

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 188 DB 2017
Petitioner	:	
v.	:	Attorney Registration No. 81770
FRED WILLIAM FREITAG, IV	:	
Respondent	:	(Allegheny County)

ORDER

AND NOW, this 28<sup>th</sup> day of June, 2019, upon consideration of the Report and Recommendation of the Hearing Committee filed on December 7, 2018; it is hereby ORDERED that the said FRED WILLIAM FREITAG, IV, of Allegheny County shall be subjected to **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. Costs shall be paid by the Respondent.

BY THE BOARD:

  
Board Chair

TRUE COPY FROM RECORD

Attest:



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

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 188 DB 2017  
Petitioner :  
v. : Attorney Registration No. 61770  
FRED WILLIAM FREITAG, IV :  
Respondent : (Allegheny County)

OPINION

This matter is before the Board on a Petition for Discipline filed by Office of Disciplinary Counsel ("ODC") on December 6, 2017, charging Respondent with failure to hold entrusted funds separate from his own and failure to list his operating account on his attorney registration form for 2015-2016. On December 28, 2017, Respondent filed an Answer to Petition.

Following a prehearing conference on January 30, 2018, a District IV Hearing Committee ("Committee") conducted a disciplinary hearing on March 15, 2018. Petitioner introduced four exhibits, which were admitted into evidence. Petitioner called no witnesses. Respondent appeared *pro se*. He introduced no exhibits and testified on his own behalf. Respondent called no other witnesses.

Following the submission of the parties' briefs, the Committee filed a Report on December 7, 2018, concluding that Respondent violated Rules of Professional Conduct ("RPC") 1.15(b) and 1.15(i) and Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 219(d)(1)(iv), and recommending that Respondent receive a Public Reprimand. The parties did not take exception to the Committee's recommendation.

Petitioner bears the burden of proving, by a preponderance of the evidence that is clear and satisfactory, that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. John T. Grigsby III*, 425 A.2d 730, 732 (Pa. 1981). The purpose of the disciplinary system is "to protect the public from unfit attorneys and to maintain the integrity of the legal system." *Office of Disciplinary Counsel v. Robert Costigan*, 584 A.2d 296, 300 (Pa. 1990). Although each disciplinary matter must be decided on the totality of the facts and circumstances, precedent is considered due to "the need for consistency in the results reached in disciplinary cases." *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 190 (Pa. 1983).

Upon the record before us, the Board concludes that Respondent engaged in professional misconduct and directs that Respondent receive a Public Reprimand.

Born in 1957, Respondent was admitted to the practice of law in the Commonwealth in 1991. The conduct at issue relates to an eight-month time span wherein Respondent failed to properly maintain funds entrusted to him. From about April 13, 2015, through about December 15, 2015, Respondent deposited to his law firm's business account ("Business Account"), funds entrusted to him by twelve clients for the costs of filing bankruptcy actions on their behalf in the United States Bankruptcy Court for the United States District Court for the Western District of Pennsylvania. Respondent's Business Account was not a properly segregated account for the deposit of entrusted funds and contained his own personal funds. From about April 13, 2015, through about December 15, 2015, by depositing entrusted funds to his Business Account, Respondent commingled entrusted funds with his own. From about April 13,

2015, through about December 15, 2015, as to twelve separate clients, Respondent misappropriated funds entrusted to him for the payment of costs for filing bankruptcy petitions totaling \$3,879.53. Shortly after placing the funds in his Business Account, Respondent paid the filing costs on behalf of each client upon the filing of each bankruptcy petition. Respondent's Business Account had sufficient funds to cover the filing fees at the time each of the petitions were filed.

Respondent admitted that he deposited to his Business Account funds entrusted to him as filing costs and acknowledged that the Business Account contained his own funds. He further admitted that he allowed those funds to be utilized for improper purposes, as they were commingled with his personal funds. At the disciplinary hearing, Respondent testified that the fees paid to him by his bankruptcy clients were flat fees as set forth in his fee agreements with each of his clients. He deposited the flat fees in his Business Account and not into an IOLTA account because according to Respondent, it was easier to pay the filing fees to the Bankruptcy Court with a debit card linked to the Business Account. It does not appear that any client's case was prejudiced due to Respondent's misconduct, since he filed the bankruptcy petitions within a reasonable period of time and paid the filing fees as required. However, Respondent acknowledged that he could have used a credit card, rather than a debit card, to which he would have charged the costs. He then could have reimbursed himself from his IOLTA Account, where he properly should have deposited the costs entrusted to him on behalf of his client for filing fees. Although Respondent explained his reasons for depositing the filing costs into his Business Account, he did not express remorse for his unethical actions.

In further violation of the rules, Respondent did not list his Business

Account on his Attorney Registration Form for 2015-2016, despite holding entrusted funds in that account during the time period covered by that form. Rule 219(d)(1)(iv), Pa.R.D.E., requires that an attorney list on the registration form, "every account...that held funds of a client or a third person, and over which the attorney has sole or shared signature authority. ..." Respondent violated this rule by failing to list his Business Account.

Respondent engaged in professional misconduct by failing to deposit entrusted funds into a trust account, failing to hold entrusted funds separate from his own, and failing to list the Business Account on his attorney registration form. The evidence established that Respondent violated RPC 1.15(b), RPC 1.15(i) and Pa.R.D.E. 219(d)(1)(iv).

Standing alone, Respondent's misconduct, involving a small amount of funds and lack of harm to clients, ordinarily would result in private discipline. See, *Office of Disciplinary Counsel v. Anonymous Attorney*, No. 22 DB 2014 (D. Bd. Order 8/26/2015) (Private Reprimand imposed for failure to act with competence, diligence and promptness, failure to communicate, commingling of estate funds, and failure to properly supervise non-lawyer employee; no prior discipline; expressed remorse; experienced personal difficulties due to father's death); *Office of Disciplinary Counsel v. Anonymous Attorney*, No. 22 DB 2000 (D. Bd. Order 6/21/2001) (Private Reprimand imposed for commingling partnership revenues that were owed to deceased partner's estate with personal funds; no prior discipline; expressed remorse); *Office of Disciplinary Counsel v. Anonymous Attorney*, 38 Pa. D. & C. 3d 235 (1985) (Private Reprimand for commingling client funds with personal funds, failing to promptly pay over to the client the funds to which he was entitled, and

writing a check without sufficient funds in an attempt to pay the client).

Here, Respondent has a substantial history of professional discipline, which the Board considers an aggravating factor. Respondent received an Informal Admonition in 2007 for failing to communicate with a client and failing to diligently represent the client; a Private Reprimand in 2009 for two convictions for driving under the influence; and a Private Reprimand in 2010 for failing to abide by a court's directive to pay attorneys' fees owed to an estate. Given this history of discipline, private discipline is not appropriate to address the misconduct in the instant matter. See, ***Office of Disciplinary Counsel v. James T. Marsh***, No. 247 DB 2018 (D. Bd. Order 1/18/2019) (Public Reprimand imposed for mishandling IOLTA account and failing to maintain client ledgers; prior discipline); ***Office of Disciplinary Counsel v. Gordon D. Fisher***, No. 21 DB 2016 (D. Bd. Order 1/19/2017) (Public Reprimand imposed for failing to hold entrusted funds in a separate account and allowing the account to be deficient for a period of time; prior discipline); ***Office of Disciplinary Counsel v. Manrico Troncelliti, Jr.***, No. 196 DB 2016 (D. Bd. Order 12/12/2016) (Public Reprimand imposed for taking unearned fees and failing to maintain and account for fiduciary funds in an estate matter, neglect and failure to communicate; prior discipline).

Under these circumstances, and considering that Respondent has demonstrated no remorse for his actions, a Public Reprimand is appropriate discipline to ensure that the public is protected and the integrity of the legal system is maintained.

**DETERMINATION**

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the Respondent, Fred William Freitag, IV, shall receive a Public Reprimand.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

By:   
Christopher M. Miller, Member

Date: 6/28/19

**BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 188 DB 2017
Petitioner	:	
	:	
v.	:	
	:	Attorney Registration No. 61770
FRED WILLIAM FREITAG, IV	:	
Respondent	:	(Allegheny County)

**PUBLIC REPRIMAND**

Fred William Freitag, IV, you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline.

Mr. Freitag, the record indicates that the conduct at issue relates to an eight-month time span wherein you failed to properly maintain funds entrusted to you. From about April 13, 2015, through about December 15, 2015, you deposited to your law firm's business account, funds entrusted to you by twelve clients for the costs of filing bankruptcy petitions. Your business account was not a properly segregated account for the deposit of entrusted funds and contained your own personal funds. By depositing entrusted funds into your business account, you commingled entrusted funds with your own funds. As to the twelve clients, you misappropriated funds entrusted to you, totaling \$3,879.53, for payment of costs for filing the bankruptcy petitions. Shortly after placing the funds in your business account, you paid the filing costs on behalf of each client upon the filing of each bankruptcy petition. Your business account had sufficient funds to cover



the filing fees at the time of the filing of each petition. No client was prejudiced by your actions, as you filed the bankruptcy petitions within a reasonable period of time and paid the filing fees as required.

In further violation of the rules, you did not list your business account on your Attorney Registration Form for 2015-2016, despite holding entrusted funds in the account during the time period covered by that form.

Your conduct in this matter has violated the following Rules of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement:

1. RPC 1.15(b) - A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded;
2. RPC 1.15(i) – A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner; and
3. Pa.R.D.E. 219(d)(1)(iv) – On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall file with the Attorney Registration Office a ...form ...setting forth every account that held funds of a client or third person.

We note that you were admitted to practice law in the Commonwealth in 1991 and have a history of professional discipline. You received an Informal Admonition

in 2007, a Private Reprimand in 2009, and a Private Reprimand in 2010. Given this history of discipline, public discipline is warranted in this matter.

Mr. Freitag, your conduct in this matter is now fully public. This Public Reprimand is a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to abide by the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction will subject you to more severe disciplinary action.

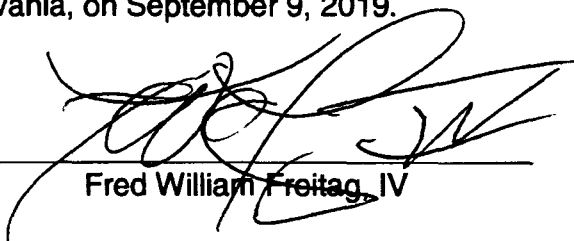
This Public Reprimand shall be posted on the Disciplinary Board's website at [www.padisciplinaryboard.org](http://www.padisciplinaryboard.org).

  
Designated Member  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Pittsburgh, Pennsylvania, on September 9, 2019.

**ACKNOWLEDGMENT**

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at Frick Building, 437 Grant Street, Suite 1300, Pittsburgh, Pennsylvania, on September 9, 2019.



Fred William Freitag, IV