respondent in December 2004 issued from the IOLTA account to herself five checks in the total amount of \$9,000, none of which was related to any entrustment as to which monies were due to her or related to fees for services rendered. Respondent was unable to explain the many discrepancies in her account, and although she claimed that her mother, a bookkeeper, reviewed the account, Respondent presented no evidence as to a review of the account.

The most problematic issue with the IOLTA account is Respondent's reaction to the overdrafts and negative balances. She contends that no one lost any money, and claims she does not know why there was a shortage in the account. Respondent has yet to acknowledge her professional obligation to properly maintain the account.

Respondent presented evidence in an attempt to mitigate the disciplinary sanction; however, the Board finds that such evidence is not connected to the events at issue and not substantiated. Respondent's testimony of her daughter's illness was unspecific. She did not provide independent evidence, such as a medical report, and could not pinpoint dates of when her daughter was life-flighted to Pittsburgh, although she claims it was many times.

Respondent's testimony was not corroborated by her other witnesses. Indeed, Judge Thomas Ling testified that Respondent told him about some emotional

problems she was having, but nothing about her daughter. Attorney Carol Rose offered similar testimony in that Respondent informed her about problems at home, but nothing specific. Respondent's reliance on the testimony of these witnesses is misplaced, as it does not support her claims of mitigation. Respondent testified that she herself had physical difficulties which contributed to her misconduct, yet she could not even offer the name of her doctor. This is not to say that Respondent does not have the problems she claims, but rather that her evidence is insufficient to support a finding that these problems contributed to her misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). The sole mitigating factor in Respondent's favor is that she has no prior history of discipline since her admission to practice law in 1992.

The Hearing Committee has recommended that Respondent be suspended for a period of three years. After careful review of this matter, the Board concurs with this conclusion. Respondent exhibited persistent negligence and a lack of comprehension as to her obligations as an attorney, but her actions do not rise to a level of outright dishonesty that would indicate a more severe discipline. While Respondent contends that three years is a "harsh and destructive suspension" and "clearly excessive", it is in line with the outcomes of prior similar matters. Precedent has established that unauthorized dealing with client money requires some form of public discipline due to the breach of trust involved. Office of Disciplinary Counsel v. Gwendolyn N. Harmon, No. 15 DB 2003, 72 Pa. D. & C. 4th 115 (2004). Ms. Harmon was suspended for three years after her escrow account was out of trust on 167 occasions and at one point out of trust in the amount of

\$26,516.08. In the matter of Office of Disciplinary Counsel v. John T. Olshock, No. 28 DB 2002, No. 862 Disciplinary Docket No. 3 (Pa. Oct. 24, 2003), Mr. Olshock was suspended for three years following his misappropriation of \$22,000. In contrast to the instant matter, Mr. Olshock admitted his misconduct, expressed remorse and demonstrated that he had changed his office procedures to prevent similar misconduct in the future.

The Board is cognizant that in determining appropriate discipline, disciplinary sanctions are not designed solely for their punitive effects, but are intended to protect the public from unfit attorneys and maintain the integrity of the legal profession and the judicial process. Office of Disciplinary Counsel v. Price, 732 A.2d 599 (Pa. 1999). Respondent's obliviousness to her misconduct and refusal or inability to acknowledge the acts, particularly in regard to the IOLTA account, place the public in danger, as the risk of her recidivism is high. It is to be hoped that a three year period of suspension will reinforce in Respondent her professional obligations and allow her time to reflect on her law practice and procedures.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Patricia L. Datsko, be suspended from the practice of law for a period of three years.

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: Charlotte S. Jefferies
Charlotte S. Jefferies, Board Member

Date: June 24, 2009

Board Members Baer and Momjian were absent and did not participate in the adjudication.