

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 155 DB 2022
Petitioner	:	
	:	
v.	:	Attorney Registration No. 94551
	:	
KELTON MERRILL BURGESS	:	
Respondent	:	(Allegheny County)

**ORDER**

AND NOW, this 29<sup>th</sup> day of April 2025, upon consideration of the Report and Recommendation of the Hearing Committee filed on October 16, 2024, pursuant to § 89.181 of the Disciplinary Board Rules; it is hereby

ORDERED that KELTON MERRILL BURGESS, of Allegheny County shall be subjected to **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. Costs shall be paid by the Respondent.

BY THE BOARD:



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Board Chair

TRUE COPY FROM RECORD

Attest:



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

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KELTON MERRILL BURGESS,	:	
Respondent	:	(Allegheny County)

OPINION

This matter comes before the Board following oral argument on Petitioner’s and Respondent’s exceptions to the Hearing Committee’s unanimous recommendation that Respondent receive a public reprimand for his violation of Rules of Professional Conduct (“RPC”) 1.5(b), 1.5(c), 1.15(b), 1.15(i), and 8.4(c), and Pennsylvania Rule of Disciplinary Enforcement (“Pa.R.D.E.”) 219(d)(1)(v).

In attorney discipline matters, evidence is sufficient to prove misconduct if a preponderance of the evidence establishes the conduct and the proof of such conduct is clear and satisfactory.<sup>1</sup> *Office of Disciplinary Counsel v. John T. Grigsby, III*, 425 A.2d 730, 732 (Pa. 1981). Upon our independent review under Pa.R.D.E. 208(d)(2) and for the reasons that follow, we conclude that Respondent violated RPC 1.5(b), 1.5(c), 1.15(b), 1.15(e), 1.15(i), and 8.4(c) and Pa.R.D.E. 219(d)(1)(v), and now enter an order directing that a public reprimand be imposed.

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<sup>1</sup> The Board takes judicial notice of *Office of Disciplinary Counsel v. Anonymous Attorney*, 331 A.3d 523 (Pa. 2025), which clarified that the standard of proof in attorney discipline matters requires the Office of Disciplinary Counsel to establish attorney misconduct with evidence that is clear and convincing. The Court explained that the clear and satisfactory standard has been consistently stated in disciplinary cases for over 70 years and is another articulation of the clear and convincing standard. The instant matter was heard by the Committee and adjudicated by the Board prior to the Court’s issuance of *Anonymous Attorney*.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on January 13, 2023, Petitioner alleged that Respondent violated numerous ethical rules related to his representation of Deborah Herrle and Ronald Scott in their respective capacities serving in the administration of the Francis Scott estate. On February 23, 2023, Respondent filed a counseled Answer to Petition for Discipline. Hearings were held before the Hearing Committee (“Committee”) on July 6, 2023, July 7, 2023, January 31, 2024, and February 1, 2024. Petitioner presented five witnesses, an expert witness, and offered exhibits, which were admitted into evidence. Respondent testified on his own behalf, called six additional witnesses and one expert witness, and offered exhibits which were admitted into evidence.

On June 28, 2024, Petitioner filed a post-hearing brief to the Committee and requested that the Committee recommend to the Board that Petitioner be suspended for a period of no less than two years. Respondent filed a post-hearing brief on August 20, 2024, and requested that the Committee recommend to the Board that private discipline be imposed. On October 16, 2024, the Committee filed its Report to the Board with a recommendation for a public reprimand. The Committee concluded that Petitioner met its burden of proof as to violations of RPC 1.5(b), 1.5(c), 1.15(b), 1.15(i), 8.4(c), and Pa.R.D.E. 219(d)(1)(v). The Committee concluded that Petitioner failed to prove violations of RPC 1.5(a), 1.6(a), 1.15(e), and 3.3(a)(1).

On November 5, 2024, Petitioner filed a Brief on Exceptions to the Committee’s Report and recommendation. Petitioner contends the Committee erred in concluding Respondent did not violate RPC 1.6(a), 1.15(e), and 3.3(a)(1) and in finding there were no aggravating factors, and further contends that a suspension for a period of no less

than two years is appropriate discipline. Respondent filed a Brief Opposing Exceptions on November 26, 2024, and separately filed a Brief on Exceptions and request for oral argument on December 3, 2024. Respondent contends the Committee erred in finding violations of RPC 1.5(b) and 8.4(c) and advocates for a private reprimand. Petitioner filed a Brief Opposing Exceptions on December 18, 2024. Following oral argument before a three-member Board panel on January 17, 2025, the full Board adjudicated this matter at its meeting on January 23, 2025.

## II. FACTUAL FINDINGS

The Board makes the following findings:

1. Respondent, Kelton Merrill Burgess, was born in 1972 and was admitted to the practice of law in Pennsylvania in 2005. Respondent maintains an office for the practice of law at Law Offices of Kelton M. Burgess, LLC, 1300 Fifth Avenue, Pittsburgh, PA 15219.

2. Respondent has no prior record of discipline.

3. In 2016, Respondent met Deborah F. Herrle through his representation of her employer, Kyrk Pyros, President and CEO of Allegheny Crane Rental. NT 20-24, 119-127, 740-742, 746.

4. In her capacity as an agent on behalf of her employer, Ms. Herrle would communicate with Respondent regarding Respondent's representation of her employer. NT 20-24, 119-127, 740-746.

5. In 2017, Respondent represented Ms. Herrle's parents, Francis and Laverne Scott, to review prior estate planning documents prepared for the Scotts, prepare the 2017 Scott Family Living Trust (Scott Trust), and subsequently modify the previously

prepared estate planning documents to disinherit Ms. Herrle's brother, Glenn Scott. NT 30; ODC 2 Bates 8, 27-28, 750-751.

6. In 2018, Respondent represented Ms. Herrle and her husband for the drafting of their own family trust documents. NT 21-22, 30, 491-494, 808.

7. Neither Ms. Herrle nor Mr. Ron Scott, Ms. Herrle's other brother, were Respondent's client for his preparation of any estate documents for Francis and Laverne Scott. NT 494.

8. Respondent had not regularly represented Ms. Herrle or Mr. Ron Scott. NT 21-22, 30, 364-365, 491-494.

9. On November 10, 2018, Ms. Laverne Scott died testate. NT 23, 814.

10. On December 13, 2018, Mr. Francis Scott died testate. NT 23, 815.

11. Decedent, Mr. Francis Scott's, Last Will and Testament (Will) provided that, among other things, distribution of Decedent's estate assets was to be effectuated pursuant to the Scott Trust. ODC 1 Bates 1.

12. The Scott Trust nominated Ms. Herrle as the successor Trustee upon the death of Decedent. The Will nominated the then-acting Trustee, Ms. Herrle, as the Executrix of Decedent's estate. ODC 1 Bates 1.

13. Ms. Herrle and her brother, Mr. Ron Scott, were the only surviving named beneficiaries of the Scott Trust. ODC 2 Bates 27-28.

14. The Trust document "specifically and intentionally" made no gift, devise, or allowance to Glenn Scott, the brother of Ms. Herrle and Mr. Ron Scott. ODC 2 Bates 27-28.

15. The Trust document directed the Trustee to distribute "no portion of this Trust or Residue" to Mr. Glenn Scott. ODC 2 Bates 27-28.

16. Immediately following the death of Mr. Francis Scott in December 2018, issues arose from the disinheritance of Mr. Glenn Scott. NT 32-33, 819-922.

17. As a result, Ms. Herrle contacted Respondent to represent her and the Decedent's interests in corresponding with the funeral home director and Mr. Glenn Scott's private counsel, James Herb, Esquire prior to and following Decedent's funeral. NT 32-33, 364-365, 819-922.

18. In December 2018, Respondent was hired to represent Ms. Herrle and Mr. Ron Scott regarding Decedent's estate. No fee agreement was discussed and/or effectuated on this date. NT 31-33, 39, 364-365.

19. Three separate representations arose out of the Francis Scott matter: (i) Ms. Herrle as the nominated executrix who was eventually granted Letters Testamentary; (ii) Ms. Herrle in her capacity as successor Trustee of the Scott Trust; and (iii) Ms. Herrle and Mr. Ron Scott as beneficiaries of the Scott Trust. NT 31-33, 39, 364-365, 489-490, 506-508.

20. On January 3, 2019, Respondent met with Ms. Herrle to discuss Decedent's estate and trust administration. No fee agreement was discussed and/or effectuated on this date. NT 33-35, 819-820.

21. Respondent and Ms. Herrle met again on January 24, 2019, to review financial documents in the Francis Scott matter. No fee agreement was discussed and/or effectuated on this date. NT 169-170, 824.

22. On February 4, 2019, Attorney Herb filed a probate Caveat and Petition for Citation on behalf of his client, Mr. Glenn Scott, in the Orphans' Court Division of Allegheny County Court of Common Pleas at docket number 2019-00750 alleging that

Decedent had died without a will. NT 34-45, 826; ODC 3 Bates 037, ODC 4 Bates 039, ODC 18 Bates 083-086.

23. On February 13, 2019, Respondent and Ms. Herrle met again to discuss two matters: (i) the Scotts' final tax return handled by Kevin McQuillan, CPA; and (ii) the impending litigation with Mr. Glenn Scott. No fee agreement was discussed and/or effectuated on this date. NT 43-46, 706-707, 834.

24. Up to the February 13, 2019, meeting with Ms. Herrle, Respondent had worked on the Francis Scott matter in December 2018, January 2019, and February 2019 without payment. NT 171, 815-820.

25. Respondent did not request payment from Ms. Herrle prior to the February 13, 2019, meeting because he believed it was too soon after the death of her parents to concern her with his fee. NT 33, 43-45, 53-54, 140, 814-816.

26. At the February 13, 2019, meeting, Ms. Herrle told Respondent she knew she owed him money. "I know that we had to owe—we owed him money." NT 43, 170-171.

27. Therefore, at the February 13, 2019, meeting, Ms. Herrle knew that she owed Respondent payment for fees already earned by Respondent in the Francis Scott matter in the months prior. NT 43, 170-171.

28. On February 13, 2019, Ms. Herrle paid Respondent \$5,000.00 for his fees earned in December 2018 and January 2019. NT 40-45, 92, 97-98, 170-171; ODC 5 Bates 45-45.

29. Respondent deposited the \$5,000.00 check in his Dollar Bank Business/Operating Account (account number ending in 6858). ODC 5 Bates 45-46, RE A ¶ 20.

30. Respondent and Ms. Herrle orally agreed that, considering the upcoming litigation with Mr. Glenn Scott, Respondent would bill in the Francis Scott matter at \$200.00 per hour with a cap at 25 hours per month totaling \$5,000.00 per month. NT 49-50, 53-54, 58-59, 841, 856-858, 893.

31. Each of the payments received by Respondent and paid by Ms. Herrle correspond with the above-described fee agreement. NT 43, 53, 58-59, 170-171, 410-411, 857-858, 900-901, 904; ODC 44 Bates 133.

32. Respondent failed to communicate in writing the basis or rate of his fee either before or within a reasonable time after he commenced his representation of Ms. Herrle and Mr. Ron Scott in their respective capacities in the Francis Scott matter. NT 34, 39, 43-45, 50-54, 58-60, 364-401, 501-502; ODC Bates 083-086, ODC Bates 87-88.

33. On February 25, 2019, Respondent filed an Answer to the Caveat and Petition on behalf of Ms. Herrle and Mr. Ron Scott. RE A ¶ 23, RE G.

34. On March 5, 2019, Respondent met with Ms. Herrle to discuss the following matters regarding Decedent's estate:

- a. Respondent informed Ms. Herrle that he needed a check drawn in the amount of \$25,000.00 to make a pre-payment of the inheritance tax due;
- b. Ms. Herrle executed a \$25,000.00 check on the Scott Trust's account made payable to "Register of Wills, Agent;"
- c. Respondent told Ms. Herrle he needed her to sign a renunciation form in favor of Respondent for the Register of Wills; and
- d. Ms. Herrle executed the renunciation form.

NT 46-48; 844-845, ODC 6 Bates 047; RE A ¶ 24(a), (b), (c), (d).



35. Respondent did not file the Renunciation executed by Ms. Herrle on March 5, 2019. NT 46-47.

36. On March 6, 2019, Respondent forwarded the \$25,000.00 check to the Allegheny County Inheritance Tax Division. NT 48.

37. On March 12, 2019, the Register of Wills held a hearing on the Caveat and Petition, but no resolution was reached. A pre-trial schedule was decreed. NT 846, RE A ¶ 27.

38. On March 15, 2019, Attorney Herb, on behalf of Mr. Glenn Scott, filed a Formal Caveat alleging, among other things, fraud and undue influence by Ms. Herrle. ODC 7 Bates 48-54.

39. On March 28, 2019, Ms. Herrle executed a check in the amount of \$10,000.00 made payable to Respondent from the Scott Trust account as payment for Respondent's February and March fees. NT 49-50, 857-858; ODC 8 Bates 55.

40. Respondent deposited that check in his Business/Operating Account. ODC 8 Bates 55; RE A ¶ 32.

41. On May 24, 2019, Respondent requested from Ms. Herrle \$10,000 for his April and May fees. NT 53, 856-858.

42. Ms. Herrle testified that she received a call from Respondent requesting payment at this time because he "was running low on cash" and "he needed to pay his mortgage." NT 53.

43. Therefore, Ms. Herrle understood that the May 24, 2019 payment was for fees already earned by Respondent. NT 53, 856-858.

44. On May 24, 2019, Ms. Herrle executed a check in the amount of \$10,000.00 made payable to Respondent from the Scott Trust account as payment for Respondent's April and May fees. NT 53-54, 856-858; ODC 10 Bates 61.

45. Respondent deposited that check in his Business/Operating Account. ODC 10 Bates; RE A ¶ 39.

46. On April 9, 2019, Attorney Herb, on behalf of Mr. Glenn Scott, filed a Praecipe for Issuance of Writ of Summons with Indexing as *Lis Pendens* against Real Property for the Scott Trust realty. On June 25 and 26, 2019, Attorney Herb informed Colonial Title that his client and Respondent's clients reached an agreement whereby Respondent would deposit and retain the net proceeds of the Scott Trust realty in his IOLTA account until the Francis Scott matter resolved. Attorney Herb filed a Praecipe to Settle and Discontinue the *Lis Pendens* affecting the Scott Trust realty. ODC 9 Bates 56-60, ODC 11 Bates 62-63, ODC 12 Bates 64-67.

47. On July 1, 2019, a closing was held for the sale of the Scott Trust realty at 153 Gass Road, Pittsburgh, PA 15229. The sale price of the realty was \$170,000.00 and the amount due by the seller at closing was \$170,105.49. NT 54-58; ODC 13 Bates 68-75.

48. Colonial Title LLC issued a check dated June 28, 2019, drawn in the amount of \$153,843.10 and a check dated July 1, 2019, drawn in the amount of \$300 for the net realty sale proceeds made payable to Respondent. ODC 14 Bates 76-77, ODC Bates 78-80.

49. As agreed by the parties, on July 11, 2019, Respondent deposited the checks to his Dollar Bank IOLTA account. ODC 14 Bates 76-44, ODC Bates 78-80.

50. Respondent thereby became entrusted with \$154,143.10 on behalf of Ms. Herrle in her capacity as Trustee. NT 54-56, 508-510, 514-516; ODC 9 Bates 61-63, ODC 11 Bates 64-67, ODC 12 Bates 64-67, ODC 15 Bates 78-80.

51. On August 29, 2019, Attorney Herb deposed Mr. Ron Scott and Ms. Herrle in the Francis Scott matter. NT 56-57, 859-862, RE ZZ.

52. On August 30, 2019, Respondent deposed Mr. Glenn Scott in the Francis Scott matter. NT 56-57, 859-862; RE ZZ.

53. At the depositions, it became clear that Mr. Glenn Scott had sufficient evidence, through medical records and expert reports, to support a claim that Decedent Francis Scott suffered from and was treated for dementia. NT 859-862; RE YY.

54. On August 30, 2019, following the deposition of Mr. Glenn Scott, Respondent met with Ms. Herrle and Mr. Ron Scott, and Respondent informed Ms. Herrle and Mr. Ron Scott that to move forward with the litigation they needed to retain an expert to obtain a favorable expert report. NT 406-410, 857-862.

55. At the August 30, 2019, meeting immediately following the three depositions, Respondent requested his unpaid fees for the prior three months, noting that he had not been paid since May 2019. NT 857-858, 862; ODC 10 Bates 61.

56. Respondent waived any fees owed to him for July 2019. NT 586, 857-858.

57. At the August 30, 2019, meeting, Respondent, Ms. Herrle, and Mr. Ron Scott discussed a contingency fee agreement moving forward. NT 862-863.

58. The contingency fee agreement was proposed by Ms. Herrle and Mr. Ron Scott. NT 864-866.

59. Respondent had not previously represented a client in an estate litigation matter under a contingency fee agreement. NT 864-866.

60. Therefore, Respondent researched whether a contingency fee agreement would be appropriate in an estate litigation matter, including conducting multiple discussions with other attorneys for advice and guidance. NT 461-463, 698, 864-866.

61. On September 9, 2019, Ms. Herrle executed a check in the amount of \$10,000.00 made payable to Respondent from the Scott Trust account as payment for Respondent's June and August fees. NT 58-59, 858, ODC 16 Bates 81.

62. Respondent deposited that check in his Business/Operating account. ODC 16 Bates 081; RE A ¶ 50.

63. Following the September 9, 2019, payment of \$10,000.00, Respondent received no further monthly payments related to the Francis Scott matter. NT 86-87, 410-411, 856-858.

64. Following surgery in September 2019, Mr. Ron Scott was "compromised" and unavailable to sign a contingency agreement for multiple months in the fall of 2019 due to related medical treatment. NT 411, 866.

65. On September 27, 2019, Respondent emailed Ms. Herrle an invoice totaling \$1,983.67 for costs associated with the August depositions. NT 59-61; ODC 17 Bates 82.

66. On September 29, 2019, Ms. Herrle executed a check in the amount of \$1983.67 made payable to Respondent for the deposition costs. NT 59-61; ODC 17 Bates 82.

67. On September 30, 2019, Respondent filed a Pre-Trial Statement in the Caveat litigation. RE A ¶ 55; RE J.

68. In November 2019, Respondent met with Ms. Herrle, her son, Dr. Scott Herrle, MD, and Mr. Ron Scott to review Decedent's medical documentation and discuss retaining an expert in the Caveat litigation. NT 60-61, 869-870.

69. On January 27, 2020, Respondent attended a status conference with Attorney Herb and the Register of Wills. NT 61-62.

70. In late January 2020 after the status conference, Respondent met with Ms. Herrle and Mr. Ron Scott by phone to discuss settling Mr. Glenn Scott's claim. NT 61-62, 878-879.

71. During that call, Ms. Herrle and Mr. Ron Scott gave Respondent authority to extend a settlement offer to Mr. Glenn Scott. NT 61-62.

72. Further, Respondent explained to Ms. Herrle and Mr. Ron Scott that he would "get in trouble" if they moved forward without a contingency fee agreement. NT 61-62, 877.

73. On January 30, 2020, Respondent sent Ms. Herrle and Mr. Ron Scott an engagement letter via email, noting: "Attached hereto is the Engagement Letter which I have been late to get to you." NT 62-63; ODC 18 Bates 83-86.

74. The January 30, 2020, engagement letter, which was backdated to February 14, 2019, provided for a 33.3% contingency fee. NT 62-63; ODC 18 Bates 83-86.

75. On January 31, 2020, Dr. Tod Marion, a psychologist hired by Respondent in the Francis Scott matter, provided Respondent with an unfavorable expert report which was consistent with Mr. Glenn Scott's expert's opinion that Ms. Herrle had unduly influenced Francis Scott while he was experiencing weakened intellect. NT 409-410, 878-879.

76. Soon thereafter, Mr. Ron Scott called Respondent to request that Respondent reduce his contingent fee percentage to 25%. NT 371-377, 875.

77. Therefore, at the beginning of February 2020, Respondent sent Ms. Herrle and Mr. Ron Scott a second engagement letter via email, also backdated to February 14, 2019, which provided for a 25% contingency fee. NT 72-73, 378-379, 876; ODC 19 Bates 87-90.

78. Ms. Herrle and Mr. Ron Scott signed and returned the second engagement letter which provided for a 25% contingency fee “from monies received.” NT 72-73, 378-379; ODC 19 Bates 87-90.

79. Respondent failed to state in his contingency fee engagement letter the method by which the fee was to be determined, including failing to identify the “monies received” that would be subject to the contingent fee percentage and whether costs and expenses would be deducted before or after the contingent fee was calculated. ODC 19 Bates 87-88.

80. On or about February 3, 2020, Respondent and Attorney Herb negotiated a settlement in the matter of Mr. Glenn Scott’s Caveat and Petition whereby Mr. Glenn Scott would receive \$100,000.00 and certain mineral rights. NT 73-75, 381-382, 882-883; ODC 20 Bates 89-90, ODC 21 Bates 91.

81. By separate correspondences dated February 10 and 11, 2020, Respondent and Attorney Herb notified a representative of the Register of Wills that a settlement had been reached in the Scott Caveat and Petition matter. ODC 22 Bates 92-93.

82. On March 12, 2020, Respondent met with Ms. Herrle and Mr. Ron Scott to review the Estate and Trust assets. The parties went through the accounts and handwrote

the assets on notebook sheets. Respondent testified that he discussed his fees at that meeting and advised his clients that he was holding \$150,000 in the IOLTA, which was 25% of the estate, and that he would take his fee out of that, and further told them he wouldn't take his fee until his clients got their money. N.T. 385-386, 884-888; ODC 23; R-EE.

83. On May 27, 2020, Respondent and Ms. Herrle appeared at the Allegheny County Department of Court Records, Wills/Orphans' Court Division, to file a petition to open the Estate. NT 75-77, 890-891; ODC 25 Bates 96-97.

84. On that date, the Petition for a Grant of Letters Testamentary to Ms. Herrle was accepted provisionally and the Register of Wills swore in Ms. Herrle as Executrix. NT 75-77, 890-891; ODC 25 Bates 96-97.

85. The Register of Wills refused to grant letters testamentary until a motion to dismiss Mr. Glenn Scott's Caveat and Petition had been filed and granted. NT 75-78, 890-891.

86. On June 19, 2020, Ms. Herrle sent Respondent an email breaking down how she and Mr. Ron Scott would split the remaining estate assets after settling with Mr. Glenn Scott, stating in pertinent part:

- a. "Here are the accounts Ron and I will Split: Citizens: \$21,985.16 . . . Key \$252,002.91"
- b. "I will leave minimum amount in each to keep open just in case we need them."
- c. "We are going Wednesday so [Family Settlement Agreements] to me an [sic] Ron before then will be good. And payments will be in form of cashiers [sic] checks."

d. "Remaining is the escrow account you have and Brighthouse account we still need to get into."

e. "I want to get this settled and get on with my life."

RE XX at U.

87. With check numbered 1052, dated June 18, 2020, Respondent disbursed entrusted funds from the Scott Trust realty proceeds to himself drawn on his IOLTA in the amount of \$50,000.00, annotated "Herrle/Scott," and made payable to "Kelton M. Burgess." ODC 28 Bates 104.

88. Respondent testified that when he received notice that Ms. Herrle and Mr. Ron Scott were getting ready to distribute the estate assets to themselves, he disbursed the \$50,000.00 from the Scott Trust realty proceeds as payment for ten months (September 2019 through June 2020) of legal fees at \$5,000.00 per month. NT 893-894.

89. A consent motion was filed with the Register of Wills and, by Order of Court dated June 19, 2020, Mr. Glenn Scott's Caveat and Petition for Citation were dismissed. ODC 26 Bates 98-102.

90. On June 22, 2020, Letters Testamentary were issued to Ms. Herrle as Executrix of Decedent's estate. ODC 25 Bates 96-97.

91. With check numbered 1053, dated June 27, 2020, Respondent disbursed entrusted funds from the Scott Trust realty proceeds to himself drawn on his IOLTA in the amount of \$30,000.00, annotated "Scott Fees," and made payable to "Kelton M. Burgess." ODC 29 Bates 105.

92. Respondent testified that he disbursed the additional \$30,000.00 to himself as the remainder of the contingent fee that he believed he was owed at that time. NT 894.



93. Respondent was not authorized by Ms. Herrle in her capacity as Trustee of the Scott Trust to disburse to himself the \$80,000.00 with which he was still entrusted from the sale proceeds of the Scott Trust realty. NT 79-81, 399-401, 508-510, 514-516, 523.

94. Respondent thereby failed to hold all Rule 1.15 Funds separate from his own property. ODC 28 Bates 104, ODC 29 Bates 105.

95. Respondent failed to obtain informed, written consent from Ms. Herrle, in her capacity as Trustee and Executrix, before he disbursed assets of the Scott Trust to himself. NT 79-81.

96. Respondent failed to produce a settlement sheet to Ms. Herrle in her capacity as Trustee and Executrix. NT 883-884.

97. By text message dated July 7, 2020, Ms. Herrle requested that Respondent give her and Mr. Ron Scott “an accounting of the escrow account” containing the proceeds of the sale of the Scott Trust realty. NT 81-82, 87-89, 389-391; ODC 30 Bates 106.

98. In or about August 2020, Respondent sent a text message to Ms. Herrle’s former employer, Mr. Pyros, through whom Respondent had met Ms. Herrle, and stated:

- a. “[Ms. Herrle] and [Mr. Ron Scott] proposed 33.3% contingency fee for a case I have worked on for two years.”
- b. “I reduced my fee to 25% which is the lowest I know of any lawyer accepting.”
- c. “That is the same amount [another lawyer] charges you.”
- d. “What is the problem?”

- e. "When you get back I need to talk ASAP. My clients will not answer my phone. I have to send Certified Mail. Before the wheels come off the bus, I think a sit-down is needed."

ODC 32 Bates 110, ODC 33 Bates 111.

99. By letter to Respondent dated August 24, 2020, James A. Stranahan IV, Esquire and Gregory D. Metrick, Esquire, among other things:

- a. Informed Respondent that Mr. Ron Scott and Ms. Herrle consulted their firm;
- b. Stated their understanding that Respondent represented Mr. Ron Scott and Ms. Herrle in defending the Caveat and Petition filed by their brother, Mr. Glenn Scott;
- c. Stated their understanding that Respondent was holding the proceeds of the Scott Trust realty in his IOLTA;
- d. Requested that Respondent provide an itemized statement of the time spent in setting aside the Caveat and the status of the administration of Decedent's Estate; and
- e. Requested that Respondent meet with them concerning the matter.

ODC 34 Bates 112.

100. Thereafter, Respondent consulted the Allegheny County Bar Association Ethics Hotline where he was told to return the disputed Scott Trust realty proceeds to his IOLTA account. NT 901-902.

101. On August 25, 2020, Respondent returned the \$80,000 from the Scott Trust realty proceeds back to his IOLTA by check numbered 1601 drawn on

Respondent's Business/Operating Account, annotated "\$80k – Scott." NT 901-902; ODC 35 Bates 113.

102. By letter dated August 26, 2020, to Ms. Herrle, Respondent asserted:

- a. "Please allow this correspondence to provide a Statement of Account for the monies my firm is presently holding in our IOLTA (Trust Account)."
- b. "As you are aware, the monies were placed into my IOLTA account following the sale of the 153 Gass Road property."
- c. "The account has \$154,143.13."
- d. "The money will remain untouched in said account pending your availability to execute and finalize settlement distribution documents."
- e. "Additionally, my office continues to await account statements for the completion of the PA REV-1500 Inheritance Tax Return. We will continue to request the same."

ODC 36 Bates 114.

103. The August 26, 2020, letter did not constitute a full accounting and did not represent that \$80,000.00 of the Scott Trust realty proceeds were drawn from the account by Respondent and later returned. ODC 36 Bates 114.

104. Respondent hired Jason Dibble, Esquire to resolve the dispute with Ms. Herrle and Mr. Ron Scott. NT 903.

105. By letter dated August 26, 2020, sent in reply to Mr. Stranahan's August 24 letter, Respondent referenced his telephone conversation with Mr. Stranahan concerning the possibility of an in-person meeting about the Estate administration and, on September 1, 2020, Respondent's counsel, Mr. Dibble, met with Attorneys Stranahan and Metrick regarding Respondent's representation of Ms. Herrle and Ronald Scott in the

Caveat litigation and for the Estate and Trust administration. At that meeting, Mr. Stranahan and Mr. Metrick informed Mr. Dibble that Ms. Herrle and Mr. Ron Scott no longer required Respondent's services. NT 342-343; ODC 37 Bates 115.

106. By letter dated September 1, 2020, Mr. Stranahan and Mr. Metrick informed Mr. Dibble, among other things, that:

- a. Respondent was to arrange for the surrender of the estate file to Ms. Herrle so that she could forward it to successor counsel of her choosing.
- b. Respondent was to provide a detailed accounting of the work that had been done to that point in regard to the estate.
- c. Respondent was to relinquish to either Ms. Herrle or successor counsel the sale proceeds for the Scott Trust realty with which Respondent was still entrusted.

ODC 38 Bates 116.

107. By email dated September 2, 2020, Mr. Dibble informed Mr. Metrick, in pertinent part, that:

- a. He understood that Ms. Herrle and Mr. Ron Scott had terminated Respondent's representation and that they were seeking successor counsel.
- b. "Although [Respondent] feels that he is entitled to the entirety of the fee that he earned with respect to the administration and litigation involved in the Francis Scott Estate, he is willing to accept the \$35,000 already paid as well as \$50,000 from the sum that remains in escrow in order to resolve [the] fee contention."

- c. "In exchange, the parties will execute a mutual release and in so doing, [Respondent] will waive the tort claims he intends to assert against [Ron] Scott should this matter proceed to litigation."

ODC 39 Bates 117.

108. On September 3, 2020, Respondent sent a series of text messages to Mr. Pyros, stating:

- a. "I've been there for you every day for years. Call me today. I've done everything for you, and you know it. I am the one who saved you \$250,000 this year alone. You owe me. You know why I am calling. Her brother is about to get them both in a world of problems."
- b. "I owe him nothing nor do you."
- c. "Please call."
- d. "Can [you] talk[?]"

ODC 40 Bates 118.

109. By letter dated September 9, 2020, Mr. Dibble replied to Mr. Stranahan's September 1, 2020, letter stating:

- a. "[Ms. Herrle's] decision to terminate [Respondent], despite his abundantly successful results in the litigation matter is duly acknowledged and the attorney-client relationship . . . is now terminated."
- b. "Regarding the monies held in trust, the entire sum is presently in dispute."
- c. "Pursuant to your clients' breach of the fee agreement, [Respondent] is entitled to compensation for his services at his hourly rate, or the agreed-upon percentage, or the greater of the two."
- d. "[Respondent] expended hundreds of hours of legal services."

- e. “[Respondent’s] customary hourly rate is \$400 per hour and his fees exceed the amount in trust.”
- f. “In accordance with Rule 1.15(f) of the Rules of Professional Conduct, [Respondent] is obligated to hold the proceeds in escrow until resolution of the fee dispute.”

ODC 41 Bates 119.

110. On September 25, 2020, Respondent filed a Petition for Leave of Court to Withdraw as Counsel in the Francis Scott matter. ODC 42 Bates 120-129.

111. Respondent admitted that the Petition contained multiple mistakes. He credibly explained at the hearing that he had never been fired by a client before and was angry and emotional when he prepared the Petition. He pulled a template off the internet, used poor word choices, and should have taken time to edit the document. N.T. 904, 905.

112. Respondent, Ms. Herrle, and Mr. Ron Scott executed a mutual release dated May 5, 2021, with respect to their dispute and the real estate transaction funds in Respondent’s IOLTA account. ODC 43 Bates 30-131.

113. Pursuant to the aforementioned agreement, by check numbered 1072, dated May 5, 2021, drawn on Respondent’s IOLTA and annotated “Settlement,” he disbursed \$100,000.00 to Ms. Herrle as the balance of the proceeds of the sale of the Scott Trust realty. ODC 44 Bates 132.

114. By check numbered 1073, dated May 5, 2021, drawn on Respondent’s IOLTA, he disbursed \$53,843.10 to himself for his remaining fees per the agreement with the Complainants. NT 904; ODC 44 Bates 133.

115. As supported by the litigation materials and records, Respondent provided a significant amount of legal services in the Francis Scott matters. NT 857-858, 900-901.

116. All payments made to Respondent in the Francis Scott matters were made after large amounts of legal services were expended by Respondent. NT 43, 53, 58-59, 170-171, 410-411, 857-858, 900-901, 904; ODC 44 Bates 133.

117. On July 13, 2021, Attorney James Vergotz, successor counsel for Ms. Herrle in her capacity as Executrix for the estate, filed the REV-1500 Inheritance Tax Return for Resident Decedent Francis Scott. As reported therein:

- a. The total gross assets of the estate were \$782,027.62;
- b. The net value subject to tax was \$623,536.07; and
- c. Respondent's fee for estate litigation was \$92,826.77.

NT 511; ODC 45 Bates 1340145.

118. Respondent failed to list a Business/Operating account maintained or used by him in the practice of law on his 2018-2019, 2019-2020, and 2020-2021 PA Attorney's Annual Fee Forms. RE A ¶ 104.

119. Respondent corrected that omission by correspondence with the Attorney Registration Office dated October 29, 2020. RE A ¶ 105.

120. ODC investigator, Mr. Brian Kline, conducted a comprehensive audit of Respondent's IOLTA and operating accounts which revealed no evidence of wrongdoing with respect to Respondent's other clients. NT 442-443.

121. Michele Sabo Conti, Esquire, Carl Schiffman, Esquire, Jaqueline Dixon, Kevin McQuillan, and Paula Canny, Esquire testified credibly as to Respondent's good character and reputation in the legal community. NT 236, 356, 456, 701, 713.

122. Respondent expressed remorse and stated that he was sorry for what happened. He admitted that he should have been more thorough and acknowledged that he did not use best practices in this matter. NT 906-909.

123. Respondent explained that based on his experience in the instant matter, he “[doesn’t] do it this way anymore” and “I would paper the file just a little bit better.” N.T. 907, 908. He admitted that he “could have done a better job by – for them by helping them understand all of this, and that’s where I think my biggest downfall was.” N.T. 908.

### III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following RPC and Pa.R.D.E:

1. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
2. RPC 1.5(c) – A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is



a recovery, showing the remittance to the client and the method of its determination.

3. RPC 1.15(b) – 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.
4. RPC 1.15(e) – 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.
5. RPC 1.15(i) – A lawyer shall deposit into a Trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.
6. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities.

7. Pa.R.D.E. 219(d)(1)(v)<sup>2</sup> – On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Office in accordance with the following procedures: (1) The form shall set forth: ... (v) every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.

#### IV. DISCUSSION

##### Respondent's Misconduct

This matter arose out of the administration of the estate of Mr. Francis Scott, the father of Ms. Herrle and Mr. Ron Scott. In the Francis Scott matter, Respondent provided representation in three separate but related capacities: (i) Ms. Herrle as the nominated executrix who was eventually granted Letters Testamentary; (ii) Ms. Herrle in her capacity as successor Trustee of the Scott Trust; and (iii) Ms. Herrle and Mr. Ron Scott as beneficiaries of the Scott Trust. Respondent's misconduct may be summarized as follows. He failed to provide a written fee agreement within a reasonable time of the commencement of the representation and his later contingency fee agreement was deficient and not understood by his clients. Respondent removed \$80,000 from his IOLTA, which represented the proceeds of the sale of Trust realty, because he believed he was entitled to the funds as his fee and thought his clients understood that based on previous discussion. However, he was not authorized to remove these funds.

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<sup>2</sup> This rule provision was amended effective September 1, 2023. The requirement to list every business operating account is currently set forth in Pa.R.D.E. 221(q)(3).

Respondent immediately deposited the funds back into the IOLTA after seeking an ethics opinion. Respondent's response to his client's request for an accounting of the Trust realty proceeds was not timely, was insufficient and failed to disclose that he had removed the funds from his IOLTA and later replaced them. Respondent failed to list his business operating account on three successive yearly attorney registration forms.

RPC 1.5(b)

Respondent violated his ethical duties by failing to communicate the basis or rate of his fee, in writing, within a reasonable time after commencing representation of his clients in late December 2018. Respondent contends that he regularly represented Ms. Herrle in such a manner that a written fee agreement was not required under the rule. However, the record evidence demonstrates that Respondent had not regularly represented Ms. Herrle or Mr. Ron Scott. Prior to commencing his representations of Ms. Herrle as the nominated executrix for her father's Estate or as Trustee of the Scott Family Trust, or as a beneficiary of the Trust involved in litigation, Respondent had represented Ms. Herrle once previously related to drafting a trust document for Ms. Herrle and her husband. Respondent's position that he had "regularly" represented Ms. Herrle is based upon his assertions that he performed similar work for Ms. Herrle's parents, and represented business interests of Ms. Herrle's employer, Mr. Pyros. Neither of those lawyer-client relationships establishes that Respondent regularly represented Ms. Herrle in matters of estate litigation or administration. Moreover, Respondent had not previously represented Mr. Ron Scott in any capacity.

The Official Comment to RPC 1.5(b) provides that a written fee agreement is not required where the representation is with such regularity that the client "will have evolved an understanding concerning the basis or rate of the fee." RPC 1.5(b), Comment [1].

Given that Respondent had not previously represented his clients in this manner, neither Ms. Herrle nor Mr. Ron Scott had developed an understanding about Respondent's fees in estate administration and litigation. Therefore, a written fee agreement was necessary. Respondent's early failure to communicate a fee agreement in writing set the stage for his clients' confusion and his subsequent rule violations, as detailed below.

RPC 1.15(b) and 1.15(i)

Petitioner argues that Respondent violated RPC 1.15(b), which requires lawyers to hold all Rule 1.15 Funds and property separate from the lawyer's own property, by depositing the \$35,000.00 paid to him by Ms. Herrle on a monthly or bi-monthly basis into his business operating account rather than his IOLTA account.

Respondent began the subject representation in December 2018. Up until the February 13, 2019, meeting where Ms. Herrle made the first \$5,000.00 payment to Respondent, Respondent had worked on the Francis Scott matter in December 2018, January 2019, and February 2019 without payment. Respondent did not request payment from Ms. Herrle prior to this meeting because he believed it was too soon after the death of her parents to concern her with his fee. Ms. Herrle was aware that she owed Respondent payment for fees already earned by Respondent in the months prior and told him that at the February 2019 meeting.

Respondent testified that he and Ms. Herrle orally agreed, considering the upcoming litigation with Mr. Glenn Scott, Respondent would bill in the Francis Scott matter at \$200.00 per hour with a cap at 25 hours per month totaling \$5,000.00 per month. Each of the payments received by Respondent and paid by Ms. Herrle correspond with the above-described oral fee arrangement. In further support of this fee arrangement, the record evidence shows that Respondent requested \$10,000 for his April 2019 and May

2019 fees on May 24, 2019. Ms. Herrle testified that, on this date, she received a call from Respondent requesting payment after two months had passed because he “was running low on cash” and “he needed to pay his mortgage.” NT 53. For that reason, Ms. Herrle understood that the May 2019 payment was for fees already earned by Respondent in April 2019 and May 2019. The record therefore shows that the \$35,000.00 paid to Respondent by Ms. Herrle was for fees already earned by Respondent. Accordingly, Respondent was permitted to deposit the \$35,000.00 in his business operating account.

However, as for the funds entrusted to Respondent from the Scott Trust realty proceeds, Respondent violated RPC 1.15(b) and 1.15(i) when he withdrew \$80,000.00 of Rule 1.15 funds that he was holding in trust in the IOLTA without written consent from Ms. Herrle acting as trustee.

#### RPC 1.5(c)

Respondent did not comply with the requirement for a fee in writing until more than a year after he began his representation of Ms. Herrle and Mr. Ron Scott. The written 25% contingency fee agreement that he eventually provided and that was signed by his clients was deficient under RPC 1.5(c). Specifically, the signed fee agreement failed to “state the method by which the fee is to be determined,” where the agreement did not identify for the clients the “monies received” in the Francis Scott matter that would be subject to Respondent’s contingency percentage. Moreover, after Respondent removed his contingency percentage from the entrusted funds held in his IOLTA, Respondent failed to provide his clients with a written statement stating the outcome of the matter showing the remittance to the client and the method of its determination as required by RPC 1.5(c).

RPC 1.15(e)

Respondent failed to comply with the requirement of RPC 1.15(e) that upon request of a client, he promptly render a full accounting of the property that the client is to receive. On July 7, 2020, Ms. Herrle texted to Respondent a request for an accounting of the proceeds of sale of the Trust realty which he had deposited to his IOLTA in July 2019. Respondent did not respond to Ms. Herrle's request until his letter of August 26, 2020, wherein he simply stated that monies were placed into his IOLTA and the account had \$154,143.13; he provided no documentation for his assertions, and thereby failed to timely and fully account to Ms. Herrle for the funds with which he was entrusted.

RPC 8.4(c)

In Respondent's August 26, 2020, letter in response to Ms. Herrle's request for an accounting, he failed to communicate to Ms. Herrle that he had disbursed to himself from his IOLTA (and later returned) \$80,000.00 of entrusted funds without permission from Ms. Herrle as trustee. Respondent's "accounting" contained in his letter was simply a statement that his IOLTA contained monies in the amount of \$154,143.13 from the sale of the real estate. Respondent failed to include a bank statement. The "accounting" was intentionally deficient and made it appear to his clients that the funds had always remained inviolate in the IOLTA. Respondent thereby engaged in conduct involving a misrepresentation in violation of RPC 8.4(c).

Pa.R.D.E. 219(d)(1)(v)

Respondent concedes that he violated Pa.R.D.E. 219(d)(1)(v) by failing to list a business or operating account on his Pennsylvania Attorney Annual Fee Form on three separate attorney registration forms for the period spanning 2018 through 2021.

Respondent corrected that omission by correspondence with the Attorney Registration Office on October 29, 2020.

### The Parties' Exceptions

We first address the parties' exceptions as to rule violations. After review, we find merit to Petitioner's exception relative to Respondent's violation of RPC 1.15(e), which rule required Respondent to promptly provide to his clients upon their request an accounting of the proceeds of the sale of the Trust realty with which he was entrusted. As detailed in the factual findings and discussed above, the record evidence supports Respondent's violation of this rule. In early July 2020, Ms. Herrle requested an accounting of the proceeds of the sale of her parents' house which Respondent had deposited to his IOLTA. It was not until August 26, 2020, that Respondent replied to Ms. Herrle's request. And, Respondent's response was not sufficient, as it merely stated that monies were placed into his IOLTA and the account had \$154,143.13. Respondent provided no documentation for his assertions.

We find no merit to Petitioner's exception relative to the Committee's conclusion that Respondent did not violate RPC 1.6(a). This rule governs confidentiality of information. Subdivision (a) prohibits a lawyer from revealing information relating to representation of a client. The record evidence demonstrates that Respondent texted Kyrk Pyros in August 2020 and on September 3, 2020, expressing frustration with the status of his representation of Ms. Herrle and Mr. Ron Scott, who he was having difficulty contacting, and essentially seeking Mr. Pyros's help to have a meeting with his clients. This was not an extraordinary request as Respondent knew Mr. Pyros through providing legal services to him and knew that Ms. Herrle had been employed by Mr. Pyros for many years. As well, Mr. Pyros was aware that Respondent represented Ms. Herrle in relation

to her parents' estate matters. NT 210. At the point in time that Respondent texted Mr. Pyros, he was frustrated and was hoping Mr. Pyros could help. The evidence does not convincingly demonstrate a violation of 1.6(a).

Also without merit is Petitioner's contention the Committee erroneously failed to find a violation of RPC 3.3(a)(1), which rule prohibits a lawyer from making a false statement of material fact or law to a tribunal. In support of its claim, Petitioner points to Respondent's Petition for Leave to Withdraw as Counsel, filed in the Orphans' Court on September 25, 2020. Respondent acknowledged that his Petition contained errors, but they were no more than that. He explained that when he drafted the Petition, he was angry that he had been fired by his clients, as that had never happened before, was emotional, and did not edit the Petition as carefully as he could have. We conclude on this record that Respondent had no dishonest intent, and did not violate RPC 3.3(a)(1).

Moving to Respondent's exceptions, we find no support in the record for these contentions. As set forth above, with regard to RPC 1.5(b), the record supports the conclusion that Respondent had not regularly represented either Ms. Herrle or Mr. Ron Scott and failed to communicate the basis or rate of his fee, in writing, before or within a reasonable time after commencing the representation in late December 2018. Respondent's assertion that he "regularly" represented Ms. Herrle and she was aware of his fees because he performed legal services for her parents and her employer in the past is not borne out by the record evidence, nor does the record support any past legal representation of Mr. Ron Scott by Respondent. Respondent needed a written communication with his clients about his fee for services and failed to provide one for over a year. We further conclude that Respondent's exception related to the RPC 8.4(c) violation is unfounded. The Committee analyzed Respondent's disbursement of \$80,000



to himself from his IOLTA without Ms. Herrle's authorization, and his August 26, 2020 letter to Ms. Herrle, the contents of which constituted a misrepresentation due to Respondent's omission of any reference to his withdrawal and replacement of Trust proceeds. These facts support the conclusion that Respondent violated RPC 8.4(c)'s prohibition on misrepresentation.

Petitioner's exception to the Committee's failure to find aggravating factors and the parties' exceptions related to the appropriate level of discipline are addressed below.

#### Appropriate Discipline

Having determined that Respondent engaged in professional misconduct, we next consider the appropriate quantum of discipline. The primary purpose of Pennsylvania's system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system. *Office of Disciplinary Counsel v. John J. Keller*, 506 A.2d 872 (Pa. 1986). It is well-established that in imposing discipline, each case must be decided individually on its own unique facts and relevant circumstances, "being mindful of the need for consistency in the results reached in disciplinary cases so that similar misconduct is not punished in radically different ways." *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 190 (Pa. 1983). The analysis under *Lucarini* requires weighing any aggravating and mitigating factors.

In assessing the appropriate level of discipline, we consider that Respondent has practiced law in the Commonwealth since 2005 with no record of professional discipline, a mitigating factor. We also find in mitigation that Respondent acknowledged wrongdoing and expressed remorse. He admitted that he did not use best practices, should have done more to help his clients understand what was happening, and should have been more thorough in "papering the file." Respondent credibly testified he has learned from his

experience in the instant matter. Respondent's character witnesses credibly testified that Respondent has a good reputation in the community.

Petitioner put forth several factors that it contends serve to aggravate discipline in this matter. Petitioner urges the Board to consider that Respondent: lacked remorse, used the entrusted funds that were in his possession as a bargaining chip against his clients Ms. Herrle and Mr. Ron Scott; backdated two contingent fee letters to obscure his failure to comply with RPC 1.5(b) and/or 1.5(c), and exhibited a lack of candor with his clients through a course of deceitful communication and lack of communication. And, Respondent's misconduct necessitated his clients hiring counsel to assist them in recovering proceeds from the sale of the Trust realty and to complete estate administration. Pet. Brief on Exceptions, pp. 5-7. Upon this record, we decline to find that the suggested factors constitute aggravation. As to lack of remorse, we find that Respondent expressed remorse, which serves as mitigation. Some of the other factors are a reiteration of the rule violations committed by Respondent or that Petitioner alleged were violated, not factors outside Respondent's instant misconduct that serve to aggravate the level of discipline. And, the fact that Respondent's clients retained other counsel in our view does not weigh in favor of increased discipline.

Prior matters involving similar misconduct provide guidance in tailoring appropriate discipline. The precedent informs our determination to impose a public reprimand in the instant matter.

Petitioner has consistently urged Respondent's suspension from the practice of law. On this record, we find this is not a suspension matter; the instant facts and circumstances are readily distinguishable from the precedent relied upon by Petitioner. Significantly, the record supports the conclusion that unlike respondent-attorneys who

have been suspended, Respondent did not misappropriate entrusted funds, did not take excessive fees, did not engage in long-standing non-compliance with IOLTA and escrow account requirements, and did not abuse his fiduciary relationship. Here, Respondent withdrew funds only when he believed, albeit wrongly, that they were owed to him pursuant to the signed contingency fee agreement, and after he expended a significant amount of legal services and obtained a favorable settlement for his clients in the estate litigation. Once his clients began distributing the estate assets to themselves, Respondent believed he could withdraw funds that were owed to him from his IOLTA. Upon learning that the \$80,000 was in dispute, Respondent immediately returned the funds to his IOLTA account after obtaining advice from the Allegheny County Bar Ethics Hotline.

Case precedent supports the imposition of discipline less than suspension in matters involving misconduct such as failure to timely provide a written fee agreement, mishandling of IOLTA funds without fraudulent intent, and failure to provide a prompt accounting upon request by a client. Recently, in the matter of *Office of Disciplinary Counsel v. Anonymous*, No. 42 DB 2023 (D. Bd. Order 9/24/24), the Board imposed a private reprimand on a respondent who violated RPC 1.15(b) and 1.15(f) when the respondent mishandled funds in which two or more persons had an interest by moving the funds from an IOLTA account to an operating account as the respondent's fee. Upon being made aware that the monies were the subject of a dispute, and after receiving an inquiry from Office of Disciplinary Counsel, the respondent consulted legal counsel and returned the disputed funds to the IOLTA. The Board found mitigation factors in favor of a private reprimand consisting of the respondent's blemish-free record of legal practice for nearly 30 years and the respondent's forthright acknowledgement of misconduct. Here, Respondent's additional acts of misconduct, i.e., failure to provide a written fee

agreement within a reasonable time after commencing representation, unclear contingency fee agreement, failure to provide a prompt accounting upon request, and misrepresentation related to the accounting, as well as failure to supply his business operating account on his attorney registration form for three years in a row, tilt in favor of a public reprimand.

Other attorneys have received public reprimands for misconduct involving some combination of failure to have a written fee agreement, mishandling IOLTA funds and accounts, and related misconduct. In the matter of *Office of Disciplinary Counsel v. Kathryn Mary Wakefield*, No. 9 DB 2025 (D. Bd. Order 2/20/2025), Wakefield received a public reprimand and probation for violation of RPC 1.15(b), 1.15(c)(2) and (4), and 1.15(f) based on her failure to keep separate funds that were entrusted to her in which two or more persons claimed an interest. The disputed funds were to be held in escrow by Wakefield until evidence was received that taxes had been satisfied by one of the parties; however, Wakefield deposited the funds into her operating account and released them before receiving evidence concerning satisfaction of the taxes. Office of Disciplinary Counsel's investigation later revealed that Wakefield was not in compliance with RPC 1.15 recordkeeping requirements. In mitigation, Wakefield had no record of prior discipline. In the matter of *Office of Disciplinary Counsel v. Richard Patrick Gainey*, No. 160 DB 2018 (D. Bd. Order 4/15/2020), the Board imposed a public reprimand for Gainey's mishandling of funds in his IOLTA account, after concluding that Gainey had not converted entrusted funds and that his conduct was based on bookkeeping errors and poor management of records. See also *Office of Disciplinary Counsel v. Clair Michelle Stewart*, No. 228 DB 2018 (D. Bd. Order 12/21/2018), *Office of Disciplinary Counsel v. George W. Bills, Jr.*, No. 108 DB 2022 (D. Bd. Order 9/15/2022); *Office of Disciplinary*

*Counsel v. Robert M. Tobia*, No. 55 DB 2022 (D. Bd. Order 5/3/2022); *Office of Disciplinary Counsel v. Arsen Kashkashian, Jr.*, No. 16 DB 2016 (D. Bd. Order 7/28/2017).

Application of the precedent to the totality of Respondent's misconduct, tempered by the mitigating circumstances, leads the Board to conclude that a public reprimand is warranted. We conclude that while Respondent engaged in misconduct that deserves discipline, he is fit to practice law and will not cause harm to the public by his continued practice. A public reprimand will emphasize to Respondent the critical need to conduct his practice in accordance with the ethical rules and will suffice to address his misconduct. On this record, a public reprimand is consistent with discipline imposed in prior similar matters and fulfills the goals of the disciplinary system.

V. DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the Respondent, Kelton Merrill Burgess, shall receive a Public Reprimand.

The expenses incurred in the investigation and prosecution of this matter shall be paid by the Respondent.

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

*S/Catherine R. O'Donnell*

By: \_\_\_\_\_  
Catherine R. O'Donnell, Member

Date: \_\_\_\_\_  
April 29, 2025