

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2291 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 89 DB 2015
	:	
v.	:	Attorney Registration No. 31598
	:	
B. FINCOURT SHELTON,	:	(Delaware County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 20th day of October, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board and the parties' responses, the request for oral argument is denied and B. Fincourt Shelton is suspended from the Bar of this Commonwealth for a period of four years. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 10/20/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 89 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 31598
	:	
B. FINCOURT SHELTON	:	
Respondent	:	(Delaware 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 May 29, 2015, Office of Disciplinary Counsel charged B. Fincourt Shelton with violations of the Rules of Professional Conduct ("RPC") in two matters. Respondent failed to file an Answer to Petition.

A disciplinary hearing was held on October 15, 2015, before a District II Hearing Committee comprised of Chair John P. McBlain, Esquire and Members Dianne M. Nast, Esquire and Guy A. Donatelli, Esquire. Respondent appeared *pro se*.

Following the submission of the parties' briefs, the Hearing Committee filed a Report on June 8, 2016, concluding that Respondent violated the Rules as charged in the Petition for Discipline 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 July 23, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

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

2. Respondent, B. Fincourt Shelton¹, was born in 1951, was admitted to practice law in the Commonwealth of Pennsylvania in 1980, and maintains his office at 883 Main Street, Darby, Pennsylvania 19023.

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

¹ This is the Respondent's attorney registration name. Respondent is referred to at times as Fincourt B. Shelton in court pleadings referenced herein.

CHARGE ONE

(Estate of Geraldine Lorenzo)

4. On February 12, 2007, Geraldine Lorenzo ("Geraldine"), a resident of Philadelphia, died intestate. P for D ¶4.

5. On or about April 17, 2007, the following occurred in the office of the Register of Wills of Philadelphia County in connection with the Estate of Geraldine Lorenzo ("Geraldine's Estate"):

a. Phyllis M. Aristotele filed a renouncement of her right to administer Geraldine's Estate in favor of Respondent;

b. Respondent filed a Petition for Probate and Grant of Letters listing Ms. Aristotele as Geraldine's aunt and as a surviving heir; and

c. Respondent was appointed as Administrator of Geraldine's Estate.

P for D ¶5; ODC-1; ODC-2.

6. Ms. Aristotele was not an heir or relative of Geraldine. P for D ¶6; ODC-11, ¶7; ODC-15, FN 1; ODC-23; N.T. 117.

7. In addition to being the Administrator, Respondent acted as the Attorney for Geraldine's Estate. P for D ¶7.

8. On June 21, 2007, Respondent was present at the settlement for the sale of Geraldine's real estate located at 1816 12th Street, Philadelphia, PA, which sold for \$200,000.00. P for D ¶8; ODC-3; N.T. 127-128.

9. Respondent received a fee of \$10,000.00 for professional services relating to the sale and settlement of Geraldine's real estate. P for D ¶9; ODC-3; N.T. 143-144.

10. On or about July 2, 2007, Respondent filed with the Register of Wills of Philadelphia County, an Inventory and Inheritance Tax Return ("Inventory and Return") in connection with Geraldine's Estate. P for D ¶10; ODC-4; N.T. 128.

11. Respondent, duly sworn to law, verified that the statements made in the Inventory were true and correct and that he understood that false statements therein were made subject to criminal penalties relating to unsworn falsification to authorities. ODC-4; N.T. 128-129.

12. Respondent declared that, under penalties of perjury, he had examined the Inheritance Return, and to the best of his knowledge and belief, it was true, correct and complete. ODC-4; N.T. 129.

13. Respondent realized that these were important documents and he therefore carefully reviewed them for accuracy prior to filing. N.T. 129.

14. Respondent listed \$35,700.00 on the Inventory and Return as the value of Geraldine's real estate. P for D ¶11; ODC-4.

15. Respondent's representation as described in the preceding paragraph was knowingly or recklessly false because Respondent:

a. was aware that Geraldine's real estate had sold for \$200,000.00 on July 2, 2007;

b. had listed \$180,000.00 as the value of the real estate in the Petition for Probate he filed on April 17, 2007; and

c. asserted and argued at the time of the hearing in this matter that the claimed \$35,700 value was correct because that was the assessed value as determined by the Philadelphia Office of Property Management, which sets the county tax assessment; however, Respondent failed to apply the common level ratio to such assessment in violation of the procedure stated on the sole exhibit introduced by Respondent. Respondent-1.

P for D ¶12; P for D ¶13; ODC- 2; N.T. 128.

16. Respondent listed a son of decedent named Moustafa A. Baker-Moustafa ("Moustafa") and a non-relative named Elizabeth Bonk ("Bonk") as beneficiaries on the Inventory and Return. P for D ¶14.

17. In Schedule H of the Return, Respondent listed the following Administrative Costs: Personal Representative Commissions (Fincourt B. Shelton) \$3,500.00; Attorney Fees \$7,000.00. P for D ¶15; ODC-4.

18. Respondent's representation in the Return that he had received \$10,500.00 in personal representative commissions and attorney's fees was knowingly or recklessly false because as of July 2, 2007, Respondent had issued checks to himself totaling \$32,200.00 and he had also received \$10,000 for the sale of real estate for his commission and attorney fees in connection with Geraldine's Estate. P for D ¶16; P for D ¶17; P for D ¶18; ODC-48; ODC-49.

19. On or about December 19, 2007, Respondent lent \$10,000 of Geraldine's Estate funds to Enhanced Recovery Solutions, LLC (hereafter "ERS") for 1 year, at an annual interest rate of 15%. P for D ¶19; ODC-6.

20. Respondent testified that ERS is a startup company that helps utility companies comply with the PUC Rules. (N.T. 88-89, 165) The two principals are Denise Garrett and Derrick Hicks. (N.T. 152) Respondent has put a lot of his own money into ERS. (N.T. 154) Respondent refers to ERS as "we" because he has "known about ERS and what their plan was from the beginning of what ERS was doing" (N.T. 168) and feels that "we're starting what I believe is going to be an industry." (N.T. 168, 170) Respondent considered himself a part of ERS as early as when they first started, in 2003 or 2004. (N.T. 172-174) Respondent further testified that "if I didn't have the ability to loan money from people that I thought would care enough to do it, we'd still be back where we were eight years ago." (N.T. 175) Respondent has loaned monies to ERS from "three or four of his clients." N.T. 177-178.

21. The December 19, 2007 Loan constituted a breach of Respondent's fiduciary duty to Geraldine's Estate. P for D ¶20.

22. On or about January 14, 2008, Respondent lent \$10,000 of Geraldine's Estate funds to Dana Asbury and Ervin Asbury for 18 months at an annual interest rate of 15%. P for D ¶21; ODC-7.

23. The January 14, 2008 Judgment Note was executed by Dana & Erving Asbury as "Maker" and by Fincourt B. Shelton, Esquire as "Guarantor." P for D ¶22; ODC-7.

24. Dana Asbury was a client of Respondent. P for D ¶23; ODC-17, p.22-24.

25. Respondent had filed on March 13, 2007, a medical malpractice suit on behalf of Ms. Asbury in Delaware County Court of Common Pleas, docketed *Dana Asbury, et al v. J.P. Lebeg et al*, case #2006-15525 for which Respondent was co-counsel with attorney Garland Cherry. P for D ¶24.

26. The purpose of the January 14, 2008 Loan was for litigation funding to pay two doctors for their testimony at Ms. Asbury's medical malpractice trial. P for D ¶25; ODC-17, p.22-24.

27. The January 14, 2008 Loan constituted a breach of Respondent's fiduciary duty to Geraldine's Estate. P for D ¶26.

28. The January 14, 2008 Loan constituted a conflict of interest for Respondent. P for D ¶27.

29. Respondent did not advise Ms. Asbury in writing of the desirability of seeking, and did not give her a reasonable opportunity to seek, the advice of independent legal counsel on the January 14, 2008 Loan transaction. P for D ¶28.

30. Ms. Asbury did not give written informed consent to the essential terms of the January 14, 2008 Loan transaction and Respondent's role in the transaction, including whether Respondent was representing Ms. Asbury in the transaction. P for D ¶29.

31. The January 14, 2008 Loan was repaid in full with interest on February 10, 2009. P for D ¶30.

32. In June, 2008, Mr. Hicks and Ms. Garrett requested Respondent to invest \$50,000 in ERS in return for a possible board position and a 2% net profit proceeds. Respondent agreed; he loaned money and received a percentage position. ODC-46, N.T. 154-158.

33. On or about September 16, 2010, despite the fact that no payments of principal or interest had been made to Geraldine's Estate on the 12/19/07 loan to ERS, or to any other lender that had loaned money to ERS, Respondent lent an additional \$50,000 of Geraldine's Estate funds to ERS for 18 months, at an annual interest rate of 12%. P for D ¶30; ODC-8, N.T. 161-162.

34. The September 16, 2010 Loan constituted a breach of Respondent's fiduciary duty to Geraldine's Estate. P for D ¶32.

35. On January 6, 2011, Derrick E. Hicks and Denise Garrett, Principals of ERS, and Respondent signed a *Memorandum of Agreement*. P for D ¶33; ODC-9, N.T. 152-154.

36. The Memorandum of Agreement provided that, in exchange for good and valuable consideration from Respondent, including funding and services to ERS, ERS shall provide to Respondent:

- a. A residual portion of 5% of the Net Profits of ERS payable to Respondent quarterly;
- b. A position as Director of Collection/legal division of ERS; and
- c. Fifty percent profit sharing of Collection/legal division of ERS.

P for D ¶33; ODC-9, N.T. 152-154.

37. The maturity date for the December 19, 2007 and September 16, 2010 Loans has passed. P for D ¶35.

38. No interest or principal payments have been made in connection with the December 19, 2007 and September 16, 2010 loans and Respondent never made attempts to collect on the loans. P for D ¶36; N.T. 174-175.

39. On May 31, 2011, Nina Stryker, Esquire on behalf of John Pilla, Jr., Anthony Pilla, Joseph Pilla, Dolores Fedele, Bartholomew Lorenzo, Michael Lorenzo, and Christopher Lorenzo ("the Lorenzo Estate Petitioners") filed in the *Estate of Geraldine Lorenzo, Deceased*, Philadelphia County, Orphans' Court Division, No. 770 DE 2011, a Petition for Declaratory Judgment to determine the proper heirs of the estate. P for D ¶37; ODC-10; ODC-11.

40. On June 8, 2011, Respondent filed an Answer to the Petition for Declaratory Judgment. P for D ¶38; ODC-12.

41. By decree dated August 9, 2011 and filed August 11, 2011, Judge John W. Herron ordered Respondent to file an account of his administration of Geraldine's Estate. P for D ¶39; ODC-10.

42. On September 16, 2011, Respondent filed with the Court of Common Pleas of Philadelphia, the First and Final Account of Fincourt B. Shelton in connection with Geraldine's Estate for the period of February 12, 2007 to September 8, 2011. ("First Account"). P for D ¶40; ODC-13, N.T. 179.

43. Respondent certified that the First Account was true and correct and that he was subject to criminal penalties for false statements. Respondent also realized that this was a very important document that he needed to review carefully, prior to filing. P for D ¶41; ODC-13, N.T. 179-180.

44. Respondent listed on the First Account an August 26, 2008 disbursement of \$35,000 to Elizabeth Bonk relating to a Home Repair Loan ("Bonk Disbursement"). P for D ¶45; ODC-13, N.T. 182.

45. Respondent knew, or should have known, the Bonk Disbursement listing was false because Respondent had made no disbursement of \$35,000.00 to Elizabeth Bonk in connection with Geraldine's Estate. P for D ¶46; P for D ¶47; P for D ¶48; N.T. 182-183; ODC-15, p. 8; N.T. 17 p. 10-11.

46. On page 7 of the First Account, Respondent represented that \$15,000 had been paid to him for "commission and attorney fees." P for D ¶49; ODC-13; N.T. 185-186.

47. Respondent's representation in the First Account that he had been paid \$15,000 for commission and attorney's fees in connection with Geraldine's Estate was false and Respondent knew, or should have known it to be false, because as of September 16, 2011, Respondent had received an aggregate amount of \$60,700 for counsel fees and commissions in connection with Geraldine's Estate. P for D ¶50; P for D ¶51; P for D ¶52; ODC-48; ODC-49; N.T. 185-186.

48. When cross-examined about why he had certified under threat of criminal penalties that he had only received \$15,000 when he had actually received

\$60,700, Respondent claimed it was "a mistake" and "erroneous" and "I was under pressure. I was just trying to get something to the Court. I really was"... "I just didn't pay attention, and I printed it out, and I sent it." N.T. 185-188.

49. Respondent's collection of \$60,700 in counsel fees and commissions in connection with Geraldine's Estate was clearly excessive and/or illegal. P for D ¶53.

50. Respondent apparently had no fee agreement in connection with Geraldine's Estate; kept no record of his time spent on the Estate matters; and, although Respondent generally charged a "flat fee" for estate matters, there was no agreed to flat fee for Geraldine's Estate. Respondent testified at the disciplinary hearing that "I felt that I was entitled to whatever fee I got because that was my first time ever being around dead folks, and I didn't realize it smelled so bad." N.T. 80.

51. Respondent had testified before Judge Herron that when he "w[ore] both hats" as an attorney and administrator, he tried not to exceed 10 percent of the gross estate when he calculated his fee. (ODC-17 p.34-36) He also testified that he did not keep time records and could not provide a breakdown of the hours he spent because he has never kept a time record. ODC 17, p. 50-51.

52. Respondent's fees and commissions amounted to 30.26% of the gross estate as stated in the First Account. ODC-48.

53. The First Account omitted any mention of the loans Respondent had made on behalf of Geraldine's Estate. P for D ¶55; N.T. 188-189.

54. On November 7, 2011, the Lorenzo Estate Petitioners filed Objections to the First Account ("First Objections"). P for D ¶56; ODC-14.

55. The matter was scheduled for a hearing on November 16, 2011, before Judge Herron. P for D ¶57.

56. The hearing commenced on November 16, 2011, however the evidence was not presented in full in order to permit Respondent to consider the filing of a Petition seeking the appointment of a *Guardian Ad Litem* ("Guardian") to represent the interests of Moustafa, a minor, the purported sole intestate heir. P for D ¶58.

57. The Petition for Appointment of a Guardian was filed on January 23, 2012; by Decree signed February 1, 2012, Judge Herron appointed Mary Jane Barrett, Esquire, Guardian for Moustafa. P for D ¶59; ODC-10.

58. On October 15, 2012, Ms. Barrett filed a *Report of Mary Jane Barrett, Guardian Ad Litem* ("Guardian Report"). P for D ¶60; ODC-15.

59. The Guardian Report, *inter alia*:

a. recommended that the Court rule that Moustafa was not the son and intestate heir of Geraldine;

b. objected to the fees paid to Respondent as excessive and unreasonable and requested Respondent be surcharged in the amount of \$60,700.00;

c. contended that Respondent's lending of estate assets to third parties was a breach of his fiduciary duty;

d. recommended Respondent be surcharged for excessive or unsubstantiated disbursements in the amount of \$46,062.03; and

e. recommended Respondent be surcharged \$38,378.59 (the difference between the principal and income balance on hand claimed to be \$109,334.39 and the actual balance reflected in bank records of \$70,955.80).

P for D ¶¶61; ODC-15.

60. The Lorenzo Estate Petitioners were confirmed as the intestate heirs of Geraldine. P for D ¶¶62; ODC-10.

61. On November 2, 2012, the Lorenzo Estate Petitioners filed Amended Objections to the First Account. P for D ¶¶63; ODC-16.

62. The Amended Objections were based on the following, *inter alia*:

a. The principal disbursement to Elizabeth Bonk in the amount of \$35,000.00 listed only "Repay Home Repair Loan" and despite being requested, Respondent had provided the Lorenzo Estate Petitioners no proof of the existence of the obligation. Ms. Bonk denied any such loan and denied receiving a repayment from the estate for such amount;

b. Respondent had failed to Account for Settlement Proceeds from the Sale of Real Estate;

c. Disbursements Respondent listed were not supported by bank records; and

d. The payment to Respondent of Commission and Attorney fees in the amount of \$60,700.00 was excessive and unreasonable.

P for D ¶64; ODC-16, N.T. 29-34.

63. On January 7, 2013, a hearing on the merits of the Amended Objections was conducted. P for D ¶65; ODC-17.

64. At the January 7, 2013 hearing, Respondent was duly sworn and testified to the following, *inter alia*:

a. He might need to report to his malpractice carrier before he answered the question whether he had sought court permission to loan monies out of the estate to a third party; and

b. Respondent needed to do an amended account at this point "for the Court to be able to really wrap his head around it."

P for D ¶66; ODC-17.

65. At the January 7, 2013 hearing, Judge Herron commented that "to say the least, the account has so many material discrepancies in it that it would be impossible for [Judge Herron] to confirm the account, other than to judicially restate it." P for D ¶67; ODC-17.

66. At the conclusion of the hearing on January 7, 2013, Respondent was granted leave to file an amended account to conform to the testimony presented, and the Lorenzo Estate Petitioners were authorized to file further objections to the amended account if new issues arose. P for D ¶68.

67. On February 22, 2013, Respondent filed an amended account ("Amended Account"). P for D ¶¶69; ODC-18.

68. Respondent represented in the Amended Account that fees and commissions paid to him totaled \$54,200.00. P for D ¶¶71; ODC-18.

69. Respondent's representation that he had been paid a total of \$54,200.00 was false, and he knew, or should have known it to be false, because he actually had been paid a total of \$60,700.00 in fees and commissions. P for D ¶¶72; P for D ¶¶73.

70. Respondent again failed to disclose in the Amended Account the loans to ERS and Dana Asbury. P for D ¶¶74; ODC-18.

71. Respondent's fees, commissions and unpaid loans to ERS totaled \$120,200.00, or 51.08% of the gross estate as stated in the Amended Account. ODC-48.

72. On April 30, 2013, a Stipulation was filed in Geraldine's Estate matter. P for D ¶¶80; ODC-19.

73. Respondent and the Lorenzo Estate Petitioners stipulated that the estate assets on hand as of February 2013 totaled approximately \$131,000.00 and consisted of the following:

a. Certificate of Deposit with Citizens Bank valued at approximately \$60,000.00;

b. Citizens Bank Estate Accounts valued at approximately \$11,000.00;

c. No real property, because it was sold during the course of the estate administration; and

d. Two Judgment Notes to ERS, LLC with stated values of \$50,000.00 and \$10,000.00 respectively.

P for D ¶81; ODC-19.

74. In accordance with the testimony presented, and notwithstanding the Amended Account as filed, Respondent acknowledged that the aggregate amount of counsel fees and commissions paid to him totaled \$60,700, including payments made directly from the Geraldine Estate accounts and from the proceeds of the sale of the real property on June 21, 2007. P for D ¶82; ODC-19, ¶20.

75. On July 12, 2013, Respondent and the Lorenzo Estate Petitioners executed a Settlement Agreement and Mutual Release ("Agreement") in connection with Geraldine's Estate. P for D ¶83; ODC-20.

76. The Agreement was filed with the Court and was approved by Judge Herron on July 29, 2013. P for D ¶84; ODC-10; ODC-20.

77. The Agreement provided, *inter alia*, that upon Court approval Respondent would:

a. pay within 10 days to Counsel for the Lorenzo Estate Petitioners the entire balance of Geraldine's Estate accounts held at Citizen's Bank;

b. refund within 90 days to Counsel for the Petitioners the sum of \$10,000.00 representing excessive fees and commissions paid to Respondent as Administrator during the estate administration; and

c. refund within 90 days to Counsel for the Lorenzo Estate Petitioners the sum of \$60,000.00 as repayment of the two promissory notes issued to ERS, LLC together with the sum of \$1,505.82 as interest due.

P for D ¶85; ODC-20.

78. Respondent timely complied with the provision to pay the Lorenzo Estate Petitioners the balance of the Estate bank accounts. P for D ¶86.

79. Upon further investigation, Counsel for the Lorenzo Estate Petitioners in the Orphans' Court discovered that Respondent had filed for personal bankruptcy on August 16, 2012, nearly 10 months before the negotiated settlement. P for D ¶87.

80. The Proof of Claim deadline for Respondent's bankruptcy proceeding was July 7, 2013. P for D ¶88.

81. Respondent had a duty to advise Judge Herron and/or the Lorenzo Estate Petitioners that Respondent had filed for personal bankruptcy. P for D ¶89.

82. Respondent had a duty in his bankruptcy proceeding to list the Estate and the Lorenzo Estate Petitioners as parties entitled to notice of the filing, and notice of the Proof of Claim deadline. P for D ¶90.

83. Prior to July 29, 2013, Respondent had not advised Judge Herron or the Lorenzo Estate Petitioners about his bankruptcy proceedings. P for D ¶91.

84. Respondent first advised counsel for the Lorenzo Estate Petitioners of his bankruptcy in November 2013 by an email. N.T. 39-40.

85. Respondent had no authority to undertake personal financial obligations during the bankruptcy proceeding. P for D ¶92.

86. To date, Respondent has not refunded the \$10,000 excessive fees or repaid the \$60,000 plus interest due from the promissory notes signed by ERS. P for D ¶93; N.T. 38.

87. On March 13, 2014 Respondent tendered his resignation as Administrator of Geraldine's Estate to allow one of the Lorenzo Estate Petitioners to request appointment as the successor Administrator to pursue the collection of the notes directly from ERS, LLC. P for D ¶94.

88. On April 16, 2014, Lorenzo Estate Petitioners filed in Orphans' Court a *Petition to Confirm the Resignation of Fincourt Shelton, Esquire as Administrator and for Appointment of Successor Administrator of the Estate* ("Petition to Confirm"). P for D ¶95; ODC-21.

89. By Decree dated May 16, 2014, Judge Herron denied the Petition to Confirm without Prejudice in order to grant the Lorenzo Estate Petitioners leave to file

the appropriate petition before the Register of Wills which has jurisdiction over the appointment of successor trustees. P for D ¶96; ODC-22.

90. On June 2, 2014, the Lorenzo Estate Petitioners filed a Petition to Confirm with the Philadelphia County Register of Wills. P for D ¶97.

91. By decree dated February 10, 2015, the Register of Wills granted the Petition to Confirm, amended the Estate record to remove Phyllis M. Aristotele as an Intestate Heir and accepted Respondent's resignation as Administrator. P for D ¶98; ODC-23.

92. Nina Stryker, Esquire testified at the disciplinary hearing. She objected to Respondent's fee as excessive and unreasonable based on her 30 years of Orphans' Court work and the Chester County *Johnson Estate* case. Ms. Stryker believed that based on the foregoing, reasonable compensation for an estate of this size and complexity was between \$10,000.00 and \$12,000.00. Ms. Stryker indicated that in most of the cases in which she has been involved where an attorney has dual roles as an attorney and administrator, compensation tends to fall in the range of no more than 7 percent of the value of the estate. N.T. 20, 32-33, 34.

93. Ms. Stryker objected to Respondent's loans of the Estate monies, which were not listed in the accounting, as a breach of fiduciary duty. She explained that under the probate and estates code, the executor's primary responsibility is the protection and preservation of assets. Title 72, the Prudent Investor Rule, does not apply to personal representatives, so there is no obligation to invest. Since there was no obligation to invest, the objection was specifically to an investment in a private company

that had no public record and that such an investment was not required in an estate of this size. N.T. 31-32.

94. In explaining why her clients agreed to accept terms in the Agreement filed with the Court on July 29, 2013 which were less than what the parties were entitled to, Ms. Stryker testified that although she firmly believed that \$10,000.00 was inadequate to compensate her clients in connection with the excessive fees taken by Respondent, her clients were getting worn out by the duration of the proceedings. They wanted to be finished and therefore were willing to accept that amount to get the settlement done. N.T. 35-36.

95. Ms. Stryker testified that her firm and an outside lawyer have made several attempts to contact ERS and collect on the promissory notes. They have been advised that ERS is attempting to negotiate a contract, however, there is no evidence of the contract or that it will ever come to fruition. Ms. Stryker's firm was told that ERS anticipated a contract to be executed in November. Her firm checked a week before the disciplinary hearing and there was no new development on that, and the contract was no closer to fruition. N.T. 41, 61-62.

96. Presently, the Geraldine Estate remains open for the purpose of collecting the funds from ERS. N.T. 42.

97. In regard to Respondent's bankruptcy proceeding, Ms. Stryker testified at the disciplinary hearing that her clients were initially technically barred from making a claim against Respondent. The attorneys for the beneficiaries took certain steps to see that the record could be opened to allow a claim to be filed. However, there were insufficient assets to pay off unsecured debts. Additionally, Ms. Stryker's partner

attempted to make a claim against Respondent's malpractice insurance policy. The claim was denied and the reason for denial was not revealed. N.T. 40; N.T. 42; ODC-50; ODC-51.

98. Ms. Stryker's testimony was credible.

CHARGE TWO

(Estate of Aisya Robles Matter)

99. Gabriel Robles ("Robles") died intestate on March 19, 2005. P for D ¶100; ODC-24.

100. Robles was survived by his eight-year-old child, Aisya Robles, ("Aisya") and Gabriel Robles' mother, Lourdes Sierra ("Sierra"). P for D ¶101.

101. On November 15, 2007, Lourdes Sierra was appointed Administrator of the Robles Estate by the Register of Wills of Philadelphia County. P for D ¶102; ODC-24.

102. Sierra, as Administratrix of the Robles Estate, retained the law firm of Pelagatti and Pelagatti ("Pelagatti") to investigate a medical malpractice claim against Temple University Hospital related to Robles' death. P for D ¶103.

103. Pelagatti failed to file a lawsuit before the applicable statute of limitations expired. P for D ¶104.

104. In June 2008, Sierra hired the Colleran law firm ("Colleran") to bring a legal malpractice action on behalf of the Robles Estate against the Pelagatti firm. P for D ¶105.

105. On July 8, 2008, Colleran filed a complaint on behalf of Sierra in the matter captioned *Sierra vs. Pelagatti et al*, Case ID # 080605225, Court of Common Pleas, Philadelphia County ("Legal Malpractice Action"). P for D ¶106; ODC-25.

106. Pelagatti negotiated a settlement with the Robles Estate for \$175,000.00 ("Legal Malpractice Settlement"). P for D ¶107.

107. In or about June 2010, Sierra retained Respondent to finalize the Legal Malpractice Settlement. P for D ¶108.

108. On July 29, 2010, Respondent entered his appearance in the Legal Malpractice Action. P for D ¶109; ODC-25.

109. On September 13, 2010, Judge Howland Abramson issued a decree settling the Legal Malpractice Action "subject to distribution by Orphans' Court." P for D ¶110; ODC-26.

110. On November 4, 2010, Respondent filed a petition ("First Petition") with the Philadelphia County Orphans' Court Division under the caption of *Estate of Aisya Robles, A Minor*, No. 1656 MI of 2010. P for D ¶111; ODC-27; ODC-28.

111. In the First Petition, Respondent, *inter alia*:

a. sought to be named Guardian of Aisya;

b. requested court permission to distribute \$20,249.73 to satisfy a Department of Welfare ("DPW") Lien;

c. expressly stated that it was the "petition of Lourdes Sierra, Administratrix of the Estate of Gabriel Robles";

d. averred that "petitioner is the paternal grandmother of the minor Aisya Robles and Administratrix of the Estate of Gabriel Robles, Deceased"; and

e. verified that Respondent was the Attorney for the Petitioner in the within Petition. P for D ¶112; ODC-28.

114. Respondent did not have the authority or permission of Sierra to file the First Petition. P for D ¶113.

115. Respondent attached to the First Petition a Verification signed by Sierra. P for D ¶114; ODC-28.

116. Sierra had signed the Verification with the understanding that she was the proposed Guardian of the Estate of Aisya. P for D ¶115.

117. In response to the First Petition, Judge John W. Herron issued a November 9, 2010 Decree naming Respondent as Guardian of the Estate of Aisya and, *inter alia*, stating "[t]he Guardian shall not enter into any settlement of any claim or cause of action without prior approval of this court." P for D ¶116; ODC-29.

118. On November 19, 2010, Sierra filed Objections to the November 9, 2010 Decree. P for D ¶117; ODC-30.

119. Sierra's Objections:

- a. claimed that she did not ask or agree for Respondent to be Guardian of Aisya;
- b. requested that Respondent be removed as Guardian; and
- c. requested that Respondent not be granted the additional \$3,500.00 fee he requested.

P for D ¶118; ODC-30.

120. By Decree dated November 22, 2010, Judge Herron directed Respondent show cause why the Court should not appoint a different Guardian in light of the objections filed. P for D ¶119; ODC-31.

121. The November 22, 2010 Decree was returnable for a hearing on January 25, 2011. P for D ¶120; ODC-31.

122. By Decree dated January 25, 2011, Judge Herron, *inter alia*:

- a. ordered that Sierra be designated as successor Guardian of the Estate of Aisya; and
- b. directed that the Guardian shall not enter into any settlement of any claim or cause of action without prior approval of the court.

P for D ¶121; ODC-33; ODC-34.

123. On January 25, 2011, the day Respondent was removed as Aisya's Guardian, Respondent forwarded a check in the amount of \$20,249.73 to DPW on behalf of Robles. P for D ¶122.

124. At the time Respondent forwarded the check to DPW, Respondent was aware that he:

- a. had been removed as Aisya's Guardian;
- b. did not have permission of the trial court to make the disbursement to DPW; and
- c. did not have the consent of Sierra to make the disbursement to DPW. P for D ¶123.

125. On March 22, 2011, Respondent filed a petition ("Second Petition") with the Philadelphia County Orphans' Court Division under the caption of *Estate of Aisya Robles, A Minor*, No. 1656 MI of 2010. P for D ¶124; ODC-35.

126. In the Second Petition, Respondent described the Petitioner as:

- a. "Petitioner Fincourt B. Shelton, Esquire, counsel to and on behalf of the Estate of Gabriel Robles, deceased,; and
- b. having been "appointed Administratrix of the Estate of Gabriel Robles...."

P for D ¶125; ODC-35.

127. Respondent's representation in the Second Petition that Respondent was counsel to and on behalf of the Estate of Gabriel Robles was false. P for D ¶126.

128. Respondent's representation in the Second Petition that Respondent had been appointed Administratrix of the Estate of Gabriel Robles was false. P for D ¶127.

129. In the Second Petition Respondent:

- a. conceded that Respondent had made distribution of \$20,249.73 to DPW;
- b. requested court approval for the DPW distribution and other settlement distributions; and
- c. proposed payment of over 34% of the settlement proceeds to Respondent and prior counsel and 1.4% to the Administrator for her commission.

P for D ¶128; ODC-35.

130. Respondent did not have the authority or permission of Sierra to file the Second Petition. P for D ¶129.

131. On April 8, 2011, on behalf of Sierra, attorney Mary Jane Barrett filed Preliminary Objections to Respondent's Second Petition. P for D ¶130; ODC-36.

132. The Preliminary Objections:

- a. claimed Respondent's Second Petition had been brought without Sierra's knowledge;

b. contended that Respondent lacked standing to file the Second Petition because Respondent was not Administrator of the Robles Estate;

c. alleged that the Second Petition had been improperly filed under Aisya's name instead of a petition that should have been filed under the caption of the decedent's estate;

d. maintained that Respondent had improperly negotiated and received settlement proceeds without obtaining Court approval as required by Phila. R.C.P. §2206;

e. claimed Respondent failed to protect the interests of the minor beneficiary because Respondent did not advocate that the funds should be allocated to a wrongful death action under which the DPW payments would not have been required; and

f. argued that Respondent's petition proposed to pay excessive fees of \$23,500 to Respondent as counsel despite his mishandling of the litigation and the estate.

P for D ¶131; ODC-36.

133. By Decree dated April 26, 2011, Judge Herron sustained the Preliminary Objections and ordered Respondent to file an appropriate Petition for the Approval of the Settlement under the caption of the Estate of Gabriel Robles, Deceased. P for D ¶132; ODC-37.

134. On May 13, 2011, Respondent filed a petition ("Third Petition") with Philadelphia County Orphans' Court Division under the caption of *Estate of Gabriel Robles, Deceased*, 685 DE of 2011. P for D ¶133; ODC-38; ODC-39.

135. In the Third Petition Respondent:

a. represented that "[t]his petition is filed on behalf of Lourdes Sierra, Administratrix of the Estate of Gabriel Robles, deceased" and that Respondent was "Counsel to the Estate of Gabriel Robles";

b. requested the court to approve the allocation of the gross settlement proceeds and order distribution of *inter alia*, \$20,249.73 to DPW and \$18,246.98 to Respondent as a fee; and

c. acknowledged that "[t]he Administratrix has not agreed to the foregoing distribution, thus the Court is requested to review the propriety of the proposed allocation and distribution and enter and to enter(sic) an order approving allocation and distribution."

(P for D ¶134; ODC-39)

136. Respondent did not have the authority or permission of Sierra to file the Third Petition. P for D ¶135.

137. Respondent's representation in the Third Petition that the petition was filed on behalf of Lourdes Sierra, Administratrix of the Estate of Gabriel Robles, deceased, was false. P for D ¶136.

138. Respondent's representation in the Third Petition that Respondent was counsel to the Estate of Gabriel Robles was false. P for D ¶137.

139. Respondent failed to provide notice of the Third Petition to DPW, the Attorney General, or the Secretary of Public Welfare. P for D ¶138.

140. On July 27, 2011, Sierra, in her capacity as Administratrix, filed an Answer and New Matter to the Third Petition. P for D ¶139; ODC-40.

141. On August 19, 2011, Respondent filed a response to Sierra's New Matter, wherein, *inter alia*, Respondent attached a certificate of service identifying Respondent as "Attorney for Petitioner, Lourdes Sierra." P for D ¶140.

142. By Order dated September 19, 2011, Judge Herron:

- a. granted the Third Petition in part;
- b. denied the Third Petition in part; and
- c. did not approve the distribution to DPW. P for D ¶141; ODC-41.

143. Respondent did not timely appeal the September 19, 2011 Order. P for D ¶142.

144. On December 14, 2011, Respondent filed a petition to compel DPW to disgorge "the amount of \$20,249.73 which it received prior to Court Ordered Distribution." P for D ¶143; ODC-42.

145. The December 14, 2011 petition identified Respondent as “Petitioner Fincourt B. Shelton, Esquire, on behalf of the Estate of Gabriel Robles, deceased...” P for D ¶144; ODC-42.

146. By Order dated March 27, 2012, Judge Herron denied the December 14, 2011 petition. P for D ¶145; ODC-43.

147. On May 15, 2012, Respondent filed an appeal of the March 27, 2012 Order. P for D ¶146.

148. On July 20, 2012, Judge Herron filed an Opinion Sur Appeal. P for D ¶147; ODC-44.

149. Judge Herron made the following findings, *inter alia*, in his Opinion:

a. Not only did Respondent act without the requisite authority or court approval, but Respondent failed to file a timely appeal of the September 19, 2011 court order that denied Respondent’s requested distribution to DPW;

b. Respondent failed to follow the appropriate administrative procedure to obtain a refund from the DPW;

c. By tendering the settlement proceeds to DPW, Respondent was an attorney acting without the approval of the Administratrix of the estate that Respondent represented and without the Orphans’ Court approval required by Judge Abramson’s September 13, 2010 Order;

d. From the very beginning, Respondent's tactics to obtain Orphans' Court approval of the distribution of the settlement award were duplicitous and confused;

e. Respondent misrepresented in the First Petition that the petitioner was Lourdes Sierra, as Administratrix of her son's estate and as grandmother of Aisya;

f. Respondent acted without the consent of the Administratrix of the Robles Estate and without court approval when he distributed \$20,249.73 to DPW on January 25, 2011;

g. Respondent continuously sought in his filings to exceed his authority in representing the estates;

h. Based on Respondent's persistent pattern of misrepresenting the identity of the petitioner and pushing the boundaries of his client's consent, there was no equitable basis on which the Court could afford Respondent's requested relief of ordering DPW to disgorge Respondent's unauthorized payment to it;

i. Respondent's lament that the practical effect of refusing to order DPW to refund the \$20,249.73 is the forfeiture of his attorney fee was not compelling due to Respondent's repeated unauthorized actions in this matter; and

j. It was patently clear from the record that Respondent realized he was required to obtain court approval for the distributions from the Gabriel Robles Estate.

P for D ¶148; ODC-44.

150. By Memorandum Opinion dated June 11, 2013, the Commonwealth Court affirmed Judge Herron's March 27, 2012 Order. P for D ¶149; ODC-45.

151. The Commonwealth Court found that the trial court properly denied Respondent equitable relief because Respondent had:

a. paid DPW the \$20,249.73 Lien Settlement without court permission;

b. failed to timely appeal the September 19, 2011 distribution order denying Respondent's requested distribution to DPW;

c. failed to exhaust all statutorily prescribed administrative remedies; and

d. bore personal responsibility for settling DPW's Lien against the Estate as medical malpractice, which led to Respondent's erroneous belief that DPW was entitled to its claim.

P for D ¶150; ODC-45.

152. Respondent received an Informal Admonition on December 16, 2011, in File C2-11-478. Respondent violated RPC 1.15(b) and RPC 1.15(h) by

commingling his funds with client funds and utilizing his IOLTA to pay personal expenses. ODC-53.

153. Respondent received an Informal Admonition on September 13, 2013, in File C2-12-991 for violations of RPC 1.15(b), RPC 1.15(c) and RPC 1.15(h). Respondent improperly commingled his funds with client funds by depositing personal, non-client related funds into his IOLTA and by using his IOLTA for his personal business by paying personal expenses, such as payments to the IRS. Additionally, he made numerous deposits of funds into his IOLTA, yet failed to keep adequate records that identified the payor, date, amount of each deposit, and the matter involved for each transaction. ODC-54.

154. Respondent failed to appreciate the extent of his wrongdoing and failed to demonstrate genuine remorse for his misconduct in the Geraldine Lorenzo Estate and the Estate of Aisya Robles.

155. Respondent did not offer any character testimony or other mitigating evidence. He offered argument that his practice has always served the underprivileged in economically distressed communities.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. RPC 1.2(a) – Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

3. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

4. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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

6. RPC 1.7(a)(2) – Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involved a concurrent conflict of interest. A concurrent conflict of interest exists if (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

7. RPC 1.8(a) – A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a matter that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

8. RPC 1.16(a)(3) – Except as stated in paragraph (c), a lawyer shall not represent a client or where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.

9. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

10. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

11. RPC 4.1(a) – In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

12. RPC 5.7(a) – A lawyer who provides nonlegal services to a recipient that are not distinct from legal services provided to that recipient is subject to

the Rules of Professional Conduct with respect to the provision of both legal and nonlegal services.

13. RPC 5.7(b) – A lawyer who provides nonlegal services to a recipient that are distinct from any legal services provided to the recipient is subject to the Rules of Professional Conduct with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.

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

15. RPC 8.4(d) – It is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

Disciplinary proceedings against Respondent were instituted by Office of Disciplinary Counsel by way of a Petition for Discipline filed on May 29, 2015. The Petition charged Respondent with violating multiple Rules of Professional Conduct. Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. John T. Grigsby*, 425 A.2d 730, 732 (Pa. 1981). Respondent failed to file a response to the Petition for Discipline. Accordingly, pursuant to Rule 208(b)(3), Pa.R.D.E. the factual allegations are deemed admitted. These admissions, supplemented by Petitioner's exhibits, the testimony of Nina Stryker, Esquire and Respondent's testimony, clearly establish that Respondent violated the charged Rules of Professional

Conduct.

Respondent engaged in material misrepresentations to the court, mishandled entrusted funds, engaged in a significant conflict of interest and breach of fiduciary duty, and engaged in extensive incompetence.

In the filings made with the Orphans' Court and the Register of Wills in connection with the Geraldine Lorenzo Estate matter, Respondent made knowing, or at a minimum, reckless misrepresentations. These were legally significant documents containing important information that Respondent had verified or certified were true and correct under criminal penalty. These false representations were made as to the value of real estate, commissions and fees received by Respondent, and a false claim of disbursement relating to a home repair loan. In connection with the Aisya Robles Estate, Respondent engaged in a persistent pattern of misrepresenting the identity of the petitioner in pleadings he filed.

Respondent mishandled entrusted Estate Funds by collecting an excessive and unreasonable fee in the amount of 30.26% of the gross estate of Geraldine Lorenzo. Supporting this conclusion is the credible and persuasive testimony of Nina Stryker, Esquire that Petitioner's fee was exorbitant, based on the size and complexity of the estate, the agreement filed in court that Respondent refund \$10,000 "representing excessive fees and commissions paid to him," and Respondent's testimony that he believed he was entitled to "whatever fee he got" because of some extensive house cleanup required in connection with the estate. Exacerbating this dishonesty was the fact that Respondent failed to keep any time records to support his entitlement to the fee amounts.

Respondent's loans of estate monies to ERS constituted an obvious conflict of interest and breach of fiduciary duty. Respondent indicated that he had and continues to have a substantial interest and commitment to ERS that motivated him to loan monies in transactions that were completely contrary to the best interests of the Estate. Respondent's breach of fiduciary duty is underscored by the fact that to date, the Estate has not received any reimbursement from ERS, notwithstanding that it has been over five years since Respondent made the loans.

Respondent incompetently represented the Geraldine Lorenzo Estate and the Estate of Aisya Robles by filing inaccurate returns and accounts, failing to exhaust all statutorily prescribed administrative remedies, paying a DPW lien against the Robles Estate without court permission, and failing to timely appeal an order. Respondent at various times characterized his representation as "sloppy work," a "mistake" and "erroneous". He admitted his own ineptitude by frequently characterizing his representation as "malpractice." N.T. 75, 77, 101, 103, 111, 113, 159.

Having concluded that Respondent violated the Rules, this matter is ripe for the determination of discipline. In their respective briefs to the Committee, Petitioner sought a suspension of at least four years and Respondent requested a "Formal Admonition," which we note is not a type of discipline provided for in the Rules of Disciplinary Enforcement. The Hearing Committee considered these recommendations and in turn recommended a suspension of three years.

After reviewing the parties' recommendations as well as the Committee's Report and recommendation, and after considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), we

recommend that Respondent be suspended from the practice of law for a period of four years.

Respondent's actions constitute serious misconduct of a diverse and varied nature. While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of a lengthy sanction when, as here, an attorney's misrepresentation, mishandling of entrusted funds, conflict of interest and widespread incompetence would likely pose a danger to the public if he continued to practice law. *Office of Disciplinary Counsel v. Robert S. Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983). In this particular case, the seriousness of Respondent's misconduct combined with aggravating factors requires a four year suspension.

Cases involving mismanaging an estate and mishandling entrusted funds have resulted in lengthy suspensions. In *Office of Disciplinary Counsel v. James A. Bolden*, 165 DB 2003 (D.Bd. Rpt. 1/25/2005) (S.Ct. Order 4/19/2005), the Disciplinary Board recommended a three year suspension, which the Supreme Court imposed, for a respondent who withdrew approximately 40% of the estate assets to which he was not entitled from an estate in which he served as executor and attorney, misrepresented to the heirs the availability of funds for distribution, failed to account for the funds he withdrew, and resisted efforts of the heirs to secure an accounting and restitution. Bolden eventually made significant, but not total restitution. In mitigation, Bolden had no history of discipline, enjoyed a distinguished work history, expressed remorse and fully cooperated with the disciplinary authorities. In *Office of Disciplinary Counsel v. John T. Olshock*, 28 DB 2002 (D.Bd. Rpt. 7/30/2003) (S. Ct. Order 10/24/03), the Supreme Court imposed a three year period of suspension on an attorney who wrote himself checks from an estate account in excess of \$18,000 of his

fee. Olshock made prompt restitution, exhibited sincere remorse, had no history of discipline and presented character witnesses. An aggravating factor was that Olshock was an assistant district attorney.

Depending on the particular facts, a wide range of public discipline from public censure to disbarment has been imposed in cases involving intentional misrepresentations to tribunals. Some of the more severe cases are *Office of Disciplinary Counsel v. Daniel E. Houlihan*, 208 DB 2003 & 110 DB 2004 (D.Bd. Rpt. 1/4/2006) (S.Ct. Order 3/28/2006) and *Office of Disciplinary Counsel v. Gregory G. Holston*, 619 A.2d 1054 (Pa. 1993). In *Houlihan*, a four year period of suspension was imposed for an attorney who, in addition to other misconduct, submitted an Acceptance of Service to the Court that he knew to be forged. *Holston* involved an attorney who forged a court order and then lied to the judge when asked who signed the order.

Attorneys who have engaged in conflicts of interest have been found unfit to practice law. In *Office of Disciplinary Counsel v. Mary Ellen Tomasco*, 111 DB 2004 (D.Bd. Rpt. 11/22/2005) (S.Ct. Order 3/10/2006), the attorney engaged in a conflict of interest by participating in a real estate transaction with her mentally incompetent client, for whom Respondent had Power of Attorney authority. Tomasco, without obtaining any written waiver or consent from her client, drafted and executed an indenture and mortgage in the amount of \$275,000.00 to finance the purchase of a parcel of land for Tomasco's benefit. The Board considered that Tomasco had no prior discipline and expressed remorse and recommended her suspension for one year and one day, which the Court imposed. The Court suspended an attorney for five years in *Office of Disciplinary Counsel v. John Francis Murphy*, 18 DB 2004 (D.Bd. Rpt. 10/26/2005) (S.Ct. Order 2/7/2006). In that matter, Murphy represented his clients in a

bankruptcy proceeding and after obtaining a bankruptcy discharge, Murphy then purchased a junior mortgage on the property, foreclosed on that mortgage and evicted his former clients after which he sold the property for a profit.

Respondent's misconduct is aggravated by his prior history of discipline. He received Informal Admonitions in 2011 and 2013 for commingling client funds with personal funds and improperly using his IOLTA Account to pay personal expenses. Private discipline has not had its intended effect of curtailing Respondent's unethical practice of law. We note as well Respondent's lack of remorse and failure to remit restitution, which are indicative of his denial of any serious wrongdoing. Respondent offered in mitigation that his practice has always served many underprivileged persons in economically distressed communities. We take note of this fact, but find it insufficiently compelling to persuade us that lesser discipline is warranted.

The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system. *Office of Disciplinary Counsel v. Suber W. Lewis*, 426 A.2d 1138, 1142 (Pa. 1981). The evidence produced by Office of Disciplinary Counsel convincingly proved that Respondent is unfit to practice law and is a danger to the public and the profession itself. A suspension of four years is warranted to comply with guiding decisions reviewed above, and to call attention to Respondent's substantial misconduct.

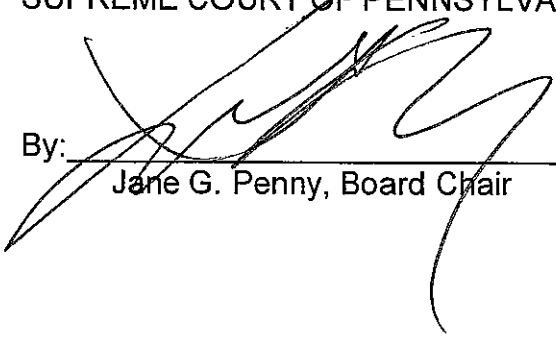
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, B. Fincourt Shelton, be Suspended from the practice of law for a period of four years.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Jane G. Penny, Board Chair

Date: 08.23.16

Board Member Cordisco did not participate in the adjudication.