

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2920 Disciplinary Docket No. 3
: :
Petitioner : No. 145 DB 2022
: :
v. : Attorney Registration No. 47102
: :
: (Philadelphia)
WENDELL K. GRIMES, : :
: :
Respondent :

ORDER

PER CURIAM:

AND NOW, this 7th day of December, 2022, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Wendell K. Grimes is suspended on consent from the Bar of this Commonwealth for a period of four years. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 12/07/2022

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disc. Dkt. No. 3
 Petitioner :
 : No. DB 2022
 : ODC File No. C1-21-526
 :
 : Atty. Reg. No. 47102
 :
WENDELL K. GRIMES, :
 Respondent : (Philadelphia)

JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT UNDER RULE 215(d), Pa.R.D.E.

Petitioner, Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and by Richard Hernandez, Esquire, Disciplinary Counsel, and Respondent, Wendell K. Grimes, who is represented by Samuel C. Stretton, Esquire, file this Joint Petition in Support of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement ("the Joint Petition") and respectfully represent that:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Wendell K. Grimes, was born in 1962, was admitted to practice law in the Commonwealth on November 19, 1986, and lists a public access address at Two Penn Center, 1500 John F. Kennedy Boulevard, Suite 405, Philadelphia, Pennsylvania 19102.

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

4. Petitioner commenced an investigation of Respondent after receiving a complaint alleging that Respondent misappropriated estate funds; this complaint was docketed at No. C1-21-526.

5. In connection with ODC File No. C1-21-526, Respondent received a Request for Statement of Respondent's Position (Form DB-7) dated November 15, 2021.

6. By letter dated December 9, 2021, Respondent submitted a counseled response to the DB-7 letter.

7. Thereafter, ODC conducted a financial audit of the account that held the estate funds.

8. Respondent has agreed to enter into a joint recommendation for consent discipline that encompasses the allegations of misconduct raised in the open complaint file.

SPECIFIC FACTUAL ADMISSIONS
AND ETHICS RULES VIOLATED

9. Respondent stipulates that the factual allegations set forth below are true and correct and that he violated the Rules of Professional Conduct as set forth herein.

CHARGE

10. On January 11, 1991, Elizabeth F. Craft ("decedent"), whose principal residence was 7007 Lincoln Drive, Philadelphia, Pennsylvania, 19119, died.

11. Decedent had a Will dated July 26, 1984.

12. The Will provided, *inter alia*, that:

- a. Mr. Charles Pettiford was to receive a pecuniary bequest of \$2,000;
- b. Mr. Bryan B. Fenderson, decedent's brother, would receive 10% of decedent's estate unless he predeceased decedent, in which case his share of decedent's estate would be bequeathed to Ms. Lettie Austin Fenderson, decedent's sister-in-law;
- c. Ms. Fenderson would receive 50% of decedent's estate unless she predeceased decedent, in which case her share of decedent's estate would be bequeathed to a trust established under the Will for Mr. Fenderson's benefit;

- d. the remaining 40% of decedent's estate would be held in trust for the benefit of Mr. Fenderson; and
- e. if Mr. Fenderson predeceased decedent or if on Mr. Fenderson's death there remained undistributed principal and income from the trust established on his behalf, the remainder of the trust proceeds were to be distributed as follows:
 - 1. 70% to the Howard University Scholarship Fund ("the Howard Fund");
 - 2. 21% to the American Red Cross Disaster Fund ("the Red Cross");
 - 3. 5% to Episcopal Community Services of the Diocese of Pennsylvania ("Episcopal Services");
 - 4. 2% to Myasthenia Gravis Foundation, Inc. ("the MG Foundation"); and
 - 5. 2% to West Mt. Airy Neighbors ("WMAN").

13. The Will designated Ms. Fenderson and First Pennsylvania Bank, N.A., to serve as co-executors and co-trustees.

14. On January 23, 1991, CoreStates Bank, N.A., as successor to First Pennsylvania Bank, N.A., renounced its

right to serve as co-executor of decedent's estate.

15. On January 24, 1991, the Register of Wills for Philadelphia County ("the Register of Wills") accepted the Will for probate and granted to Ms. Fenderson Letters Testamentary.

16. Mr. Fenderson died approximately two months after decedent had passed away.

17. On April 4, 2008, Ms. Fenderson died.

18. Before Ms. Fenderson died, she had distributed to herself the share of decedent's estate that she was entitled to receive, but she had not distributed the shares of decedent's estate that the Howard Fund, the Red Cross, Episcopal Services, the MG Foundation, and WMAN were entitled to receive.

19. Sometime in 2010, William M. Labkoff, Esquire, was contacted by a Washington, D.C. attorney and advised that Ms. Fenderson had died and that approximately \$80,000 was being held in an estate account for decedent's estate at SunTrust.

20. Sometime in 2010, Mr. Labkoff filed a Petition for Citation and other paperwork with the Register of Wills to have Robert Dickman, Esquire, appointed Administrator DBNCTA for decedent's estate so that Mr. Dickman could recover the funds held in the estate account for decedent's estate at SunTrust and take appropriate action to have the recovered

funds distributed to the Howard Fund, the Red Cross, Episcopal Services, the MG Foundation, and WMAN.

21. On November 16, 2010, the Register of Wills held a hearing on the Petition for Citation.

22. On December 21, 2010, the Register of Wills issued a Decree granting the Petition for Citation and appointing Mr. Dickman as Administrator DBNCTA for decedent's estate.

23. On January 3, 2011, the Register of Wills granted to Mr. Dickman Letters of Administration DBNCTA.

24. Sometime thereafter, Mr. Dickman contacted SunTrust about the estate account that Ms. Fenderson had maintained on behalf of decedent's estate at that institution, but SunTrust was unable to provide any information about the estate account to Mr. Dickman.

25. Sometime in 2015, Mr. Labkoff was contacted by Assets International and advised that the funds held in the estate account at SunTrust were escheated to the District of Columbia.

26. Sometime after Mr. Labkoff was contacted by Assets International he turned over to Respondent the file Mr. Labkoff maintained for decedent's estate and requested that Respondent track down the funds that had been held in the estate account at SunTrust.

27. Respondent was unable to locate the funds that had been held in the estate account at SunTrust.

28. Sometime after March 17, 2017, but before June 23, 2017, Respondent received from Assets International a document titled "MEMORANDUM OF UNDERSTANDING" ("Memo of Understanding") that had been signed by the President of Assets International on March 17, 2017.

29. The Memo of Understanding stated, *inter alia*, that:

- a. Assets International would disclose to Respondent in a separate legal document the nature and location of the assets that belonged to decedent's estate after Respondent signed, dated, and returned the Memo of Understanding to Assets International; and
- b. if Respondent signed and returned the legal document to Assets International, that company would recover the assets that belonged to decedent's estate and turn those assets over to Respondent in Respondent's capacity as Personal Representative for decedent's estate, in exchange for a commission payment that equated to one-third of the total value of the assets.

30. On June 23, 2017, Respondent signed and dated the Memo of Understanding and returned that document to Assets International.

31. Sometime in 2018, Mr. Dickman retired and moved to North Carolina.

32. In 2018, Mr. Labkoff filed a Petition for Citation and other paperwork with the Register of Wills to have Respondent appointed Administrator DBNCTA for decedent's estate so that Respondent could recover the funds held in the estate account for decedent's estate at SunTrust and take appropriate action to have those funds distributed to the Howard Fund, the Red Cross, Episcopal Services, the MG Foundation, and WMAN.

33. On May 8, 2018, the Register of Wills held a hearing on the Petition for Citation.

34. On August 7, 2018, the Register of Wills issued a Decree granting the Petition for Citation and appointing Respondent as Administrator DBNCTA for decedent's estate.

35. On August 10, 2018, the Register of Wills granted Respondent Letters of Administration DBNCTA.

36. By letter dated January 29, 2019, sent to Respondent by Elizabeth M. Turton, Esquire, Vice President of Assets International, Ms. Turton, *inter alia*:

- a. enclosed a check in the amount of \$53,349.94, which represented the estate's share of the funds that Assets International had recovered on behalf of decedent's estate;
- b. stated that Assets International had recovered a total of \$82,076.83 from the District of Columbia and deducted \$28,726.89 as a commission fee; and
- c. provided Respondent with copies of the check that Assets International received from the District of Columbia and the EIN for decedent's estate.

37. On February 6, 2019, Respondent deposited the \$53,349.94 check with Citizens Bank and opened an estate checking account titled "Estate of Elizabeth Craft Wendell L Grimes Admin" ("the Craft estate account").

38. Respondent had sole signature authority for the Craft estate account.

39. An audit of the financial records related to the Craft estate account shows that:

- a. on February 13, 2019, Respondent wrote a check to himself for \$4,250, noting it was for "Partial atty fees";

- b. on March 11, 2019, Respondent began withdrawing funds from the estate account without identifying the purpose of each withdrawal;
- c. the number of ATM cash withdrawals exceeded 200;
- d. Respondent made several debit card purchases for Sunoco, PECO Residential, Verizon, Progressive Insurance, Philadelphia Parking Authority, and TGI Fridays;
- e. on March 3, 2020, Respondent procured five certified checks made payable to the Howard Fund in the amount of \$16,800, the Red Cross in the amount of \$5,040, Episcopal Services in the amount of \$1,200, WMAN in the amount of \$480, and the MG Foundation in the amount of \$480;
- f. between April 1, 2020 and April 27, 2020, Respondent redeposited into the Craft estate account the four certified checks he obtained that were made payable to the Red Cross, Episcopal Services, WMAN, and the MG Foundation, and used those funds;

- g. on June 16, 2020, the balance in the Craft estate account was \$604.10;
- h. between July 22, 2020, and December 29, 2021, Respondent began depositing funds into the Craft estate account, with the largest deposit occurring on December 29, 2021 (over a month after ODC sent the DB-7 letter to Respondent), when Respondent deposited the \$16,800 Howard Fund certified check and a certified check from Republic Bank in the amount of \$20,000; and
- i. on December 31, 2021, the balance in the Craft estate account was \$44,857.10.

40. Between February 3, 2019, and June 16, 2020, Respondent issued a check payable to himself, and made teller cash withdrawals, ATM cash withdrawals, and debit card purchases from funds held in the Craft estate account that totaled \$35,945.84.

- a. The figure of \$35,945.84 is based on financial records showing that Respondent did not use the proceeds from the Howard Fund \$16,800 certified check and that the balance in the Craft estate account was \$604.10 as of June 16, 2020.

41. Respondent had to obtain the approval of the Orphans' Court in Philadelphia County to use or distribute any of the proceeds that were held in the Craft estate account.

42. Respondent failed to obtain the approval of the Orphans' Court in Philadelphia County to use or distribute any of the proceeds that were held in the Craft estate account.

43. Respondent had to provide notice to the Pennsylvania Office of Attorney General before using or distributing any of the proceeds that were held in the Craft estate account.

44. Respondent failed to provide the requisite notice to the Pennsylvania Office of Attorney General before using or distributing any of the proceeds that were held in the Craft estate account.

45. Respondent misappropriated \$35,945.84 from the \$53,349.94 of funds that he was entrusted to hold in the Craft estate account until the Orphans' Court in Philadelphia County issued a decree approving distribution of those funds.

46. By his conduct as alleged in paragraphs 10 through 45 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.15(b), which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded;
- b. RPC 1.15(d), which states that upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment;
- c. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the

client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment; and

- d. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

47. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of four years.

48. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline, including the mandatory

acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

49. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct.
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein.
- c. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a suspension of four years.
- d. Respondent has no record of discipline.
- e. Respondent has made partial restitution of the funds he misappropriated from the Craft estate account, which is entitled to some weight in determining the discipline to impose.

50. There are three disciplinary cases that support Petitioner and Respondent's joint recommendation that Respondent be suspended for four years for misappropriating

fiduciary funds. In those three cases, the suspensions imposed ranged from three to four years.

The Court approved a joint consent discipline for a four-year suspension for converting fiduciary funds in ***Office of Disciplinary Counsel v. Heather L. Harbaugh***, No. 192 DB 2005 (on consent) (S.Ct. Order 1/30/07). Respondent Harbaugh engaged in misconduct in two client matters. Respondent Harbaugh's most serious misconduct was her conversion of \$33,951.82 belonging to her client and her client's estranged husband. The converted funds were entrusted to Respondent to hold until the property issues in the divorce proceedings were resolved. Respondent Harbaugh also failed to: provide an accounting to her client and to the attorney for her client's husband; and respond to her client's communications. After Respondent Harbaugh received a DB-7 letter she made full restitution to her client and her client's husband. In the second matter, Respondent Harbaugh failed to file a petition to modify custody and a contempt petition on behalf of her client, misrepresented to her client that she had filed a petition to modify custody, and failed to respond to her client's requests for information and action. Mitigating factors were Respondent Harbaugh's lack of a disciplinary record, cooperation, payment of restitution (but only after Respondent's client contacted ODC, the Pennsylvania Lawyers

Fund For Client Security, and a local District Attorney's office), and treatment for depression, anxiety, and co-dependency related to an abusive domestic situation. An aggravating factor was Respondent Harbaugh's knowledge that her client was suffering from depression and was financially destitute.

In ***Office of Disciplinary Counsel v. John T. Olshock***, No. 28 DB 2002 (D.Bd. Rpt. 7/30/03) (S.Ct. Order 10/24/03), the Court adopted the Board's recommendation and suspended Respondent Olshock for three years for misappropriating \$22,093 from an estate. In recommending a three-year suspension, the Board found as mitigating circumstances that Respondent Olshock: had no record of discipline; made prompt restitution to the heirs of the estate before ODC began investigating him; expressed sincere remorse although he offered no plausible explanation for his misconduct; changed the manner in which he handled estate funds so that he no longer had signature authority over an estate account; and presented favorable character testimony. An aggravating circumstance was that Respondent held a part-time position as the First Assistant District Attorney for Washington County.

A three-year suspension was imposed in ***Office of Disciplinary Counsel v. Daniel F. Zeigler***, No. 49 DB 2005 (D.Bd. Rpt. 3/17/06) (S.Ct. Order 6/14/06). The Board

determined that Respondent Zeigler converted \$15,039.46 from an estate and \$2,447.56 he received from another client to pay the client's tax obligation. Also, Respondent Zeigler commingled his funds with fiduciary funds by depositing fiduciary funds into his operating account. Mitigating factors were Respondent Zeigler's lack of a disciplinary record, restitution payments to the estate and the client (which Respondent accomplished by borrowing funds), and decision to close his office accounts and cease the private practice of law. The Board appeared to treat as aggravating factors Respondent Zeigler's failure to respond to requests for information from the Pennsylvania Lawyers Fund from Client Security and ODC, as well as his failure to respond to two subpoenas requesting financial records ODC served on him.

Based on the aforementioned precedent, Respondent and Petitioner submit that Respondent's misconduct warrants a four-year suspension. Respondent's matter most closely resembles **Harbaugh** based on the amount of funds misappropriated. Moreover, unlike the attorneys in **Harbaugh**, **Olshock**, and **Zeigler** who made full restitution, Respondent can only be given credit for partial restitution.

51. A suspension of four years will advance the goals of attorney discipline. Those goals are protecting the public, maintaining the integrity of the courts and the legal

profession, and specific and general deterrence. See **Office of Disciplinary Counsel v. Keller**, 506 A.2d 872, 875 (Pa. 1986); **In re Iulo**, 766 A.2d 335, 338-339 (Pa. 2001). The term of suspension will require Respondent to prove his fitness to resume the practice of law at a reinstatement hearing. Additionally, proceeding by way of consent discipline will conserve the limited resources of the attorney disciplinary system and result in Respondent commencing a term of suspension many months sooner than were Respondent's disciplinary matter to proceed through a formal hearing, with review by the Board and the Court.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., the Three-Member Panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline On Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court enter an Order that Respondent receive a suspension of four years, and that Respondent comply with all of the provisions of Rule 217, Pa.R.D.E.; and


b. Pursuant to Pa.R.D.E. 215(i), the Three-Member Panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter, and that under Pa.R.D.E. 208(g)(1) all expenses be paid by Respondent within 30 days after the notice of the taxed expenses is sent to Respondent.

Respectfully and jointly submitted,

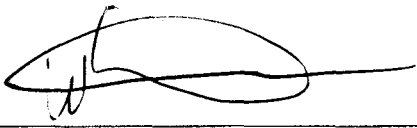
OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL

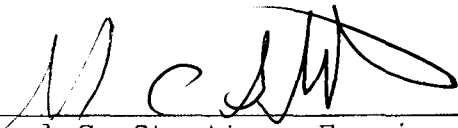
10/20/2022
Date

By 
Richard Hernandez
Disciplinary Counsel

10/15/22
Date

By 
Wendell K. Grimes
Respondent

10/18/22
Date

By 
Samuel C. Stretton, Esquire
Counsel for Respondent


BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disc. Dkt. No. 3
Petitioner :
: No. DB 2022
: ODC File No. C1-21-526
v. :
: Atty. Reg. No. 47102
WENDELL K. GRIMES, :
Respondent : (Philadelphia)


VERIFICATION

The statements contained in the foregoing Joint Petition in Support of Discipline On Consent Under Pa.R.D.E. 215(d) are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

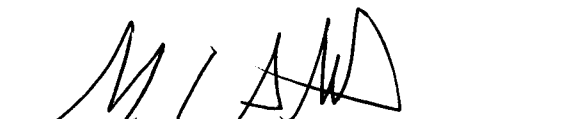
10/20/2022
Date


Richard Hernandez
Disciplinary Counsel

10/15/22
Date


Wendell K. Grimes
Respondent

10/18/22
Date


Samuel C. Stretton, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. Disc. Dkt. No. 3
 Petitioner :
 : No. DB 2022
 : ODC File No. C1-21-526
 :
 : Atty. Reg. No. 47102
 :
WENDELL K. GRIMES, :
 Respondent : (Philadelphia)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

Respondent, Wendell K. Grimes, hereby states that he consents to the imposition of a suspension of four years, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline On Consent ("the Joint Petition") and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with Samuel C. Stretton, Esquire, in connection with the decision to consent to discipline;

2. He is aware that there is presently pending an investigation into allegations that he has been guilty of misconduct as set forth in the Joint Petition;

3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He consents because he knows that if charges predicated upon the matter under investigation were filed, he could not successfully defend against them.

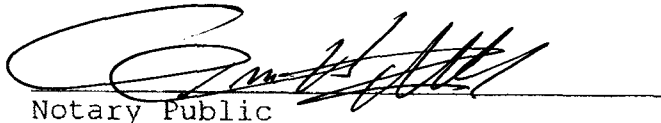


Wendell K. Grimes
Respondent

Sworn to and subscribed

before me this 15th

day of October, 2022.


Notary Public

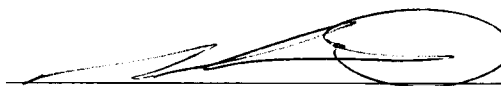
Commonwealth of Pennsylvania - Notary Seal
Gregory M. Hubert, Notary Public
Philadelphia County
My commission expires May 16, 2026
Commission number 1201042
Member, Pennsylvania Association of Notaries

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: _____

A handwritten signature in black ink, appearing to read "Richard Hernandez", is written over a horizontal line. The signature is stylized with a large, circular flourish at the end.

Name: Richard Hernandez, Disciplinary Counsel

Attorney No. (if applicable): 57254