IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2746 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 132 DB 2019
	:	
v.	:	Attorney Registration No. 27886
	:	
ALBERT M. SARDELLA,	:	(Chester County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 1st day of December, 2020, upon consideration of the Report and Recommendations of the Disciplinary Board, Albert M. Sardella is suspended from the Bar of this Commonwealth for a period of two years, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board. *See* Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 12/01/2020

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 132 DB 2019
v.	:	Attorney Registration No. 27886
ALBERT M. SARDELLA Respondent	:	(Chester 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 July 15, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent, Albert M. Sardella, with violations of the Rules of Professional Conduct in three separate matters concerning Respondent's representation of clients in a personal injury case, his conduct in an estate matter, and his failure to comply with IOLTA obligations. Respondent filed an Answer to Petition for Discipline on August 27, 2019.

Following assignment of this matter to a District II Hearing Committee ("Committee"), a prehearing conference was conducted by the Committee Chair on October 11, 2019. On October 31, 2019, Respondent filed a Motion for Leave to File an Amended Answer to which Petitioner filed a Response in opposition. The Committee Chair granted the Motion by Order dated November 11, 2019. Respondent filed an Amended Answer on February 10, 2020.

The Committee conducted a disciplinary hearing on November 14 and November 15, 2019. The parties entered into a written Stipulation in which Respondent agreed that he violated RPC 1.5(b) and RPC 1.8(h)(2) in the estate matter and RPC 1.15(b) and RPC 1.15(g) in the IOLTA matter and the personal injury matter.

Petitioner presented one witness, Office of Disciplinary Counsel Auditor/Investigator Stephen J. Schmitt. Petitioner moved into evidence Exhibits ODC 1-60, Exhibit P-1, and Affidavits in Lieu of Testimony from three individuals employed at the Pennsylvania IOLTA Board. Respondent testified on his own behalf and offered character testimony from retired Magisterial District Judge Mark A. Bruno. Respondent offered into evidence Exhibits SV-1 through SV-102; SD-1 through SD-40; SI-1 through SI-16; SK-1; and SG-1 through SG-4.

On January 10, 2020, Petitioner filed a Brief to the Committee and recommended that Respondent be disbarred.

On February 11, 2020, Respondent filed a Brief to the Committee and recommended that a public reprimand with probation be imposed for his actions in the estate matter and that the other charges against him be dismissed.

By Report filed on April 24, 2020, the Committee concluded that Respondent committed ethical misconduct related to his IOLTA account, his handling of the estate and his handling of client funds in the personal injury matter and recommended to the Board that Respondent be suspended for a period of one year and one day.

On May 15, 2020, Petitioner filed a Brief on Exceptions to the Committee's Report and requested that the Board recommend to the Court that Respondent be suspended for no less than two years. On May 21, 2020, Respondent filed a Brief on Exceptions to the Committee's Report and requested that the Board impose a public reprimand on Respondent.

On May 29, 2020, Petitioner filed a Brief Opposing Respondent's Exceptions. Respondent filed a Response to Petitioner's Brief Opposing Exceptions on June 9, 2020 and requested oral argument.

A three-member panel of the Board held oral argument on July 16, 2020.

The Board adjudicated this matter at the meeting held on July 23, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is vested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any 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.

2. Respondent, Albert M. Sardella, was born in 1953, was admitted to practice law in the Commonwealth of Pennsylvania in 1978, and maintains his office under the umbrella name, The Sardella Firm, at 1240 E. Lincoln Highway, Coatesville, Chester County, Pennsylvania 19320.

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

4. Respondent has no history of prior discipline.

5. Respondent has been a sole practitioner since 1988, and is experienced in trusts and estates matters. SG-1, p. 3; SV-79; Petition for Discipline ("P for D") ¶ 69; Amended Answer ("A.A.") ¶ 69; 11/14/19 N.T. 159-160.

6. At least thirty percent of Respondent's law practice involves estate planning, drafting wills and powers of attorneys, administering estates, and litigating matters in Orphans' Court. SG-1, p. 2; SV-79; 11/14/19 N.T. 160.

7. For 12 years, Respondent served as the Solicitor for the Register of Wills of Chester County and the Solicitor for the Orphans' Court for the Court of Common Pleas of Chester County. SG-1, p. 3; SV-79.

The DiSario Matter

8. On January 8, 2005, Respondent was retained to represent Mr. DiSario for an accident caused by an uninsured motorist on November 22, 2004 (the "accident"). ODC-2; ODC-3.

9. At the time of the 2004 accident, Mr. DiSario and his wife, Barbara DiSario, had an automobile insurance policy with Westfield Insurance Group ("Westfield"),

which provided first party medical benefits of $5,000.00 ("First Party Benefits" or "PIP"). ODC-3 at Exhibit C; 11/15/19 N.T. 21, 22.

10. In addition to the DiSarios having PIP coverage of $5,000.00 for medical expenses, they had health insurance coverage under a group plan with Aetna Insurance ("Aetna") through Mrs. DiSario's employer, Fashion Bug. ODC-3 at Exhibit A.

11. During the course of the uninsured motorist litigation, Mr. DiSario was also eligible for and received health benefits from Medicare, as evidenced by the Medicare lien that was asserted later.

12. Throughout Respondent's representation, Mr. DiSario informed Respondent about his medical treatment and correspondence he received from Medicare, medical providers, and the third-party servicer for Aetna, The Rawlings Company. ODC-3 at Exhibits C, D, E and F.

13. On April 10, 2013, Respondent represented the DiSarios at a binding arbitration for UIM Benefits before a panel of three arbitrators. During the arbitration, Respondent moved into evidence a Medicare lien for $6,511.74 and the lien for $8,758.49, claimed by The Rawlings Company (in at least eleven communications) from April 17, 2011 through 2015. Respondent did not provide evidence that Blue Shield might also have a lien. 11/15/19 N.T. 104.

14. For a period of several years prior to the arbitration hearing, both Centers for Medicare & Medicaid Services ("CMS") on behalf of Medicare and The Rawlings Company on behalf of Aetna sent written correspondence to Mr. DiSario and/or Respondent concerning their respective lien claims.

a. CMS sent correspondence on at least the following four dates prior to the arbitration hearing: May 3, 2010, December 9, 2010, February 25, 2011 and March 30, 2011. Exhibit E of Exhibit ODC-3.

b. The Rawlings Company sent correspondence on at least the following 19 dates prior to the arbitration hearing: August 31, 2005, October 10, 2005, January 4, 2006, February 21, 2006, March 20, 2006, April 5, 2006, May 26, 2006, July 5, 2007, August 9, 2007, December 13, 2007, December 21, 2009, April 14, 2010, January 19, 2011, April 7, 2011, June 20, 2011, August 31, 2011, November 23, 2011, April 5, 2012 and June 22, 2012.

ODC-3, Exhibit F.

15. On April 19, 2013, an Arbitration Award for UIM Benefits was awarded to Mr. and Mrs. DiSario in the amount of $140,000.00 (the "Arbitration Award"). P for D ¶ 6; A.A. ¶ 6; ODC-3 at Exhibit F; SD-12.

16. On May 23, 2013, Respondent received a check for $140,000.00 from Westfield payable to him, Mr. DiSario and Mrs. DiSario (the "Westfield Check"). P for D ¶ 7; A.A. ¶ 7; SD-13.

17. On May 24, 2013, Respondent deposited the fully endorsed Westfield Check into the Escrow Account. P for D ¶ 9; A.A.¶ 9.

18. Respondent's Escrow Account, which was opened in the 1980s, was with Coatesville Savings Bank and was not an IOLTA Account. 11/14/19 N.T. 27, 112.

19. Even though Respondent opened an IOLTA Account with Citizens Bank when the rules requiring such an account went into effect in the mid-1990s and a year later opened a new IOLTA Account with First Niagara Bank, now named KeyBank

(11/14/19 N.T. 109-110), Respondent did not use his IOLTA Account and he continued to use his Escrow Account for deposits of settlement proceeds from personal injury cases until 2017. 11/14/19 N.T. 110-117.

20. After deducting fees of $46,666.67 and costs of $12,471.09, Respondent was required to hold $80,862.21 for the DiSarios. 11/14/19 N.T. 44.

21. On July 25, 2013, Respondent sent a letter to CMS and advised of the Arbitration Award. ODC-3, Exhibit E.

22. On August 13, 2013 and September 20, 2013, CMS sent letters to Respondent concerning the lien claim. ODC-3, Exhibit E.

23. On September 27, 2013, Medicare informed Respondent that it did not have a lien against the proceeds from the Arbitration Award. P for D ¶ 13; A.A. ¶ 13; ODC-3 at Exhibit E; SD-19.

24. On October 1, 2013, Respondent sent a second letter to Medicare to confirm that Medicare was not asserting a lien against the Arbitration Award and had closed its file and Respondent threatened to make distribution to Mr. DiSario if Medicare did not respond within 10 days. ODC-3, Exhibit E; SD-21.

25. Respondent copied Mr. DiSario on the October 1, 2013 letter, but did not inform Mr. DiSario that he had no intention of distributing the funds if Medicare did not respond within 10 days. 11/15/19 N.T. 91.

26. In December 2013, Medicare informed Respondent that it did not have a lien against the Arbitration Award and had closed its file. SD-26 ¶ 5, pp. 6-7; 11/15/19 N.T. 52-53.

27. On May 23, 2013, Respondent sent a letter to The Rawlings Company and advised of the Arbitration Award. ODC-3, Exhibit F.

28. Between May 14, 2013 and July 8, 2015, The Rawlings Company sent written correspondence to Mr. DiSario and/or Respondent about its lien claim on at least the following 13 dates: May 14, 2013, August 5, 2013, October 24, 2013, November 15, 2013, December 18, 2013, January 16, 2014, May 2, 2014, July 16, 2014, October 13, 2014, January 13, 2015, April 9, 2015, May 27, 2015 and July 8, 2015. ODC-3, Exhibit F.

29. In a number of these letters, The Rawlings Company requested payment of the claimed lien amount of $8,758.49. See, e.g., correspondence dated July 16, 2013, November 15, 2013, December 18, 2013, April 9, 2015, May 27, 2015 and July 8, 2015. ODC-3, Exhibit F.

30. In various correspondence, The Rawlings Company advised Respondent that the amount of the claim may increase if additional health benefits were paid. ODC-3, Exhibit F.

31. There is no evidence of any communications from The Rawlings Company to Mr. DiSario or Respondent after July 8, 2015.

32. There is no evidence that The Rawlings Company at any time advised Mr. DiSario or Respondent that it was no longer pursuing the lien on behalf of Aetna.

33. From Respondent's receipt of the Westfield Check on May 23, 2013, through 2015, Respondent informed The Rawlings Company that Aetna was not entitled to reimbursement for medical expenses because the Arbitration Award was obtained under the provisions of the DiSarios' personally funded automobile insurance policy with Westfield. ODC-3; SD-13; SD-17; 11/15/2019 N.T. 39-40.

34. According to the payment history provided by The Rawlings Company, Aetna paid Mr. DiSario's medical providers for dates of service during the period of February 8, 2005 through July 6, 2007. ODC-3, Exhibit F.

35. Nevertheless, Respondent claims he was concerned that the amount of this lien could increase if Mr. DiSario required additional medical care. As such, Respondent claims he always gave Mr. DiSario the choice of paying The Rawlings Company the amount of the lien owed to Aetna or to have Respondent escrow the amount in order not to jeopardize Mrs. DiSario's employment and health insurance benefits under the Aetna policy. ODC-3, paragraph 4D; 11/15/2019 N.T. 42, 54-56.

36. Respondent claims he also informed the DiSarios that he had an ethical obligation to protect the interests of these lienholders. A.A.¶ 8; 11/15/2019 N.T. 38-39.

37. On May 6, 2014, Respondent wrote to Mr. DiSario, "I don't want to delay distribution of the award any further because Mr. Filitreau of The Rawlings Company failed to read correspondence [I] sent to him." SD-22.

38. According to Respondent, he "finally convinced" Mr. DiSario to accept distribution of the undisputed funds approximately fourteen months after Respondent deposited the Westfield Check into the Escrow Account.

39. Respondent testified that Mr. DiSario would not allow him to make distribution prior to July 3, 2014, claiming the DiSarios were concerned that Mrs. DiSario would lose her job for receiving payment because the Aetna plan was governed by ERISA. 11/15/19 N.T. 56.

40. Neither Mr. DiSario nor Mrs. DiSario testified at the hearing on this matter (even though Mr. DiSario attended the hearing), and there is no direct evidence

from Mr. DiSario or Mrs. DiSario about Mrs. DiSario's employment, the health insurance benefits provided by her employer, or the risk of losing her health insurance benefits if Aetna's lien claim was not paid.

41. On July 3, 2014, Mr. DiSario signed the Distribution Agreement which lists three deductions totaling $64,137.76, from the gross recovery of $140,000.00:

Attorney Fee (1/3)	$46,666.67
Costs Advanced	12,471.09
Escrow for medical lien claim by Rawlings	5,000.00

P for D ¶ 16-18; SD-23.

42. From the time of the deposit of the Westfield check in the amount of $140,000.00 until the distribution on July 3, 2014, the Escrow Account never held less than $80,862.24, which was Mr. DiSario's share of the settlement amount after deduction of fees and costs advanced. Stephen J. Schmitt spreadsheet.

43. Respondent believed he had a legal basis to reduce the amount of the lien of $8,758.49 by the proportionate amount of his legal fees, or $3,758.49. ODC-3, Exhibit G.

44. On July 3, 2014, Respondent distributed $75,862.24 to Mr. and Mrs. DiSario by Escrow Account Check No. 1216 dated July 3, 2014. This amount included the $3,758.49 that Respondent had deducted from the lien to be paid to The Rawlings Company. P for D ¶ 19; SD-23; SD-24.

45. On July 3, 2014, and continuing through April 2017, Respondent informed Mr. DiSario that he would escrow $5,000.00 for The Rawlings Company in the event the lien was compromised or until the four-year statute of limitations expired on or about April 17, 2017. P for D ¶ 23; Answer ¶ 23; ODC-3.

46. On July 7, 2014, Escrow Account Check No. 1216 posted to the Escrow Account. P for D ¶ 24; Answer ¶ 24.

47. Respondent testified that the four-year statute of limitations expired in early June of 2017, which was four years after Respondent received the check from Westfield Insurance Company for the arbitration award, deposited the check, and the check cleared. 11/15/19 N.T. 61-62, 117-118.

48. On June 6, 2017, Respondent withdrew $5,005.00 from the Escrow Account in order to purchase a Cashier's Check for $5,000.00 payable to Mr. DiSario. N.T. 50; SD-32.

49. On June 16, 2017, Respondent's then-attorney, Paul C. Troy, Esquire transmitted the Cashier's Check to Mr. DiSario noting the four-year statute of limitations had expired. ODC-18.

50. There is no evidence that the Mr. DiSario requested the $5,000.00 that was held in escrow at any time between the distribution in July, 2014 and its distribution to him in June, 2017.

51. From the time of the distribution to Mr. DiSario on July 3, 2014 until the distribution of the $5,000.00 on June 16, 2017, the Escrow Account was out of trust on occasion because its balance was below $5,000.00 during that time period. 11/14/19 N.T. 46-47; Stephen J. Schmitt spreadsheet.

The IOLTA Matter

52. Respondent opened an IOLTA Account at Citizens Bank in the mid-1990s when the IOLTA Rules first went into effect. A year later, he was advised that Citizens Bank was not an approved bank, so he opened an IOLTA Account at First Niagara Bank, now named KeyBank. 11/14/19 N.T. 109-110.

53. Respondent read the rules concerning IOLTA accounts at that time and found them to be confusing. 11/14/19 N.T. 110 -111.

54. Respondent continued his prior practice of depositing personal injury recoveries into his Escrow Account at the Coatesville Savings Bank and, from the time of the opening of his IOLTA Account until 2017, he did not use it for this purpose; this practice was in accordance with his understanding of the rules. 11/14/19 N.T. 112-115.

55. Respondent believes he is in compliance with the IOLTA Rules merely by having an IOLTA Account, noting that the Rules do not "say" a lawyer must use an IOLTA. 11/14/19 N.T. 109-115; 11/15/19 N.T. 78-79.

56. Respondent testified at the hearing, as he did at the subpoena return on November 9, 2018, concerning his ongoing belief that personal injury settlements and other types of client recoveries are required to be deposited into an interest bearing escrow account, not an IOLTA. 11/14/19 N.T. 116-117.

57. In 2017, Respondent was advised by his attorney at that time, Mr. Troy, that he was not complying with the rules concerning his IOLTA Account. 11/14/19 N.T. 115-117.

58. Until untimely filing his 2016-2017 Attorney Registration Form on August 12, 2016, Respondent failed to disclose the fact that he held client funds in the Escrow Account. On the form, Respondent did not provide the complete account number associated with the Escrow Account, and he did not report having an operating account. 11/15/19 N.T. 160-175; Affidavit of Blythe, ¶ 13; ODC-40; ODC-40(a).

59. Respondent's annual Attorney Registration Forms from 2012- 2013 through 2015-2016 were inaccurate in that they did not identify the Escrow Account at

Coatesville Savings Bank in which client funds were held. 11/15/19 N.T. 153-161; Exhibits ODC 36-39.

60. In June 2017, Respondent asked Mr. Troy to contact the IOLTA Board on his behalf, claiming he was confused and did not know what questions to ask. 11/14/19 N.T. 108-109.

61. In June 2017, Mr. Troy contacted the IOLTA Board for the purpose of reporting the Escrow Account and to be proactive in ascertaining the amount of interest Respondent had deprived the IOLTA Board by depositing Qualified Funds into the Escrow Account. Affidavit of Blythe, ¶ 15.

62. From August 31, 2017 through October 5, 2017, Respondent's counsel produced to the IOLTA Board Respondent's bank statements Respondent had available for the period August 2010 to July 2017, and other records for the IOLTA. The IOLTA Board used the records to calculate interest payments from the date the account was opened in September 1986. Affidavit of Blythe, ¶¶ 17, 18; Affidavit of Libhart, ¶ 5.

63. On October 5, 2017, after reviewing Respondent's records and interest calculations from various sources, the IOLTA Board presented to Mr. Troy its calculations for determining back interest totaling $73,762.51, and seeking the first payment by November 1, 2017. Affidavit of Libhart, ¶ 6; SI-6.

64. Between October 2017 and June 2019, there were communications involving the IOLTA Board, its outside counsel and Mr. Troy concerning the interest due to the IOLTA Board, including requests by the IOLTA Board for additional information and the provision of additional information by Respondent through his attorney. Affidavit of Blythe; Affidavit of Libhart; Affidavit of Cheshire; SI-8; ODC-44 through ODC-52.

65. By June 26, 2019, Respondent and the IOLTA Board had reached an agreement to settle for the period of January 2007 through December 2017 (the "Documented Years"). Affidavit of Libhart, ¶ 14; Affidavit of Cheshire, ¶ 25.

66. On June 26, 2019, Respondent's current counsel, Jeffrey P. Lewis, Esquire transmitted a check drawn on Respondent's operating account, payable to the IOLTA Board, for the amount of $2,433.79, in full payment of the settlement for back interest owed for the Documented Years. Affidavit of Libhart, ¶ 14; Affidavit of Cheshire, ¶ 25; ODC-55(a); SI-15.

67. As of the disciplinary hearing on November 15, 2019, Respondent and the IOLTA Board had not agreed on the amount of back interest owed for the period from September 1996 through December 2006 (the "Undocumented Years"), which the IOLTA Board calculates is $23,945.54 and Respondent claims is $13,682.96. Affidavit of Libhart, ¶ 16; Affidavit of Cheshire, ¶ 35; 11/14/19 N.T. 145.

68. There is a bona fide dispute between the IOLTA Board and Respondent about the amount of interest due for the Undocumented Years, and both parties are acting in good faith in asserting their respective positions.

69. In April 2019, Mr. Lewis and Petitioner exchanged correspondence regarding outstanding requests for RPC 1.15 documents and current inquiries. ODC-52; ODC-53.

70. On May 10, 2019, Mr. Lewis provided un-redacted versions of the records previously provided on February 28, 2018, including a reconciliation for an IOLTA at Key Bank for the period May 2017 through February 20, 2018 (the "Reconciliation"). ODC-52; ODC-54.

71. Mr. Schmitt's testimony established the following facts:

a. From April 16, 2013 through May 24, 2013, Respondent's Escrow Account was out of trust by approximately $1,021.45 and then 2,021.73 (11/14/19 N.T.40-41; Stephen Schmitt spreadsheet);

b. From June 20, 2016 through July 13, 2016, Respondent's Escrow Account was out of trust by varying amounts between $157.00 and $3,756.00 (11/14/19 N.T.46-47; Stephen J. Schmitt spreadsheet);

c. It was Respondent's practice with personal injury recoveries that had been deposited into his Escrow Account not to write distinct checks for attorney fees and costs, and to instead make withdrawals in smaller amounts in increments (11/14/19 N.T. 42);

d. During the period of time covered by the review of Respondent's Escrow Account (February 5, 2013 through February 5, 2018), Respondent deposited flat fees and fully earned fees into the Escrow Account when they should have been deposited into an operating account (11/14/19 N.T. 51-52);

e. Respondent paid various operating and personal expenses out of the Escrow Account, including payments to Sean Hawk (a private investigator), Paul Kiefer (a non-client), Steve Kurtz (a non-client), Patty Sardella (Respondent's wife), Albert C. Sardella (Respondent's son) and Terry Barnes (a non-client) (11/14/19 N.T. 53-59); and

f. Respondent had a separate operating account at Coatesville Savings Bank, and funds from the Escrow Account were transferred to that account or written to that account. 11/14/19 N.T. 59.

72. Respondent called the separate operating account referred to above a "reserve account" which was coupled with the Escrow Account, and he usually had $150,000.00 in that account as a protective means to be sure that client funds were always available. 11/14/19 N.T. 123-124.

73. Because Respondent did not use his IOLTA Account from the time that it was opened until 2017, he did not take any of the steps required to manage such an account or to keep required records as set forth in RPC 1.15.

74. Despite Respondent's failure to comply with the requirements of RCP 1.15 for many years, there is no evidence that any client did not receive the full amount due following a personal injury settlement, judgment or award.

75. There is no evidence that Respondent misappropriated any money that was due to a client or that he received any money from of the Escrow Account to which he was not entitled.

The Valence Estate

76. According to Respondent, he never charged his great uncle, Walter F. Valence for acting as Attorney-in-Fact under a Power-of-Attorney and for legal services Respondent claims he provided to Mr. Valence or a member of Mr. Valence's family, from approximately 1985 through Mr. Valence's death on February 25, 2012. A.A. ¶ 70; SV-79; 11/14/19 N.T. 55.

77. Services rendered by Respondent for Mr. Valence during his lifetime included a guardianship, a personal injury case, a tax assessment matter, an estate

matter where Mr. Valence was the executor, and services pursuant to powers of attorney. 11/14/19 N.T. 154-155 and 270-271.

78. Respondent testified that Mr. Valence told him that he would name Respondent as executor in his will and that he wanted Respondent "to take care of all of the services you provided me during these times up until whenever." 11/14/19 N.T. 156.

79. Respondent also prepared a Will for Mr. Valence, naming Albert M. Sardella as the executor, which Mr. Valence executed ("the Will"). ODC-22.

80. The Will contains no provision making a specific bequest to Respondent for attorney fees for legal work performed for Mr. Valence by Respondent during Mr. Valence's lifetime. ODC-22.

81. There is no Codicil to the Will making a specific bequest to Respondent for attorney fees for legal work performed for Mr. Valence by Respondent during Mr. Valence's lifetime.

82. There is no evidence of any written fee agreements for any of the legal services performed by Respondent for Mr. Valence during his lifetime nor of any writings indicating that fees for such work were to be paid to Respondent from Mr. Valence's estate.

83. On February 25, 2012, Respondent visited Mr. Valence in the hospital. During this visit, Mr. Valence reminded Respondent that he kept important papers and other valuable items in his personal safe located in the basement of his home. 11/14/19 N.T. 186, 195-196; SV-80(a).

84. Mr. Valence died on February 25, 2012. A.A. ¶ 64.

85. After learning of Mr. Valence's death, Respondent did not go to Mr. Valence's house in order to open the safe and retrieve its contents, nor did he take any

other measures to secure the house and the personal property in it, ignoring the fact that other individuals had keys to Mr. Valence's home. 11/14/19 N.T. 186, 195-196.

86. The beneficiaries named under the Will were to receive a set percentage of the Estate after all debts were paid, as follows: 50% to John Valence, Sr., 29% to Tinka Canike, and 3% to John G. Valence, Jr., Jonathan Valence, Gregory Canike, Kimberly Morris, Jackie Brunssen, Heather Mously, and Katha Valence (collectively the "Beneficiaries"). ODC-31; P for D ¶ 65; A.A. ¶ 65.

87. Mr. Valence's brother, John Valence, Sr. (John Sr.) and John's children, who resided in Florida, attended the funeral and family services for Mr. Valence. While at a funeral luncheon, John Sr. and other out-of-town relatives expressed their desires to take some of the decedent's personal belongings before returning to their homes. ODC -31, p. 2.

88. Respondent requested that the beneficiaries make a list of items removed from the house and to provide it to him. Two of the beneficiaries provided lists, but John Sr. did not and Respondent believes that he took the bulk of the personal property. 11/14/19 N.T. 167-169.

89. Respondent waited until March 27, 2012, to go to the Register of Wills in order to obtain Letters Testamentary and probate Mr. Valence's Will. Respondent was appointed Executor of the Estate on April 2, 2012. A.A. ¶ 67.

90. Respondent, as the Executor of the Estate, retained himself for legal services. He did not provide a written fee agreement to the Estate setting forth his rate or other basis for his fees. 11/14/19 N.T. 160-161.

91. Respondent decided to serve as the lawyer for Executor of the Estate with the hope of administering the Estate quickly and efficiently and without the necessity of retaining separate legal counsel. ODC-31, p. 2.

92. Respondent had 30 to 35 years of experience as a lawyer representing an estate administrator or as an estate administrator. N.T. 11/14/19 N.T. 159-60.

93. On April 1, 2012, Respondent orally retained the law firm of Rubino & Hoey, LLC owned in part by Respondent's friend, Paul J. Rubino, Esquire, and where Respondent's son, Albert C. Sardella, Esquire, had just started his legal career. A.A. ¶ 67; SV-80, pp. 19, 20.

94. Respondent determined the fees the Estate would pay to the Rubino Firm, beginning with a $5,000.00 retainer and $2,000.00 for fees associated with the sale of the decedent's home. SV-80, p. 19.

95. Later in April 2012, Respondent advertised Notices of the Estate and began efforts to get decedent's house ready to be listed for sale and to pay the insurance renewal for decedent's 1993 Ford Tempo. SV-79 attached timeline.

96. Respondent relied upon decedent's neighbor to "keep an eye on the house" and decided for safety purposes to keep decedent's 1993 Ford Tempo parked in the driveway, in order to make it appear that someone was living at the residence. 11/14/19 N.T. 169-171.

97. Respondent did not learn that the decedent's 1993 Ford Tempo (worth $2,000.00) was missing or stolen until May 20, 2012; he did not contact the police or any of the Beneficiaries about the theft until contacting John, Sr. on May 24, 2012. On

May 25, 2012, John Sr. confirmed to Respondent that he had taken decedent's car to his home in Florida. SV-79 attached timeline; 11/14/19 N.T. 170-178; SV-5.

98. For the next two months, Respondent communicated with John Sr. about the difficulty Respondent was having locating the title for the decedent's car and the potential risk to Respondent if the car was not insured. SV-6; SV-7; SV-8; 11/14/19 N.T. 176-178.

99. Respondent acquiesced to John Sr.'s directive to terminate the listing agreement with Dorie Brossette, a realtor who Mr. Valence had arranged to sell his home in anticipation of moving to Little Flower Manor Assisted Living, in favor of another realtor, John Guerrera (a relative). SV-53, Exhibit 2; 11/14/19 N.T. 189-190.

100. Respondent and Ms. Brossette agreed to terminate the listing provided she would be paid a 20% referral from the standard commission paid to Mr. Guerrera. SV-53, Exhibit 2. 11/14/19 N.T. 190-191.

101. On May 1, 2013, Respondent accepted an offer on the house, less a seller assist of $2,500.00. SV-53, Exhibit 2.

102. On June 12, 2013, one day before the closing on the sale of Mr. Valence's home, Respondent and his attorney son spent a total of 20 hours reviewing standard Pennsylvania real estate documents and the HUD-1. Neither realized that the HUD-1 did not accurately reflect the sales price for Mr. Valence's home and that the realtors had been paid more than the standard commission. A.A. ¶ 79; SV-80(a).

103. The HUD-1 includes a line item for legal fees of $2,000.00 to Respondent's son. Respondent testified at a deposition that the 20 hours included a significant amount of time he spent on June 12, 2013, traveling from St. Michaels,

Maryland to Paoli, Pennsylvania and "running around time" on the day of closing by him and his son. SV-80(a), pp. 92-94.

104. On July 3, 2013, Respondent informed John Sr. that he could not make distribution under the Will until the Revenue Department had approved the Inheritance Tax Return, which Respondent expected to take 90 days. SV-10.

105. On July 12, 2013, Respondent signed the Inheritance Tax Return which included the following information: Total Assets of $237,180.87 (including real estate valued at $145,000.00), Total Deductions of $128,665.49, and a Net Value of Estate Subject to Tax of $108,515.39; Schedule H for Funeral Expenses and Administrative Costs including the following: $17,235.53 to Williams-Lombardo Funeral Home, $1,265.95 to Giorgio's Restaurant, $3,420 to Kelly's Restaurant, $3,011.00 for Funeral Flowers, $4,250.00 for Headstone, $19,000.00 to Albert M. Sardella for Personal Representative Commissions, $19,000.00 to Rubino & Hoey for Attorney Fees, and miscellaneous other expenses. SV-22.

106. Respondent signed the Inheritance Tax Return as the personal representative of the Estate doing so under penalties of perjury. SV-22.

107. Respondent justified his decision to include these expenses as line items deductions in the Inheritance Tax Return, claiming they were good faith estimates of expenses that the Estate would incur at some future date. A.A. ¶ 85.

108. Respondent valued the gross estate at $237,180.87 and valued net assets at $108,515.39.

109. On July 19, 2013, Respondent made the first partial distribution to the Beneficiaries in the total amount of $42,000.00, knowing that he had paid himself and his son legal fees of $32,500.00 and paid himself an executor's commission and expense

reimbursements (collectively "fees") from the Estate checking account totaling $29,500.00. P for D ¶ 88; A.A. ¶ 88.

110. Respondent takes the position that the $29,500.00 includes fees for services he undertook as the Attorney-in-Fact under Mr. Valence's Power of Attorney. A.A. ¶ 88. Check amended answer and answer

111. On September 25, 2013, Respondent made a second partial distribution to the Beneficiaries for a total of $55,135.54, knowing that he had issued payment for fees of an additional $15,000.00, for total fees of $44,500.00. P for D ¶89; A.A. ¶ 89; SV-23 through 31.

112. On July 14, 2014, Respondent wrote to the Beneficiaries and made a final at-risk distribution for a total of $8,000.00 to them, knowing that he had issued payment to himself for fees of an additional $1,500.00 on January 24, 2014, for total fees to himself of $46,000.00. Respondent included a notation in the memo portion of each check to the Beneficiaries stating: "[b]y endorsing this check I release the Executor and counsel for any and all claims relative to this estate." P for D ¶ 91; A.A. ¶ 91; SV-32 through 40.

113. Respondent's July 14, 2014 letters transmitting the final at-risk-distributions to the Beneficiaries did not explain the significance of the language included in the memo section of each distribution check, but included a paragraph that the Beneficiaries could contact him with questions. P for D ¶ 92; A.A. ¶ 92.

114. Respondent admits that he did not advise the Beneficiaries, in writing, of the desirability of seeking the advice of independent legal counsel in connection with the release of a potentially disputed claim as reflected in the memo portion of each final distribution check. P for D ¶ 95; A.A. ¶ 95.

115. In August 2015, Anita Fulwiler O'Meara, Esquire contacted Respondent on behalf of John Valence, Jr. and Katha Valence explaining that she had obtained his filings with the Register of Wills (because none were provided to her clients) and had questions regarding $19,000.00 in attorney's fees to Respondent's son; his $19,000.00 executor fee; funeral expenses (since the decedent had a pre-paid funeral policy); and other items. Ms. O'Meara asked Respondent to cooperate by providing a voluntary accounting so that she would not need to file a Petition for Accounting with the Orphans' Court. SV-44.

116. On August 24, 2015, Respondent agreed to provide to Ms. O'Meara information in the Estate file and represented that he would cooperate with Ms. O'Meara to avoid a formal proceeding in Orphans' Court. SV-45.

117. From August 12, 2015 through October 25, 2015, Ms. O'Meara communicated with Respondent about his failure to voluntarily provide the accounting and file materials despite many extensions in light of Respondent's medical conditions. SV-44; SV-45; SV-46; SV-47.

118. On October 26, 2015, Ms. O'Meara filed a Petition for Citation to Show Cause Why an Accounting Should Not be Filed by the Executor (the "Petition for Accounting") in the Orphans' Court Division of the Court of Common Pleas of Delaware County, No. CV-661-15. SV-48.

119. Thereafter, the Orphans' Court issued a Citation regarding the hearing on the Petition for Accounting for a return date of November 30, 2015. Respondent obtained a continuance, claiming that it would give the parties an opportunity to resolve the issues before the hearing. SV-49.

120. On December 17 and 18, 2015, Respondent communicated with Ms. O'Meara's office to inquire if he needed to file an Answer to the Petition for Accounting since he had placed some documents in her mailbox late on December 16, 2015. P for D ¶ 102; A.A. ¶ 102; SV-52.

121. On December 21, 2015, Respondent filed an Answer to the Petition for Accounting with New Matter, asserting it was too late for the Beneficiaries to object to the accounting and one year had transpired since he had made final distribution. SV-51.

122. The hearing originally scheduled for February 16, 2016 was continued at Respondent's request, and rescheduled for Monday, March 14, 2016. SV-60; SV-61.

123. On Friday, March 11, 2016, Respondent and Ms. O'Meara met at Respondent's office to review the Estate file. SV-61.

124. Due to the volume of materials Respondent provided to Ms. O'Meara on March 11, 2016 and Respondent's agreement to provide an accounting without the requirement of an Order within two weeks of March 11, 2016, Ms. O'Meara and Respondent made a joint written request to the Orphans' Court to continue the hearing. SV-62.

125. The hearing scheduled for March 11, 2016, was rescheduled for March 28, 2016.

126. On March 25, 2016, Respondent informed the Orphans' Court that he was unavailable for the hearing on March 28, 2016, explaining he would be on trial in a specially listed medical malpractice case. Respondent asked for a two-week continuance and represented that he would prepare the Accounting. SV-62.

127. On April 11, 2016, President Judge Chad F. Kenney held a hearing on the Petition for Accounting. Judge Kenney issued a Decree dated April 11, 2016 ordering Respondent to file a Formal Accounting on or before May 11, 2016, and scheduling the audit for July 11, 2016 ("the Decree"). P for D ¶ 104; A.A. ¶ 104; P for D ¶ 105; A.A. ¶ 105; SV-66.

128. Respondent filed the Accounting on May 11, 2016. SV-68.

129. The Accounting included the following information: assets in inventory of $210,180.87; funeral and related expenses of $29,782.38; administration expenses of $88,177.24 (which included Executor's fee and reimbursement of expenses of $19,000.00, attorney fees of $12,000.00, and attorney fees as agent under P.O.A. since 10/12/98 and various unpaid attorney fees and expenses of $9,000.00 for a total of $40,000.00); and distributions to beneficiaries of $104,925.54. SV-68.

130. The Accounting does not differentiate the work Respondent performed as Executor from the work he performed as counsel for the Executor. SV-68.

131. Respondent did not appear for a hearing scheduled for May 16, 2016 because of his mistaken belief that the hearing would not be held if he filed the Accounting on or before May 11, 2016. 11/14/19 N.T. 266.

132. On May 16, 2016, Ms. O'Meara filed a Petition of Certain Beneficiaries to Remove Executor, Impose Surcharge and Assess Attorney Fees. SV-70.

133. On July 8, 2016, the Objecting Beneficiaries filed Objections to the Accounting. P for D ¶ 111; A.A. ¶ 111.

134. The Orphans' Court scheduled a hearing to address the Objections to the Accounting and the Surcharge Petition for November 29 and 30, 2016 (the "hearings").

135. On September 29, 2016, Ms. O'Meara deposed Respondent and Respondent's son. (SV-80; and SV-80(a)). Respondent was represented by Jay Fischer, Esquire.

136. On November 28, 2016, Respondent filed an Amended Accounting. SV-83.

137. The Amended Accounting included the following information: assets in inventory of $211,383.75; funeral and related expenses of $29,782.38; administration expenses of $104,482.65 (which included Executor's fee and reimbursement of expenses of $19,000.00, attorney fees to Rubino & Hoey of $7,000.00, attorney fees to Albert M. Sardella of $12,500.00, and attorney fees in capacity as agent under P.O.A. since 10/12/98 and various unpaid attorney fees and expenses of $13,000.00, for a total of $51,500.00); and distributions to beneficiaries of $104,925.54. SV-83.

138. The Amended Accounting does not differentiate the work Respondent performed as Executor from the work he performed as counsel for the Executor. SV-83.

139. On November 28, 2016, Ms. O'Meara emailed Mr. Fischer confirming she had rejected Respondent's settlement offer to return $30,000.00 to the Estate. Ms. O'Meara made a counter-offer, requiring Respondent to pay her fees and certain liabilities for a total payment of $74,260.00. Mr. Fischer forwarded the email from Ms. O'Meara to Respondent before the hearing began on November 29, 2016. SV-83.

140. On November 29, 2016, and November 30, 2016, the Orphans' Court held hearings on the Objections to the Accounting and Surcharge Petition.

141. Respondent returned to the Estate $30,000.00 that he had paid to himself from the Estate, and the $30,000.00 check was deposited in the Estate account on December 1, 2016. SV-88.

142. Respondent explained in his Memorandum (submitted to the Orphans' Court) that he does not record all the time he devotes to any case, which he claims would be impractical since he needs time to devote to his client matters and he only has one secretary and one part-time paralegal. Instead, Respondent makes a general and approximate record of his time, without recording time spent for all telephone calls and "repetitious" actions. SV-79.

143. On January 13, 2017, the Orphans' Court filed a Final Decree and opinion removing Respondent as Executor and surcharging him. P for D ¶ 115; A.A. ¶ 115; ODC-23.

144. The Court ordered as follows: $60,370.00 (including the $30,000.00 that Respondent deposited into the Estate on December 2, 2016) surcharged against Respondent, attorney fees in the amount of $65,612.28 to be paid by Respondent to Ms. O'Meara's law firm, $8,500.00 to be paid by Respondent to the Estate for any supplement or correction to the Pennsylvania Inheritance Tax Return and any penalties, Respondent removed as Executor, and the Register of Wills of Delaware County directed to issues Letters of Administration *de bonis non cum testament annexo* to Ms. O'Meara. SV-89.

145. On January 23, 2017, Respondent filed a Motion for Reconsideration of the Orphans' Court Order. SV-90.

146. On February 15, 2017, the Court held a hearing on the Motion for Reconsideration and issued a Decree confirming the appointment of Ms. O'Meara as the Administratrix of the Estate and staying the payment of her counsel fees while the parties negotiated a settlement. ODC-27.

147. The Orphans' Court extended the stay several more times after April 12, 2017. P for D ¶ 125; A.A. ¶ 125.

148. By July 7, 2017, Ms. O'Meara and Respondent executed a Joint Petition for Approval of Settlement of Surcharge against Respondent. S.V. 99; ODC-32.

149. By Decree dated July 18, 2017, the Orphans' Court approved the settlement, which included an additional payment of $50,000.00 by Respondent's professional liability carrier. ODC-33.

150. The Orphans' Court Action formally ended on August 7, 2017 with the filing of a Praecipe to Mark the Order and Opinion dated January 13, 2017 Satisfied. ODC-35.

151. There was no proper basis for Respondent as Executor to pay to himself fees from the Estate for legal services that he performed over a period of years for Mr. Valence during his lifetime.

152. There was no proper basis for Respondent as Executor and/or counsel for the Executor to retain Rubino & Hoey (where his son was an inexperienced associate) to perform legal services for the Estate given the "uncomplicated" nature of the estate administration. 11/14/19 N.T. 165.

153. There is no evidence to substantiate the Executor commission and attorney fees that were paid by the Estate to Respondent, and, based upon the

information available about the administration of the Estate, the commission and attorney fees that were charged were excessive.

Miscellaneous

154. Respondent provided inaccurate information in his Pennsylvania Attorney's Annual Fee Forms for his attorney registrations from 2012 through 2019 in that he did not accurately identify his bank accounts. ODC-36 through ODC-43.

155. Respondent signed these forms certifying the accuracy of the information therein, although the forms were prepared by his secretary based upon the prior year's form, which were inaccurate. ODC-36 through ODC-43; 11/15/19 N.T. 153-177.

156. Respondent continued to inaccurately complete the annual forms even after Office of Disciplinary Counsel notified him that they were investigating his handling of RPC 1.15 funds. 11/14/19 N.T. 174, 176-177.

157. Respondent admits that it was his responsibility to ensure that the forms were completed accurately. 11/15/19 N.T. 155, 174.

158. Respondent testified that he does not know how to use a computer and relies on his office staff for technology issues. Respondent was unable to answer questions concerning how he currently reconciles his IOLTA and whether he is using software or another mechanism. 11/15/19 N.T. 128, 162, 182-183.

159. Respondent has a history of public service, including providing pro bono legal services and serving on community boards. SG-1.

160. Respondent self-reported through counsel his failure to comply with the IOLTA requirements, cooperated with the IOLTA Board in its investigation, has paid the interest due for the years for which documentation is available, and has attempted to

reach a settlement agreement with respect to interest that is due for the years for which no documentation is available.

161. Respondent had medical conditions in 2015 and 2018 that limited his ability to engage in the full-time practice of law (SV-50, SV-96, SI-11, SD-34 and SD-37), but he performed work as he was able and there is no evidence that the medical conditions had a material negative impact on any clients or legal matters.

162. Respondent did not accept full responsibility for his actions and did not express genuine remorse for his misconduct.

163. Retired Magisterial District Judge Mark A. Bruno testified as a character witness on behalf of Respondent as follows:

a. He knows Respondent from his roles as Constable and District Judge (11/14/19 N.T. 69-70);

b. Respondent has provided legal services without being paid (11/14/19 N.T. 70); and

c. Respondent has integrity and is known in the community, well respected, and willing to help anyone in need.

11/14/19 N.T. 72.

164. Respondent, Mr. Schmitt and Retired District Judge Bruno testified credibly.

III. CONCLUSIONS OF LAW

The DiSario Matter

1. By his conduct, Respondent violated the following Rules of Professional Conduct:

a. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property, and such property shall be identified and appropriately safeguarded.

b. RPC 1.15(c) [Effective 9/20/08] – Complete records shall be preserved for a period of five years, and the books and records to be maintained are described.

c. RPC 1.15(c) [Effective 3/9/15] -- Complete records shall be preserved for a period of five years, and the books and records to be maintained are described.

d. RPC 1.15(g) [Effective 4/23/05] – All Qualified Funds shall be placed in an IOLTA Account.

2. Petitioner has not met its burden of proving violations of RPC 1.1, 1.3, 1.15(e), 1.15(f), 8.4(b) and 8.4(c).

The IOLTA Matter

1. By his conduct, Respondent violated the following Rules of Professional Conduct:

a. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property, and such property shall be identified and appropriately safeguarded.

b. RPC 1.15(c) [Effective 9/20/08] – Complete records shall be preserved for a period of five years, and the books and records to be maintained are described.

c. RPC 1.15(c) [Effective 3/9/15] -- Complete records shall be preserved for a period of five years, and the books and records to be maintained are described.

d. RPC 1.15(g) [Effective 4/23/05] – All Qualified Funds shall be placed in an IOLTA Account.

e. RPC 1.15(g) [Effective 9/20/08] – The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held.

f. RPC 1.15(h) – A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying the service charges on that account, and only in an amount necessary for that purpose.

g. RPC 1.15(i) – A lawyer shall deposit into a Trust Account legal fees or 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 fashion.

h. RPC 1.15(l) – All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.

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

2. Petitioner has not met its burden of proving a violation of RPC 8.4(b).

The Valence Estate

1. By his conduct, Respondent violated the following Rules of Professional Conduct:

a. RPC 1.1 – A lawyer shall provide competent representation to a client.

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

c. RPC 1.5(a) – A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

d. RPC 1.5(b) – When a 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.

e. RPC 1.5(e) – A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless: (1) the client is advised of and does not object to the participation of all the lawyers involved, and (2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered to the client.

f. RPC 1.7(a) – A lawyer shall not represent a client if the representation involves a concurrent conflict of interest, which exists if there

is a significant risk that the representation will be materially limited by a personal interest of the lawyer.

g. RPC 1.8(h)(2) – A lawyer shall not settle a claim or potential claim for malpractice liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel in connection therewith.

h. RPC 1.15(e) – A lawyer shall promptly deliver to the client any property, including but not limited to Rule 1.15 Funds, that the client is entitled to receive, and upon request of the client, shall promptly render a full accounting regarding the property.

i. RPC 8.4(a) – It is professional misconduct for a lawyer to violate the RPC.

2. Petitioner has not met its burden of proving violations of RPC 1.16(a)(2), 4.1(a), 5.1(c)(1), 8.4(b), 8.4(c) and 8.4(d).

IV. DISCUSSION

Herein, the Board considers the Committee's recommendation to suspend Respondent for one year and one day for his misconduct in three separate matters charged in the Petition for Discipline filed on July 15, 2019. These matters concern Respondent's representation of the DiSarios in a personal injury case, the mishandling of his escrow account and IOLTA account for many years, and his conduct relative to his representation of the Valence Estate. Petitioner and Respondent each filed exceptions to

the Report vigorously opposing the recommendation and the Board heard oral argument on the issues.

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). Based on the evidentiary record, and for the reasons stated herein, we conclude that Petitioner met its burden of proof as to certain allegations that Respondent committed professional misconduct and we recommend that he be suspended for a period of two years from the practice of law.

We first address Respondent's misconduct in the IOLTA matter. The record establishes that Respondent has practiced law in the Commonwealth since 1978. In the mid-1980s, Respondent opened an escrow account at Coatesville Savings Bank. When the IOLTA Rules and regulations first went into effect in the mid-1990s, Respondent opened an IOLTA account at Citizens Bank. About one year later, Respondent switched financial institutions and opened a new IOLTA Account at First Niagara Bank, now KeyBank. Following the opening of the IOLTA account, and for some twenty years until 2017, Respondent never used the IOLTA account. Instead, contrary to the rules and regulations governing IOLTA, Respondent utilized his Coatesville Savings Bank Escrow account to deposit the proceeds of settlements, awards and judgments from personal injury matters, thus depriving the IOLTA Board of receiving its rightful interest for decades. Alerted to Respondent's misuse of his accounts in 2017, Respondent's then–attorney notified the IOLTA Board and Respondent currently is involved in settling that dispute as to interest owed.

Respondent's reasoning for his failure to use the IOLTA account for two decades was that he found the IOLTA rules confusing. He further believed that he was in

compliance with the IOLTA rules merely by having such an account, and did not comprehend that the rules required him to use it. Without seeking advice on how to properly use the IOLTA account, either from other attorneys or entities such as the IOLTA Board or bar associations, Respondent concluded that he would continue to use his escrow account to deposit client funds, and thus blithely operated under his wrong assumptions for many years, seemingly without concern for clarifying his initial and ongoing confusion.

Because Respondent did not utilize his IOLTA account, he did not meet the requirements of RPC 1.15, such as maintaining required records. The record evidences that Respondent at times used the escrow account into which he deposited client funds as an operating account and personal account from which he made payments to non-client contractors and family members for personal matters. Additionally, Respondent's annual attorney registration forms were inaccurate for a number of years with respect to the identification of his bank accounts holding client funds and the identification of operating and business accounts. Disturbingly, even after Respondent was on notice that Petitioner was investigating his RPC 1.15 records, he did not make a point to ensure the accuracy of his attorney registration forms and failed to report certain accounts or mislabeled the accounts. Respondent testified that his secretary simply used the information contained in the previous year's attorney registration statement. Respondent acknowledged that he was responsible for verifying the accuracy of the information in his annual registration statements and did not do so.

In connection with the IOLTA matter, Respondent has admitted that he violated RPC 1.15(b) by failing to hold Rule 1.15 Funds and property separate from his own property; and RPC 1.15(g) by failing to place Qualified Funds in an IOLTA Account

and for failing to identify an account as a Trust Account. We conclude, as did the Committee, that Respondent also violated RPC 1.15(c) by failing to maintain records; RPC 1.15(h), by depositing his own funds in a trust account; RPC 1.15(i), by failing to deposit in a trust account fees and expenses that had been paid in advance; RPC 1.15(l), by failing to place all Fiduciary Funds in a Trust Account, and if such funds were Qualified Funds, failing to place them in an IOLTA Account; and RPC 1.15(m), by failing to place Qualified Funds in an IOLTA Account.

Respondent contends that he is now in compliance with RPC 1.15 and uses his IOLTA in accordance with the requirements, although we are not entirely convinced that Respondent is in full command of the factual details of his IOLTA account based on his inability to answer Petitioner's questions regarding reconciling his accounts, and his repeated testimony that his secretary is computer savvy and he is not.[1] Notwithstanding Respondent's current use of his IOLTA account, his lack of compliance with the express regulations for twenty years provides a basis for discipline.

Respondent's long-standing IOLTA account non-compliance and mishandling of his escrow account is at the heart of his misconduct in the DiSario matter. Respondent has admitted that he violated RPC 1.15(b) by failing to hold Rule 1.15 Funds and property separate from his own property; and RPC 1.15(g) by failing to place Qualified Funds into his IOLTA account. In connection with his representation of the DiSarios, Respondent deposited the $140,000.00 check from Westfield Insurance Company for the arbitration award into his escrow account and not into his IOLTA account. Thereafter, Respondent's escrow account was out of trust in varying small amounts on several

[1] RPC 1.1 Comment [8] advises that in order to maintain competence, a lawyer "should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."

occasions, he deposited flat fees and fully earned fees into the escrow account instead of into the operating account, and he paid various operating and personal expenses out of the escrow account. Additionally, Respondent failed to maintain required records for the proper amount of time.

Petitioner urges the Board to conclude that the Committee erred when it concluded that Respondent did not commit misconduct related to his distribution of the DiSarios' funds. Upon review, we conclude that the Committee's factual analysis of the DiSario matter is sound. The Westfield check was received by Respondent on May 23, 2013 and deposited into his escrow account on May 24, 2013. No distribution was made to Mr. and Mrs. DiSario until July 3, 2014, a period of nearly fourteen months. At first blush, this appears to be an unreasonable delay in distribution; however, the record establishes there were legitimate reasons in view of certain third party lien notices for not making an immediate or earlier distribution to the DiSarios, even though the lien holders eventually did not receive any payment. Petitioner did not put forth sufficient evidence of a clear and satisfactory nature that in connection with his representation, Respondent lacked competence and diligence, that he failed to promptly deliver the payment of the DiSarios' share of the settlement, or that his actions were in some way dishonest or of a criminal nature.

Lastly, we consider Respondent's conduct relative to the Valence Estate, which we view as the most serious of the charges against him. Respondent has admitted violations of RPC 1.5(b) for failing to have a written fee agreement between himself as Executor and himself as counsel for the Executor; and RPC 1.8(h)(2) for not advising the unrepresented beneficiaries of the Estate of the desirability of seeking the advice of independent legal counsel when Respondent made the final at-risk distribution that

included release language. In addition to these admitted violations, we conclude, as did the Committee, that Respondent violated numerous other Rules of Professional Conduct.

The record establishes that Respondent acted as both the Executor and the counsel for the Executor in the estate of his great-uncle, Walter Valence, which Estate according to Respondent's own testimony was "not complicated" (11/14/19 N.T. 165) and consisted of real property, personal property therein, and three bank accounts, with a probate value of approximately $210,000. Respondent's dual capacity was not unethical per se, and he reasoned that acting in such capacity would be an efficient method of administering the estate, but as the record demonstrates, Respondent's representation proved otherwise.

Respondent failed the Estate in a multitude of ways. He provided incompetent representation in violation of RPC 1.1 from the outset by failing to have a fee agreement and failing to have invoices to differentiate the work he performed in his role as Executor from the work performed in his role as counsel to the Executor, thereby heightening the risk that the services would be duplicated. Despite Respondent's stated position that the estate was not complicated and that he decided to act as counsel to the Executor to be efficient, he retained the law firm of Rubino & Hoey a mere five days after going to the Register of Wills to probate the will. Coincidentally, this firm happened to employ Respondent's son, a recently barred attorney. Respondent attempted to justify his actions by explaining that he wanted his inexperienced son to learn how do to an estate; it is unclear what benefit Respondent sought to bring to the Estate by retaining outside counsel, in particular his son, who had little to no experience. Respondent was qualified to handle the legal work of the Estate; his retention of Rubino & Hoey had no legitimate purpose and was clearly unnecessary and inappropriate.

In other acts of incompetence, Respondent failed to file the Inheritance Tax Return timely and provided no explanation for this delay. The Inheritance Tax Return contained questionable entries and inaccuracies about attorney fees, funeral expenses, and other expenses Respondent claimed were estimates. Further, after distributions to beneficiaries on July 19, 2013 and September 25, 2013, there was no activity until the final at-risk distribution on July 14, 2014. There is no explanation for this delay of more than nine months, which delay is patently unreasonable.

Respondent's actions concerning his provision of information to Attorney O'Meara were drawn out and should have been handled in a more timely fashion. Ms. O'Meara's involvement began in August 2015 and due to her dissatisfaction with Respondent's responses, in October 2015 she filed a Petition to Show Cause Why an Accounting Should Not Be Filed. Despite further communication and exchange of additional information, Ms. O'Meara remained unsatisfied with Respondent's response to her requests and she continued to press for a Court Decree, which was granted on April 11, 2016, with an accounting due on May 11, 2016. Finally, Respondent did not explain any of the commission or fees that were paid to him, including any information about the amount of time he spent, which actions demonstrated incompetence.

RPC 1.3 required Respondent to act with reasonable diligence and promptness in his representation. Aspects of Respondent's work on the Estate demonstrated a lack of reasonable diligence and promptness, such as the late filing of the Inheritance Tax Return, the delay from September 2013 until July 2014 making the final distribution, and delays in providing full and complete information to Ms. O'Meara.

Troublingly, and perhaps most egregiously for the purpose of discipline, Respondent charged excessive fees to the Estate, in violation of RPC 1.5(a). According

to the most recent summary of commission and fees contained in the Amended Accounting, there were executor fees and reimbursement of expenses of $19,000; attorney fees to Rubino & Hoey of $7,000; attorney fees to Respondent of $12,500; and attorney fees to Respondent in the amount of $13,000 for services Respondent claims he rendered during Walter Valence's lifetime. This totals $51,500. Bearing in mind that Respondent did not present any itemized invoices for services rendered as either Executor or counsel for Executor, and recognizing that the assets of the Estate were valued at approximately $210,000, these commission and fee amounts are excessive.

The fee of $13,000 paid by the Estate to Respondent for work he performed during Mr. Valence's lifetime is unsupported by the evidence. As aptly noted by the Committee, the role of Executor is to cumulate the decedent's assets, pay all appropriate debts and legitimate expenses of the estate administration, and distribute the remaining amount. The Executor does not have the discretion to pay what is not a valid debt or legitimate administration expense. Respondent may well have provided legal services to his great uncle during the course of Mr. Valence's lifetime for which Respondent was not paid; however, Respondent provided no proof other than his oral statement that he provided the services and that Mr. Valence told him to pay himself from the estate. Respondent paid himself $13,000 in fees because he was in a position to do so as Executor and acted in his self-interest.

Respondent's repayment of $30,000 to the Estate does not mitigate his misconduct in charging excessive fees. While Respondent's motivations for repayment are his own, it can be deduced that by the time he repaid the Estate in December 2016, he had been the subject of criticism in court filings and a hearing had been held to address his conduct and whether he should be removed and surcharged. Respondent's

timing of repayment suggests that he did so under intense scrutiny and pressure, not because he felt innate remorse for his actions.

The record evidences other conduct violations pertaining to the Valence Estate. As noted above, Respondent admitted that he neglected to have a written fee agreement, in violation of RPC 1.5(b). This is particularly problematic in light of the excessive fee issue, as there is no way to determine exactly what work was performed to substantiate the fee. Respondent did not explain the time he spent, and it is not clear how the attorney fees charged by Respondent as counsel for the Estate were calculated. Similarly, it is not apparent what work was performed as Executor. Certainly a written fee agreement at the commencement of representation would have provided necessary and helpful structure to the arrangement and required documentation of the fees charged.

Respondent's retention of Rubino & Hoey caused problems on several levels, some of which were discussed above in relation to his violation of the competence requirement of RPC 1.1. Respondent's retention of a second law firm to perform work for the estate was unnecessary and unjustified by Respondent's explanation that he wanted to give his son experience working on an estate. The fee of $7,000 to the Rubino firm contributed to the excess fee charged by Respondent. RPC 1.5(e) prohibits dividing a fee for legal service with another lawyer not in the same firm unless the client is aware and does not object and the total fee is not excessive. Respondent's conduct fails the second part of subsection (e), as it has been established that Respondent charged an excessive fee. Respondent as counsel for the Executor should have performed all of the legal work required for an estate that was "not complicated." Unfortunately, by charging excessive fees, directing work unnecessarily to his son's firm which Respondent should

have done, and dividing the excessive fee with the Rubino firm, Respondent violated RPC 1.5(e).

RPC 1.7(a) prohibits representation of a client if the representation involved a concurrent conflict of interest, which exists if there is a significant risk that the representation will be materially limited by a personal interest of the lawyer. Respondent ran afoul of this rule when, in his capacity as Executor, he paid himself legal fees that he believed he was entitled to for services rendered to Mr. Valance during his lifetime, despite the lack of documentation on this point. Respondent's payment to himself of $13,000 reduced the amount available for distribution to the beneficiaries. Also, Respondent hired the Rubino firm to perform legal work even though he was counsel for the estate, just so his son could learn how to do an estate.

Respondent admitted he violated RPC 1.8(h)(2) because he wrote to all of the beneficiaries about making a final at risk distribution and provided a receipt and release for each beneficiary to sign, but did not advise them in writing that they should seek the advice of independent legal counsel.

RPC 1.15(e) requires a lawyer to promptly deliver to a client funds to which the client is entitled and promptly render a full accounting upon request. Respondent's delay in making final distribution and the delays in providing full information to counsel for certain of the beneficiaries and in filing the Accounting and Amended Accounting violated this provision of the rules.

Respondent's actions in violating the Rules of Professional Conduct serve as a violation of RPC 8.4(a).

By any metric, Respondent's representation of the Valance Estate was unprofessional. His actions are all the more confounding and troubling due to his twelve-

year stint as Solicitor for the Register of Wills of Chester County and Solicitor for the Orphans' Court in Chester County, and his testimony that approximately 30 to 50 percent of his practice over the past thirty-five years involved estate planning, administering estates and litigating matters in Orphans' Court. The record establishes that at the time he undertook the representation of the Valence Estate, Respondent was an experienced trusts and estates practitioner who was tasked with an uncomplicated matter. While the Committee has suggested that Respondent's actions in the Estate matter were an aberration, it appears that the decisions he made were not based on a lack of knowledge in the subject matter or an error in judgment. Rather, it appears that Respondent manipulated the representation of the Estate to his advantage, and we are offended by the grasping nature of such actions, as they more closely resemble a concerted effort to funnel money to himself and his son.

In sum, Respondent charged excessive fees without keeping any records to justify such fees, and unnecessarily and unreasonably retained his son's law firm and shared the excessive fees with that firm. His reimbursement of $30,000 to the estate under the circumstances of a challenge to the commission and fees does not resolve the conduct, nor does it stand as a mitigating factor in this matter. In addition to Respondent's misconduct concerning the excessive fees, he violated numerous other rules in the Valence matter and committed professional misconduct by his failure to use his IOLTA account and to properly handle the DiSarios' funds.

Having concluded that Respondent violated the Rules of Professional Conduct, we next consider the appropriate sanction to address Respondent's misconduct. The Committee has recommended a suspension for one year and one day; Petitioner argues for a two year suspension, while Respondent advocates that

suspension is not warranted and a public reprimand is appropriate to address the facts and circumstances of this matter.

It is well-established that 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). In recommending discipline, the Board must weigh the aggravating and mitigating factors present and determine how these factors impact the assessment of discipline. ***Office of Disciplinary Counsel v. Joshua Eilberg***, 441 A.2d 1193, 1195 (Pa. 1982). Upon reviewing the totality of the facts and circumstances of this record, and after considering the goals of the disciplinary system and the established precedent to ensure the application of consistent discipline, we conclude that Respondent's misconduct warrants a suspension for a period of two years. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 190 (Pa. 1983); ***Office of Disciplinary Counsel v. Melvin V. Richardson***, No. 35 DB 1988, 8 Pa. C. & C. 4th 344, 355 (1990).

We have analyzed the mitigating and aggravating factors and have weighed them accordingly. Respondent's community involvement, including pro bono services, and his character testimony serve as mitigating factors. Respondent, who was approximately 66 years of age at the time of the disciplinary hearing and a licensed attorney since 1978, puts forth his many years of practice without professional discipline as competent mitigating evidence. It is well-established that a respondent who has no history of discipline may be entitled to the benefit of mitigation. ***Office of Disciplinary Counsel v. Paul M. Pozonsky***, 177 A.3d 830 (Pa. 2018); ***Office of Disciplinary Counsel v. Michael Fein***, No. 147 DB 2018 (D. Bd. Rpt. 3/5/2020) (S. Ct. Order

6/29/2020). However, upon closer examination of this point, when considering that Respondent was in violation of the conduct rules for two decades due to his failure to use his IOLTA account, a failure which he neglected to correct despite his admitted confusion relative to the rules and regulations, we conclude that his lack of discipline is not so compelling to convince the Board that suspension of his license is not warranted.

Respondent's lack of remorse is an aggravating circumstance. Respondent has not meaningfully apologized nor recognized the breadth of his wrongdoing. Respondent believes he has not intentionally violated any of the conduct rules; that his clients have not been harmed; that his current use of his IOLTA account since 2017 ameliorates his misuse for two decades; and that his reimbursement of monies to the Valence estate adequately addresses any questions as to his underlying conduct. Although he has admitted certain rule violations and has accepted responsibility in those instances, his attitude belies a full embrace of wrongdoing. Respondent continues to believe that he should be excused for his failure to comply with the rules and that he should be treated leniently because he was either "confused" or his actions were an "aberration."

In the context of these facts and circumstances, we conclude that a public reprimand is inconsistent with discipline in prior matters and not appropriate to address the serious nature of the instant misconduct. We recognize that public reprimands have been imposed in matters concerning mishandling of IOLTA accounts. *See*, ***Office of Disciplinary Counsel v. Richard Patrick Gainey***, No. 160 DB 2018 (D. Bd. Order 4/15/2020) (mismanagement of IOLTA account and failure to keep required records; remorse and recognition of wrongdoing); ***Office of Disciplinary Counsel v. William Paul Marshall***, No. 66 DB 2019 (D. Bd. Order 4/25/2019) (long-standing mishandling and

misuse of IOLTA account and history of routine violations of record keeping rules; remorse and remediation); ***Office of Disciplinary Counsel v. Clair Michelle Stewart***, No. 228 DB 2018 (D. Bd. Order 12/21/2018) (mishandling of IOLTA account and mishandling of estate funds; cooperated with Office of Disciplinary Counsel). Upon review, we find this line of cases to be inapposite to the instant matter, primarily for the reasons that Respondent's misconduct does not involve IOLTA violations alone and Respondent has not expressed contrition for his acts. Respondent's offensive conduct in the Valence Estate matter in combination with his IOLTA derelictions is sufficiently significant to warrant suspension, particularly in light of the aggravating factors.

Precedent supports a suspension of two years as appropriate to address the serious misconduct in the instant matter. In the matter of ***Office of Disciplinary Counsel v. James A. Bolden***, No. 165 DB 2003 (D. Bd. Rpt. 1/25/2005) (S. Ct. Order 4/19/2005), the Court suspended Bolden for a period of three years after he charged excessive fees in his capacity as an attorney and executor for an estate and only reimbursed the excessive fees because of extensive litigation in the Orphans' Court resulting in a surcharge. Bolden reimbursed $120,000 of $161,000 in fees and commission in an estate with a probate value of $202,000. In addition to this misconduct, Bolden neglected the estate by failing to file a timely Inheritance Tax Return, provide an accounting, notify the heirs as to distribution, and provide accurate financial information on the funds available for distribution to the heirs.

Respondent's handling of the Valence Estate is similar to Bolden's misconduct, although Bolden's excessive fees were much more than that charged by Respondent in an estate having a similar probate value. Additionally, Bolden violated RPC 8.4(c) and RPC 8.4(d), involving dishonesty and conduct prejudicial to the

administration of justice, which misconduct is not present in the instant matter. These factors warrant Bolden's long suspension. Similar to Respondent, Bolden had no prior history of discipline.

Upon this record, we conclude that Respondent is unfit to practice law. A two year term of suspension is warranted, as it removes Respondent from practice and protects the public, fulfilling the predominant mission of the disciplinary system. If Respondent desires to practice law in the future, he will be required to prove his fitness by clear and convincing evidence.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, Albert M. Sardella, be Suspended for two years from the practice of law in this Commonwealth.

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: /s/ John C. Rafferty
John C. Rafferty, Jr., Member

Date: 09/02/2020

Member Senoff recused.