[J-97-2012]
IN THE SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL, Petitioner | : | No. 1800 Disciplinary Docket No. 3 |
| | : | No. 98 DB 2010 |
| v. | : | |
| | : | Attorney Registration No. 43312 |
| | : | (Philadelphia) |
| MELVIN T. SHARPE, JR., Respondent | : | |
| | : | Argued: September 11, 2012 |

**ORDER**

**PER CURIAM:** **DECIDED: SEPTEMBER 28, 2012**

Upon consideration of the Report and Recommendations of the Disciplinary Board dated November 18, 2011, and following oral argument, it is hereby

ORDERED that Melvin T. Sharpe, Jr., is disbarred from the Bar of this Commonwealth and he 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.

Judgment Entered 9/28/2012

CHIEF CLERK

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL<br>Petitioner | : | No. 98 DB 2010 |
| v. | : | Attorney Registration No. 43312 |
| MELVIN T. SHARPE, JR.<br>Respondent | : | (Philadelphia) |

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

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

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

## I. HISTORY OF PROCEEDINGS

On June 15, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Melvin T. Sharpe, Jr., containing three charges. On July 14, 2010, Respondent filed a verified Response to Petition for Discipline, which failed to admit or deny the factual allegations in the Petition.

A prehearing conference was held on August 20, 2010. Respondent was instructed to provide Disciplinary Counsel, prior to the disciplinary hearing, with any

documents he sought to introduce into evidence. Respondent provided no additional documents.

A disciplinary hearing was held on October 1, 2010, before a District I Hearing Committee comprised of Chair Michael A. DeFino, Esquire, and Members Scott H. Mustin, Esquire, and W. Matt Reber, Esquire. Respondent appeared pro se. Petitioner offered the testimony of two witnesses and documentary exhibits. Respondent testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on May 6, 2011, concluding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline, and recommending that he be Disbarred.

Respondent filed a Brief on Exceptions on June 10, 2011, and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on June 23, 2011.

Oral argument was held on July 18, 2011, before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on July 23, 2011.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E.

Rule 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Melvin T. Sharpe, Jr. He was born in 1958 and was admitted to practice law in the Commonwealth in 1985. He maintains his office at 2836 West Harold Street, Philadelphia, PA 19132. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a record of discipline consisting of an Informal Admonition administered in 2005 for violations of Rules of Professional Conduct 1.3, 1.4(a) and (b), and 1.16(d).

**The Ott Matter**

4. On April 23, 2000, Emmet Dunnigan, a resident of Philadelphia, died testate.

5. On May 22, 2000, the decedent's will was admitted to probate at the Office of the Register of Wills in Philadelphia.

6. Mr. Dunnigan's will bequeathed all of his personal property and the residue of his Estate to his two sisters, Lillian Kennedy and Pauline Carter, or their survivors, and appointed Arnold B. Green as Executor to the Estate.

7. Mr. Green engaged Respondent in 2000 as counsel to the Dunnigan Estate.

8. Mr. Green opened an account for the Dunnigan Estate at Sovereign Bank, for which only he, as the Executor, had signature authority. He opened another

Estate account at Citizens Bank, which required both Respondent's and Mr. Green's signatures to transact business on the account.

9. On April 5, 2010, Respondent testified at a subpoena return in this disciplinary matter that Mr. Green depended on Respondent to pay all of the distributive heirs their money. (ODC-5 at p.63)

10. In 2002, Respondent made an initial distribution of $50,000 each to Ms. Carter and Ms. Kennedy, and informed them that there was approximately $50,000 left to be distributed between the two.

11. On or about December 20, 2004, Respondent sent Ms. Kennedy a check in the amount of $21,766.97, representing the final distribution of the proceeds of the Estate.

12. Respondent sent Ms. Carter's final distribution check of $21,766.97 to her at the same time as Ms. Kennedy's, but was unaware that Ms. Carter had died on August 30, 2004.

13. In or about early 2005, Respondent learned from Ms. Kennedy that Ms. Carter had died.

14. Upon hearing that Ms. Carter had died, Respondent stopped payment on the check, which was never negotiated, and approximately $21,000 remained in the Estate account.

15. Ms. Kennedy informed Respondent that Ora Ott, Ms. Carter's daughter and sole heir, was living in the South.

16. Respondent told Ms. Kennedy to have Ms. Ott contact him whenever Ms. Kennedy contacted Ms. Ott.

17. According to Respondent, periodically Ms. Kennedy would call Respondent or he would call her, and Respondent would ask if she had made contact with her niece, and Ms. Kennedy would tell him that she had not yet contacted Ms. Ott. (N.T. 133)

18. Apart from speaking to Ms. Kennedy, Respondent took no other steps to try and find Ms. Ott, because according to Respondent, there was "nothing that [he] could do", he "[had] been in numerous matters where you just have to kind of wait for someone to appear"; he "didn't have a pool of funds to do—attempt to find this heir"; and "didn't know if Ms. Ott was deceased or anything." (N.T. 132-134)

19. Respondent failed to take even modest, inexpensive steps to locate Ms. Ott.

20. During the course of the Estate administration, Respondent and Mr. Green had pre-signed all of the Estate account checks, leaving the payee blank.

21. At or about the time Respondent learned of Ms. Carter's death, there were "still a couple of checks left over" and that had been previously signed by him and Mr. Green. (N.T. 174)

22. Unbeknownst to Mr. Green, Respondent wrote his name as the payee on one of the pre-signed checks, and misappropriated Ms. Carter's bequest.

23. Respondent's misappropriation of estate funds was knowing and intentional.

24. Mr. Green was unaware that Respondent had misappropriated the Estate funds.

25. Respondent testified that he "used those funds (i.e. Ms. Carter's) in the worst financial crisis in our nation's history," and that "those funds had been used by me in my business operations in difficult times." (N.T. 17, 124)

26. In or about 2009, Ms. Ott, a Tennessee resident, contacted Respondent and requested that Respondent pay her the remaining share of the proceeds of the Dunnigan Estate in her capacity as the sole heir of Pauline Carter.

27. Respondent no longer had the funds to pay Ms. Ott.

28. Respondent told Ms. Ott that the funds due to her were invested and would be available on various dates, including October 17, October 24, the first week in November, and November 30, 2009.

29. When Respondent was contacted by Freda Turner, Esquire, a Tennessee attorney for Ms. Ott, he told Ms. Turner that he was waiting to receive the funds from an investment.

30. This was a misrepresentation, as Respondent wanted more time to collect funds to pay Ms. Ott.

31. By letter of November 5, 2009, Respondent wrote to Ms. Turner and told her that the funds were in escrow from 2003 to 2006, but that in or about 2006, the funds were "invested to earn interest in a client trust funds revolving CD, that rolls over," and "according to [Respondent's] investment broker," the funds would be available on November 30, 2009. (ODC-12)

32. Respondent's representations to Ms. Ott and Ms. Turner were false and misleading when made, in that the funds had not been invested in any institution and, prior to speaking to Ms. Ott and Ms. Turner, Respondent had already converted the funds to his own use.

33. Respondent testified at the subpoena return that in the letter of November 5, 2009, he told Ms. Turner about a CD to "buy some additional time to come up with the money to repay Ms. Ott." (ODC-5 at pp. 61-62)

34. In December 2009, Ms. Ott filed a complaint with the Office of Disciplinary Counsel seeking distribution of the monies owing to her from the Dunnigan Estate.

35. During the course of a telephone conversation with Disciplinary Counsel on January 26, 2010, Respondent stated that the funds were invested in "Gold Street Financial," and Respondent would fax an account statement to Disciplinary Counsel that afternoon.

36. Respondent later retracted this statement, and admitted that he misappropriated the funds.

37. As of the date of the hearing, Respondent has failed to pay Ms. Ott any of the money representing her mother's share of the Dunnigan Estate.

38. As counsel to the Executor of the Dunnigan Estate, Respondent failed to send written notice of estate administration to beneficiaries, pursuant to Orphans' Court (O.C.) Rule 5.6(a), as evidenced by the absence of such notice in a certified copy of the Register of Wills file for the estate.

39. As counsel to the Executor, Respondent failed to file with the Register of Wills a certification of compliance with O.C. Rule 5.6(a), as evidenced by the absence of such notice in the Register of Wills file for the Estate.

40. Two years after date of death, and annually thereafter, Respondent as counsel to the Executor, failed to file with the Register of Wills a Status Report by

Personal Representative of uncompleted administration, pursuant to O.C. Rule 6.12(a), as evidenced by the absence of such notice in the Register of Wills file for the Estate.

**The Moore Matter**

41. In 2005, Respondent represented True Light Community Ministry, Inc. in connection with the prospective sale of True Light's real property at 1947 North 33rd Street, Philadelphia, to the Honorable Jimmie Moore, a Judge of the Philadelphia Municipal Court.

42. Carolyn L. Gaines, Esquire, acted as Judge Moore's counsel in connection with the purchase of the property, and drafted the Contract for Sale of Real Estate, which was dated July 29, 2005, and was signed by True Light's President and Judge Moore.

43. Paragraph 2(b) of the contract provided for a $10,000 deposit to be paid by the buyer (Judge Moore), upon signing of the contract by seller.

44. Paragraph 2(d) and 2(e) of the contract provided that all deposits and/or down payments shall be held in escrow in a federally insured escrow account until consummation or termination of the contract.

45. The contract stated that the deposit shall be nonrefundable except upon breach of the agreement by seller.

46. Under paragraph 5(b) of the contract, the property was to be conveyed free and clear of all liens, encumbrances and easements.

47. The deposit was to be nonrefundable if the buyer failed to consummate the sale after the seller had cleared the title.

48. Judge Moore was always prepared to execute.

49. The contract provided, under Section 8(a), that the buyer did not assume and shall not be required to pay or otherwise satisfy any pre-existing liabilities or pre-existing obligations of seller, except as specifically set forth in the contract.

50. There was no provision in the contract for Judge Moore to have any responsibility for the seller's attorneys' fees and no financial responsibility with respect to clearing the title.

51. As far as attorney's fees, Judge Moore was going to pay Ms. Gaines her fee and the seller was going to pay Respondent his fee.

52. The deposit was not to be used for any purpose whatsoever, pending settlement of the property.

53. According to Ms. Gaines, it was never contemplated that the deposit would be used for either Respondent's attorney's fees or any expenses of the seller in clearing the title.

54. Under the contract, all modifications to the terms of the contract were required to be made in writing.

55. Judge Moore gave Respondent a check for $10,000 dated July 30, 2005, payable to Respondent which stated in the "memo" section that it was "Escrow for Purchase" of 1947 N. 33rd Street, Philadelphia.

56. On August 2, 2005, Respondent deposited the check in an account at PNC, which account was for Respondent's personal bills.

57. A spreadsheet of the activity in the PNC account reflects that Respondent used the account for personal expenses such as purchases at Home Depot, payment of telephone bills, airline tickets, internet service, grocery store purchases, and automobile garage services, among other things.

58. According to Ms. Gaines, during the entire time that she represented Judge Moore, she did not make any agreement with Respondent permitting Respondent to withdraw the deposit for his own use or the use of his client.

59. Judge Moore at no time varied the terms of the contract so the $10,000 could be used by Respondent for any purpose.

60. At the time the contract of sale was signed, Ms. Gaines knew there were liens on the property, but understood from Respondent that he could clear the liens prior to settlement.

61. At a later time, Ms. Gaines requested a title report, which reflected that the outstanding liens against the seller were six figure liens.

62. By letter dated December 14, 2005, Respondent wrote to Ms. Gaines, stating that he had been unsuccessful in negotiating a settlement of True Light's outstanding tax liabilities, which were liens on the property; he wanted to explore other options; and he recommended that the closing be postponed until January 30, 2006.

63. The closing was postponed, but ultimately Respondent did not provide Ms. Gaines with any evidence that the liens had been cleared.

64. In March 2006, Ms. Gaines wrote to Respondent requesting that he contact her, but he did not do so.

65. By letter of April 28, 2006, Ms. Gaines wrote to Respondent indicating that she had left messages for him that were not returned, and requesting that he contact her no later than May 5, 2006 to discuss a timeline for the completion of the sale.

66. In or about June 2006, Ms. Gaines scheduled a settlement of the property and notified Respondent by mail, and although Ms. Gaines and Judge Moore were present and waiting, Respondent and his client did not appear.

67. Respondent told Ms. Gaines that in order to resolve the liens he could transfer the property to another nonprofit, and then transfer the property to Judge Moore, but that never happened.

68. By letter dated August 21, 2006, Ms. Gaines wrote to Respondent, observing that her attempts to contact Respondent by telephone had been unsuccessful, advising him that the buyer was prepared to close in the sale of the property within the next 30 days, and requesting that all outstanding issues be resolved within that time frame since the contract was executed more than a year ago.

69. By letter dated September 21, 2006, Ms. Gaines wrote to Respondent and stated that the closing was scheduled for September 29, 2006.

70. In preparation for the closing, Ms. Gaines asked Respondent to forward evidence that the property had been transferred to a nonprofit, and requested resolutions supporting that transaction, but no such documents were forthcoming.

71. At that point, Judge Moore determined that because True Light had not cleared title, he directed Ms. Gaines to relay to True Light that he wanted his money back.

72. On September 28, 2006, Ms. Gaines telephoned Respondent and informed him that Judge Moore was terminating the contract because the seller was unable to convey the property free and clear of encumbrances after more than a year of attempting to resolve outstanding issues, and requested immediate return of the deposit.

73. Ms. Gaines confirmed the call in writing by letter dated October 4, 2006, but Respondent failed to return the deposit.

74. By letter dated November 7, 2006, Ms. Gaines wrote to Respondent and requested the deposit within five days, but it was not returned.

75. At the hearing, Respondent introduced into evidence a letter he had written to Ms. Gaines dated November 20, 2006, which stated, among other things, "...in fact the **$10,000 escrow** was made non-refundable precisely because of the expense factor is [sic] securing the transaction of the subject distressed vacant property given the risk." (R-1) (emphasis in original)

76. At the hearing, when shown Respondent's November 20, 2006 letter and quoted statement, Judge Moore testified that the statement was not accurate and was not true. He testified that he was purchasing the property as is for $23,000. The contract was clear that the money was to be held in a federally insured account and upon the parties not being able to come to the table the money was supposed to be returned to Judge Moore. (N.T. 79-81)

77. With respect to Respondent's statement in the letter that, "...by the express written terms and conditions of the July 29, 2005 Contract, it cannot be terminated, because of Seller's inability to convey clear title," Judge Moore testified as follows:

> Absolutely not. I wanted to purchase a property. I wanted clear title. I could not move without the property having clear title. (R-1; N.T. 81-82)

78. Ms. Gaines wrote to Respondent by letter dated November 29, 2006, stating that since True Light was unable to pass clear title, Respondent's client

had breached the contract, and that Judge Moore was willing to give Respondent another week to resolve the matter by returning the full $10,000 deposit.

79. On December 22, 2006, Ms. Gaines brought an action on behalf of Judge Moore against Respondent and True Light in the Philadelphia Municipal Court, seeking return of the $10,000 deposit.

80. Respondent did not appear and defend the action, and on October 10, 2007, the Municipal Court entered a default judgment in favor of Judge Moore and against Respondent and True Light in the amount of $10,000, plus costs of $114.

81. Respondent did not appeal the judgment.

82. At no point in the Municipal Court action did Respondent raise any substantive defenses.

83. To date, Respondent has not returned any portion of the $10,000 deposit.

84. Prior to filing a disciplinary complaint, Judge Moore had been willing to take monthly payments from Respondent and conveyed this to Respondent when they saw each other on occasion in 2009.

85. Respondent wrote a letter to Ms. Gaines dated November 20, 2006, in which he stated that he had "held that deposit pending the final sale of the property or the resolution of all outstanding claims and issues regarding the proposed sale." (R-1)

86. A bank statement for the period March 31, 2006 to April 27, 2006 for Respondent's PNC account, into which Respondent deposited Judge Moore's check, reflects that Respondent had a beginning balance of $76.44 and a month end balance of -$39.91 as of April 27, 2006. (ODC-4)

87. A spreadsheet of activity for the PNC account as of December 29, 2006 shows a balance of $387.48. (ODC-30)

88. Under cross-examination, Respondent stated that it was "absolutely true" that he held the deposit pending the final resolution of all outstanding liens and issues regarding the proposed sale, but when asked to testify as to where and when the deposit was held, he was unable to do so. (N.T. 148-149)

89. Respondent's statement to Ms. Gaines in November 2006 and his testimony at the hearing were false and misleading, because the money was not in the account into which it had been deposited as of March 31, 2006.

90. Respondent does not believe he did anything wrong with respect to Judge Moore's funds.

91. Respondent acknowledged that there was nowhere in the agreement or any other writing that said that the escrow funds could be used to compensate him for work done in clearing the title.

92. On March 11, 2010, the Supreme Court of Pennsylvania issued a subpoena to Respondent for, among other documents, fee agreements and distribution sheets for all clients for the period January 1, 2007 to February 1, 2010.

93. At the subpoena return, Respondent testified that he "generally" does not "have fee agreements" for the "service type transactions, " such as "recording deeds, doing wills, those kind of things." (ODC-5 at p. 49)

94. For example, Respondent indicated he does not do a fee agreement to record a deed for a client. (N.T. 126)

95. Respondent does not think there is anything wrong with failing to have fee agreements for all matters, and does not believe that he is required to do so. (N.T. 127)

96. Respondent's testimony at the subpoena return indicates that he never knew how to use his IOLTA account, even though he knew he had to have one. (ODC-5 at p. 13)

97. From August 21, 2006 to December 21, 2009, the IOLTA account was used infrequently, including the period March 1, 2007 to August 31, 2009, during which the only activity was the posting of interest.

98. Respondent testified at the subpoena return that he always used his personal account at PNC for whatever funds came in, including settlement checks, disbursement to vendors for client matters, and his own fees. (ODC-5 at pp. 10. 14-15)

99. The subpoena issued on March 11, 2010 called for Respondent to produce check registers and separately maintained ledgers for the period January 1, 2006 to February 1, 2010.

100. In response to the request for check registers and ledgers, Respondent testified at the subpoena return that "part of [his] problem is that [his] financial accountability and responsibility is not good, so [he doesn't] really keep registers of checks and [he doesn't] really keep separately maintained ledgers." (ODC - 5 at p. 17)

101. In his PA Attorneys Annual Fee Form for the years 2004 through 2010, Respondent certified that he was familiar and in compliance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct regarding the handling of funds and other

property of clients and the maintenance of IOLTA accounts and with Pa.R.D.E. 221 regarding the mandatory reporting of overdrafts on fiduciary accounts.

## III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct:

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

2. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

3. [Former] RPC 1.15(a) (effective 4/23/05) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

4. [Former] RPC 1.15(b) (effective 4/23/05) - Upon receiving property of a client or third person in connection with a client-lawyer relationship a lawyer shall promptly notify the client or third person. Except as stated in this Rule of 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. [Former] RPC 1.15(f) - (effective 4/23/05) - All Nonqualified Funds shall be placed in a Trust Account or in another investment vehicle specifically agreed upon by the lawyer and the client or third person which owns the funds.

6. [Former] RPC 1.15(g) (effective 4/23/05) - All Qualified Funds shall be placed in an IOLTA account

7. RPC 1.15(b) (effective 9/20/08) - 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.

8. RPC 1.15(e) (effective 9/20/08) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person shall promptly render a full accounting regarding the property; Provided however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

9. RPC 1.15(l) – A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

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

11. RPC 4.1(a) – In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

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

13. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

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

## IV. DISCUSSION

Respondent was charged with a laundry list of violations of the Rules of Professional Conduct arising out of his representation of the estate of Emmet Dunnigan and theft of funds therefrom, theft of escrow money while he served as counsel to the seller in a real estate transaction, and failure to maintain fee agreements and proper records for his IOLTA account. We find that Petitioner overwhelmingly met its burden of proof on all of these charges and agree with the recommendation of the hearing committee that Respondent be disbarred.

### The Ott Matter

In June 2000, Respondent was retained as counsel to the estate of Emmet Dunnigan by the estate's executor, Arnold Green. Mr. Dunnigan's sisters, Lillian Kennedy and Pauline Carter, or their heirs, were named as beneficiaries. In 2002 Respondent made a partial distribution of $50,000.00 to each of the sisters and told them that they would receive their equal share of approximately $50,000.00 at some point in the future.

In December 2004, Respondent sent a check in the amount of $21,766.97 to Ms. Kennedy and one in the same amount to Ms. Carter which he represented to be the final distribution of the proceeds of the estate. Shortly thereafter, Ms. Kennedy notified Respondent that Ms. Carter had died and that her daughter and sole heir, Ora Ott, was currently living in the South. Respondent promptly stopped payment on the check payable to Ms. Carter which left approximately $21,000.00 in the estate account. Respondent told Ms. Kennedy to tell Ms. Ott to contact him if Ms. Kennedy spoke to her. Respondent did nothing to determine the whereabouts of Ms. Ott aside from

calling Ms. Kennedy from time to time to see if she had spoken to her. He did not conduct an internet search or, as far as we can tell from the record, even ask Ms. Kennedy for Ms. Ott's address or phone number so that he could attempt to contact her himself. Instead, according to Respondent, he just waited for her to appear. (N.T. 132-134).

The record reveals that at some point between 2005 and 2009 Respondent depleted the estate account of the funds that were owed to Ms. Ott by writing estate checks1, to himself in the amount of $21,000.00.2 Remarkably, in what can be seen only as a lame attempt to rationalize his theft, Respondent testified that he "used those funds in the worst financial crisis in our nation's history" and that "those funds had been used by me in my business operations in difficult times." (N.T. 17, 124).

Unfortunately for Respondent, Ms. Ott finally appeared in 2009 and asked for her inheritance. Rather than admit his wrongdoing and tell Ms. Ott that her money was no longer available for distribution Respondent told her that he had invested her money and that it would be available first on October 17, then October 24, then the first week in November and finally on November 30, 2009. All of these representations were blatant lies, since Respondent knew he had not invested the money but rather had taken it for his own use.

Respondent's deceptions were not limited to his empty promises to Ms. Ott. He also deceived Ms. Ott's Tennessee attorney, Freda Turner, when he wrote to

1 These checks had been presigned in blank by the executor, Mr. Green, who testified that he did not know Respondent had written checks to himself and that he did not authorize him to do so.
2 Respondent testified at his subpoena hearing that he wrote the checks to himself in 2005 but later testified at his hearing that it was after 2005.

her on 11/5/09 and told her a tall tale involving investments that were never made, an investment advisor who never existed, and a promise of payment by 11/30/09 that never materialized.3

Respondent testified at his subpoena hearing that his multiple deceptions were designed to "buy some additional time to come up with the money to pay Ms. Ott." (ODC5 at pp. 61-62).

In December 2009, Ms. Ott filed a complaint with the Office of Disciplinary Counsel.

On January 26, 2010 Respondent chose to spread his deception to yet another person. This time he told Disciplinary Counsel that the funds were invested in Gold Street Financial and that he would fax counsel records supporting this assertion. The documents were never delivered because they did not exist.

Finally, with no options remaining, Respondent admitted to Disciplinary Counsel that he had misappropriated the funds.

Respondent promised to repay the funds he had wrongfully taken but never did so.

The record also reveals that Respondent failed to file with the Register of Wills a certification of compliance with O.C. Rule 5.6(a), pursuant to O.C. Rule 5.6(d) (ODC-2 at p. 2; ODC-9), and failed to meet his obligation of filing with the Register of Wills a status report of uncompleted administration pursuant to O.C. 6.12(a).

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3 Amazingly, in that lie-packed letter Respondent assured Ms. Turner that all of his statements were firmly based on the "Pa. Rules of Professional Conduct," including "Rule 4.1, *Truthfulness in Statements to Others*" (emphasis supplied by Respondent).

## The Moore Matter

In 2005 Respondent represented True Light Community Ministry, Inc. in connection with the prospective sale of its property to the Honorable Jimmie Moore of the Municipal Court of Philadelphia.

The agreement of sale for this transaction clearly provided that the buyer's down payment of $10,000.00 was to be held in a "federally insured escrow account" until "consummation or termination" of the contract. (Paragraph 2(d) and 2(e) of agreement of sale). Further, the contract required that the property was "to be conveyed free and clear of all liens, encumbrances [and] easements..." (N.T. 22-3).

The down payment was to be nonrefundable if the seller was able to deliver clear title and the buyer refused to complete the transaction.

The record reveals that pursuant to the terms of the agreement of sale Judge Moore gave Respondent a check dated 7/30/05 in the amount of $10,000.00 as a down payment for the purchase of True Light's property. Judge Moore wrote on the check that it was "escrow for purchase" of 1947 N. 33rd Street, Philadelphia (True Light's property). Rather than deposit Judge Moore's check into a federally insured escrow account as he was obligated to do under the terms of the contract for sale, Respondent deposited it into his personal checking account. Over the course of time, according to Respondent's bank records, Respondent used Judge Moore's $10,000.00 to pay for personal expenses that included items from Home Depot, telephone bills, airline tickets, food, and car repairs.

While it was known by the parties at the time the contract for sale was signed that title to the property was encumbered with liens, the amount of those liens was not known until a title report was issued. As it turned out the liens against the

property Judge Moore wished to purchase were "substantial," totaling more than one hundred thousand dollars. (N.T. 26,68).

Respondent, who knew that his client was obligated under the terms of the contract of sale to deliver clear title, attempted to find a way to remove the liens. Whatever efforts he made yielded no success.

In the meantime, Judge Moore and his attorney were growing impatient and decided to bring the matter to a head by scheduling a settlement of the property sometime in June 2006. Respondent and his client failed to appear at that settlement. Respondent ultimately asked the buyer for more time to resolve the title issues and proposed a plan to transfer title to another non profit entity.

By August 2006 Judge Moore, through his attorney Carolyn Gaines, began pressing again to consummate the sale. Ms. Gaines scheduled a second settlement for September 24, 2006, and asked Respondent to provide her with documentary proof that he had resolved the title issues.

Since Respondent had not done what he had hoped to do, he had no documents to forward to Ms. Gaines. So, he did nothing. By this time, according to Judge Moore 's testimony, it became clear to him that Respondent's client would never deliver clear title to the property and he instructed Ms. Gaines to ask for the immediate return of his $10,000.00 deposit. (N.T. 32,33, 34).

Pursuant to her client's instructions she requested the return of her client's money in a telephone call and by a letter dated October 4, 2006. Respondent did not refund Judge Moore's deposit because, as the record demonstrates, he had already spent it. Ms. Gaines again wrote to Respondent and demanded the return of Judge Moore's deposit. This time Respondent answered in a letter wherein he claimed,

among other things, that Judge Moore's deposit was intended to be nonrefundable even if the seller could not deliver clear title and that it was understood by the parties that the deposit money could be used to pay the seller's legal fees and the costs associated with Respondent's attempt to deal with the liens on the property.4 He also told Ms. Gaines that he was in possession of the deposit and would hold it pending the final sale of the property.

Not only are Respondent's claims in his letter squarely contradicted by the express and unambiguous terms of the contract of sale5, but also they are belied by the testimony of both Ms. Gaines and Judge Moore as well as Respondent's subsequent conduct which will be discussed in greater detail below.

Further, Respondent's own bank records reveal that he did not hold the money pending final sale but rather had spent it long before any settlements were scheduled.

Unpersuaded by Respondent's interpretation of the contract of sale, Ms. Gaines again demanded return of the deposit and finally filed an action against him in the Municipal Court of Philadelphia seeking its return.

Notwithstanding Respondent's written claim to Ms. Gaines that under the contract he was lawfully entitled to retain Judge Moore's deposit for the payment of fees and expenses, Respondent asserted no defenses to Judge Moore's lawsuit. In fact he did not even appear when the matter was called to trial. As a result, a default judgment in favor of Judge Moore and against True Light Ministries and Respondent in the

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4 It must be remembered that there is no evidence that any of the money was used for expenses associated with attempting to clear title.

5 The contract provided that any alteration or change in terms could only be made in writing. Of course there is no writing transforming a buyer's deposit that was to be held in escrow until settlement into a source of funding for the seller's costs and attorney fees and the contract did not address those issues.

amount of $10,000.00 and $114.00 in costs was entered by the Municipal Court on October 10, 2007. Respondent did not appeal nor did he pay the judgment.

The record reveals that before Judge Moore filed his complaint with the Office of Disciplinary Counsel he attempted to work out a payment plan with Respondent so that he could get his money back. Astoundingly, Respondent, who had taken the position before Judge Moore filed his lawsuit that he was contractually entitled to keep the deposit, did not raise those defenses to Judge Moore but rather acknowledged the debt and on several occasions during 2009 agreed to pay him the money he was owed.

Respondent, despite his promises, paid Judge Moore nothing. Moreover, at his Disciplinary Hearing Respondent reverted back to his fantastical assertion that he was entitled to keep the $10,000.00 deposit for legal fees and costs, as well as his claim that he had retained possession of Judge Moore's money pending final sale of the property, even though his bank records did not support that assertion.

## V. FEE AGREEMENTS AND IOLTA ACCOUNT

Much of the evidence relating to the charge regarding Respondent's failure to maintain proper fee agreements and his trust account was collected via subpoena and Respondent's testimony on return of the subpoena on April 5, 2010 and April 7, 2010.

Petitioner subpoenaed Respondent's fee agreements for the years 2007 to 2010 and found that he failed to comply with the requirement that he have fee agreements for each representation. Respondent stated that his failure to provide fee agreements resulted from his mistaken impression that such agreements

were not required for certain types of legal matters, or when the clients had low incomes.

Respondent also failed to fulfill his responsibilities to handle client funds in a proper manner. Respondent admitted that he used his IOLTA account minimally and never knew what to use it for or how to use it. (ODC-5 at p. 13) Respondent routinely deposited checks representing settlements, escrow for transactions, fees and disbursements into non-IOLTA accounts. (ODC-5 at pp. 10, 14, 15) Also, Respondent did not maintain account records.

## VI. RECOMMENDATIONS FOR DISCIPLINE

It has long been recognized that the primary purpose of our disciplinary system is to protect the public from unfit attorneys and to maintain the integrity of the legal system. When an attorney's breaches of trust are so egregious that his continuation in the practice of law poses a real threat to his future clients and adversely impacts on the public's perception of the legal profession, disbarment is an appropriate remedy. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986).

In the instant case Respondent stole money from an estate as well as from a buyer in a real estate transaction. He concocted fanciful tales to conceal these thefts. He lied to the beneficiary of an estate for whom he served as counsel, other members of the bar, and the Office of Disciplinary Counsel. Moreover, he was previously disciplined for failing to return unearned fees. These lies, attempted cover-ups, and prior discipline were found to be aggravating factors by the hearing committee. We agree.

We combed the record in search of evidence of mitigation and like the

hearing committee before us could find none.6 In the Ott matter, we are especially troubled that during the disciplinary proceedings, after he was caught taking money rightfully belonging to Ms. Ott, Respondent, in an apparent attempt to justify his behavior, thought it appropriate to reference the "tough economy" and hard times he was going through when he took Ms. Ott's money. This indicates to us that Respondent fails to grasp the basic concept that an attorney's duty to safeguard entrusted funds is unconditional and not dependent upon his personal financial condition or the vagaries of the economy.

Respondent's conduct in the *Moore* matter is in many ways more troubling than his behavior in *Ott*. There the credible testimony of Judge Moore and his attorney, Ms. Gaines, established that Respondent refused to return a $10,000.00 deposit for the purchase of property even though the unequivocal terms of the contract for sale required to him to do so. Further, the record revealed that Respondent did not hold Judge Moore's deposit in a federally insured escrow account as he was obligated to do, but rather deposited it into his own account and spent it on personal items and office expenses. Instead of acknowledging his wrongdoing and expressing remorse, Respondent insisted that he was authorized to use Judge Moore's money for expenses relating to his efforts to clear title and to compensate him for his time. Respondent's claims were expressly refuted by the witnesses and the contract for sale. Moreover, Respondent did not assert this position when he was sued by Judge Moore for the return of his $10,000.00 deposit. In fact, Respondent subsequently acknowledged his debt to Judge Moore and promised to repay him.

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6 Respondent offered a tepid expression of remorse in the Ott matter but, given all of his efforts to deceive the victim, her attorney, and the Office of Disciplinary counsel long after he had stolen the money, it carried little weight with the hearing committee or with us.

We find that Respondent's stubborn refusal to accept responsibility for his actions and failure to express remorse for them under these circumstances are additional aggravating factors to which we attach considerable weight.

Further, to the charges that he failed to enter into fee agreements in cases where they were required, Respondent offered no defense that makes any sense. Finally, Respondent's failure to segregate funds that he was obligated to hold in trust and his startling admissions that he was not sure of the purpose of an IOLTA account convinces us that the discipline in this case should be severe.

We have examined the record and considered all of the surrounding aggravating and purported mitigating circumstances in this case in order to arrive at our recommendation for discipline. *Office of Disciplinary Counsel v. Rainone, 911 A.2d 920 (Pa. 2006).* We have also consulted the relevant decisional law concerning the appropriate discipline for lawyers whose disciplinary violations were similar to those committed by Respondent. *See Keller supra*[7]; *Office of Disciplinary Counsel v. Monsour,* 701 A.2d 556 (Pa. 1997)(mishandling of client funds is a serious breach of the public trust that cannot be tolerated and can result in disbarment); *Office of Disciplinary Counsel v. Lewis*, 426 A.2d 1138 (Pa. 1981) (inappropriate use of client funds may result in disbarment).

We conclude that when as our Respondent did here, an attorney

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7 On facts strikingly similar to those involved here the Supreme Court disbarred an attorney who misappropriated funds from an estate and then lied to his client in order to conceal his theft. Keller also commingled proceeds from a real estate sale with his own funds and converted them to his own use. In both cases Respondent repaid his victims.

Even though Keller asked the Court to mitigate his discipline on the basis of medical testimony presented at his Disciplinary Hearing it refused to do so stating that "the focus is not upon Respondent, but rather is directed to the impact of his conduct upon the system and its effect on the perception of the system by the society it serves". *Keller* supra at 878.

commingles and misappropriates entrusted funds, attempts to conceal his thefts by lying to virtually anyone he encounters, fails to make even the slightest attempt at restitution even after he is caught, expresses no meaningful remorse, demonstrates no appreciation of the seriousness of his misconduct, has a prior history of discipline, and lacks a basic understanding of his professional obligations to enter into fee agreements or segregate funds that are entrusted to him, disbarment rather than suspension is the appropriate remedy. Accordingly, we recommend that Respondent be disbarred.

## V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Melvin T. Sharpe, Jr., be disbarred from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter is to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Howell K. Rosenberg, Board Member

Date: November 18, 2011

Board Member Momjian did not participate in the matter.

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

Pennsylvania Judicial Center
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November 18, 2011

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|---|---|---|
| OFFICE OF DISCIPLINARY COUNSEL<br>Petitioner | : | |
| v. | : | No. 98 DB 2010 |
| | : | Attorney Registration No. 43312 |
| MELVIN T. SHARPE, JR.<br>Respondent | : | (Philadelphia) |

**Expenses Incurred in the Investigation and Prosecution**
**of the above-captioned proceedings***

| | | |
|---|---|---|
| 06/15/2010 | 9 copies of Petition for Discipline | $ 99.00 |
| 07/14/2010 | 9 copies of Answer to Petition for Discipline | 18.00 |
| 05/06/2011 | 9 copies of Report of Hearing Committee | 139.50 |
| 06/23/2011 | 9 Copies of ODC's Brief to Opposing Exceptions | 126.00 |
| 08/26/2010 | Transcript of Prehearing held on 08/20/2010 | 369.00 |
| 10/22/2010 | Transcript of Hearing held on 10/01/2010 | 1,608.75 |
| 09/14/2010 | PA State Police Criminal History Report | 10.00 |
| 11/18/2011 | Administrative Fee | 250.00 |
| | **TOTAL AMOUNT DUE** | **$2,620.50** |

**Make Check Payable to PA Disciplinary Board**
**PAYMENT IS REQUIRED UPON RECEIPT OF ORDER**

* Submitted pursuant to Rule 208(g) of the Pa.R.D.E. and §93.111 of the Disciplinary Board Rules.