

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 132 DB 2022
Petitioner :
v. : Attorney Registration No. 34355
MARC ALAN ROBERTS :
Respondent : (York County)

ORDER

AND NOW, this 12th day of October, 2022, in accordance with Rule 215(g), Pa.R.D.E., the three-member Panel of the Disciplinary Board having reviewed and approved the Joint Petition in Support of Discipline on Consent filed in the above captioned matter; it is

ORDERED that MARC ALAN ROBERTS be subjected to a **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a) and Rule 205(c)(9) of the Pennsylvania Rules of Disciplinary Enforcement.

BY THE BOARD:



Board Chair

TRUE COPY FROM RECORD

Attest:



Marcee D. Sloan
Board Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
v. : ~~132~~ DB 2022
MARC ALAN ROBERTS, : Attorney Reg. No. 34355
Respondent : (York County)

JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215(d)

Petitioner, Office of Disciplinary Counsel (ODC) by Thomas J. Farrell, Chief Disciplinary Counsel, and Kristin A. Wells, Disciplinary Counsel, and Respondent, Marc Alan Roberts, Esquire, by and through his counsel, P. Brennan Hart, Esquire, respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) 215(d), and in support thereof state:

1. ODC, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106, is invested, pursuant to Pa.R.D.E. 207, with the power and the duty to investigate all matters involving alleged misconduct of an attorney in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Marc Alan Roberts, was born on September 17, 1956, and was admitted to practice law in Pennsylvania on October 28, 1981. Respondent is on active status. His registered address is 149 East Market Street, York, Pennsylvania 17401.

3. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

FILED
09/20/2022
The Disciplinary Board of the
Supreme Court of Pennsylvania

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

4. Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline is attached hereto as Exhibit "A".

Mary Jane Reed

5. Respondent hired Mary Jane Reed approximately 10 years ago to provide support services for his practice.

6. Prior to becoming an employee of Respondent's firm, Mrs. Reed, who was not an attorney, had acquired expertise in notary work and in supporting real estate and estate administration clients through her work for her late husband, who was a solo legal practitioner, and another attorney.

7. Ms. Reed is currently 89 years old.

Estate of Carol Y. Sherr

8. Following the November 8, 2020, death of their mother, Kimberly Sherr and Luann Johns (collectively "Complainants") contacted Mrs. Reed for assistance in opening and administering their mother's estate.

9. Complainants knew Mrs. Reed socially and were aware that she was employed by Respondent's law practice.

10. On December 21, 2020, the Complainants met with Mrs. Reed and Respondent and retained Respondent to represent them in the administration of their mother's estate.

11. On December 24, 2020, the Complainants filed a Petition for Grant of Letters Testamentary, signed by Respondent as counsel, with the Lancaster County Register of Wills, and were granted Letters as co-executrixes of the estate.

12. Over the next several months, with Respondent's knowledge, Mrs. Reed met with

Complainants weekly to discuss the estate administration.

13. At one of the first of these meetings, Mrs. Reed requested Complainants sign numerous blank checks for the estate checking account, which Mrs. Reed stated she would use to pay estate expenses.

14. Ultimately, Mrs. Reed utilized these checks to collect a \$20,882.88 fee paid to Respondent's firm and to convert \$31,983.03 in estate funds for her own use without Complainants' knowledge or consent.

15. Respondent failed to take sufficient action relative to the estate, including failing to timely file an estate tax return.

16. On September 14, 2021, Complainants contacted Respondent directly concerning Mrs. Reed's misuse of estate funds and failure to take sufficient action to support the administration of the estate.

17. Respondent thereafter immediately returned to successor counsel the entirety of the fee paid by Complainants.

Respondent's Statement of Position and Action

18. On January 11, 2022, ODC sent Respondent a DB-7 Request for Statement of Respondent's Position letter ("DB-7 letter") concerning the above-stated facts.

19. On February 17, 2022, Respondent submitted a response to ODC's DB-7 letter, followed by a supplemental response dated March 27, 2022.

20. Respondent acknowledges that he failed to exercise the appropriate supervision over Mrs. Reed.

21. If this matter were to proceed to hearing, Respondent would testify he had no knowledge that Mrs. Reed requested and received signed blank checks from Complainants and doing so was against firm policy.

22. If this matter were to proceed to hearing, Respondent would testify that Mrs. Reed told him the Complainants authorized the \$20,882.88 check for the firm's fee, and he accepted her assertion as truthful.

23. If this matter were to proceed to hearing, Respondent would testify that Mrs. Reed's role in the practice was unique; in deference to her prior experience and with the expectation that her role would be diminishing and limited in duration, Respondent failed to properly supervise Ms. Reed's management of estate matters to ensure estate funds were handled in compliance with the Rules of Professional Conduct.

24. Upon receipt of the DB-7 letter, Respondent immediately undertook a review of all files in which Mrs. Reed had been involved to determine whether she misappropriated additional funds.

25. Respondent identified two estates in which it appeared Mrs. Reed had misappropriated approximately \$261,000.00.

26. Respondent promptly contacted the executors of those estates to inform them of the potential misappropriation and the availability of coverage for any losses through his professional liability insurance provider.

27. Respondent has initiated a civil action against Mrs. Reed.

28. Mrs. Reed is also facing criminal charges for her theft. *See Commonwealth v. Reed*, CP-36-CR-0001493-2022 (Lancaster Co.).

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED

29. Respondent violated the following Pennsylvania Rules of Professional Conduct:
- a. RPC 1.1, which requires that a lawyer provide competent representation to a client;
 - b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client; and
 - c. RPC 5.3(b), which states that a lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

SPECIFIC RECOMMENDATION FOR DISCIPLINE
PUBLIC REPRIMAND

Respondent fully admits to his misconduct in violation of the Rules of Professional Conduct and expresses remorse for his failure to properly supervise Mrs. Reed and the harm that his failure caused to his clients. Respondent's misconduct is mitigated by his 40 years of practice without any prior discipline. Further, Respondent's prompt action in refunding the entirety of the fee collected for the Sherr Estate and voluntary investigation of all files on which Mrs. Reed worked are mitigating factors.

Precedent supports the imposition of a public reprimand under facts similar to this case. In *ODC v. Evan Shingles*, 148 DB 2019 (public reprimand administered 1/13/2021), Respondent Shingles received a public reprimand with one-year probation for, *inter alia*, his failure to properly supervise his office assistant, even after he was made aware that she and Respondent Shingles' father ("Stanley"), who worked as an attorney with Respondent Shingles, were improperly depositing entrusted funds into the firm's operating account. The legal assistant in this matter had been Stanley's employee for years while he practiced in his own firm and came with Stanley to

work at Respondent Shingles' firm when he and Stanley combined their practices. Due to Respondent Shingles' failure to keep records required by RPC 1.15, the mismanagement of entrusted funds persisted for approximately two years prior to detection by Respondent Shingles. When faced with a disciplinary investigation, Respondent Shingles took full responsibility for his misconduct and ultimately took the steps necessary to come into full compliance with RPC 1.15. In mitigation, Respondent Shingles had no prior history of discipline in his 20 years of practice. Respondent Shingles' probationary period was based on the Board's determination that continuing oversight of Respondent Shingles' compliance with RPC 1.15 recording keeping was necessary.

In *ODC v. Weitzman*, 140 DB 2018 (public reprimand administered 10/29/2018), Respondent Weitzman received a public reprimand for his failure to properly supervise a formerly-admitted attorney, Adrian Moody, who was employed by Respondent Weitzman's firm as a legal assistant. Specifically, Respondent Weitzman permitted Mr. Moody to independently staff a separate office, at which Mr. Moody conducted client intake and provided members of the public with his personal business card, thereby giving the impression that he was duly licensed to practice law. In aggravation, Respondent Weitzman had previously been suspended for a period of three years based on his tax evasion criminal conviction. In mitigation, Respondent Weitzman accepted full responsibility for his misconduct and took remedial actions in the face of ODC's investigation.

As in *Shingles* and *Weitzman*, Respondent Roberts clearly failed in his duties to properly supervise Ms. Reed. While not expressly stated in the Disciplinary Board's *Shingles* Report, it is likely that many of the factors that led to Respondent's complacent oversight of Ms. Reed also applied in that case, as both assistants came to the respective practices with long careers providing legal administrative support. Similar to *Shingles* and *Weitzman*, when Respondent was made aware of the misconduct, he took action to rectify the same. Unlike *Shingles*, a probationary

period does not appear necessary in this case, as Respondent's IOLTA and operating accounts were not implicated by Ms. Reed's misconduct and there is no evidence to suggest that Respondent has mismanaged those accounts in any way.

While more severe discipline has been imposed in some failure to supervise cases, such does not appear warranted here. In *ODC v. Krzton*, 86 DB 2020 (D. Bd. Rpt. 6/2/2021) (S. Ct. Order. 8/6/2021), the Court imposed a six-month suspension of Respondent Krzton's license based on, *inter alia*, his failure to properly supervise his non-lawyer assistant, Joy Hale, in her dealings with various estates for which Respondent Krzton served as counsel. Notably, Respondent Krzton discovered that Ms. Hale had stolen \$3,300 from an estate, yet he continued to task her with the same level of responsibility and continued to allow her full access and control over at least seven estate accounts, checkbooks, and monthly statements. Despite the prior theft, Respondent Krzton failed to maintain records of the estate accounts or enhance supervision of Ms. Hale's activities to ensure compliance with record-keeping responsibilities and prevent future theft. Over the course of approximately three years, Ms. Hale stole \$191,026.99 from seven estates and provided falsified account records to the estate representatives in an effort to conceal her theft. Even after Ms. Hale's additional theft had been discovered, Respondent Krzton continued to employ Ms. Hale for an additional two months, albeit in a role that did not include access to estate funds.

In *ODC v. Colaizzi*, 120 DB 2016 (D. Bd. Rpt. 9/28/2018) (S. Ct. Order 1/4/2019), the Court imposed a one-year and one-day suspension of Respondent Colaizzi's license based on his failure to supervise his non-lawyer assistant, who was his wife ("Andrea"), in her handling of client funds, which enabled her theft of \$97,763.90 from one estate and \$49,218.55 from four other client matters. Due to Respondent Colaizzi's failure to turn over the stolen estate funds upon request by the Bankruptcy Court, he was found in contempt and sentenced to six months' imprisonment,

subject to purge upon his payment of the funds. After Andrea admitted her theft from the estate to Respondent Colaizzi, he continued to employ her for an additional two years, during which time she continued to misappropriate client funds. While Respondent Colaizzi repaid the majority of the funds Andrea stole, he did not satisfy a \$5,174.50 consent judgment entered against him in favor of one of his clients.

The Disciplinary Board's analysis in both *Krzton* and *Colaizzi* makes clear that it was the respondents' continued employment following discovery of their assistants' thefts that was of most concern. In *Krzton*, the Board stated that such continued employment "demonstrated that [Respondent Krzton] did not fully acknowledge or understand the gravity of these matters, or accept his own responsibility therein ..." *Krzton* D. Bd. Rpt., at 23. In *Colaizzi*, the Disciplinary Board stated:

Respondent's conduct once he learned of Andrea's wrongful acts in [the estate matter] is the crux of this disciplinary matter. Inexplicably, Respondent continued to allow Andrea to be present at his law office, train new employees, and access his law firm's financial records, accounts, mail and email ... [and she] continued to have full access to the office for approximately two years ... [during which] it is not clear that Respondent provided the necessary oversight to prevent another theft.

Colaizzi D. Bd. Rpt, at 20-21. Further, the Board determined that Respondent Colaizzi had not accepted responsibility for his misconduct or "demonstrate that he was aware of the need for an immediate response to Andrea's conduct, in order to protect his clients." *Id.*, at 21.

Unlike the respondents in *Krzton* and *Colaizzi*, Respondent Roberts took swift and immediate action once notified of Ms. Reed's theft. In addition to terminating Ms. Reed's employment and returning the entirety of the fee paid to the firm in the Sherr Estate, Respondent undertook a review of all estate matters in which Ms. Reed had been involved to determine whether she misappropriated additional funds. For those matters in which discrepancies were

identified, Respondent promptly contacted the estate representatives to advise them of the potential misappropriation and of the availability of coverage for any stolen funds through Respondent's malpractice carrier. Respondent's immediate action to ameliorate his paralegal's misconduct, unlike the respondents in *Krzton* and *Colaizzi*, suggests a lesser disciplinary sanction than imposed in those cases is appropriate.

WHEREFORE, Petitioner and Respondent respectfully request that your Honorable Board:

- (a) Review and approve this Joint Petition and impose a public reprimand; and
- (b) Pursuant to Pa.R.D.E. 215(i), enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted,

Office of Disciplinary Counsel
Thomas J. Farrell
Chief Disciplinary Counsel

Date: 9/20/2022

By: 
Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: 9-12-22

By: 
Marc Alan Roberts
Respondent
149 E. Market St,
York, PA 17401
Telephone (717) 843-1639

Date: 9/14/22

By: 

P. Brennan Hart, Jr., Esquire
Respondent's Counsel
Attorney Registration No. 18123
Pietragallo Gordon, *et al.*
One Oxford Ctr., 38th Floor
Pittsburgh, PA 15219
Telephone (412) 263-4347

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
	:	Petitioner
	:	
	:	___ DB 2022
v.	:	
	:	Attorney Reg. No. 34355
MARC ALAN ROBERTS,	:	
	:	Respondent
	:	(York County)

RESPONDENT'S AFFIDAVIT UNDER RULE 215(d) OF THE
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

I, Marc Alan Roberts, Respondent in the above-captioned matter, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of discipline in the form of a public reprimand in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. I am an attorney actively licensed in the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 28, 1981.
2. I desire to submit a Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d).
3. My consent is freely and voluntarily rendered; I am not being subjected to coercion or duress; I am fully aware of the implications of submitting the consent;
4. I am aware there is presently pending a proceeding involving allegations that I have been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent of which this affidavit is attached hereto;
5. I acknowledge that the material facts set forth in the Joint Petition are true;

6. I consent because I know that if the charges continued to be prosecuted in the pending proceeding, I could not successfully defend against them; and

7. I am aware of my right to retain counsel in the instant proceeding and I have acted upon the advice of counsel, P. Brennan Hart, Jr., Esquire in connection with my decision to execute the Joint Petition.

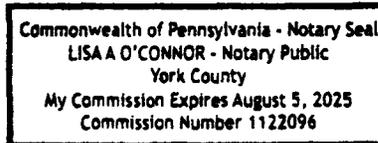
It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 12th day of September, 2022.



MARC ALAN ROBERTS

Subscribed and sworn this 12th
day of September, 2022 before
Lisa A. O'Connor, Notary Public



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OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: __ DB 2022
v. :
: Attorney Reg. No. 34355
MARC ALAN ROBERTS, :
Respondent : (York County)

VERIFICATION

The statements made in the foregoing Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d) are true and correct to the best of my knowledge or information and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

Kristin A. Wells

Date: 9/20/2022

By: _____

Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: 9-12-22

By: _____

Marc Alan Roberts
Respondent
149 E. Market St,
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Telephone (717) 843-1639

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Petitioner :
: __ DB 2022
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MARC ALAN ROBERTS, :
Respondent : (York County)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Disciplinary Board Rules and Procedures § 89.22 (service by a participant).

First Class Mail and email as follows:

Marc Alan Roberts
c/o P. Brennan Hart, Esq.
Pietragallo Gordon, *et al.*
One Oxford Ctr., 38th Floor
Pittsburgh, PA 15219

pbh@pietragallo.com

Date: 9/20/2022

By: 
Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: Kristin A. Wells

Name: Kristin A. Wells

Attorney No. (if applicable): 312080