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METHOD OF CITATION

Letters and numbers in parentheses indicate documents and locations as follows:

“ODC,” followed by a number and “Bates,” followed by a number(s), indicates an evidentiary Exhibit of the Office of Disciplinary Counsel and the location of the page or pages within that Exhibit, offered and admitted into evidence at the disciplinary hearing held on August 22, 2023.

“NT,” followed by a number(s) indicates the pages in the Notes of Testimony, or hearing transcript, of the disciplinary hearing held on August 22, 2023.

“DEPO,” followed by a number(s), indicates the pages of the transcribed testimony of one of Respondent’s expert witnesses, Bruce Wright, M.D., completed on September 28, 2023.

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Unreported Disciplinary Board opinions can be accessed at:
<http://www.pacourts.us/courts/supreme-court/court-opinions>. From the pull-down box for "Court Type" select Disciplinary Board, then enter the Disciplinary Board docket number (use the four-digit year for the case in the Board Docket Number field), select an appropriate Date Range according to the year of the case (e.g., 01/01/1995 and 01/01/2000 in the date range fields), and use the dropdown features to clear the month and year fields. Click search, then click on the pdf link to the opinion.

I. STATEMENT OF THE CASE

Office of Disciplinary Counsel (ODC) filed and served the Petition for Discipline on January 20, 2023. Pursuant to a Stipulation to a one-time 20-day extension for Respondent to file his Answer to the Petition, the Answer was filed and served on March 3, 2023. By Notice of Prehearing Conference and Hearing dated March 15, 2023, a prehearing conference was scheduled for June 23, 2023, and a disciplinary hearing was scheduled for August 22, 2023. A prehearing conference was held as scheduled and a Prehearing Order was issued by the Hearing Committee assigned to this case.

The disciplinary hearing was held, as scheduled, before a Hearing Committee comprised of Gina Marie Zumpella, Chair, Amy M. Kirkham, member, and Todd M. Pappasergi, Member. On that date, ODC offered the testimony of its Auditor/Investigator, and documentary exhibits ODC 1-20 which were admitted into evidence in its case-in-chief, as well as ODC 21-23, 27, 29 and 30, which were admitted into evidence in the dispositional phase of the hearing. Due to the unavailability of one of Respondent's expert witnesses, Bruce Wright, M.D., the record remained open and the deposition of Dr. Wright was taken on September 28, 2023, with Hearing Committee Member Kirkham presiding.

II. ABSTRACT OF EVIDENCE RELIED UPON BY PETITIONER
Documentary Evidence

ODC 1 Petition for Discipline

ODC 2 Answer to Petition for Discipline

ODC 3 CR-0010212-2014 Docket *Commonwealth v. Eric Taylor*

ODC 4 CR-0010212-2014 Verdict *Commonwealth v. Eric Taylor*

ODC 5 CR-0010212-2014 Order of Sentence

ODC 6 CR-0010212-2014 Post-Sentence Motion

ODC 7 Order of Court dated 11/29/16 denying Post Sentence Motion

ODC 8 Superior Court Docket 1849 WDA 2016

ODC 9 Amended Notice of Appeal to the Superior Court

ODC 10 Memorandum Opinion dated September 25, 2018

ODC 11 Supreme Court Allocatur Docket Sheet 416 WAL 2018

ODC 12 Supreme Court Order dated 3/22/19 denying Petition for Allowance of Appeal

ODC 13 12/30/19 Karsh & Associates Fee Letter to Michelle Kenney

ODC 14 \$25,000 Cashier's Check, Karsh IOLTA Deposit Slip, and \$7,500 Cash Out Slip

ODC 15 PNC Bank records for Karsh IOLTA 1/1/20 – 6/30/20

ODC 16 Text Messages between Kenney and Karsh 4/4/21, 4/19/21, 4/26/21 and 4/30/21

ODC 17 Reimbursement Payments from Karsh to Kenney

ODC 18 Karsh Attorney Annual Fee Form 2020-2021

ODC 19 CR-10212-2014 Docket, 8/8/22 *pro se* PCRA, Mot. to Reinstate Appellate Rights

ODC 20 Superior Court Docket and filings 438 WDA 2023

ODC 21 (Redacted) Federal Tax Lien *IRS v. Karsh* FTL-16-001234

ODC 22 (Redacted) *Margaret Epps vs. Karsh* AR-16-002958 docket and filings

ODC 23 *Manor Building vs. Karsh* docket and Praecipe for Writ GD-13-014671

ODC 27 3/11/22 Report of Sandra A. Davis, L.C.S.W., Ph.D.

ODC 29 7/13/22 Sandra A. Davis's Supplemental Report; AA Sponsor Ned Spells, Jr.

ODC 30 Pa. Code Chapter 47 State Board of Social Workers...and Professional Counselor Standards

Witness Testimony

-- Sheila A. Bluemling, ODC Auditor/Investigator

III. PROPOSED FINDINGS OF FACT

1. Respondent, Ralph David Karsh, was born in 1958. (ODC 1 Bates 2, ODC 2 Bates 21)

2. Respondent was admitted to the bar of the Courts of the Commonwealth of Pennsylvania on November 26, 1990, and his attorney registration mailing address is 5516 Baywood Street, Unit 3, Pittsburgh, PA 15206. (ODC 1 Bates 2, ODC 2 Bates 21)

3. On May 5, 2016, after a jury trial, Eric Taylor was convicted of, among other offenses, Third Degree Murder of Unborn Child and Criminal Attempt-Murder of the First Degree filed in the Allegheny County Court of Common Pleas at CP-02-CR-0010212-2014. (ODC 1 Bates 2, ODC 2 Bates 21)

4. On August 3, 2016, Mr. Taylor was sentenced to a period of incarceration of 180 to 360 months on the charge of Third Degree Murder of Unborn Child, and 90 to 180 months on the charge of Criminal Attempt-Murder of the First Degree, to run consecutively. (ODC 1 Bates 3, ODC 2 Bates 21)

5. On August 12, 2016, Rachael C. Arianna Santoriella filed Post-Sentence Motions on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 21)

6. By Order of Court dated November 29, 2016, Mr. Taylor's Post-Sentence Motions were denied. (ODC 1 Bates 3, ODC 2 Bates 21)

7. Ms. Santoriella was counsel for Mr. Taylor in his appeals to both the Superior Court and the Pennsylvania Supreme Court. (ODC 1 Bates 3, ODC 2 Bates 22)

8. On December 9, 2016, a notice of appeal was filed on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 22)

9. On September 25, 2018, the Superior Court affirmed the Judgment of Sentence. (ODC 1 Bates 3, ODC 2 Bates 22)

10. On October 25, 2018, a Petition for Allowance of Appeal was filed on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 22)

11. On March 22, 2019, Mr. Taylor's Petition for Allowance of Appeal was denied by the Supreme Court of Pennsylvania. (ODC 1 Bates 4, ODC 2 Bates 22)

12. Respondent's fee letter dated December 30, 2019, sent to Mr. Taylor's aunt, Michelle Kenney, stated:

(a) Respondent was willing to represent Mr. Taylor in the matter by investigating and filing a Post-Conviction Relief Act (PCRA) Petition and a "first appeal to Superior Court, to be negotiated depending on circumstances."

(b) His fee for the representation was \$15,000.

(c) "Any additional cases will involve additional fees to be negotiated."

(d) "All fees are non-refundable" and "All fees are considered earned when paid."

(e) "In addition to [Respondent's] fee [Ms. Kenney] was responsible for costs which may include private investigators, ... experts associated with trial, ... and any other necessary expenses."

(f) If Mr. Taylor failed to fulfill his responsibilities under the terms of the fee agreement, Respondent would withdraw from

representing Mr. Taylor, but it contained no provision for Respondent's obligations to Mr. Taylor or Ms. Kenney if Respondent failed to discharge his duties under the agreement.

(ODC 1 Bates 4, ODC 2 Bates 22, ODC 13 Bates 143-144; NT 20-21)

13. On or about January 27, 2020, Ms. Kenney met Respondent at a bank in Squirrel Hill and provided Respondent with PNC Bank Cashier's Check No. 7899112, drawn in the amount of \$25,000, made payable to Respondent, and dated January 27, 2020. (ODC 1 Bates 5, ODC 2 Bates 22, ODC 14 Bates 145-147)

14. At the time Respondent received the \$25,000 check, he did not discuss with Ms. Kenney how he would handle the \$10,000 he had received in excess of the \$15,000 fee he had requested in his written communication about the fee, except for reasonable expenses as they might be incurred. (ODC 1 Bates 5, ODC 2 Bates 22; NT 43)

15. On January 27, 2020, Respondent negotiated the \$25,000 check by depositing \$17,500 of the proceeds of the check to his PNC Bank IOLTA ending 7692 and receiving \$7,500 in cash. (ODC 1 Bates 5, ODC 2 Bates 22, ODC 14 Bates 145-147, ODC 15 Bates 150-156)

16. Given the terms of the basis or rate of Respondent's fee, as set forth in his letter to Ms. Kenney dated December 30, 2019, and the provisions of Rule of Professional Conduct 1.15, Respondent was required to split the deposit of the \$25,000 check as follows: \$15,000 to Respondent or his business/operating account and \$10,000 to Respondent's IOLTA or other trust account, to be drawn upon only if there arose "[a]ny additional cases [that] would involve additional fees to be negotiated" or if "costs ... and any other necessary expenses" of the PCRA representation were incurred. (ODC 1 Bates 4, ODC 2 Bates 22, ODC 13 Bates 143-144)

17. Respondent had no specific discussion or other communication with Ms. Kenney about the \$10,000 excess portion of the proceeds of the \$25,000 check. (ODC 1 Bates 5, ODC 2 Bates 22-23; NT 43)

18. Respondent did not obtain the informed consent of Mr. Taylor or Ms. Kenney, confirmed in writing, to expend the \$10,000 excess portion of the \$25,000 check except for, and only in the amount of, reasonable expenses incurred. (ODC 13 Bates 143-144; NT 43-44, 45-46, 58, 67)

19. The following are the dates, transaction amounts, and balances for Respondent's PNC Bank IOLTA activity:

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>	<u>Account Balance</u>	<u>Entrustment Balance</u>	<u>Amt. Out of Trust</u>
01/27/20	deposit	\$17,500.00	\$17,648.06	\$10,000	\$ 0.00
01/28/20	withdrawal	6,000.00	11,648.06	10,000	.00
02/03/20	withdrawal	2,500.00	9,148.06	10,000	-851.94
02/26/20	withdrawal	3,000.00	6,148.06	10,000	-3,851.94
03/12/20	withdrawal	3,000.00	3,148.06	10,000	-6,851.94
03/25/20	withdrawal	2,000.00	1,148.06	10,000	-8,851.94
04/16/20	check	800.00	348.06	10,000	-9,651.94
06/08/20	check	300.00	48.06	10,000	-9,951.94

(ODC 1 Bates 6-7, ODC 2 Bates 23; NT 23-25)

20. Respondent's disbursements of the \$10,000 in excess of the \$15,000 fee he had requested and received from Ms. Kenney on Mr. Taylor's behalf constituted a misappropriation of funds with which he was entrusted by Ms. Kenney. (ODC 13 Bates 143-144; NT 68)

21. Respondent failed to keep Mr. Taylor reasonably informed about the status of his legal matter and failed to timely inform either Mr. Taylor or Ms. Kenney that Respondent would not be filing a PCRA Petition on behalf

of Mr. Taylor. (ODC 1 Bates 7, ODC 2 Bates 23-24; NT 19, 63-64, 68, 74-75)

22. Respondent failed to substantially perform the services on behalf of Mr. Taylor for which Respondent had been retained by Ms. Kenney. (NT 18-19, 68)

23. On several occasions between January 2020 and late April 2021, Ms. Kenney inquired of Respondent, both by phone calls and text messages, about the status of Mr. Taylor's PCRA. (ODC 1 Bates 7, ODC 2 Bates 24; NT 63-64)

24. During Respondent's initial communications he told Ms. Kenney that he was working on Mr. Taylor's case and asked her to be patient. (ODC 1 Bates 7, ODC 2 Bates 24)

25. In or about April 2021, Ms. Kenney first became aware that Respondent had not filed a PCRA Petition on behalf of Mr. Taylor. (NT 17-18, 63-64, 74-75)

26. Thereafter, text messages were exchanged between Respondent and Ms. Kenney about the services Respondent had agreed to perform for

Mr. Taylor and the \$25,000 she had advanced for fees and expenses that she had provided to Respondent. (ODC 1 Bates 8, ODC 2 Bates 24)

27. Among the text messages they exchanged on April 4, 2021, were the following:

(a) Ms. Kenney demanded that Respondent refund the \$25,000 that he had received from her because Respondent had not performed the services for which he had been retained.

(b) Ms. Kenney stated that if Respondent did not refund the \$25,000 she would file a disciplinary complaint against him or sue him.

(c) Respondent requested that Ms. Kenney give him until the end of that week and asked her to speak with him by phone.

(ODC 1 Bates 8, ODC 2 Bates 24)

28. Among the text messages they exchanged on April 19, 2021, were the following:

(a) Respondent stated he was trying to come up with a “viable plan” as his “money situation is not good.”

(b) Respondent stated he knew that Ms. Kenney had “blasted” him on social media but he wanted her to remember that if “[he] can't work [he] can't pay.”

(c) Respondent “[would] not claim to be right” if Ms. Kenney sued him.

(d) Respondent would “try to get [Ms. Kenney] paid but ... [i]t will take forever for that case to settle if you sue and I do have some time in.”

(e) Ms. Kenney stated she had not hired successor counsel for Mr. Taylor because she “can't afford one and [Respondent] missed the deadline dates so [Mr. Taylor] is screwed.”

(ODC 1 Bates 8-9, ODC 2 Bates 25)

29. Among others, between April 26, 2021 and April 30, 2021, the following text messages were exchanged:

(a) Respondent requested that Ms. Kenney answer his phone call.

(b) Respondent wanted her permission to pursue the Court's permission to file a PCRA Petition *nunc pro tunc*.

(c) Ms. Kenney replied "Send me my [money] otherwise I will have to sue you."

(d) Respondent asked Ms. Kenney to give him until Wednesday, April 28, 2021, because he was waiting to hear "to see if I can do this."

(e) Ms. Kenney gave Respondent until Friday, April 30, 2021, to refund her money or she would "take legal action the following Monday, which is May 3, 2021."

(ODC 1 Bates 9-10, ODC 2 Bates 25)

30. On May 4, 2021:

(a) Ms. Kenney texted Respondent because she had not heard back from him nor received a refund of her \$25,000.

(b) Respondent replied to Ms. Kenney by stating "I have \$2,000. I can send [it] to you right now and am meeting with family to try and get more this weekend."

(c) Ms. Kenney agreed to accept the \$2,000 but asked Respondent when he planned on repaying the full amount that he owed to her.

(d) Respondent replied "I will pay your money back but if I can't work I can't pay. I couldn't find a way to win this case."

(ODC 1 Bates 10-11, ODC 2 Bates 25)

31. Respondent began refunding money to Ms. Kenney via Cash App on May, 5, 2021. (ODC 1 Bates 11, ODC 2 Bates 25)

32. By text message to Respondent dated May 6, 2021, Ms. Kenney confirmed her receipt of the first \$2,000 refund and requested that he send her every document in his possession regarding Mr. Taylor's case. (ODC 1 Bates 11, ODC 2 Bates 25)

33. Initially, Respondent did not comply with Ms. Kenney's requests for the contents of Mr. Taylor's client file and a full refund of the \$25,000. (ODC 1 Bates 11, ODC 2 Bates 25)

34. Respondent's reimbursement payments were made to Ms. Kenney on the following dates and in the following amounts:

<u>DATE</u>	<u>AMOUNT</u>
05/05/21	\$2,000
06/03/21	2,000
07/01/21	2,000
07/29/21	2,000
08/31/21	2,000
10/04/21	1,000
10/06/21	1,000
11/01/21	1,000
11/03/21	500
11/06/21	500
12/03/21	1,000
12/13/21	500
12/17/21	500
01/04/22	1,000
01/25/22	1,000
02/01/22	1,000
02/23/22	1,000
03/17/22	500

04/04/22	1,000
06/10/22	1,000
<u>06/10/22</u>	<u>2,500</u>
TOTAL	\$25,000

(ODC 1 Bates 11-12, ODC 2 Bates 25; NT 7-8)

35. Respondent eventually returned the contents of Mr. Taylor's case file to Ms. Kenney, on behalf of Mr. Taylor. (ODC 1 Bates 13, ODC 2 Bates 25)

36. On Respondent's 2020-2021 PA Attorney's Annual Fee Form, he did not list a business/operating account maintained or used by him in his law practice, as required by Rule 219(d)(1)(v), Pa.R.D.E. (ODC 1 Bates 13, ODC 2 Bates 25)

37. On August 8, 2022, Mr. Taylor filed a *pro se* "Motion for Post Conviction Collateral Relief" against Respondent in the Allegheny County Court of Common Pleas, alleging, *inter alia*, failure of Respondent to file his appearance on behalf of Mr. Taylor, ineffective assistance of counsel to collaterally attack his conviction, and abandonment of Mr. Taylor by Respondent in his earlier PCRA matter. (ODC 19 Bates 239, 257-270; NT 68-75)

38. On December 15, 2022, Mr. Taylor filed a *pro se* “Motion to Reinstate Appellate Rights” in the Allegheny Court of Common Pleas alleging, *inter alia*, Respondent’s abandonment of Mr. Taylor, failure to collaterally attack his criminal conviction, and his failure to enter an appearance on Mr. Taylor’s behalf. (ODC 19 Bates 271-272)

39. On February 2, 2023, the Court of Common Pleas filed a Notice of Intention to Dismiss Mr. Taylor’s PCRA Petition and Motion to reinstate Appellate Rights within 30 days, pursuant to Pennsylvania Rule of Criminal Procedure 907. (ODC 19 Bates 276)

40. Mr. Taylor filed his *pro se* Petitioner’s Response to the court’s Notice of Intention to Dismiss. (ODC 19 Bates 277-281)

41. By Order of Court dated March 16, 2023, the court dismissed Mr. Taylor’s *pro se* PCRA. (ODC 19 Bates 282)

42. On April 12, 2023, Mr. Taylor filed a Notice of Appeal to the Superior Court from the Order dated March 16, 2023. (ODC 19 Bates 284)

43. By Order of the Superior Court dated May 22, 2023:

[T]he PCRA court is DIRECTED to clarify in writing ... whether this is Appellant’s first PCRA petition for trial court

docket CP-02-CR-0010212-2014. The PCRA court is further DIRECTED to clarify in writing...whether counsel was appointed to represent Appellant for this PCRA petition.... If Appellant was entitled to counsel, the trial court shall appoint counsel to represent Appellant and inform [the Superior] Court forthwith so that the March 16, 2023 order can be vacated and the matter remanded for further proceedings.... (Emphasis original)

(ODC 19 Bates 287-288)

44. By letter dated July 19, 2023, the Court of Common Pleas informed the Superior Court that, upon review of the record, the Court determined that the filing was Mr. Taylor's first PCRA Petition and, therefore, he was entitled to court-appointed counsel. The Court further stated that by its Order of the same date, the Court appointed Thomas N. Farrell to represent Mr. Taylor in his PCRA matter. (ODC 19 Bates 289-290)

IV. PROPOSED CONCLUSIONS OF LAW

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of a lawyer admitted to the practice of law by the Supreme Court of Pennsylvania or a lawyer who provides or offers to provide any legal services in this Commonwealth, and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules. (ODC 1 Bates 1-2, ODC 2 Bates 21)

2. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. (ODC 1 Bates 2, ODC 2 Bates 21)

3. Respondent violated Rule of Professional Conduct 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

4. Respondent violated Rule of Professional Conduct 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

5. Respondent violated Rule of Professional Conduct 1.5(a) - A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

6. Respondent violated Rule of Professional Conduct 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.

7. Respondent violated Rule of Professional Conduct 1.15(e) - 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.

8. Respondent violated Rule of Professional Conduct 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.

9. Respondent violated Rule of Professional Conduct 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

10. Respondent violated Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

11. Respondent violated Rule of Professional Conduct 8.4(d) – It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.

12. Respondent violated Pennsylvania Rule of Disciplinary Enforcement 219(d)(1)(v) - On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures:

(1) The form shall set forth: Every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.

13. Respondent failed to establish by clear and convincing evidence that his substance abuse and/or psychiatric diagnoses caused his

misconduct, pursuant to *Office of Disciplinary Counsel v. Seymour H. Braun*,
553 A.2d 894 (Pa. 1989).

V. ARGUMENT

A. RULE VIOLATIONS

Pennsylvania disciplinary law has established that “evidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof of such conduct is clear and satisfactory.” *Office of Disciplinary Counsel v. Lawrence J. DiAngelus*, 907 A.2d 452 (Pa. 2006); *Office of Disciplinary Counsel v. John J. Keller*, 506 A.2d 872 (Pa. 1986). The Office of Disciplinary Counsel is not required to establish the misconduct through direct evidence. “The ethical violations may be proven solely by circumstantial evidence.” *Keller* at 875; *Office of Disciplinary Counsel v. John T. Grigsby, III*, 425 A.2d 730 (Pa. 1981).

There is little dispute about the relevant facts of Respondent’s conduct after Michelle Kenney hired him to represent her nephew, Eric Taylor, in the matter of “a PCRA Petition and a first appeal to Superior Court....” (ODC 13 Bates 143-144) Respondent’s fee letter dated December 30, 2019, addressed to Ms. Kenney, provided that he agreed to represent Mr. Taylor for a “non-refundable” fee of \$15,000.

On January 27, 2020, Ms. Kenney handed Respondent a cashier's check drawn in the amount of \$25,000. At the time Respondent received the \$25,000 check, he did not discuss with Ms. Kenney how she wanted him to handle the additional \$10,000. (ODC 1 Bates 5, ODC 2 Bates 22; NT 43, 46, 67) Respondent did not obtain the informed consent of Mr. Taylor or Ms. Kenney, confirmed in writing, to expend any portion of the excess \$10,000 from the \$25,000 check, except for reimbursement of reasonable expenses that had been incurred in the PCRA matter, as set forth in the fee letter. (ODC 13 Bates 143-144; NT 43-44, 45-46, 58, 67) Consequently, the \$10,000 portion of the \$25,000 check proceeds constituted an entrustment of \$10,000 from Ms. Kenney to Respondent on behalf of Mr. Taylor.

Despite Respondent's fee letter including the provision "Any additional cases will involve additional fees to be negotiated," there were no other cases for which he was retained by Mr. Taylor or Ms. Kenney. Given the terms of Respondent's fee letter, Rule of Professional Conduct 1.15 required Respondent to split the negotiation of the \$25,000 check as follows: \$15,000 to Respondent or a deposit to his business/operating account; and \$10,000 to Respondent's IOLTA or other trust account, to be drawn upon only as reasonable expenses of the PCRA matter were incurred. Instead,

Respondent presented the \$25,000 check for a deposit of \$17,500 in his IOLTA as well as his receipt of \$7,500 in cash. (ODC 14 Bates 145-147, ODC 15 Bates 150-154) Although Respondent's fee letter to Ms. Kenney provided that she, on behalf of Mr. Taylor, was "responsible for costs which may include private investigators, reproduction of documents, costs for experts associated with trial or preparation for trial and any other necessary expenses..." the only applicable costs incurred by Respondent resulted from his lone visit to Mr. Taylor at his place of incarceration on February 7, 2020. The consultation lasted approximately three hours, which was Respondent's only communication with his client. (ODC 1 Bates 7, ODC 2 Bates 23-24; NT 19, 35, 58) Nevertheless, Respondent did not account for the expense of that cost -- either to Ms. Kenney before she filed a complaint with the Office of Disciplinary Counsel, or to ODC during its investigation of the complaint, or to the Hearing Committee on the record of this disciplinary matter -- so that Respondent could receive credit for that particular disbursement from the \$10,000 entrustment of funds that he should have maintained in his IOLTA.

Respondent's improper dissipation of the \$10,000 entrustment began almost immediately after he deposited the \$10,000 in his IOLTA on February

3, 2020, and the misappropriation ended on June 8, 2020, leaving only \$48.06 of the entrustment in his IOLTA. (ODC 1 Bates 6-7, ODC 2 Bates 23, ODC 15 Bates 157-176)

Rule of Professional Conduct (RPC) 1.15(b) requires Respondent to “hold all Rule 1.15 Funds ... separate from the lawyer’s own property. Such property shall be identified and appropriately safeguarded.” Between February 3 and June 8, 2020, Respondent disbursed nearly all of the \$10,000 entrustment that was in his IOLTA. Because he did so for a purpose other than paying the expenses of his representation of Mr. Taylor, Respondent violated RPC 1.15(b). RPC 1.15(i) states:

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.

Since there is no proof that Respondent obtained such informed consent in writing, he violated RPC 1.15(i) by misappropriating the entrusted funds. Respondent’s offhand reference that the additional \$10,000 “seemed like a bonus” (NT 44, 67) is not only self-serving in the context of a disciplinary proceeding involving charges that he commingled and misappropriated entrusted funds, but also lacks any semblance of credibility in the absence

of an iota of corroboration for his statement. Respondent's misappropriation of the entrusted funds violated RPC 8.4(c) in that he thereby engaged in "conduct involving dishonesty, fraud, deceit or misrepresentation."

In January 2020 Respondent received a \$15,000 "non-refundable" fee to represent Mr. Taylor in his PCRA matter. He acted quickly to consult with his client but did so only once, on February 7, 2020. He later claimed that he had reviewed the trial court record but he did nothing for Mr. Taylor thereafter. Respondent could not justify keeping the \$15,000 fee under the "non-refundable ... earned when paid" terms of his fee agreement because he failed to file either a PCRA petition on behalf of Mr. Taylor or an *Anders* brief.¹ (NT 53-54, 68) Respondent did not inform Mr. Taylor nor Ms. Kenney about his failure to take action in Mr. Taylor's PCRA matter. In April 2021 Ms. Kenney found out that Respondent had not acted timely on behalf of Mr. Taylor and confronted Respondent about it. Based upon these facts, Respondent violated RPC 1.5(a) for collecting a clearly excessive fee, RPC 1.3 for failing to act with reasonable diligence and promptness in

¹ More appropriately, in Mr. Taylor's case, a *Turner / Finley* letter would be filed to inform the trial court and Mr. Taylor that Respondent was seeking to withdraw from the representation if he had not found a good-faith basis for Mr. Taylor to collaterally attack his criminal conviction.

representing Mr. Taylor, and RPC 1.4(a)(3) for failing to keep Mr. Taylor reasonably informed about the status of his PCRA matter.

Respondent's failure to act on behalf of Mr. Taylor or, in the alternative, advise Mr. Taylor and the Court of Common Pleas about why he could not pursue PCRA relief for Mr. Taylor, also violated RPC 8.4(d). Respondent's inaction resulted in Mr. Taylor filing a *pro se* "Motion for Post Conviction Collateral Relief" on August 8, 2022, alleging that Respondent had been ineffective for not filing a PCRA petition for him, the dismissal of which Mr. Taylor appealed to Superior Court, which directed the lower court to review the matter. The PCRA court consequently had to appoint new PCRA counsel for Mr. Taylor. Respondent's failure to act engendered unnecessary litigation and, therefore, was prejudicial to the administration of justice. (ODC 19 Bates 239-290)

When, in April 2021, Ms. Kenney confronted Respondent with the knowledge that she was aware he had not filed a PCRA petition on behalf of Mr. Taylor, she and Respondent exchanged text messages about the services he had agreed to perform in exchange for the \$25,000 she had advanced to Respondent. On April 4, 2021, Ms. Kenney demanded that Respondent refund the \$25,000 and stated that if he did not do so, she would

file a disciplinary complaint against him or sue him. Respondent requested that Ms. Kenney give him until the end of the week and then speak with him by phone about the matter. (ODC 1 Bates 8, ODC 2 Bates 24) On April 19, 2021, they exchanged several text messages. Respondent stated that he was trying to come up with a “viable plan” because “his money situation is not good,” and if he could not work due to losing his law license he could not pay her back. Ms. Kenney replied that she could not hire successor counsel for Mr. Taylor because she could not afford another lawyer. (ODC 1 Bates 8-9, ODC 2 Bates 25) Between April 26 and April 30, 2021, Ms. Kenney repeated her request for Respondent to return her money and, at his request, she gave him until May 3, 2021 to do so. (ODC 1 Bates 9-10, ODC 2 Bates 25) On May 4, 2021, Ms. Kenney texted Respondent again because he had not returned her money. Respondent told her he had \$2,000 to send to her and was trying to get more money from his family. She agreed to accept \$2,000 but wanted to know when he would repay the full amount. Respondent promised to repay Ms. Kenney but repeated “If I can’t work I can’t pay,” (ODC 1 Bates 11, ODC 2 Bates 25) in an effort to dissuade her from filing a complaint against him with ODC.

On May 5, 2021, nearly one year after he had drained all but the last of the \$10,000 entrustment from his IOLTA in addition to the \$15,000 fee, Respondent *began* refunding money to Ms. Kenney via Cash App but did not complete the \$25,000 reimbursement until a year later, on June 10, 2022. (ODC 1 Bates 11-12, ODC 2 Bates 25; NT 7-8) Respondent, therefore, failed to promptly deliver to Ms. Kenney Rule 1.15 Funds that she was entitled to receive, in violation of RPC 1.15(e). Similarly, upon termination of his representation of Mr. Taylor, Respondent failed to take reasonable steps to refund the \$10,000 additional payment, in violation of RPC 1.16(d).

B. APPROPRIATE LEVEL OF DISCIPLINE

1. Respondent Did Not Satisfy His Burden of Proof for Mitigation Pursuant to *ODC v. Braun*

Respondent seeks to have the Hearing Committee accord him mitigation, pursuant to *Office of Disciplinary Counsel v. Seymour H. Braun*, 553 A.2d 894 (Pa. 1989), in its consideration of the level of discipline it might recommend. In *Braun* the Supreme Court of Pennsylvania held that:

In determining the appropriate sanction which should be imposed, the primary question is whether the record supports the finding that [Braun]'s psychiatric condition ... was a factor in causing his admitted egregious misconduct. [T]he Board found that [Braun]'s psychiatric disability mitigated his misconduct, as it was a factor in inducing the misconduct. *Braun* 895.

To that end, Respondent testified on his own behalf and presented the testimony of several witnesses. Those witnesses included his former therapist, Sandra A. Davis, Ph.D., a licensed clinical social worker, with whom he treated from July 2021 until September 2022 (NT 90, 94), and a forensic psychiatrist, Bruce Wright, M.D., with whom Respondent consulted once in April and once in May 2023, for a total of less than two and a half hours. (DEPO 24-25)

Respondent testified to his history of sobriety and relapse as follows: after starting to use and abuse both recreational and prescribed medications in his early teens, his first date of sobriety was in 1986. From that time onward, including the point at which he began his practice of law in 1990 (NT 38-39), he was sober for 25 years until he relapsed in 2011. (NT 50-51) He attributed his relapse to the occurrence – purportedly in short order – of the death of his sister, the dissolution of his marriage, the dissolution of his law partnership, and the loss of hundreds of thousands of dollars to an unscrupulous home remodeler. At that time, he resumed social drinking and drug use. After “four or five years it got really bad.... I was doing some opioids, I smoked marijuana.” (NT 50-51) Respondent, nevertheless, continued regularly practicing law after his relapse. He testified on cross-

examination that, for 11-12 years prior to and including his retention by Ms. Kenney, he fully practiced law during his relapse, advising clients, negotiating plea agreements, and handling criminal trials (NT 66-67):

I was what one would call a functional addict, alcoholic. I was able to take a drink or a small dose of a drug during the business day, calm my nerves, stave off any illness, and then I would use at night. (NT 64-65)

Respondent reported to Dr. Davis that his next date of sobriety was in May 2021. (NT 91)

Although Dr. Davis failed to produce, in response to ODC's several requests from Respondent's counsel (NT 106-107), any of her diagnostic and treatment notes upon which she based her opinion letter (ODC 27 Bates 438-440), she testified that Respondent approached her about therapy because of the disciplinary complaint Ms. Kenney had filed against him. (NT 91) Dr. Davis diagnosed him with the "co-morbidities" of depression and alcohol and substance dependence. His course of treatment with Dr. Davis consisted of weekly individual therapy sessions for about one year, before tapering to twice monthly, in addition to his attendance at Alcoholics Anonymous and Narcotics Anonymous meetings. Respondent stopped treating with Dr. Davis at the end of September 2022. (NT 94) Dr. Davis authored a very brief second report (ODC 29 Bates 449), with a final

diagnosis of Respondent's co-morbidities "in remission." She concluded that those diagnoses, combined with "isolation during COVID, stress of a divorce and family pressures ... [and] due to his hectic schedule he had stopped attending meetings ... led to his relapse." (NT 96) She further testified when asked if his relapse caused him to engage in misconduct:

Absolutely, because when you're drug addicted or alcohol dependent, your judgment gets greatly impaired, forcing you to make decisions that are inappropriate, or as we say in the field, poor judgment, and I think that's exactly what happened. (NT 96)

When analyzing whether Respondent can meet his burden of proof for *Braun* mitigation, Dr. Davis's conclusion as to causation fails to establish a chronological nexus. Respondent's relapse began in 2011 and his misconduct did not occur until 2020. The causal factor analysis set forth in *Braun* cannot bridge the chasm between Respondent's relapse into substance abuse, and what is apparently his only instance of misconduct. It strains credulity to conclude that there is clear and convincing evidence of a causal nexus between the two. Respondent testified that during his 11-year relapse he was regularly representing clients in criminal trials, negotiating their plea agreements and advising them. (NT 66-67)

On cross-examination, Dr. Davis acknowledged that she had included in her opinion letter a reference to stressors that had triggered Respondent's "faulty judgment" and his "reduced self-control," including financial stressors. (NT 103) That, in addition to the other evidence of record involving Respondent's financial problems (ODC 21 Bates 315-316, ODC 22 Bates 317-396, ODC 23 Bates 397-413), provides the more likely explanation for Respondent's misconduct. In that regard, Respondent testified as follows: "I am relatively broke." (NT 56), "I have about ten grand in assets" (NT 180), "I got all those [Federal] taxes filed up to 2015, [that] was the initial problem, and there was a payment plan set up, which I followed for a number of years and then I couldn't" (NT 183-184)

It is also worth noting that Dr. Davis had recommended that Respondent continue therapy, but Respondent chose to end their sessions. (NT 104) She had also recommended that Respondent begin a course of anti-depressant medication, but he chose not to seek out a medical doctor to prescribe such medication. That decision was based on the advice of his most recent AA sponsor, who is a lawyer and not a medical doctor. (ODC 29 Bates 447-449, ODC 31 Bates 505-509; NT 105, 149-150; DEPO 39-40)

Dr. Wright testified that “it’s hard to say any one thing caused” Respondent’s relapse. He listed several factors that Respondent told him had contributed to his relapse, but Dr. Wright did not attempt to corroborate Respondent’s account. (DEPO 27-28) Dr. Wright did not read Dr. Davis’s records or reports. (DEPO 28-29) Relying solely on Respondent’s self-reports (DEPO 28), Dr. Wright diagnosed Respondent with opioid use disorder, unspecified stimulant-related disorder, unspecified alcohol-related disorder, and unspecified anxiety disorder. (DEPO 21) Dr. Wright also testified that he had formed the opinion that:

[T]here was a direct causal relationship between the allegations of misconduct and [Respondent’s] psychiatric disorders, including a substance use disorder and an affective, or mood, disorder.

[B]y definition, substance abuse disorders...become a disorder when they affect an individual’s ability to function on a daily basis...[and Respondent’s]...substance use...affected his capacity to function. (DEPO 21-22)

However, Dr. Wright acknowledged that he did not know *when* Respondent’s misconduct had occurred, nor the duration of his misconduct. (DEPO 20-21, 25-26) In light of the lack of a chronological nexus between Respondent’s lengthy relapse that began in 2011 and his misconduct that commenced in 2020, Dr. Wright’s conclusion that Respondent did not have the ability to function on a daily basis is unsupported by the weight of the evidence in this

case. Having made that leap, Dr. Wright went on to testify that Respondent would not have engaged in the misconduct “but for” the substance abuse disorder. (DEPO 23) In so doing, Dr. Wright chose not to consider that Respondent’s considerable financial problems could be the primary -- or even a contributing -- causal factor for his misconduct. Most alarming is that Dr. Wright refused to consider that factor when asked about the issue on cross-examination. He instead opined that Respondent’s financial problems had been caused by his substance abuse (DEPO 15, 30-35), an assertion that Respondent had not testified to.

In *Office of Disciplinary Counsel v. Peter James Quigley*, No. 30 DB 2015, No. 2262 Disciplinary Docket No. 3 (2017), the Pennsylvania Supreme Court considered Quigley’s offer of evidence to establish *Braun* mitigation where Quigley had withdrawn from his IOLTA arbitrary amounts of entrusted settlement funds belonging to five clients over a span of three years. The Hearing Committee found that Quigley had violated RPCs 1.3, 1.15(b), 1.15(e), and 8.4(c) and recommended disbarment. Quigley filed exceptions to the Disciplinary Board, which concurred with the Hearing Committee’s findings and recommendation. Quigley then took exception to the Board’s recommendation to address the Hearing Committee’s assessment of

Quigley's evidence, which is similar in some respects to Respondent's *Braun* proffer and other evidence of record in the instant matter.

Quigley testified to his lengthy legal career, his community involvement, and the later financial strain that he experienced, including the filing of IRS tax liens. Quigley began taking money from his IOLTA "based on need" and acknowledged such misappropriation was improper. *Id.* at 6. That misconduct he attributed to a combination of personal circumstances including the dissolution of a long-term romantic relationship, the loss of his longtime bookkeeper, and a decline in his business. *Id.*

Quigley elicited testimony from a licensed psychologist who held a Ph.D. and who had a personal and professional relationship with Quigley. The doctor met with Quigley for two and half hours, prepared a report of his conclusions based upon that meeting, and gave the opinion that if Quigley had been seen by a psychologist when the misconduct had occurred, he would have been diagnosed with "depression and 'some post-traumatic stress.'" *Id.* at 7 When asked what effect those diagnoses would have on Quigley's mismanagement of client funds, the doctor opined:

Well, when a person suffers from either or both of those, there's no real ability to concentrate on anything. All you do is fly as best you can maybe on one wing and that's what Mr. Quigley was doing.... And that I think is why he made whatever errors he allegedly made. *Id.*

On cross-examination, the doctor added that there was a causal factor between the events of Quigley's personal life and his handling of client funds. *Id.* at 8.

The Hearing Committee in *Quigley* concluded that the serious nature of Quigley's mishandling of client funds over a number of years, and the associated misrepresentations he made warranted a recommendation for disbarment. The Hearing Committee rejected Quigley's personal difficulties as mitigating factors for his misconduct because his bookkeeper's resignation and his loss of business occurred *after* he began commingling some of his clients' funds with his own money. The Committee also concluded that the doctor did not demonstrate a causal connection between the psychological diagnoses he attributed to Quigley and his misconduct. *Id.* at 9 The doctor's testimony was "uncertain and therefore insufficient to demonstrate the requisite causal link" for *Braun* mitigation. The Committee noted that the doctor "failed to explain how he made the diagnosis or precisely how he determined that [Quigley's] misconduct related to the diagnosis." The Committee also found that Quigley knowingly commingled his funds with those of his clients in order to shield his money from the IRS, rather than because of his other personal circumstances. The Committee

also rejected Quigley's argument for mitigation via the restitution he had made to four of the five clients who were affected because those funds were returned after initiation of the disciplinary proceedings. Finally, the Committee concluded that Quigley had engaged in a pattern of intentional misconduct as to those multiple clients. *Id.* at 10. The Supreme Court in *Quigley* agreed with the findings of the Hearing Committee and the Board concerning Quigley's failure to "demonstrate a causal connection [pursuant to *Braun*] between his misconduct and a psychiatric disorder sufficient to constitute a lesser disciplinary sanction" *Id.* at 13-14

Although there are distinctions between the facts of *Quigley* and the instant matter – the number of clients involved, the total amount of client funds, the timeframe during which the misconduct took place -- those differences are factors to be considered in determining the appropriate level of discipline to be recommended in any disciplinary case, rather than the analysis of whether either Quigley or Respondent clearly and convincingly proved a causal connection pursuant to *Braun*. As to the analysis of whether Respondent clearly and convincingly proved a causal connection pursuant to *Braun*, the conclusion reached in *Quigley* is both on point and compelling in the instant matter. As was the case with the expert witness in *Quigley*,

neither Dr. Davis, nor Dr. Wright, demonstrated a clear causal connection between Respondent's psychiatric disorders (including a substance use disorder and an affective, or mood, disorder) and Respondent's misconduct. Dr. Davis's conclusion as to causation failed to overcome a timing problem in that Respondent's relapse began in 2011, but his misconduct did not occur until 2020. Dr. Wright's diagnoses and conclusions were based solely on Respondent's own recitation of his history and the severity of his substance abuse. (DEPO 28) Dr. Wright did not attempt to corroborate Respondent's account, he did not know *when* Respondent's misconduct had occurred (DEPO 20-21), nor the duration of his misconduct, which would make the doctor's testimony insufficient to establish a causal connection between the relapse and the misconduct. (DEPO 26)

2. Other Proposed Mitigation Offered by Respondent is Not Compelling

As was the case in *Quigley, supra*, Respondent's repayment of both the \$10,000 entrustment and his \$15,000 fee to Ms. Kenney did not begin until after she had threatened and filed a complaint with the Office of Disciplinary Counsel. Although Respondent eventually repaid the funds to Ms. Kenney, he is not entitled to the same mitigation that can be attributed to a lawyer who, of their own accord, makes timely restitution.

Respondent's testimony, while showing some signs of remorse, also included references that indicate a clear lack of recognition of his misconduct: Having acknowledged that he did not clarify with Ms. Kenney why she had included the additional \$10,000 along with his requested fee before disbursing those funds to himself (ODC 1 Bates 5, ODC 2 Bates 22; NT 43), Respondent testified "I don't want to quote her, but ... honestly, it seemed like a bonus...." (NT 43-44). He also testified:

I knew that I could show at [\$]350, [\$]400 an hour, that I had done at least [\$]8,000 to [\$]10,000 worth of work, maybe I could have shown the whole [\$]15[,000], I don't know, I didn't bother to look at it, but I felt ... I should pay [Ms. Kenney] back everything. (NT 188)

Respondent attempted to establish that the COVID-19 pandemic somehow factored into his failure to diligently represent Mr. Taylor. He testified "[W]hen the pandemic hit, I went into a total isolation funk.... [Q]uite honestly, I was pretty convinced that was the end of the world as we know it...." (NT 51) Respondent also offered the testimony of a lawyer acquaintance, Giuseppe Roselli, who stated that he had "a number of concerns" about Respondent, and that he was "lonely" and "struggling ... overwhelmingly" during the pandemic. (NT 80) By contrast, Mr. Roselli testified that he did *not* have concerns about Respondent's sobriety during

that period. (NT 81) On cross-examination, Mr. Roselli was asked whether Respondent was negatively affected by the pandemic in early 2020, before any cases had been reported in the United States, and he answered that he was referring to “The period of time that we were sitting home.” (NT 85) What is colloquially known as the COVID-19 “lockdown” did not go into effect in Allegheny County until after Respondent had all but emptied his IOLTA of entrusted funds. (ODC 1 Bates 8, ODC 2 Bates 23)

Respondent testified that he had discussions with Ms. Kenney about representing Mr. Taylor in the months leading up to the issuance of his December 2019 fee letter. (NT 40) When he agreed to accept his “non-refundable” fee from Ms. Kenney on January 27, 2020, he also knew that, at that time, he had approximately three months within which to file a PCRA petition for Mr. Taylor or withdraw from the representation. (NT 41-42) Respondent visited Mr. Taylor on February 7, 2020, and began reviewing the trial record before quickly concluding that Mr. Taylor had no basis to collaterally attack his conviction with a PCRA petition. (NT 47) The COVID-19 pandemic and how it might have affected Respondent simply does not fit into the timeline within which the bulk of his misconduct occurred, since he

had dissipated most the \$10,000 entrustment before the effects of the pandemic had reached the Allegheny County Court of Common Pleas.

3. Precedent Involving Similar Misconduct

Office of Disciplinary Counsel v. Peter Jude Caroff, No. 42 DB 2019 (2020), involved Caroff's violations of RPCs 1.3, 1.4(a)(3) and (4), 1.5(b), 1.15(b), 1.15(c), and 8.4(c) in a single client matter. *Id.* at 13-14 His lack of diligence, lack of communication, failure to keep client funds (\$760) separate from his own, failure to maintain such funds in a trust account, failure to return an unearned fee, and making misrepresentations about the status of the client's arbitration matter warranted the imposition of a suspension of one year and one day due to prior discipline of an Informal Admonition and his failure to demonstrate remorse for his conduct. *Id.* at 18 Caroff testified about his mental health issues that he said prevented him from properly representing his clients, but he was unable establish mitigation pursuant to *Braun. Id.* at 17

In *Office of Disciplinary Counsel v. Darren Keith Parr*, No. 193 DB 2019 (2020), the Supreme Court approved a petition for discipline on consent for a suspension of one year and one day. Parr misappropriated entrusted funds via his misuse of his IOLTA. In mitigation of his misconduct, Parr

showed that he had resolved problems with administering his IOLTA and he exhibited remorse for his misconduct.

In *Office of Disciplinary Counsel v. William R. Balaban*, No. 23 DB 2019 (2019), Balaban was suspended for one year and one day pursuant to a petition for discipline on consent. Balaban, a 40-year practitioner who had an extensive record of charitable affiliations, and no history of discipline, misappropriated \$75,000 that had been entrusted to him. In addition to cooperating with ODC he expressed remorse for his misconduct.

Office of Disciplinary Counsel v. Perry Lynn Flaugh, No. 112 DB 2015 (2016), dealt with Flaugh's violations of RPCs 1.3, 1.4(a), 1.15(b), 1.15(e), 1.16(d), 8.4(c), and 8.4(d) for his failure to hold entrusted funds (\$1,000) separate from his own property, failure to promptly deliver funds to a client or third person, failure to protect a client's interests upon termination of the representation, conduct involving dishonesty, fraud, deceit or misrepresentation, conduct prejudicial to the administration of justice, lack of diligence, and failure to communicate with his clients. The Hearing Committee and the Board found several aggravating circumstances including a misrepresentation about Flaugh's accounting for handling entrusted funds by writing a check to himself instead of his client and then

converting the proceeds of the check to his own use. He failed to reimburse a client for the full amount to which the client was entitled, failed to show recognition of, and remorse for his misconduct. The Board found that, despite the absence of prior discipline, there was no evidence of mitigation. The Board recommended and the Supreme Court imposed a suspension of one year and one day.

Respondent herein has no record of discipline having been imposed during his 32-year legal career. He belatedly made restitution to Ms. Kenney of the \$15,000 fee that she had agreed to pay him but which had been mostly unearned due to his lack of diligence. Respondent also misappropriated the \$10,000 additional amount that Ms. Kenney had included with her payment of Respondent's "non-refundable" fee. Respondent both failed to hold that \$10,000 portion separate from his own property and failed to timely reimburse it to Ms. Kenney. Despite his expression of remorse for his misconduct, the record also shows that Respondent does not fully recognize that his actions constitute violations of the Rules of Professional Conduct. Respondent failed to establish any additional mitigating factors that might tend to support a lesser sanction than he could otherwise receive.

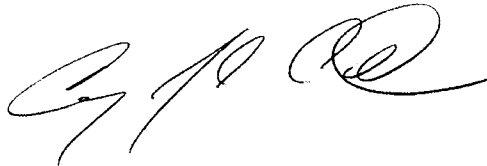
VI. CONCLUSION

It is the position of the Office of Disciplinary Counsel that the Hearing Committee should recommend Respondent be suspended from the courts of the Commonwealth of Pennsylvania for a period of one year and one day for his violations of Rules of Professional Conduct 1.3, 1.4(a)(3), 1.15(b), 1.15(e), 1.15(i), 1.16(d), 8.4(c), 8.4(d) and Rule of Disciplinary Enforcement 219(d)(1)(v).

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL



By _____
Cory John Cirelli
Disciplinary Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

: No. 13 DB 2023

v. :

RALPH DAVID KARSH, :

: Attorney Registration No. 58782

Respondent : (Allegheny County)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa.C.S. §89.22 (relating to service by a participant).

By Email, as follows:

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11/9/23

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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: Cory John Cirelli

Signature: 

Name: Cory John Cirelli

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