[J-130-2016] [MO: Mundy, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2262 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 30 DB 2015
	:	
	:	Attorney Registration No. 37440
v.	:	(Monroe)
	:	
	:	ARGUED: December 6, 2016
PETER JAMES QUIGLEY,	:	
	:	
Respondent	:	

DISSENTING OPINION

JUSTICE DONOHUE **DECIDED: JUNE 20, 2017**

I respectfully dissent from the Majority's decision to impose the sanction of disbarment on the record presented here. The essential purpose of our system of lawyer discipline is "to protect the public from unfit attorneys and to maintain the integrity of the legal system." *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872, 875 (Pa. 1986); *In re Oxman*, 437 A.2d 1169, 1174 (Pa. 1981). While the aim of the disciplinary system is not intended to be punitive, sanctions are a necessary means to accomplish its end and are punitive in nature. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186, 190 (Pa. 1983). At all times, we "must balance a concern for public welfare with a respect for the substantial interest that an attorney has in continuing his professional involvement in the practice of law... ." *Office of Disciplinary Counsel v. Kanuck*, 535 A.2d 69, 74 (Pa. 1987) (quoting *Office of Disciplinary Counsel v. Lewis*, 426 A.2d 1138, 1142 (Pa. 1981)).

Disbarment is an extreme sanction properly reserved for only the most egregious matters, as it constitutes a termination of the privilege to practice law without any promise of ultimate reinstatement. *Office of Disciplinary Counsel v. Cappuccio*, 48 A.3d 1231, 1238 (Pa. 2012). On several occasions, this Court has held that misappropriation of client funds may warrant a sanction of disbarment, *see, e.g. Office of Disciplinary Counsel v. Monsour*, 701 A.2d 556, 558 (Pa. 1997). *Office of Disciplinary Counsel v. Davis*, 614 A.2d 1116, 1117 (Pa. 1992), *reinstatement granted sub nom. Matter of Davis*, 671 A.2d 222 (Pa. 1996); *Keller*, 506 A.2d at 875; *Lucarini*, 472 A.2d at 190; *Office of Disciplinary Counsel v. Knepp*, 441 A.2d 1197, 1201 (Pa. 1982), and Respondent, as a result of his egregious conduct, has thus exposed himself to the possibility of imposition of this severe punishment by virtue of his misdeeds.

This Court has declined, however, to create a per se rule that misappropriation of funds must result in disbarment, prescribing instead a standard by which we exercise our discretion through consideration of the facts and circumstances of each case individually. *See, e.g.*, *Office of Disciplinary Counsel v. Chung*, 695 A.2d 405, 407 (Pa. 1997) (citing *Lucarini*, 472 A.2d at 190); *Monsour*, 701 A.2d at 558. Accordingly, in every case this Court must conduct a de novo review to determine whether significant mitigating factors weigh against disbarment. *Office of Disciplinary Counsel v. Preski*, 134 A.3d 1027, 1031 (Pa. 2016); *Office of Disciplinary Counsel v. Rainone*, 911 A.2d 920, 930 (Pa. 2006).

The principal issue in this case is not whether Respondent committed multiple acts of mishandling client funds. In most instances he has admitted his guilt, and I agree with the Majority's cogent analysis with respect to the Disciplinary Board's

conclusion that Respondent violated multiple provisions of the Pennsylvania Rules of Professional Conduct. Instead, the principal issue here is whether to impose a lengthy suspension from the practice of law or the more extreme sanction of disbarment. The essential difference between these two sanctions is that while both sanctions involve the withdrawal of the privilege of practicing law, a suspended attorney may resume practice at the end of the period of suspension upon demonstration of his fitness to practice, whereas a disbarred attorney may not apply for readmission to the bar for a period of five years, and

> there is no basis for an expectation by the disbarred attorney of the right to resume practice at some future point in time. When reinstatement is sought by the disbarred attorney, the threshold question must be whether the magnitude of the breach of trust would permit the resumption of practice without a detrimental effect upon "the integrity and standing of the bar or the administration of justice nor subversive of the public interest."

Matter of Renfroe, 695 A.2d 401, 403 (Pa. 1997) (citing *Keller*, 506 A.2d at 875). To make this determination, we must consider whether sufficient mitigating factors tilt in favor of the lesser sanction. *See, e.g.*, *Chung*, 695 A.2d at 407 (holding that given the attorney's many years of significant community service, genuine remorse, and strong character evidence, a five-year suspension was appropriate sanction); *Office of Disciplinary Counsel v. Shorall*, 592 A.2d 1285, 1294 (Pa. 1991) ("[I]n light of the evidence offered in mitigation, we believe that the ODC's pursuit of the extreme sanction of disbarment is [] inappropriate as being too severe and unjustified."); *Office of Disciplinary Counsel v. Kanuck*, 535 A.2d 69, 76 (Pa. 1987) (holding that where the attorney did not intend to embezzle his clients' funds and made restitution in every instance, a five year suspension was appropriate sanction).

Respondent refers this Court to substantial mitigating evidence in support of his request for the imposition of a lesser sanction than disbarment. He notes that he was never charged with any crimes and denies that any of his acknowledged misdeeds were committed with any criminal intent. Respondent's Brief at 12, 15, 17, 19, 25-26. He also denies that he ever acted maliciously or intentionally to cause harm to his clients, and that upon being made aware by the Disciplinary Board of shortcomings in his IOLTA account, he immediately took the necessary remedial steps to make each of his clients whole and to bring his IOLTA account into trust. *Id.* at 2, 16. Respondent indicates that none of his clients brought claims of wrongdoing against him. *Id.* at 4. In addition, he references the favorable character evidence he presented, demonstrating that he is well respected in his legal community, having practiced for more than thirty-two years without any history or incidents of prior disciplinary violations. *Id.* at 2. 4, 16, 26. He cooperated throughout the entirety of the disciplinary process, stipulating to the majority of the allegations against him. *Id.* at 4. Finally, Respondent has expressed deep remorse for his actions, which he fully acknowledges were "quite disturbing," "not becoming of a member of the bar," and involved "egregious misconduct." *Id.* at 16, 25-26.

In contrast, in the cases cited above, including *Monsour*, *Davis*, *Keller*, *Lucarini*, and *Knepp*, in which the sanction of disbarment was imposed for the misappropriation or mishandling of client funds, the attorneys typically offered relatively little mitigation evidence. Davis blamed "careless office procedures" for his intentional misconduct. *Davis*, 614 A.2d at 1122. Keller offered only evidence of a disturbed emotional state, brought on by the dissolution of his business relationship with his brother. *Keller*, 506

A.2d at 877. Monsour and Lucarini presented evidence of an untreated alcoholism condition. *Monsour*, 701 A.2d at 558-59; *Lucarini*, 472 A.2d at 187. Knepp contended that he was driven to his misdeeds because of "financial difficulties" and "a desire to maintain an image of solvency." *Knepp*, 441 A.2d at 1201. In addition, unlike here, these cases involved additional misconduct, such as forging clients' signatures (*Keller* and *Lucarini*), counseling clients to undertake dishonest acts in court proceedings and deceitful use of an affidavit (*Davis*), disobeying a court order (*Monsour*), charging excessive legal fees (*Knepp*), and failing to act diligently and lying to conceal the transgression (*Keller* and *Knepp*).

In my view, the mitigating factors present here, including Respondent's immediate efforts to make his clients whole, his length of practice without a disciplinary history, his age (sixty), his cooperation throughout the disciplinary process, and his remorse and recognition of the seriousness and wrongfulness of his conduct, when taken together, provide a substantial counterweight to lessen the severity of his conduct so to justify a form of discipline less than disbarment. As a result, I respectfully dissent from the learned Majority's decision to impose this sanction, and would instead suspend Respondent from the practice of law for a period of five years.

Justice Wecht joins this dissenting opinion.