BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 195 DB 2014
v.	:	Attorney Registration No. 76688
MICHAEL PAUL PETRO Respondent	:	(Allegheny County)

ORDER

AND NOW, this 2nd day of February, 2016, upon consideration of the Report and Recommendation of the Hearing Committee filed on July 20, 2015; it is hereby

ORDERED that the said MICHAEL PAUL PETRO, 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:

Elaine M. Bixler
Secretary of the Board
The Disciplinary Board of the
Supreme Court of Pennsylvania

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OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 195 DB 2014
v.	:	Attorney Registration No. 76688
MICHAEL PAUL PETRO Respondent	:	(Allegheny County)

OPINION

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on December 8, 2014, Office of Disciplinary Counsel charged Michael Paul Petro, Respondent, with violations of the Rules of Professional Conduct arising out of allegations related to mishandling of a trust account. Respondent filed an Answer to Petition for Discipline on January 21, 2015.

A disciplinary hearing was held on April 9, 2015, before a District IV Hearing Committee comprised of Chair Mark Gordon, Esquire, and Members Jennifer R. Andrade, Esquire, and Darlene S. Wood, Esquire. Respondent was represented by Craig E. Simpson, Esquire. Petitioner called one witness and introduced two exhibits. Respondent testified on his own behalf and called one witness who testified as a character witness. Respondent introduced no exhibits.

Following the submission of Briefs by the parties, the Hearing Committee filed a Report on July 20, 2015, concluding that Respondent committed professional misconduct and recommending that a Private Reprimand be imposed, with conditions.

Petitioner filed a Brief on Exceptions on August 13, 2015.

Respondent filed a Brief Opposing Exceptions on August 31, 2015.

This matter was adjudicated by the Disciplinary Board at the meeting on October 22, 2015.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the 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 the aforesaid Rules.

2. Respondent is Michael Paul Petro. He was born in 1969 and was admitted to practice law in the Commonwealth of Pennsylvania in 1995. Respondent's mailing address is 2300 Lawyers Building, 428 Forbes Avenue, Pittsburgh, Pa 15219. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent does not have prior discipline of record in Pennsylvania.

4. In 2004, Respondent, along with Robert Seewald, Esquire and Robert E. Mielnicki, Esquire formed a partnership. That partnership dissolved in 2012. PE 1, PE 2; N.T. 7.

5. By 2008, Mr. Mielnicki became the *de facto* managing partner of the firm.

6. From the inception of the law firm through 2008, Respondent was not engaged in the administration of the law firm's IOLTA Account. N.T. 57-58.

7. In 2008, the bookkeeper was terminated and Mr. Mielnicki asked Respondent to become the custodian of the IOLTA Account. Respondent agreed to do so and became the person primarily responsible for managing the IOLTA, including, but not limited to having primary responsibility for depositing funds, disbursing funds and reconciling the IOLTA Account balances. PE 1, PE 2, N.T. 7.

8. The testimony offered by Respondent and Mr. Mielnicki demonstrates that Respondent had no knowledge or appreciation of how the IOLTA Account was to be managed, nor the requirement that there be a method of determining the extent to which funds of the individual clients within the IOLTA Account were recorded. At the time Respondent assumed the handling of the IOLTA Account, it appears that he did not know what funds were in the account for each of the firm's respective clients. N.T. 102, 103.

9. Client funds that made their way into the firm's IOLTA Account substantially emanated from retainer fees for family law and criminal law matters and from third party settlement recoveries out of personal injury claims. N.T. 29, 38, 60.

10. When Respondent worked on hourly fee matters, he would calculate the number of hours worked and the fees for those hours, and disburse monies from the IOLTA Account into the firm's general account to pay firm expenses and lawyer draws. N.T. 39, 60-62.

11. At various times beginning in April 2012, the law firm's IOLTA Account was below the amount that had been entrusted on behalf of four clients – Price, Dallas, Stutzman and Macklin. PE-1, PE-2; N.T. 7.

12. By August 6, 2012, the balance in the law firm's IOLTA Account was $8,786.52, which was $22,296.98 below the total entrusted amounts of $31,083.50 on behalf of the four clients listed above. PE-1, PE-2; N.T. 7.

13. On August 7, 2012, the firm issued from the IOLTA Account a check payable to Ms. Macklin and a check payable to the firm's General Account, for which there were insufficient funds in the IOLTA Account. Notwithstanding the deficiency, PNC Bank honored the firm's check, but notified the Lawyers Fund for Client Security and the firm's managing partner, Mr. Mielnicki of the deficiency. PE-1, PE-2; N.T. 7, 88.

14. Respondent admitted that, at various times beginning on April 12, 2012, the firm's IOLTA Account fell below the amount of monies entrusted to the firm by the clients of the firm, and conceded to the insufficiency of the funds in the IOLTA Account as of August 7, 2012. N.T. 65.

15. Respondent never knowingly wrote a check for fees from any clients knowing that there were insufficient funds on behalf of the client in the IOLTA account. N.T. 65.

16. Respondent acknowledged that his conduct was negligent, "stupid, and just careless." N.T. 66.

17. From August 7, 2012 and thereafter, the deficiencies which were identified in the IOLTA Account led Respondent to contribute his own funds into the IOLTA Account, in the amount of $42,600. There is no evidence that prior to that time, there had been any contribution of personal funds into the IOLTA Account. PE-1, PE-2; N.T. 7, 86-97.

18. Not knowing the exact amount of the deficiency, Respondent actually deposited more of his money into the account than was necessary to make up the

deficiency. Respondent expressed uncertainty as to how much greater his contributions were than the actual deficiencies of the IOLTA Account, which were referenced in the Petition for Discipline. N.T. 68.

19. Respondent did not check the IOLTA Account bank statements when they arrived in the office. N.T. 63, 82.

20. Respondent did not maintain client ledgers documenting deposits made into the IOLTA Account on behalf of the individual clients of the firm. N.T. 27, 58, 103.

21. Respondent reconstructed the client ledgers after he was contacted by Petitioner in order to aid Petitioner in its investigation, and contemporaneously advised Petitioner that he had so reconstructed the ledgers. PE-1. PE-2.

22. No evidence was offered to show that Responded took funds from a client and failed to deposit those funds into the firm's IOLTA Account; wrote a check directly to himself from the IOLTA Account; or, wrote a check from the IOLTA Account that was cashed and deposited into his own personal account. N.T. 61-63.

23. No evidence was presented that Respondent ever disbursed from the IOLTA Account or the General Account of the law firm funds that exceeded the fees he or his partners had earned for the services delivered to the clients.

24. No evidence was presented as to the nature of the work performed by the firm on behalf of clients Dallas, Price, Stutzman and Macklin, nor whether the partners of the firm, including Respondent, had billed those cases at various times after the entrustment of funds for services rendered that would have justified disbursements from the IOLTA Account into the firm's General Account.

25. No client of the firm has failed to receive funds that the firm was entrusted to hold for the client because of PNC's willingness to honor checks despite the account becoming insufficient and because of the contributions made by Respondent. N.T. 68-69.

26. No bank records, client retainer agreements, law firm bills for services rendered and drawn against the IOLTA Account, or the reconstructed ledgers were admitted into evidence, making it difficult to determine whether the firm's clients met their respective financial obligations to the firm pursuant to retainer agreements.

27. Respondent expressed sincere remorse for his careless handling of the IOLTA Account records and his subsequent Rules violations. N.T. 79-80.

28. Since August 2012, after the discovery of the IOLTA Account improprieties, Respondent has been properly managing a new IOLTA account, maintaining all appropriate records, balancing the ledger with the bank statements, and also balancing the bank statements with the total of the individual client ledgers. N.T. 69-70.

29. Respondent offered sincere assurances that the misconduct will not occur in the future. N.T. 80-81.

III. CONCLUSIONS OF LAW

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

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 should be identified and appropriately safeguarded.

2. RPC 1.15(c) – 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 following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l):

> (2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date and amount of each deposit, and the matter involved for each transaction.

3. RPC 1.15(h) – A lawyer shall not deposit the lawyer's own funds in the Trust Account, except for the sole purpose of paying service charges on the account, and only in an amount necessary for that purpose.

Petitioner failed to meet its burden of proof by clear and satisfactory evidence that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of RPC 8.4(c).

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline charging Respondent with misconduct arising from his mishandling of his law firm's IOLTA Account. Respondent has admitted substantially all of the averments contained in the Petition for Discipline, but denies that he misappropriated client funds. Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441, 444 (Pa.

2000). The Board's review of the record leads to the conclusion that Petitioner met its burden of proof that Respondent violated Rules of Professional Conduct 1.15(b), 1.15(c)(2) and 1.15(h), but failed to demonstrate clearly and satisfactorily that Respondent misappropriated entrusted funds in violation of Rule 8.4(c).

In 2009, Respondent was asked to maintain his law firm's IOLTA Account and he agreed to do so. Thereafter, he admittedly failed to maintain the proper records for the IOLTA Account, which included his failure to review the monthly statements, which caused a deficiency to occur between April 2012 and August 2012. Due to the lack of proper recordkeeping, Respondent was unaware that the account balance had gone below the amount of the aggregate entrustment until the August 2012 overdraft. As soon as Respondent learned of the overdraft, he deposited his own personal funds into the IOLTA Account to make up the deficiency.

The admissions offered by Respondent in his Answer to Petition for Discipline, his testimony and the testimony of Mr. Mielnicki, Respondent's former law partner, show that Respondent had no appreciation or understanding of how to document the deposits and disbursements that flowed from the clients into and out of the law firm's IOLTA Account. While the evidence demonstrated that Respondent mishandled the IOLTA, it does not show that he engaged in dishonest behavior.

Respondent offered credible testimony that during the time frame of the IOLTA Account issues, he had never taken entrusted funds from a client and failed to deposit those funds into the firm's IOLTA Account, he had never written a check from the IOLTA Account that was cashed and deposited into his own personal account, he had never written a check directly to himself from the IOLTA Account, and that when Respondent worked on hourly fee matters, the hours worked creating fees for services

would lead to a disbursement from the IOLTA Account in an amount commensurate with the fees that were earned. No evidence was offered to the contrary, and as the Hearing Committee aptly noted in its Report, without access to bank records, retainer agreements, bills for services, or ledgers, it is difficult to establish the circumstances of the insufficiency in the IOLTA Account. The Committee concluded, as do we, that there is no compelling evidence presented that client funds were utilized when the IOLTA Account was depleted.

Having concluded that Respondent violated the Rules, this matter is ripe for the determination of discipline. The Hearing Committee recommended a private reprimand conditioned upon Respondent attending Continuing Legal Education courses focused on law office management. Petitioner seeks public discipline in the form of a stayed suspension with a practice monitor for two years. Respondent argues that a private reprimand is the correct discipline.

The Board is obligated to view this matter in its entirety. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186, 190 (Pa.1983). After reviewing the Hearing Committee's Report and recommendation, as well as the parties recommendations, 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 conclude that a public reprimand is the appropriate discipline.

Depletion of an IOLTA Account, whether intentional or inadvertent, is a very serious matter. Similarly, serious ethical violations occur when an attorney fails to keep the required records necessary for account maintenance and deposits his or her own funds into the IOLTA Account. Public discipline is warranted to emphasize to Respondent the severity of his offenses, and to reinforce the precept that client funds must be kept

inviolate.

We note in mitigation that Respondent has practiced law since 1995 and has no record of prior discipline. He exhibited genuine remorse for his actions, describing them as negligent, stupid and careless. He understands that his ignorance of the manner in which IOLTA Accounts are to be properly handled is not an excuse. Upon discovery of the trust account insufficiency in August 2012, Respondent took steps to learn proper recordkeeping and has correctly maintained his IOLTA Account since 2012, including balancing the ledger with the bank statements and balancing the bank statements with the individual client ledgers. These remedial actions, as well as Respondent's credible assurances that there will be no further violations of the Rules, incline the Board to reject conditions pertaining to Continuing Legal Education courses.

Given the lack of dishonest conduct, the immediate corrective action taken by Respondent, and the sincere remorse shown, the Board directs that Respondent be publicly reprimanded.

V. DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously determines that the Respondent, Michael Paul Petro, shall receive a Public Reprimand. The expenses incurred in the investigation and prosecution of this matter shall be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By:_____
James C. Haggerty, Board Member

Date: 2-2-2016

Board Members Porges and Cordisco did not participate.