

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. **1** DB 2021
v. :
: Atty. Reg. No. 23681
WILLIAM P. FEDULLO, :
Respondent : (Philadelphia)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and by Richard Hernandez, Esquire, Disciplinary Counsel, files the within Petition for Discipline and charges Respondent, William P. Fedullo, with professional misconduct in violation of the Rules of Professional Conduct ("RPC") as follows:

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

FILED
01/08/2021
The Disciplinary Board of the
Supreme Court of Pennsylvania

2. Respondent, William P. Fedullo, was born in 1949, was admitted to practice law in the Commonwealth on November 1, 1976, lists an office address at 1528 Walnut Street, Suite 400, Philadelphia, Pennsylvania 19102, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

CHARGE

A. **Sexual Relations with, and Improper Financial Assistance Provided to, Ms. Kimberly Guerin, and Mishandling of Ms. Guerin's Legal Matters.**

3. Sometime in May 2015, Ms. Kimberly Guerin spoke to Respondent on the telephone to discuss retaining him to represent her for claims she had against various individuals and entities, as well as a mortgage foreclosure action that had been filed against her in the Court of Common Pleas of Northampton County, Civil Division, said lawsuit captioned ***PNC Bank, NA vs. Kimberly Guerin***, docket number C-48-CV-2014-10254 ("the PNC Bank lawsuit").

4. At the conclusion of the telephone conversation, Respondent agreed to represent Ms. Guerin and arranged for her to meet with him at Respondent's office on June 2, 2015, so that he could obtain from her documents related to her claims and he could have her execute a written fee agreement.

5. On June 2, 2015, Ms. Guerin met with Respondent at his office.

6. Respondent presented to Ms. Guerin a written fee agreement dated June 2, 2015, which fee agreement stated, *inter alia*, that:

- a. he would represent Ms. Guerin on a contingency fee basis in her claim "against Dick Adams Realtor and possibly others";
- b. he would also represent Ms. Guerin on two matters that would not be subject to a contingency fee, involving Ms. Guerin and her house, for which matters he would "bill [Ms. Guerin] on an hourly basis with the fee to be paid from the proceeds of the Contingency Fee Agreement";
- c. his fee on an hourly basis was \$225.00; and
- d. he would send to her an itemized bill of his fees and costs "on a bi-monthly basis."

7. During the time period that Respondent represented Ms. Guerin, he did not send to her an itemized bill for any legal services he had rendered to her in non-contingent fee matters.

8. Prior to June 2, 2015, Respondent and Ms. Guerin did not have a sexual relationship.

9. On June 22, 2015 and July 8, 2015, Respondent gave Ms. Guerin a check (check number 11876 and 11901, respectively), each in the amount of \$1,200, that was drawn on a business account that he maintained with PNC Bank, account number xxxxxx4422, titled "WILLIAM P. FEDULLO ATTORNEY ACCOUNT."

10. These two \$1,200 checks represented advances of funds that Respondent made to Ms. Guerin on her legal matters, in violation of RPC 1.8(e).

11. Sometime prior to July 12, 2015, Respondent and Ms. Guerin had a telephone conversation, during which conversation it was arranged that Ms. Guerin would meet Respondent at the Sands Bethlehem Casino and Resort at 77 Sands Boulevard, Bethlehem, Pennsylvania 18015 ("Sands Casino"), where he was staying so that he could attend a golf outing sponsored by Larry Holmes, the former boxing heavyweight champion of the world.

12. On July 12, 2015, Ms. Guerin drove from her house, located in Wind Gap, PA, to the Sands Casino.

13. Respondent met Ms. Guerin in the lobby of the Sands Casino.

14. Respondent and Ms. Guerin engaged in sexual relations in Respondent's hotel room.

15. Thereafter, Ms. Guerin accompanied Respondent to Emeril's Chop House for dinner.

16. The following day, July 13, 2015, Ms. Guerin returned to the Sands Casino.

17. Respondent and Ms. Guerin again engaged in sexual relations in Respondent's hotel room.

18. Sometime in July 2015, Respondent settled Ms. Guerin's claims against Mr. Dick Adams ("Mr. Adams") and Dick Adams Real Estate, Inc. (Dick Adams, Inc.), for the sum of \$34,000.

19. The settlement agreement provided that Ms. Guerin would receive \$26,000 upon execution of the settlement agreement, and an additional payment of \$8,000 by July 31, 2015.

20. Mr. Adams and Dick Adams, Inc., made the \$26,000 payment.

a. Ms. Guerin received all of the proceeds from the \$26,000 payment.

21. On August 3, 2015, Respondent filed a Complaint on behalf of Ms. Guerin in the Court of Common Pleas of Northampton County, Civil Division, thereby commencing a

lawsuit captioned **Kimberly Guerin vs. Christopher Rogers and Charlotte Rogers**, docket number C-48-CV-2015-06769 ("the Rogers lawsuit").

22. Sometime in early August 2015, Respondent received the \$8,000 payment pursuant to the settlement reached with Mr. Adams and Dick Adams, Inc.

23. On April 29, 2015, a criminal case was filed against Ms. Guerin in Magisterial District Court 03-2-09, which case was captioned **Commonwealth of Pennsylvania v. Kimberly Guerin**, docket number MJ-03209-NT-0000104-2015 ("the trespass case").

- a. Ms. Guerin was charged with the summary offense of defiant trespass.
- b. Respondent represented Ms. Guerin at an August 4, 2015 hearing in the trespass case.
- c. At the hearing, Ms. Guerin's neighbor, Ms. Charlotte Rogers, testified against Ms. Guerin.
- d. Ms. Rogers, who was an employee of St. Luke's University Health Network ("St. Luke's"), disclosed confidential medical information about Ms. Guerin, which disclosure Ms. Guerin realized was a violation of HIPAA.

- e. On August 4, 2015, Ms. Guerin was found guilty.
- f. On August 26, 2015, Respondent filed on behalf of Ms. Guerin an appeal to the Court of Common Pleas of Northampton County from the guilty determination, said appeal captioned **Commonwealth of Pennsylvania v. Kimberly Guerin**, docket number CP-48-SA-0000210-2015 ("the trespass appeal").
- g. On February 22, 2016, the Commonwealth of Pennsylvania agreed to withdraw the charge and the trespass appeal was dismissed with prejudice.

24. When Respondent appeared to represent Ms. Guerin at the August 4, 2015 hearing, he personally handed to Ms. Guerin an envelope containing a letter dated August 3, 2015, addressed by him to Ms. Guerin and a check in the amount of \$4,600, made payable to Ms. Guerin.

25. The August 3, 2015 letter stated, *inter alia*, that:
- a. he had received the \$8,000 payment pursuant to the settlement reached with Mr. Adams and Dick Adams, Inc.;

- b. he had deducted \$3,400 from the \$8,000 payment, which amount represented Respondent's contingent fee of 10% of the settlement proceeds; and
- c. he was enclosing a check in the amount of \$4,600, made payable to Ms. Guerin, which represented her final share of the settlement proceeds.

26. On July 6, 2015, a criminal case was filed against Ms. Guerin in Magisterial District Court 03-3-01, which case was captioned **Commonwealth of Pennsylvania v. Kimberly Guerin**, docket number MJ-03301-NT-0000387-2015 ("the harassment case").

- a. Ms. Guerin was charged with the summary offense of harassment.
- b. Respondent represented Ms. Guerin at the November 10, 2015 hearing in the harassment case.
- c. On November 10, 2015, Ms. Guerin pled guilty.

27. In early September 2015, Respondent and Ms. Guerin had a telephone conversation, during which conversation they arranged to meet on September 4, 2015, at Respondent's then-

office at 121 South Broad Street, 8th Floor, Philadelphia, PA 19107 ("the Philadelphia office").

28. On September 4, 2015, Ms. Guerin drove to the Philadelphia office, where she met Respondent.

29. Respondent and Ms. Guerin engaged in sexual relations in the Philadelphia office.

30. Beginning sometime in early 2016 and continuing through the fall of 2017, Respondent would call Ms. Guerin from time to time.

31. During these telephone conversations, Respondent would:

- a. discuss various aspects of Respondent's personal life; and
- b. request that Ms. Guerin meet him at the Blue Bell Country Club at 1800 Tournament Drive, Blue Bell, Pennsylvania 19422 ("the Country Club").

32. From early 2016 through the fall of 2017, Ms. Guerin met Respondent from time to time at the Country Club.

33. In the summer of 2016, Ms. Guerin entered into a settlement agreement with St. Luke's to resolve the HIPAA violation committed by Ms. Rogers at the August 4, 2015 hearing.

34. Sometime in the summer of 2016, Respondent reviewed, edited, and revised the settlement agreement that Ms. Guerin entered into with St. Luke's.

35. The settlement agreement provided that Ms. Guerin would receive \$10,000 from St. Luke's.

36. By letter dated August 8, 2016, sent to Respondent by Scott C. Heckman, Esquire, Vice President and Associate General Counsel with St. Luke's, Mr. Heckman, *inter alia*, enclosed a settlement check and a copy of the executed settlement agreement.

37. Sometime after August 8, 2016, but before August 12, 2016, Respondent contacted Ms. Guerin by telephone, during which telephone conversation Ms. Guerin agreed to come to the Philadelphia office in order to receive a check representing her share of the settlement proceeds.

38. On August 12, 2016, Ms. Guerin drove to the Philadelphia office, where she met Respondent.

39. While Ms. Guerin was at the Philadelphia office, she signed a statement of distribution and received from Respondent a check dated August 12, 2016, in the amount of \$7,500, representing her share of the proceeds from the settlement that she reached with St. Luke's after the deduction of Respondent's 25% contingency fee.

40. On March 16, 2017, Respondent filed a Complaint on behalf of Ms. Guerin in the Court of Common Pleas of Northampton County, Civil Division, thereby commencing a lawsuit captioned **Kimberly Guerin vs. Rose Schoch et al.**, docket number C-48-CV-2017-02083 ("the first Schoch lawsuit").

41. On November 24, 2017, Respondent filed a Praecipe for Writ of Summons on behalf of Ms. Guerin in the Court of Common Pleas of Northampton County, Civil Division, thereby commencing a lawsuit captioned **Kimberly Guerin vs. Rose Schoch et al.**, docket number C-48-CV-2017-10556 ("the second Schoch lawsuit").

42. By letter dated October 18, 2017, John Molnar, Esquire, counsel for Mr. and Ms. Rogers in the Rogers lawsuit, sent to Respondent via first class mail and email, Defendants, Christopher Rogers and Charlotte Rogers's Request for Production of Documents to Plaintiff ("the Documents Request").

43. Respondent received Mr. Molnar's letter, and the Documents Request.

44. Respondent failed to advise Ms. Guerin that he had received the Documents Request.

45. Respondent failed to take any action to submit a substantive response to the Documents Request.

46. By letters dated January 5 and February 8, 2018, sent by Mr. Molnar to Respondent via first class mail and email, Mr. Molnar, *inter alia*:

- a. stated that he had not received a response to the Documents Request; and
- b. advised that if he did not receive a response, he would file a motion to compel.

47. Respondent received these letters.

48. Respondent failed to advise Ms. Guerin of Respondent's receipt of Mr. Molnar's January 5 and February 8, 2018 letters.

49. In connection with the first Schoch lawsuit, Respondent filed an Amended Complaint on behalf of Ms. Guerin on December 8, 2017.

50. By email dated January 10, 2018, sent from Ms. Guerin to Respondent, Ms. Guerin requested copies of the files that Respondent maintained for the legal matters that he was handling on her behalf.

51. Respondent received this email.

52. By email dated January 12, 2018, sent from Ms. Guerin to Respondent, Ms. Guerin, *inter alia*, explained that

she wanted copies of the files that Respondent maintained for the legal matters that he was handling on her behalf because he had "major surgery" scheduled for January 22, 2018, and she was concerned as to whom would handle her lawsuits if "something goes wrong" during Respondent's surgery.

53. Respondent received this email.

54. By email dated January 17, 2018, from Ms. Guerin to Respondent, Ms. Guerin stated that she had previously sent Respondent two emails "addressing the issues that are at hand" and expressed that she had "no desire to speak with [Respondent] on the phone."

55. On January 19, 2018, Respondent called Ms. Guerin, during which telephone conversation he:

- a. informed Ms. Guerin that Respondent's wife had discovered photos of Ms. Guerin on Respondent's cellphone; and
- b. advised Ms. Guerin that Respondent's wife had demanded that he cease all contact with Ms. Guerin and that he cease representing her.

56. By email dated January 19, 2018, sent by Ms. Guerin to Respondent at 12:27 p.m., with a subject line of "Phone call today," Ms. Guerin, *inter alia*:

- a. stated that Respondent wanted to "recuse [him]self as [her] lawyer because of the fact that [he has] photographs of [her] in a phone and [Respondent's] marriage is on the line"; and
- b. remarked that Respondent "utilize[s] [his] position to take advantage of women."

57. Respondent received this email.

58. On January 19, 2018, Ms. Guerin sent Respondent four additional emails; Respondent responded to these emails by calling Ms. Guerin.

59. By email dated January 19, 2018, sent by Ms. Guerin to Respondent at 2:32 p.m., Ms. Guerin stated that Respondent has "a problem and it's very big right now."

60. After this email, Respondent called Ms. Guerin, during which telephone conversation Ms. Guerin threatened to disclose to Respondent's wife what had transpired between Respondent and Ms. Guerin at the Sands Casino.

61. By email dated January 19, 2018, sent by Respondent to Ms. Guerin at 2:42 p.m., Respondent stated that he would "talk to [her] tomorrow" and that he was "willing to continue to represent [her]."

62. By email dated January 19, 2018, sent by Ms. Guerin to Respondent at 2:43 p.m., Ms. Guerin, *inter alia*:

- a. stated that she was not sure that she wanted Respondent to continue to represent her; and
- b. informed Respondent that he had a "huge problem right now and [he] brought this on [him]self."

63. After this email, Respondent called Ms. Guerin, during which telephone conversation he made some comments about the relationship between Ms. Guerin and Ms. Guerin's daughter.

64. By email dated January 19, 2018, sent by Ms. Guerin to Respondent at 3:09 p.m., Ms. Guerin stated the following: "How f---ing dare you. You went Past [sic] go. Time to talk to your wife about your behavior."

65. After this email, Ms. Guerin called Respondent's wife several times and left multiple voicemail messages.

66. After Ms. Guerin called Respondent's wife, Ms. Guerin called Respondent's son and left a voicemail message.

67. After Ms. Guerin called and left a voicemail message for Respondent's son, Respondent called Ms. Guerin.

68. By email dated January 19, 2018, sent by Ms. Guerin to Respondent at 3:37 p.m., Ms. Guerin, *inter alia*, described

the circumstances that led to the sexual encounters with Respondent at the Sands Casino.

69. On January 22, 2018, Respondent had a surgical procedure performed on one or both of his knees.

70. On January 22, 2018, Gary J. Saylor, II, Esquire, counsel for the defendants in the first Schoch lawsuit, filed an Answer and New Matter.

71. Respondent received the Answer and New Matter.

72. Respondent failed to advise Ms. Guerin that there was a need to respond to defendants' New Matter.

73. Respondent requested of Mr. Saylor that Ms. Guerin receive an extension until March 12, 2018, to file a reply to defendants' New Matter because Respondent had knee replacement surgery on January 22, 2018.

74. Mr. Saylor agreed to Respondent's request to extend the deadline until March 12, 2018.

75. Respondent failed to file on behalf of Ms. Guerin a reply to defendant's New Matter on or before March 12, 2018.

76. Respondent arranged for Angelo L. Scaricamazza, Esquire, to contact Ms. Guerin.

- a. Mr. Scaricamazza contacted Ms. Guerin as a favor to Respondent and at no time was acting as Respondent's attorney.

77. On Monday, January 29, 2018, Mr. Scaricamazza sent a text message to Ms. Guerin, in which Mr. Scaricamazza, *inter alia*, stated that Mr. Scaricamazza had not spoken with Respondent over the weekend and that Mr. Scaricamazza would try to contact Respondent and thereafter contact Ms. Guerin.

78. By letter dated February 27, 2018, sent by Mr. Scaricamazza to Ms. Guerin, Mr. Scaricamazza, *inter alia*:

- a. acknowledged receiving a February 23, 2018 text message from Ms. Guerin, in which message she advised that she had met with an attorney;
- b. advised that he would "serve as a point of contact for [Ms. Guerin] with respect to the transfer of the files to Ms. Guerin's new attorney";
- c. requested that Ms. Guerin's new attorney contact Mr. Scaricamazza to arrange "the transition of the file materials"; and
- d. stated that Respondent would assist Ms. Guerin's new attorney with an "understanding of the facts and issues involved in [Ms. Guerin's] matters"

79. Between March 9, 2018 and May 10, 2018, Ms. Guerin and Mr. Scaricamazza exchanged text messages.

80. By email dated March 29, 2018, sent by Ms. Guerin to Mr. Scaricamazza, Ms. Guerin, *inter alia*, provided Mr. Scaricamazza with the name and contact information for Jeremy F. Clark, Esquire, who was considering representing Ms. Guerin but wanted to speak with Respondent before deciding whether to represent her.

81. Between March 29, 2018 and April 13, 2018, Ms. Guerin and Mr. Scaricamazza exchanged a series of text messages concerning the transfer to Mr. Clark of the files that Respondent maintained for Ms. Guerin's legal matters.

82. On April 17, 2018, Ms. Guerin sent a text message to Mr. Scaricamazza in which she notified Mr. Scaricamazza that the files that Mr. Clark had received from Respondent were incomplete.

83. After Ms. Guerin sent her April 17, 2018 text message, Mr. Scaricamazza and Ms. Guerin exchanged a series of text messages on that day concerning, *inter alia*, Ms. Guerin's files.

84. On May 11, 2018, Ms. Guerin received a package from FedEx that enclosed:

- a. a letter dated May 9, 2018, addressed to Ms. Guerin by Kevin V. Mincey, Esquire; and

- b. petitions Respondent was intending to present to withdraw as Ms. Guerin's counsel in the Rogers lawsuit, the first Schoch lawsuit, and the second Schoch lawsuit.

85. Mr. Mincey's May 9, 2018 letter informed Ms. Guerin that Respondent intended to present to the court petitions to withdraw as Ms. Guerin's counsel in the Rogers lawsuit, the first Schoch lawsuit, and the second Schoch lawsuit on May 16, 2018, at 9:00 a.m. at Northampton County Motion Court.

86. On May 16, 2018, Respondent separately filed in the Rogers lawsuit, the first Schoch lawsuit, and the second Schoch lawsuit the Petition of Plaintiff's Counsel for Leave to Withdraw ("Withdrawal Petitions").

87. On May 16, 2018, a hearing was held in the chambers of the Honorable Jennifer R. Sletvold on the Withdrawal Petitions.

88. On May 16, 2018, Judge Sletvold issued several Orders that:

- a. granted the Withdrawal Petitions;
- b. stayed the proceedings in the Rogers lawsuit for 45 days; and

- c. stayed the proceedings in the first Schoch lawsuit and the second Schoch lawsuit for 60 days.

89. By his conduct as alleged in paragraphs 3 through 88 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- c. RPC 1.7(a)(2), which states that except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (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;

- d. RPC 1.8(e), which states that a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client;
- e. RPC 1.8(j), which states that a lawyer shall not have sexual relations with a client unless a consensual relationship existed between them when the client-lawyer relationship commenced; and
- f. RPC 8.4(a), which states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

B. Undocumented Loan Agreement and Mishandling of the IOLTA Account.

90. At all times relevant hereto, Respondent maintained with PNC Bank an IOLTA account, account number xxxxxx8948, titled "William P. Fedullo, Esq IOLTA Client Trust Fund" ("the IOLTA account").

91. In or about January 2016, Respondent agreed to loan monies to Ms. Guerin.

92. Respondent failed to comply with RPC 1.8(a), in that he did not:

- a. have the oral terms of the loan agreement reduced to writing in a manner that could be reasonably understood by Ms. Guerin and disclose and transmit that writing to Ms. Guerin;
- b. advise Ms. Guerin in writing that she should seek the advice of independent counsel concerning the loan agreement; and
- c. obtain Ms. Guerin's written informed consent to the essential terms of the loan agreement and Respondent's role in the transaction.

93. Commencing on January 5, 2016, and continuing through July 21, 2017, Respondent loaned funds to Ms. Guerin

by issuing to her the following checks that were made payable to her and drawn on the IOLTA account:

- a. check number 3002, dated January 4, 2016, in the amount of \$2,300 (\$900 of the \$2,300 represented a loan of funds to Ms. Guerin);
- b. check number 3004, dated January 14, 2016, in the amount of \$2,000;
- c. check number 3006, dated April 1, 2016, in the amount of \$2,500;
- d. check number 3008, dated April 22, 2016, in the amount of \$2,500;
- e. check number 3009, dated May 17, 2016, in the amount of \$2,500;
- f. check number 3010, dated June 18, 2016, in the amount of \$2,500;
- g. check number 3027, dated September 21, 2016, in the amount of \$2,500;
- h. check number 3031, dated November 25, 2016, in the amount of \$2,500;
- i. check number 3070, dated July 18, 2017, in the amount of \$1,000;
- j. check number 3071, dated August 5, 2017, in the amount of \$1,000; and

k. check number 3072, dated August 20, 2017, in the amount of \$1,500.

94. On August 1, 2015, the opening day IOLTA account balance was \$522,151.44.

95. As of August 1, 2015, Respondent was required to be holding in the IOLTA account on behalf of clients and third parties the following amounts:

a. \$120,578.12 on behalf of Respondent's client, Mr. Thomas Mundis, which was the amount Mr. Mundis was entitled to receive from \$125,000 that Respondent had held aside in the IOLTA account to satisfy any unpaid medical bills (none) and additional expenses Respondent might incur (\$4,421.88); and

b. \$50,000 on behalf of Respondent's client, Ms. Elizabeth Elkin, to satisfy any unpaid Medicare lien (\$45,624.17) with the remainder to be distributed to her (\$4,375.83).

96. As of August 1, 2015, Respondent was entrusted to hold in the IOLTA account a total of \$170,578.12 on behalf of Mr. Mundis, Medicare, and Ms. Elkin.

97. As of August 1, 2015, Respondent was holding in the IOLTA account \$328,000 that represented Respondent's legal fees for the matter involving Mr. Mundis.

a. Respondent delayed taking the remainder of his legal fees in the matter involving Mr. Mundis until Respondent had resolved whether any additional unpaid medical bills had to be satisfied.

98. As of August 1, 2015, the total of the funds that Respondent was holding in the IOLTA account, inclusive of Respondent's undistributed legal fees and expenses, in connection with the matters involving Mr. Mundis and Ms. Elkin was \$498,578.12.

99. After deducting \$498,578.12 from the opening balance of \$522,151.44, there remained \$23,573.32 that cannot be attributed as funds belonging to a client or third party.

100. The amount of \$23,573.32 represented Respondent's personal funds that he had earned prior to August 1, 2015, and had allowed to remain in the IOLTA account.

101. On October 23, 2015, Respondent issued to Mr. Mundis check number 2995 that was drawn on the IOLTA account, in the amount of \$120,578.12, which represented his share of the settlement proceeds.

102. On October 27, 2015, Respondent issued to himself check number 2996 that was drawn on the IOLTA account, in the amount of \$300,000, which represented a portion of the \$328,000 in undistributed legal fees that related to the matter involving Mr. Mundis.

103. From October 27, 2015 through January 3, 2016, Respondent continued to hold in the IOLTA account \$28,000 in legal fees that he had earned in connection with the legal matter involving Mr. Mundis.

104. On January 4, 2016, Respondent issued to himself check number 3003 that was drawn on the IOLTA account, in the amount of \$28,000, which represented the remainder of the undistributed legal fees that related to the matter involving Mr. Mundis.

105. On September 29, 2016, Respondent deposited into the IOLTA account a check in the amount of \$226,847.07 that had been issued by Rosen, Schafer & DiMeo, LLP.

- a. This check was issued to Respondent in payment of a legal fee and these funds belonged to Respondent.

106. Respondent allowed a portion of the proceeds from the \$226,847.07 legal fee payment to remain in the IOLTA account until July 17, 2017 (i.e., nine and one-half months).

107. Between September 29, 2016 and July 17, 2017, Respondent distributed to himself the \$226,847.07 legal fee payment by issuing to himself the following checks that were drawn on the IOLTA account:

- a. check number 3029, dated September 29, 2016, in the amount of \$12,000;
- b. check number 3032, dated November 25, 2016, in the amount of \$148,700;
- c. check number 3060, dated April 10, 2017, in the amount of \$60,000; and
- d. check number 3069, dated July 17, 2017, in the amount of \$7,500.

108. These four checks totaled \$228,200, which exceeded the \$226,847.07 legal fee payment by \$1,352.93.

109. Respondent represented Ms. Melissa Rucker in a personal injury case, which matter settled for the gross amount of \$40,000.

110. Respondent received and deposited into the IOLTA account two settlement checks that he received on behalf of Ms. Rucker—one settlement check in the amount of \$6,000, which was deposited on October 7, 2016, and the second settlement check in the amount of \$34,000, which was deposited on January 17, 2017.

111. By letter dated January 19, 2017, sent by Respondent to Ms. Rucker, he, *inter alia*:

- a. confirmed that Ms. Rucker's case had settled for the gross amount of \$40,000;
- b. enclosed two copies of a Schedule of Distribution;
- c. requested that Ms. Rucker sign a Schedule of Distribution and return it to Respondent; and
- d. enclosed check number 3044, which was drawn on the IOLTA account and made payable to Ms. Rucker, in the amount of \$20,481.12.

112. On the Schedule of Distribution, Respondent listed his fees and costs as \$12,074.88.

113. On January 19, 2017, Respondent issued check number 3045, in the amount of \$12,004, which was drawn on the IOLTA account and made payable to Respondent.

114. From January 19, 2017 through August 31, 2017, Respondent continued to hold in the IOLTA account \$70.88 in legal fees and expenses that he had earned in connection with the legal matter involving Ms. Rucker.

115. On August 4, 2017, Respondent improperly deposited \$2,500 of Respondent's own funds into the IOLTA account so that he could loan monies to Ms. Guerin.

116. After making the August 4, 2017 \$2,500 deposit, Respondent issued to Ms. Guerin the following two checks that were drawn on the IOLTA account:

- a. check number 3071, dated August 5, 2017, in the amount of \$1,000; and
- b. check number 3072, dated August 20, 2017, in the amount of \$1,500.

117. Commencing on August 1, 2015, and continuing through August 31, 2017, Respondent engaged in a pattern of holding in the IOLTA account funds that belonged to him in an amount that was in excess of any amount that was necessary for the purpose of paying service charges on that account.

118. Between August 1, 2015 and August 31, 2017, Respondent engaged in a pattern of commingling his personal funds with fiduciary funds held in the IOLTA account.

119. On June 15, 2016, Respondent deposited into the IOLTA account a \$32,000.00 settlement check that he received on behalf of his client, Mr. Paul Johnson.

120. By letter dated June 23, 2016, sent by Respondent to Mr. Johnson, Respondent, *inter alia*:

- a. confirmed that Mr. Johnson's case had settled for \$32,000;

- b. enclosed two copies of a Schedule of Distribution;
- c. requested that Mr. Johnson sign one copy of a Schedule of Distribution and return it to Respondent;
- d. enclosed check number 3018, which was drawn on the IOLTA account and made payable to Mr. Johnson, in the amount of \$14,999.88;
- e. stated that Respondent had compromised and paid several medical liens but that he was negotiating with Georgia Health Imaging to reduce the lien it held in the amount of \$2,212; and
- f. advised Mr. Johnson that Respondent was holding aside from the settlement proceeds \$2,212, and that if Respondent was able to compromise the Georgia Health Imaging lien, he would forward to Mr. Johnson the difference between the \$2,212 and the compromised lien amount.

121. Respondent compromised the Georgia Health Imaging lien to \$1,500.

122. By check number 3023, dated July 8, 2016, which was drawn on the IOLTA account and made payable to Georgia Health Imaging, Respondent satisfied the compromised lien amount of \$1,500.

123. Respondent failed to promptly distribute to Mr. Johnson the sum of \$712, which was the difference between the original lien amount (\$2,212) and the compromised lien amount (\$1,500).

124. In December 2019 (i.e., approximately three and one-half years later), Respondent paid Mr. Johnson \$712 by issuing to him check number 3102 drawn on the IOLTA account.

125. Prior to August 31, 2017, Respondent failed to perform on a monthly basis a reconciliation of the IOLTA account, as required by RPC 1.15(c)(4).

126. Prior to August 31, 2017, Respondent's IOLTA account was used to hold funds of more than one client, yet Respondent failed to maintain individual client ledgers for each client on whose behalf he received fiduciary funds that were deposited into the IOLTA account, as required by RPC 1.15(c)(2).

127. By his conduct as alleged in paragraphs 90 through 126 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.8(a)(1)-(3), which states that 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 manner 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;
- b. RPC 1.15(b), which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property

shall be identified and appropriately safeguarded;

- c. RPC 1.15(c)(2), which states that complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter). A lawyer shall also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(1):

...

(2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements;

- d. RPC 1.15(c)(4), which states that a regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the

total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement;

- e. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law,

procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment; and

- f. RPC 1.15(h), which states that 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, and only in an amount necessary for that purpose.

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the foregoing charges and upon completion of said hearing to make such findings of fact, conclusions of law, and

recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel



By _____
Richard Hernandez
Disciplinary Counsel
Attorney Registration No. 57254

1601 Market Street
Suite 3320
Philadelphia, PA 19103
(215) 560-6296

VERIFICATION

I, Richard Hernandez, Disciplinary Counsel, verify that the statements made in the foregoing Petition for Discipline are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

1/8/21

Date



Richard Hernandez
Disciplinary Counsel

CERTIFICATE OF COMPLIANCE

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

Submitted by: Office of Disciplinary Counsel

Signature:  _____

Name: Richard Hernandez

Attorney No. (if applicable): 57254