

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2052 Disciplinary Docket No. 3
Petitioner :
: No. 188 DB 2012
v. :
: Attorney Registration No. 53031
RICHARD J. KWASNY, :
Respondent : (Bucks County)

ORDER

PER CURIAM:

AND NOW, this 26th day of June, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated March 24, 2014, it is hereby

ORDERED that Richard J. Kwasny is suspended from the Bar of this Commonwealth for a period of five years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 6/26/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 188 DB 2012
Petitioner	:	
	:	
v.	:	Attorney Registration No. 53031
	:	
RICHARD J. KWASNY	:	
Respondent	:	(Bucks County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on December 11, 2012, Office of Disciplinary Counsel charged Richard J. Kwasny, Respondent, with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of conduct involving his practice of law while on administrative suspension, his mismanagement of his IOLTA/Escrow Account and his alteration of certain documents presented to the PA Lawyers Fund for Client Security. Respondent filed an Answer to Petition on March 7, 2013.

A disciplinary hearing was held on May 21 and May 28, 2013, before a District II Hearing Committee comprised of Chair Nelson J. Sack, Esquire and Members Candace Centeno, Esquire, and Carin O'Donnell, Esquire. Four days prior to the May 21, 2013 hearing, Respondent requested a continuance for health reasons, but provided no medical documentation. The request was denied and the hearing commenced. Respondent did not appear, but forwarded by letter on that day, another request for continuance. The Committee continued the hearing until May 28, 2013. On May 28, 2013, Respondent sent another written request for continuance, which was denied. The hearing was held in Respondent's absence.

Following the submission of a Brief filed by Petitioner, the Hearing Committee filed a Report on September 18, 2013, concluding that Respondent violated the Rules as charged in the Petition, and recommending that he be suspended for a period of three years.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 15, 2014.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 is Richard J. Kwasny. He was born in 1957 and was admitted to practice law in the Commonwealth in 1988. He maintains his office at 53 South Main Street, Yardley, Bucks County, Pennsylvania 19067, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior history of discipline.

Administrative Suspension and Unauthorized Practice

4. The annual attorney registration filing deadline is July 1 of each year.
(ODC Exh. 37)

5. Prior to the registration deadline for the year 2010-2011, Respondent was sent several generic "email blast" reminder notices. These emails are sent beginning in April and the purpose is to remind attorneys that the annual registration is approaching.
(ODC Exh. 37)

6. The emails were sent to the email address provided by Respondent on his 2009-2010 registration.

7. On May 15, 2010, the annual registration forms were sent directly to Respondent at his registered address of 53 S. Main Street, Yardley, PA 19067. On September 20, 2010, the Attorney Registrar sent Respondent's "generic" Final Notice of Nonpayment of Annual Fee for 2010-2011 by mailing such notice to the address on file at the Registrar's Office. (ODC Exh. 1; Exh. 36)

8. This mailing, on Page 2, notified Respondent that if he failed to timely send in his registration form and registration fee he would be administratively suspended.

9. The September 20, 2011 mailing also notified Respondent, on Page 2, that he must comply with Pa.R.D.E. 217, and notify all clients, lawyers and appropriate judges if he was administratively suspended. (ODC Exh. 1; ODC Exh. 36)

10. Respondent did not timely file his Annual Registration Form. (ODC Exh. 37)

11. On November 18, 2010, Respondent was notified by letter that he was administratively suspended by Order of the Supreme Court of Pennsylvania and the effective date of his suspension was December 18, 2010. (ODC Exh. 2; ODC Exh. 37) This letter gave instructions as to how to avoid the suspension becoming effective.

12. The November 18, 2010 letter was sent by USPS, certified/return receipt requested. The returned green card was received by the Attorney Registrar's Office. (ODC Exh. 3; ODC Exh. 37)

13. Respondent did not timely file his Annual Registration Form or pay his fee and his administrative suspension became effective on December 18, 2010. (ODC - Exh. 37)

14. On February 11, 2011, the Attorney Registrar's Office received Respondent's Annual Registration Form, a check for his fee and late payment penalties and a signed Statement of Compliance. (ODC Exh. 4; ODC Exh. 37)

15. Respondent's statement of compliance submitted on February 11, 2011, provided no evidence of compliance with Pa.R.D.E. Rule 217. (ODC Exh. 4; ODC Exh. 18; ODC Exh. 37)

16. Respondent signed the Statement of Compliance when he knew or should have known that he had not complied with the notification requirements of Rule 217. (ODC Exh. 4; ODC Exh. 18)

17. Respondent's check, received by the Registrar's Office on February 11, 2011 in payment of his registration fee and late penalties, was returned by Respondent's bank for insufficient funds. (ODC Exh. 28; Exh. 37)

18. Respondent continued to practice law while his license was administratively suspended. (ODC Exh. 18; Exh. 32)

IOLTA/Escrow Account and Alteration of Documents

19. On or about September 10, 2010, the PA Lawyers Fund for Client Security ("Client Security") received notice from Respondent's bank that an escrow account check had been returned for insufficient funds. Respondent's escrow account was also designated as an IOLTA Account. (ODC Exh. 33; N.T. May 28, 2013 p. 18; 20)

20. On or about September 30, 2010, Client Security notified Respondent of the notice of insufficient funds and requested an explanation and documentation rectifying the same. (ODC Exh. 33)

21. In correspondence dated October 11, 2010, in response to the September 30, 2010 inquiry, Respondent provided a copy of a bank check in the amount of \$18,978.49 made out to client Patricia Bouffard, with an explanation that a \$16,000 check that was to be deposited into yet another account ("Mormando account") had been deposited into the wrong account in error which led to the escrow account insufficiency. The check to Ms. Bouffard was a replacement check for the one returned for insufficient funds. (ODC Exh. 5; Exh. 6; N.T. May 28, 2013 p. 20, 21)

22. Respondent failed to properly identify and safeguard Mormando's money. (ODC Exh. 5; Exh. 6; N.T. May 28, 2013 p. 18, 20, 30, 36)

23. Respondent failed to properly identify and safeguard Ms. Bouffard's funds. (ODC Exh. 5; Exh. 6; N.T. May 28, 2013 p. 18, 20, 30, 36)

24. When further inquiry was sought by Client Security, Respondent by correspondence dated October 28, 2010 provided additional documentation and further explanation of the discrepancy. (ODC Exh. 7; N.T. May 28, 2013 p. 21)

25. The documents provided by Respondent in his correspondence dated October 28, 2010, were (1) client ledger for Patricia Bouffard; (2) client ledger for Anthony Martino; (3) copies of the July, August and September 2010 bank statements and records for Escrow Account 3497; and (4) a copy of the deposit slip reflecting that the funds had been erroneously deposited in operating account 4828. (ODC Exh. 7; N.T. May 28, 2013, p. 21)

26. In his further explanation provided in Respondent's letter of October 11, 2010, he indicated that the \$16,000 funds had been erroneously deposited in operating account 8492, even though the deposit slip clearly shows the money was deposited into account 4828. (ODC Exh. 7)

27. The \$16,000 check allegedly erroneously deposited into operating account 4828 on June 30, 2010, was money belonging to client "Mormando." (ODC Exh. 7; ODC Exh. 48)

28. On June 30, 2010, the date of the allegedly erroneous deposit of the \$16,000 into operating account 4828, that bank account had a balance of \$187. (ODC Exh. 48)

29. On July 6, 2010, the balance of operating account 4828 was a negative \$235.94. There were no checks made out to either Bouffard or Mormando between June 30 and July 6, 2010. (ODC Exh. 49)

30. Respondent improperly used the \$16,000 relating to his representation of Mormando to fund his law office and keep his operating account 4828 liquid.

31. Respondent failed to identify and safeguard Mormando's money a second time.

32. Patricia Bouffard received her funds in the amount of \$18,978.49 by bank check dated October 6, 2010. (ODC Exh. 6)

33. Respondent's bank records show that a \$7,000 check was drawn on escrow account 3497 on October 6, 2001, with the notation "Bouffard certified check." (ODC Exh. 16)

34. The balance of the funds used for the bank check did not come from operating account 4828. (ODC Exh. 39)

35. There are no bank records indicating the origin of the \$18,978.49 check payable to Patricia Bouffard.

Bank Transfers - Bouffard and Martino Accounts

36. Respondent wrote check number 2871 to his daughter Sara Kwasny, who was not a client. (ODC Exh. 7; Exh. 12; Exh. 18)

37. This check was written from escrow account 3497 in the amount of \$5,000.00 and was dated August 9, 2010. (ODC Exh. 7; Exh. 12; Exh. 18)

38. The cash from this check was placed in operating account 4828 by Ms. Kwasny. (ODC ex. 210)

39. There was no notation on the check as to which clients' funds were disbursed by check number 2871 from escrow account 3497. (ODC Exh. 70)

40. The Trust Bank Journal indicates that the August 9, 2010 check to Sara Kwasny came from the account named "Cost, Ray and Judy." (ODC Exh. 26)

41. Check 2872 from the escrow account 3497 in the amount of \$5,000.00 dated August 12, 2010, was made out to Respondent's law firm and deposited in the operating account 4828. (ODC Exh. 7; Exh. 12)

42. The notation on the copy of the cancelled check 2872 provided to Client Security by Respondent indicated the money came from the Martino account. (ODC Exh. 7)

43. The notation on the copy of the cancelled check 2872 received by ODC from Sovereign Bank pursuant to a subpoena indicated the money came from the Bouffard account. (ODC Exh. 12; N.T. May 28, 2013 p. 46, 49)

44. The notation as to the source of the funds on check 2872 provided to Client Security by Respondent had been altered by Respondent prior to being sent to Client Security. (Exh. 12, Exh. 7)

45. Check 2872 was noted in the Martino client ledger provided to Client Security by Respondent as a disbursement from the Martino account. (ODC Exh. 10)

46. Check 2872 also was noted in the Trust Bank Journal as originating from funds credited to the Martino account. (ODC Exh. 26)

47. Check 2872 did not show up anywhere in the Bouffard client ledger provided to Client Security. (ODC Exh. 8)

48. Check 2872 with the name "Bouffard" in the notation line is the same check that appears in the bank records and client ledger for the Martino account. (ODC Exh. 7; Exh. 8; Exh. 10; Exh. 12; Exh. 26; N.T. May 28, 2013 p. 53)

49. Respondent changed the notation as to the source of the funds on check 2872 from escrow account 3497.

Second Martino Client Ledger

50. Petitioner, by subpoena, received a second client ledger regarding the Martino account. (ODC Exh. 35)

51. The second Martino client ledger accurately reflects the transactions involving the Martino account, as verified by the bank records produced by Sovereign Bank pursuant to a subpoena from Petitioner. (ODC Exh. 7; Exh. 12; Exh. 22; Exh. 35)

52. The second Martino client ledger differs from the one provided by Respondent to Client Security on October 28, 2010. (ODC Exh. 7; Exh. 10; Exh. 35)

53. The Martino client ledger received by Client Security from Respondent on October 28, 2010 is absent any disbursement to Sara Kwasny on August 9, 2010. (ODC Exh. 7; Exh. 10)

54. The second Martino client ledger received via subpoena, does show a disbursement to Sara Kwasny, on August 9, 2010. (ODC Exh. 35)

55. The second Martino client ledger records a \$5,000 disbursement on August 12, 2010 with a notation "Bouffard" on the ledger.

56. The second Martino client ledger recording a disbursement on August 12, 2010, in the amount of \$5,000, with a notation "Bouffard", is consistent with the copy of the check received from Sovereign Bank. (ODC Exh. 12; Exh. 35)

57. The second Martino client ledger records a transfer on August 12, 2010, via check 2872. (ODC Exh. 7; Exh. 12; Exh. 35)

58. Check 2872 was the same check number on the August 12, 2010 check for \$5,000 from escrow account 3497. (ODC Exh. 7; Exh. 12; Exh. 35)

59. The Martino client ledger received by Client Security from Respondent identifies an August 12, 2010 check for \$5,000 but is absent any notation as to the Bouffard Account. (ODC Exh. 7; Exh. 10)

60. The second Martino client ledger, received via subpoena, identifies the August 12, 2010 check for \$5,000 and also attributes this money to the Bouffard account.

61. The second Martino client ledger is consistent with the return check (no. 2872) provided by Sovereign Bank. (ODC Exh. 35; Exh. 12)

62. The second Martino client ledger includes the disbursement on September 23, 2010, of \$5,000 with a notation that it is from the "Haig" account. (ODC Exh. 35)

63. The bank records indicate a check written on September 23, 2009, from escrow account 3497 in the amount of \$5,000. Said check is noted as coming from the "Haig" funds. (ODC Exh. 22)

64. The second Martino client ledger shows a disbursement on September 23, 2009, as an advance from the "Haig" account. (ODC Exh. 35)

65. The Martino client ledger provided by Respondent to Client Security was altered before its submission.

Second Bouffard Client Ledger

66. Petitioner received a second client ledger for the Bouffard account. (ODC Exh. 34)

67. The second Bouffard client ledger accurately reflects the transactions involving the Bouffard account. (ODC Exh. 12; Exh. 8; Exh. 34)

68. The bank records produced by Sovereign Bank, regarding check 2872, in response to a subpoena are consistent with the second Bouffard client ledger. (ODC Exh. 12; Exh. 8; Exh. 340)

69. The second Bouffard client ledger differs from the client ledger provided by Respondent to Client Security. (ODC Exh. 7; Exh. 8; Exh. 340)

70. The second Bouffard client ledger shows a receipt by Respondent of \$5,000 on August 12, 2010 from that account. (ODC Exh. 34)

71. The Bouffard client ledger provided by Respondent to Client Security does not show a disbursement to Respondent on August 12, 2010, or at any time. (ODC Exh. 7; Exh. 8)

72. The Bouffard client ledger Respondent provided to Client Security was altered before its submission.

73. In addition, a copy of the cancelled check 2872 was provided by Respondent to Client Security. (ODC Exh. 7)

74. The cancelled check 2872 that was provided by Respondent indicates the money came from the Martino account.

75. Petitioner received a copy of cancelled check 2872 via subpoena from Sovereign Bank.

76. The cancelled check received via subpoena from Sovereign Bank indicates the money came from the Bouffard account. (ODC Exh. 12; N.T. May 28, 2013 p. 46,49)

77. The notation as to the source of the funds on check 2872 provided to Client Security by Respondent had been altered by Respondent prior to being sent to Client Security.

Bank Transfers Involving the Haig Account

78. On November 3, 2010, \$26,500 was deposited in Respondent's operating account 48248 on behalf of Brian and Tina Haig. (ODC Exh. 14; Exh. 31)

79. The balance of Respondent's operating account 4828 as of November 30, 2010 was \$110.67. (ODC Exh. 14)

80. No disbursements had been made to Brian and Tina Haig between November 3 and November 30, 2010. (ODC Exh. 14)

81. Respondent improperly converted and placed into his operating account 4828, the Haigs' money in order to keep his operating account liquid. (ODC Exh. 14)

82. Respondent transferred \$5,000 from escrow account 3497 to his operating account 4828 on September 23, 2010. The notation on the check indicated the funds being transferred were from the "Haig" account. (ODC Exh. 46; Exh. 22)

83. The notation "Haig" did not match the General Bank Ledger. The General Bank Ledger indicated this \$5,000 was an "advance on fee" from the account of "Cost, Ray & Judy." (ODC Exh. 29)

84. The Trust Journal indicates that Respondent received \$25,000 on behalf of Brian and Tina Haig, in a prior matter, on March 10, 2009. (ODC Exh. 45)

85. The Trust Bank Journal indicates the money from this prior matter was distributed on March 10, 2009. The Trust Bank Journal shows that the Haigs received \$16,666.67 and Respondent received \$8,333.33. (ODC Exh. 45)

86. The bank records for escrow account 3497 also indicates the receipt of \$25,000 on March 10, 2009. They further indicate the disbursement of \$16,666.67 to the Haigs on March 18, 2009. (ODC Exh. 47)

87. No transfer of funds in the amount of \$8,333.33 that was identified in the Trust Bank Journal as being funds of Respondent was ever made from escrow account 3497 to Respondent's operating account 4828, or any other account. (ODC Exh. 47; N.T. May 28, 2013 p. 60- 62)

88. Respondent commingled his funds with funds received from a client by failing to transfer funds out of escrow account 3497.

89. There were no funds being held by Respondent on behalf of the Haigs on September 23, 2010 that could have been transferred to his operating account 4828. (N.T. May 28, 2013 p. 60)

90. Respondent failed to properly identify and safeguard the Haigs' money.

Bank Transfers Involving the Epstein Account

91. A deposit of \$133,000 was made into Respondent's escrow account 3497 on December 2, 2009 for client Epstein. (ODC Exh. 20)

92. The Trust Bank Journal identifies the \$133,000 received and deposited by Respondent on December 2, 2009 as belonging to Mr. Epstein. (ODC Exh. 45)

93. The Trust Bank Journal and the bank records indicate that on December 7, 2009, Respondent transferred \$20,000 of Mr. Epstein's money into his operating account 4828. (ODC Exh. 20; Exh. 15; Exh. 45)

94. At the time of the transfer of the \$20,000 from escrow account 3497 on December 7, 2009, Respondent's operating account had a negative balance of \$10,460.00 (ODC Exh. 15)

95. Respondent improperly used and transferred \$20,000 of Mr. Epstein's funds to keep his law office operating account 4828 liquid, changing the balance in that account from a negative balance of \$10,460.00 to a positive balance. (ODC Exh. 15)

96. On December 10, 2009, Respondent transferred \$114,050 from escrow account 3497 to operating account 4828. (ODC Exh. 20; ODC Exh. 45)

97. Respondent forwarded a check in the amount of \$133,000 to Mr. Epstein on December 11, 2009 drawn from his operating account 4828. (ODC Exh. 15)

98. The December 11, 2009 check to Mr. Epstein in the amount of \$133,000 was returned for insufficient funds. (ODC Exh. 15)

99. After the bank received the Epstein check, operating account 4828 from which the Epstein check for \$133,000 was drawn showed a balance of a negative \$6,784.61. (ODC Exh. 15)

100. Respondent failed to properly identify and safeguard Mr. Epstein's money.

Respondent's Conduct Regarding Disciplinary Hearings

101. Respondent filed an Answer to Petition for Discipline and attended the pre-hearing conference on April 19, 2013.

102. Respondent was given multiple opportunities to present evidence and call witnesses with regard to the instant matter. (N.T. May 21, 2013 p. 5-11; N.T. May 28, 2013 p. 5-99)

103. Respondent was given deference in the granting of a continuance and the extension of deadlines to provide justification of his inability to attend hearings and produce evidence. (ODC Exh. 18; ODC Exh. 52)

104. Respondent did not appear before the Hearing Committee at the scheduled disciplinary hearing on May 28, 2013. (N.T. May 28, 2013 p. 5-6)

105. Respondent has not demonstrated remorse or acceptance of responsibility for his acts of misconduct.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

1. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property.

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

3. 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 the fees are earned or expenses incurred.

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

5. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulations of the legal profession in that jurisdiction.

6. RPC 8.4(c) – It is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

7. Pa.R.D.E. 217(a) – A formerly admitted attorney shall promptly notify all clients being represented in pending matters, other than litigation or administrative proceedings, of his disbarment, suspension, administrative suspension or transfer to inactive status.

8. Pa.R.D.E. 217(b) – A formerly admitted attorney shall promptly notify all clients who are involved in pending litigation or administrative proceedings, and the attorney for each adverse party, of the disbarment, suspension, administrative suspension or transfer to inactive status and consequent inability to act as an attorney after the effective date of such disbarment, suspension, administrative suspension or inactive status transfer.

9. Pa.R.D.E. 217(c) – A formerly admitted attorney shall promptly notify of the disbarment, suspension, administrative suspension or transfer to inactive status, all other persons with whom the formerly admitted attorney may expect to have professional contacts where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing.

IV. DISCUSSION

This matter is before the Board for consideration of charges against Respondent arising from conduct and actions that he took involving his practice of law while administratively suspended, mismanagement of his IOLTA/Escrow Accounts, and

alteration of documents presented to Client Security in response to an investigation undertaken by that organization. Petitioner bears the burden of establishing by clear and satisfactory evidence that Respondent's conduct violated the Rules of Professional Conduct and Rules of Disciplinary Conduct charged in the Petition for Discipline. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Petitioner's exhibits and the testimony presented at the disciplinary hearing clearly establish that Respondent violated the Rules. Although Respondent filed an Answer to Petition, he did not appear at the hearing to present any evidence on his behalf.

Respondent ignored multiple notices from the Registrar's Office concerning the filing of his registration form and the payment of his annual license renewal fee. He was administratively suspended effective December 18, 2010 and was not reinstated until February 11, 2011. Respondent did not comply with the notice requirements of Pa.R.D.E. 217 and continued to practice law during this time.

Respondent mismanaged his IOLTA/Escrow accounts on numerous occasions. Most of the transactions that constituted misconduct involved the use of client funds transferred from the escrow accounts to his law firm operating account in order to cover financial shortfalls and negative balances in that operating account. He frequently failed to identify the source of the funds he was transferring, or used multiple client identifications for the same transfers, depending upon which office records he was using. While there is no evidence that clients did not eventually receive the funds they were entitled to receive, there is no doubt that Respondent engaged in serious misconduct.

In connection with this mismanagement of accounts, Respondent provided three documents to Client Security during its investigation that were altered or otherwise falsified. Respondent provided a copy of a check to Client Security, which notation

indicated the money came from the Martino account. The notation on the identical check obtained from Sovereign Bank showed the money came from the Bouffard account. The Martino and Bouffard client ledgers provided to Client Security also showed evidence of alteration prior to their submission. The client ledgers for Martino and Bouffard that were provided to Petitioner both differed from those provided to Client Security. These actions can only be characterized as an attempt to mislead Client Security and avoid detection of fiduciary mismanagement.

Respondent did not appear before the Hearing Committee on May 21, 2013, the date of the scheduled disciplinary hearing. He did not provide an acceptable basis to support his failure to appear; nonetheless, Respondent was generously granted a seven day continuance. However, Respondent once again did not appear before the Hearing Committee on May 28, 2013. No reasonable basis was given to support Respondent's failure to appear and the hearing commenced without his participation in this serious matter concerning his professional license. Needless to say, Respondent has not accepted responsibility for his actions, nor has he demonstrated remorse.

There is no *per se* discipline for cases involving the mishandling of client funds. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983). A review of cases indicates that the discipline to be imposed for charges such as these is very fact-specific, while bearing in mind that unauthorized dealing with client money is a breach of trust typically requiring some form of public discipline. Office of Disciplinary Counsel v. Gwendolyn N. Harmon, No. 15 DB 2003, 72 Pa. D. & C. 4th 115 (2004). Aggravating and mitigating factors should be considered. In re Anonymous, 8 Pa.D. & C. 4th 344 (1990). As noted above, Respondent's failure to appear is an aggravating circumstance, while his lack of prior discipline over the course of a nearly 25 year legal career is a mitigating factor.

In a 2009 case, the Supreme Court suspended an attorney for three years for mismanagement of her IOLTA account, which was out of trust on 52 occasions and had a negative balance on 20 occasions. In order to bring the account into trust, the respondent deposited at least \$29,300 in personal funds into the account. She did not acknowledge her professional obligations, contending that she did not know why there was a shortage and that no one lost any money. Office of Disciplinary Counsel v. Patricia L. Datsko, 74 DB 2008 (Pa. 2009).

The Hearing Committee has recommended that Respondent be suspended for a period of three years, also the recommendation made by Petitioner. After careful review of this matter, the Board concurs with this recommendation, as it is consistent with outcomes of prior similar matters. We are, of course, cognizant that in determining appropriate discipline, disciplinary sanctions are not designed solely for their punitive effects, but are intended to protect the public from unfit attorneys and maintain the integrity of the legal profession and the judicial process. Office of Disciplinary Counsel v. Price, 732 A.2d 599 (Pa. 1999). Respondent's unwillingness to participate in the disciplinary process and refusal or inability to acknowledge his acts place the public in danger, as the risk of his recidivism is high. A suspension of three years will require Respondent to prove his rehabilitation before being allowed to practice law again, and it will act as a safeguard to the public.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Richard J. Kwasny, be Suspended from the practice of law for a period of three years.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Stephan K. Todd, Board Member

Date: March 24, 2014

Board Chair Bevilacqua dissented and would recommend a five year suspension.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 188 DB 2012
Petitioner	:	
	:	
v.	:	Attorney Registration No. 53031
	:	
RICHARD J. KWASNY	:	
Respondent	:	(Bucks County)

DISSENTING OPINION

I respectfully dissent from the majority's recommendation of a suspension from the practice of law for a period of three years.

As set forth in the majority opinion, Respondent violated no less than nine (9) Rules of Professional Conduct and Rules of Disciplinary Enforcement. By way of summary, the majority found by clear and convincing evidence that Respondent engaged in the unauthorized practice of law while administratively suspended, mismanaged his IOLTA/Escrow accounts on multiple occasions by transferring clients funds from escrow accounts to his law firm operating account in order to cover financial shortfalls, and, quite egregiously, when directed to provide information to Client Security for its investigation of the IOLTA discrepancies, Respondent chose to provide altered documents to that organization in order to impede its investigation.

In support of its recommendation, the majority cites the matter of Office of Disciplinary Counsel v. Patricia L. Datsko, 74 DB 2008 (Pa. 2009), wherein the respondent mismanaged her IOLTA account for three years and failed to recognize her professional

responsibilities, resulting in a suspension of three years. While the facts of the Datsko case are similar to the instant matter, I believe that Respondent's deliberate course of dishonest action elevates the level of seriousness and warrants a very lengthy suspension. In adjudicating cases involving dishonest conduct, the Supreme Court has made clear that acts of dishonesty by an attorney establish unfitness to continue practicing law. Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (Pa. 1994).

Determining discipline involves not only considering prior cases, but analyzing and weighing aggravating and mitigation factors. Office of Disciplinary Counsel v. Fotj, 69 Pa. D. & C. 4th 278 (2003). Respondent's total and complete failure to demonstrate remorse and acceptance of responsibility and his failure to participate in the disciplinary hearings weigh heavily against him and are further indicators that a very lengthy suspension is required.

I recommend that Respondent be suspended for a period of not less than five years.

Respectfully submitted,

By: 
Gabriel L. Bevilacqua, Board Chair

Date: March 24, 2014