

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2910 Disc. Dkt.
Petitioner : No. 3 - Supreme Court
:
:
v. : No. 114 DB 2022
:
:
: Atty. Reg. No. 44449
:
SCOTT ERIC DIAMOND, :
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, Scott Eric Diamond, with professional misconduct in violation of the Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.") 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 Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Scott Eric Diamond, was born in 1960, was admitted to practice law in the Commonwealth on November 13, 1985, lists a public access address at 1835 Market Street, Suite 2950, Philadelphia, Pennsylvania 19103, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By Order dated October 28, 2022, the Supreme Court of Pennsylvania placed Respondent on temporary suspension pursuant to Pa.R.D.E. 214(d)(2).

CHARGE

4. On June 23, 2022, the United States Attorney's Office filed a two-count Information in the United States District Court for the Eastern District of Pennsylvania, said case captioned **United States of America vs. Scott E. Diamond and Jesse M. Cohen**, Docket No. 2:22-cr-00206-AB ("the federal criminal case").

5. The Information alleged the following:

- a. beginning in or about June 2018, and continuing until at least in or about July 2020, Respondent, while a partner at an unidentified law firm (the law firm was Sacks Weston Diamond, LLC, hereinafter "the SWD firm"), and Jesse M. Cohen, an associate at

- the SWD firm, engaged in fraud by agreeing to steal the legal fees generated from subrogation and personal injury matters that they were handling on behalf of firm clients;
- b. to ensure the secrecy of their fraudulent scheme, Respondent and Mr. Cohen selected matters that they were handling that were not being monitored by the other partners of the SWD firm;
 - c. Respondent deleted files and other records of the SWD firm and made false entries in the SWD firm's computer system to conceal the fraudulent scheme;
 - d. Respondent and Mr. Cohen notified the insurance company or other payor responsible for issuing a settlement or legal fee payment to make the check payable to "Diamond Law, P.C." ("the Diamond firm," an entity that Respondent created before he became a partner at the SWD firm), rather than the SWD firm, and to mail the check to a post office box that belonged to Respondent;

- e. on those occasions when Respondent and Mr. Cohen were unable to arrange for checks to be mailed to Respondent's post office box, Respondent intercepted the envelopes containing the checks before the SWD firm's bookkeeper retrieved the mail;
- f. after Respondent obtained the checks, he deposited the checks into a business account or IOLTA account, both of which he maintained for the Diamond firm;
- g. Respondent shared the wrongfully diverted legal fees equally with Mr. Cohen by issuing checks to Mr. Cohen;
- h. for some matters, Respondent and Mr. Cohen failed to reimburse the SWD firm for costs incurred, which served not only to conceal their fraudulent conduct from the SWD firm, but also generated additional proceeds they stole from the SWD firm;
- i. apart from Respondent's fraudulent scheme with Mr. Cohen, Respondent separately handled several personal injury matters for SWD clients and diverted the legal fees and

expense reimbursements generated in those matters to himself;

- j. for some personal injury matters, Respondent diverted funds from clients by charging as firm costs Respondent's personal expenses, which purported costs were paid from a client's settlement proceeds; and
- k. in total, Respondent and Mr. Cohen defrauded the SWD firm of \$319,931 in legal fees and costs.

6. On July 21, 2022, Respondent appeared before the Honorable Anita B. Brody, and pled guilty to one count of Mail Fraud, in violation of 18 U.S.C. § 1341, and one count of Wire Fraud, in violation of 18 U.S.C. § 1343.

7. The crime of Mail Fraud is punishable by a term of imprisonment of twenty years, a three-year period of supervised release, a \$250,000 fine, and a \$100 special assessment.

8. The crime of Wire Fraud is punishable by a term of imprisonment of twenty years, a three-year period of supervised release, a \$250,000 fine, and a \$100 special assessment.

9. On March 22, 2023, Respondent appeared before Judge Brody for sentencing.

10. Judge Brody sentenced Respondent to:

- a. imprisonment of six months on each count, to run concurrently;
- b. three years of supervised release on each count, to run concurrently, upon Respondent's release from prison;
- c. a special condition of six months of home confinement while Respondent is on supervised release, to commence after Respondent is released from prison;
- d. payment of restitution in the amount of \$319,931.13 to the SWD firm; and
- e. a special assessment of \$200.

11. Each of the crimes of which Respondent pled guilty constitutes a "crime" as defined in Pa.R.D.E. 214(h).

12. Respondent's conviction constitutes a per se basis for discipline under Pa.R.D.E. 203(b)(1) and Pa.R.D.E. 214(e).

13. In accordance with Pa.R.D.E. 214(a), Respondent reported his conviction to ODC.

14. The specific client matters that were the subject of Respondent's and Mr. Cohen's criminal and unethical conduct are described below.

15. At all times relevant hereto, Respondent maintained an IOLTA account that was for the Diamond firm with BB&T, titled "DIAMOND LAW PC IOLTA ACCT" ("the Diamond IOLTA account").

16. At all times relevant hereto, Respondent maintained an operating account that was for the Diamond firm with BB&T, titled "DIAMOND LAW PC" ("the Diamond operating account").

**MISAPPROPRIATION OF FEES BELONGING TO THE
SWD FIRM BY RESPONDENT AND JESSE M. COHEN**

THE FISHEL MATTER

17. In July 2015, Eastern Alliance Insurance Group ("Eastern Alliance") retained the SWD firm to handle a subrogation investigation and recovery related to Mr. Michael Fishel's workers' compensation claim.

18. Mr. Fishel retained the SWD firm to represent him for any personal injury claims he had arising from the accident.

19. In March 2016, the SWD firm referred Mr. Fishel's personal injury matter to George M. Kontos, Esquire.

20. Mr. Kontos agreed to pay to the SWD firm a referral fee of one-third of any fee that Mr. Kontos received in his representation of Mr. Fishel.

21. On June 13, 2018, Mr. Kontos issued a \$1,500 check, made payable to the SWD firm, representing the referral fee that Mr. Kontos owed to the SWD firm.

22. Respondent took possession of the \$1,500 referral fee check and deposited that check into the Diamond operating account.

23. On June 19, 2018, at 10:55 a.m., the following entry was made in the SWD firm's case management system for Mr. Fishel's matter: "case [sic] closed no recovery per local counsel."

24. This entry was false.

25. Respondent made this false entry.

26. Respondent gave Mr. Cohen \$750 from the \$1,500 referral fee check.

27. Respondent retained \$750 from the \$1,500 referral fee check.

28. Respondent used \$750 in fees belonging to the SWD firm.

29. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE BULMER MATTER

30. In April 2016, Erie Insurance retained the SWD firm to handle a subrogation investigation and recovery related to Mr. Jeremy Bulmer's workers' compensation claim.

31. Mr. Bulmer retained the SWD firm to represent him for any personal injury claims he had arising from the accident.

32. The SWD firm retained the law firm of Keis George, LLP ("the Keis firm"), to act as local counsel because Mr. Bulmer's personal injury claims arose in Indiana.

33. A lawsuit was commenced on behalf of Mr. Bulmer in Wayne County, Indiana.

34. On February 27, 2019, a mediation was held concerning Mr. Bulmer's personal injury lawsuit.

a. Respondent and Mr. Cohen participated in the mediation.

35. During the mediation, the parties reached an agreement to settle Mr. Bulmer's personal injury lawsuit for the sum of \$175,000.

36. In order to issue the settlement check, Jon K. Stowell, Esquire, an attorney at the Keis firm, required a Form W-9 from a law firm.

37. On March 4, 2019, Mr. Cohen sent an email to Respondent requesting that Respondent call him.

38. Respondent called Mr. Cohen and Mr. Cohen told Respondent there was a need to supply a Form W-9 to Mr. Stowell.

39. Following Respondent's telephone conversation with Mr. Cohen, Respondent sent a March 4, 2019 email to Mr. Cohen that attached a Form W-9.

40. The Form W-9 that Respondent sent to Mr. Cohen was signed by Respondent, and contained information related to the Diamond firm.

41. By email dated March 4, 2019, sent by Mr. Cohen to Mr. Stowell's legal assistant, Ms. Christine Ray, Mr. Cohen, *inter alia*:

- a. attached a copy of the Form W-9 that Respondent sent to Mr. Cohen; and
- b. requested that the settlement check and the release be mailed directly to Mr. Cohen at Mr. Cohen's home address, 1830 Lombard Street, Unit 409, Philadelphia, PA 19146.

42. By email dated March 11, 2019, sent by Mr. Cohen to Mr. Stowell and Ms. Ray, Mr. Cohen, *inter alia*:

- a. inquired about the status of the release and the settlement check; and
- b. requested confirmation that the settlement check and the release would be mailed to him at 1830 Lombard Street, Unit 409, Philadelphia, PA 19146.

43. By email dated March 12, 2019, sent by Mr. Stowell to Mr. Cohen, Mr. Stowell advised that he had the settlement check, which would be mailed to Mr. Cohen either that day or the following day.

44. By email dated March 12, 2019, Mr. Cohen forwarded Mr. Stowell's email to Respondent.

45. Mr. Cohen received from Ms. Ray a \$175,000 settlement check made payable to "Jeremy Bulmer and Diamond Law PC," a Settlement and Release Agreement ("the Release"), a Stipulation of Dismissal, and an Order of Dismissal.

46. On or before March 19, 2019, Mr. Cohen presented to Respondent the \$175,000 settlement check.

47. On March 19, 2019, Respondent went to a branch of BB&T and had an employee with that financial institution deposit the \$175,000 settlement check into the Diamond IOLTA account.

48. On March 20, 2019, Respondent gave Mr. Cohen check number 1019, in the amount of \$13,500, made payable to him, drawn on the Diamond IOLTA account.

49. On March 20, 2019, Respondent issued to himself a check in the amount of \$13,500, drawn on the Diamond IOLTA account

50. Respondent used \$13,500 in fees belonging to the SWD firm.

51. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE COOPER MATTER

52. In February 2016, Erie Insurance retained the SWD firm to monitor Erie Insurance's lien interest in a personal injury case that was filed in New York on behalf of Mr. David Cooper.

53. Erie Insurance agreed to pay a 10% contingent fee of the amount of the recovered lien.

54. On March 10, 2016, Respondent made the following entry in the SWD firm's case management system:

I spoke to Erie Adjuster on this case and told her that the attonrey [sic] in NY has filed the case and confirmed that he included the lien in the complaing [sic]. Adjuster does not need our involvement since under NY Law-the Plaintiff attorney has

obligation to pay Erie if they [sic] are included in the complaint. I am closing the file. Erie will hire us if they feel that it is warranted [sic].

55. Based on this entry the matter involving Erie Insurance and Mr. Cooper was marked closed.

56. The March 10, 2016 entry was false because Respondent knew that Mr. Cohen was monitoring the New York litigation on behalf of Erie.

57. In September 2019, Mr. Cooper's personal injury lawsuit settled for \$400,000.

58. On September 17, 2019, Mr. Cohen sent an email to Jack Murrett, Esquire, counsel for Mr. Cooper, in which Mr. Cohen, *inter alia*:

- a. provided a calculation of the amount of Erie Insurance's lien under New York law, which he determined was \$63,500.18;
- b. requested that the check for the lien be made payable to "Diamond Law, PC"; and
- c. directed that the check be mailed to Diamond Law, P.C., P.O. Box 30268, Philadelphia, PA 19103 ("the post office box address").

59. The post office box address that Mr. Cohen provided to Mr. Murrett was maintained by Respondent for the Diamond firm.

60. Under cover of letter dated September 18, 2019, sent by Mr. Murrett to the post office box address, he enclosed a check made payable to Diamond Law, PC, in the amount of \$63,500.18.

61. Respondent received the \$63,500.18 check.

62. By email dated September 23, 2019, sent by Mr. Cohen to Ms. Verna (a/k/a Beth) Shultz, a Senior Subrogation Specialist with Erie Insurance, Mr. Cohen, *inter alia*:

- a. attached a copy of the \$63,500.18 check, which he advised was being mailed to "Warrendale today"; and
- b. attached a Form W-9 for the Diamond firm and an invoice that billed Erie Insurance \$6,350, which invoice directed that the check was to be made payable to Diamond Law, PC, and mailed to the post office box address.

63. Sometime thereafter, Respondent received a check from Erie Insurance that was made payable to the Diamond firm in the amount of \$6,350.

64. In or about October 2019, Respondent gave Mr. Cohen \$3,175, representing one-half of the \$6,350 attorney fee payment that Respondent received from Erie Insurance.

65. In or about October 2019, Respondent retained for himself \$3,175 from the \$6,350 fee payment that Respondent received from Erie Insurance.

66. Respondent used \$3,175 in fees belonging to the SWD firm.

67. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE SHULTZ MATTER

68. In or about April 2017, Respondent and Mr. Cohen agreed to represent Ms. Verna (a/k/a Beth) Shultz in a personal injury matter.

69. In April 2017 Mr. Cohen requested, in his capacity as an attorney at the SWD firm, an expert report from ARCCA concerning a glass candle warmer that Ms. Shultz had purchased from Walmart, which caused an injury to Ms. Shultz when it broke in her hand.

70. In June 2017, ARCCA submitted to Mr. Cohen an expert report and an invoice charging the SWD firm \$1,143.10 for services rendered.

71. Mr. Cohen received the expert report and ARCAA's invoice.

72. On August 21, 2017, a file was opened in the SWD firm's case management system that related to Ms. Shultz's personal injury matter.

73. On April 6, 2018, Respondent and Mr. Cohen commenced a lawsuit on behalf of Ms. Shultz in the Court of Common Pleas for York County by filing a Complaint.

a. The filing fee for the Complaint was \$227.25, which expense was paid by the SWD firm.

74. The York County lawsuit filed on behalf of Ms. Shultz was eventually transferred to the United States District Court for the Middle District of Pennsylvania.

75. In November 2018, Respondent and Mr. Cohen settled Ms. Shultz's personal injury lawsuit for the sum of \$15,000.

76. On November 6, 2018, Respondent made the following entry in the SWD firm's case management system: "lost [sic] at arbitration. No appeal."

77. Based on this entry the matter involving Ms. Shultz was marked closed.

78. The November 6, 2018 entry was false because Ms. Shultz's personal injury case had settled for \$15,000.

79. On November 28, 2018, Ms. Shultz and her husband executed a Release and Indemnification Agreement, in which they agreed to settle Ms. Shultz's personal injury claims for the sum of \$15,000.

80. By email dated December 18, 2018, sent to Mr. Cohen by Mary E. Kauffman, Legal Assistant to Joseph F. Murphy, Esquire, counsel for the defendants in Ms. Shultz's personal injury lawsuit, Ms. Kauffman, *inter alia*:

- a. advised that the settlement check would be mailed that day to Mr. Cohen's office; and
- b. requested confirmation that the office address was 1845 Walnut Street, Suite 1600, Philadelphia PA 19103.

81. By email dated December 18, 2018, sent by Mr. Cohen to Ms. Kauffman, Mr. Cohen, *inter alia*:

- a. stated that the settlement check was to be sent to Mr. Cohen's home office; and
- b. provided his home address, 1830 Lombard Street, Apt. 409, Philadelphia, PA 19146.

82. Under cover of letter dated December 18, 2018, sent by Mr. Murphy to Mr. Cohen's home address, Mr. Murphy enclosed a \$15,000 settlement check made payable to the SWD firm and Ms. Shultz and her husband.

83. Mr. Cohen received the \$15,000 check.

84. On or before December 27, 2018, Mr. Cohen gave Respondent the \$15,000 check.

85. On December 27, 2018, Respondent deposited the \$15,000 settlement check into the Diamond IOLTA account.

86. On December 28, 2018, Respondent transferred \$3,000 from the Diamond IOLTA account to the Diamond operating account.

87. The \$3,000 transfer represented the contingent fee that Respondent and Mr. Cohen charged Ms. Shultz for legal services rendered in her personal injury case.

88. In or around December 28, 2018, Respondent gave Mr. Cohen \$1,500 from funds drawn on the Diamond operating account, representing one-half of the \$3,000 contingent fee payment that Respondent and Mr. Cohen charged Ms. Shultz.

89. In or about December 28, 2018, Respondent retained for himself \$1,500 from the \$3,000 contingent fee payment.

90. Respondent used \$1,500 in fees belonging to the SWD firm.

91. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE AZAM MATTER

92. In April 2016, Eastern Alliance retained the SWD firm to handle a subrogation investigation and recovery related to Mr. Muhammad Azam's workers' compensation claim.

93. Mr. Azam retained the SWD firm to represent him for any personal injury claims he had arising from the accident.

94. In SWD's case management system, Mr. Cohen was listed as the assigned attorney.

95. In January 2018, Mr. Cohen commenced a lawsuit on behalf of Mr. Azam in the Court of Common Pleas for Lancaster County by filing a Complaint.

96. Sometime prior to September 6, 2019, Mr. Cohen settled Mr. Azam's personal injury lawsuit for the sum of \$30,000.

97. In connection with Mr. Azam's matter, the SWD firm had incurred expenses totaling \$7,983.09.

98. On September 6, 2019, Mr. Cohen filed a Praecipe to Settle, Satisfy and Discontinue in Mr. Azam's personal injury lawsuit.

99. On September 6, 2019, Respondent made the following entry in the SWD firm's case management system, which Respondent attributed to Mr. Cohen:

status [sic] to eastern-case gong
[sic] back to Eastern as we don't rep
them anymore. DONT [sic] WORK ON
THIS!! PER SED A GENERAL LETTER
CONTROLLING THIS CASE IS IN THE FILES
WHERE WE WERE TERMINATED." (bold in
original)

100. Based on this entry the matter involving Mr. Azam was marked closed.

101. The September 6, 2019 entry was false because Mr. Azam's personal injury case had settled for \$30,000.

102. Respondent deleted files related to Mr. Azam's matter from the SWD firm's case management system.

103. In September 2019, Respondent received two checks in settlement of Mr. Azam's personal injury lawsuit that totaled \$30,000.

104. In September 2019, Respondent deposited the two settlement checks into the Diamond IOLTA account.

105. On October 15, 2019, Respondent issued to Mr. Azam a \$10,000 check drawn on the Diamond IOLTA account.

106. On October 15, 2019, Respondent issued to Eastern Alliance a \$3,082.28 check drawn on the Diamond IOLTA account, in payment of its lien.

107. \$15,000 from the \$30,000 in settlement proceeds were paid to a Mr. Ronald Schlesinger.

108. After Respondent issued payments to Mr. Azam, Eastern Alliance, and Mr. Schlesinger, there remained from the \$30,000 in settlement proceeds \$1,917.72 that had yet to be distributed.

109. Respondent and Mr. Cohen treated the \$1,917.72 as an attorney fee.

110. On October 15, 2019, Respondent issued to Mr. Cohen a \$958.86 check drawn on the Diamond IOLTA account, check number 1039.

111. On October 15, 2019, Respondent issued to himself a \$958.86 check drawn on the Diamond IOLTA account, check number 1040.

112. Respondent used \$958.86 in fees belonging to the SWD firm.

113. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE COLLINS MATTER

114. In January 2017, Erie Insurance retained the SWD firm to monitor Erie Insurance's workers' compensation lien interest in a personal injury case involving Mr. Daniel Collins.

115. Erie Insurance agreed to pay a 10% contingent fee of the amount of the recovered lien.

116. Mr. Cohen was assigned to monitor Erie Insurance's workers' compensation lien interest.

117. Mr. Cohen referred Mr. Collins to Craig Murphey, Esquire, with the law firm of Purchase, George & Murphey to represent Mr. Collins for any personal injury claims he had arising from the accident.

118. Sometime over the summer of 2019, Mr. Murphey settled Mr. Collins' personal injury case.

119. On June 24, 2019, Mr. Murphey issued a referral check to the SWD firm in the amount of \$1,389.

120. By email dated July 8, 2019, sent to Mr. Cohen by Ms. Karen E. Brosius, bookkeeper for the SWD firm, Ms. Brosius, *inter alia*, inquired if she should close the file.

121. In a reply email to Ms. Brosius, Mr. Cohen answered in the affirmative.

122. By email dated February 10, 2020, sent by Ms. Shultz to Mr. Cohen, Ms. Shultz, *inter alia*:

- a. advised that Erie Insurance had received \$23,890.03 in satisfaction of the workers' compensation lien related to Mr. Collins; and
- b. requested that Mr. Cohen send her an invoice.

123. By email dated February 10, 2020, sent by Mr. Cohen to Ms. Shultz, Mr. Cohen, *inter alia*:

- a. attached an invoice;
- b. stated that "on this file it is a Diamond Law, PC invoice"; and
- c. stated that the invoice has "the P.O. Box where we process payments."

124. The invoice billed Erie Insurance \$2,389 and directed that the check was to be made payable to Diamond Law, PC, and mailed to the post office box address.

125. On or before February 19, 2020, Respondent received a \$2,389 check from Erie Insurance that was made payable to the Diamond firm.

126. On February 19, 2020, Respondent issued to Mr. Cohen a check in the amount of \$1,194, representing Mr. Cohen's share of the \$2,389 fee payment that Respondent received from Erie Insurance.

127. Respondent retained for himself \$1,195 from the \$2,389 fee payment that Respondent received from Erie Insurance.

128. Respondent used \$1,195 in fees belonging to the SWD firm.

129. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE MITCHELL MATTER

130. In April 2019, Erie Insurance retained the SWD firm to handle a property subrogation investigation and recovery related to a fire that damaged a house belonging to its insured, Ms. Joyce Mitchell.

131. An initial investigation indicated that a service call to Ms. Mitchell's house by a technician employed by Windstream Communications, Inc. ("Windstream"), may have been the cause of the house fire.

132. Sedgwick Claims Management Services, Inc. ("Sedgwick") managed claims for Ace American Insurance Company on behalf of Windstream.

133. Sometime in January 2020, Mr. Cohen agreed to settle Erie Insurance's property subrogation claim against Windstream for the sum of \$86,601.19.

134. On January 14, 2020, Respondent made the following entry in the SWD firm's case management system, which Respondent attributed to Mr. Cohen:

received call from adjuster. The defendant is also insured by Erie and they want the case closed. There [sic] is reimbursement check coming in to Erie for there [sic] costs from the non liable co-defendant which is theirs to keep in the event that it is sent here.

135. The January 14, 2020 entry was false.

136. Respondent deleted files related to the property subrogation matter involving Erie Insurance from the SWD firm's case management system.

137. On January 20, 2020, a representative from Erie Insurance executed a Property Damage Release on behalf of Erie Insurance.

138. By email dated January 20, 2020, sent by Mr. Cohen to Ms. Barbara Kelley, a Claims Examiner with Sedgwick, Mr. Cohen, *inter alia*:

- a. attached the executed Property Damage Release;
- b. requested that the check be made payable to "'Diamond Law attorneys for Erie Ins.'"; and
- c. directed that the check be mailed to the post office box address.

139. In February 2020, Sedgwick mailed an \$86,601.19 check to the post office box address.

140. Respondent received this check.

141. Respondent received \$24,248.33 as attorney fees from the \$86,601.19 check that Sedgwick issued in settlement of Erie Insurance's property subrogation claim.

142. On March 1, 2020, Respondent issued to Mr. Cohen check number 2127, in the amount of \$12,124, made payable to

Mr. Cohen, drawn on the Diamond operating account.

- a. This check represented Mr. Cohen's share of the attorney fees for the property subrogation matter involving Erie Insurance.

143. Respondent retained as his share of the attorney fees for the property subrogation matter involving Erie Insurance the sum of \$12,124.33.

144. Respondent used \$12,124.33 in fees belonging to the SWD firm.

145. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE ALCORN MATTER

146. In January 2018, Erie Insurance retained the SWD firm to handle a property subrogation investigation and recovery related to a fire that damaged a house belonging to its insureds, Mr. Andrew Alcorn and Ms. Jennifer Alcorn

147. An investigation indicated that MCP Chimney Sweeps, Inc. ("MCP Chimney"), may have been responsible for the house fire.

148. Westfield Insurance was handling the claim on behalf of MCP Chimney.

149. On September 9, 2019, Respondent made the following entry in the SWD firm's case management system, which entry

bore Mr. Cohen's initials under the "Staff" field:

expert [sic] could not find cause and origin. File to be clsoed [sic] with permission of carier [sic].

150. The September 9, 2019 entry was false in that Erie Insurance's property subrogation claim was still being pursued by Respondent and Mr. Cohen.

151. Respondent was responsible for that entry.

152. Based on the September 9, 2019 entry, the property subrogation matter involving Erie Insurance was marked closed.

153. Respondent deleted files related to the property subrogation matter involving Erie Insurance from the SWD firm's case management system.

154. In or around January or February 2020, Mr. Cohen settled Erie Insurance's property subrogation claim against MCP Chimney for the sum of \$300,000.

155. On February 10, 2020, Westfield Insurance mailed to the SWD firm a \$300,000 check made payable to Erie Insurance and a "Release from Property Damage Only."

156. Mr. Cohen took possession of the \$300,000 check and the "Release from Property Damage Only" when it was received at the SWD firm.

157. The \$300,000 check was transmitted to Erie Insurance.

158. Sometime after February 10, 2020, a representative from Erie Insurance executed the "Release from Property Damage Only" on behalf of Erie Insurance, thus memorializing the settlement of Erie Insurance's property subrogation claim against MCP Chimney for the sum of \$300,000.

159. By email dated February 19, 2020, sent by Mr. Cohen to Ms. Pamela L. Andrew, Senior Subrogation Specialist with Erie Insurance, Mr. Cohen, *inter alia*:

- a. attached an invoice that charged an attorney fee of \$84,000;
- b. stated that payment was to be made to Diamond Law, PC; and
- c. requested that the payment be mailed to the post office box address.

160. By email dated February 21, 2020, sent by Ms. Andrew to Mr. Cohen, Ms. Andrew, *inter alia*, stated that she was mailing the \$84,000 check that day.

161. Later that morning Mr. Cohen sent an email to Respondent in which Mr. Cohen forwarded the emails exchanged between Mr. Cohen and Ms. Andrew.

162. Respondent received the \$84,000 check from Erie Insurance.

163. Respondent gave Mr. Cohen \$42,000, representing one-half of the \$84,000 attorney fee payment for the property subrogation matter involving Erie Insurance.

164. Respondent retained \$42,000 as his share of the attorney fee for the property subrogation matter involving Erie Insurance.

165. Respondent used \$42,000 in fees belonging to the SWD firm.

166. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE WAGNER MATTER

167. In May 2018, Donegal retained the SWD firm to handle a subrogation investigation and recovery related to Ms. Michelle Ann Wagner's workers' compensation claim.

168. Ms. Wagner retained the SWD firm to represent her for any personal injury claims she had arising from the accident.

169. In SWD's case management system, Mr. Cohen was listed as the assigned attorney.

170. In March 2019, Respondent and Mr. Cohen commenced a lawsuit on behalf of Ms. Wagner and her husband in the

United States District Court for the Eastern District of Pennsylvania by filing a Complaint.

171. In April 2020, Respondent and Mr. Cohen settled Ms. Wagner's personal injury lawsuit for the sum of \$200,000.

172. In connection with Ms. Wagner's matter, the SWD firm had incurred expenses totaling \$2,490.

173. Sometime after a settlement was reached in Ms. Wagner's personal injury lawsuit, Respondent made the following entry in the SWD firm's case management system, which was backdated to October 20, 2018: "Michell [sic] does not want to sign up with us."

174. This entry was false because Ms. Wagner retained the SWD firm and her personal injury lawsuit had settled for \$200,000.

175. Respondent deleted files related to Ms. Wagner's matter from the SWD firm's case management system.

176. By email dated May 5, 2020, sent by Mr. Cohen to defense counsel, Mr. Cohen, *inter alia*:

- a. attached notarized signature pages from the settlement agreement that had been executed by Ms. Wagner and Mr. Wagner, as well as a copy of the Form W-9 for the Diamond firm;

- b. requested that the settlement check and the release be made payable to "'Diamond Law PC, attorneys for Michelle and Jason Wagner'"; and
- c. directed that the settlement check be mailed to the post office box address.

177. Mr. Cohen prepared a Distribution Sheet showing how the settlement proceeds were to be apportioned.

178. The Distribution Sheet that was signed by Ms. Wagner showed that the settlement proceeds were apportioned as follows:

- a. \$5,000 for costs;
- b. \$65,000 for Donegal's workers' compensation lien;
- c. \$65,000 for attorney fees; and
- d. \$65,000 to Ms. Wagner.

179. On or before May 13, 2020, Respondent received the \$200,000 settlement check that was issued by Continental Casualty Company.

180. On May 13, 2020, Respondent deposited the \$200,000 settlement check into the Diamond IOLTA account.

181. On May 13, 2020, Respondent issued two \$65,000 checks drawn on the Diamond IOLTA account; one \$65,000 check

was made payable to Ms. Wagner and the other \$65,000 check was made payable to Donegal.

182. Respondent and Mr. Cohen shared equally in the \$65,000 attorney fee.

183. Mr. Cohen received from Respondent a total of \$32,500.

184. Respondent received \$32,500.

185. Respondent used \$32,500 in fees belonging to the SWD firm.

186. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE FRITZ MATTER

187. In October 2018, Erie Insurance retained the SWD firm to handle a property subrogation investigation and recovery related to a fire that damaged a house belonging to its insured, Mr. Donald Fritz.

188. An investigation indicated that the house fire may have occurred due to a defective chimney liner installed by Sootslayer Chimney Sweeps ("Sootslayer").

189. EMC Insurance was handling the claim on behalf of its insured, Sootslayer.

190. In October 2019, Erie Insurance's subrogation claim was filed with Arbitration Forums, Inc. ("Arbitration

Forums"), an organization designed to arbitrate subrogation claims.

191. By letter dated October 22, 2019, sent by Ms. Shultz to Arbitration Forums, Ms. Shultz advised Arbitration Forums that Mr. Cohen was authorized to handle the subrogation claim on behalf of Erie Insurance.

192. In or about May 1, 2020, the Arbitration Forums' panel awarded Erie Insurance \$93,049.19.

193. By email dated May 1, 2020, sent by Ms. Lisa M. Lilley, a former paralegal with the SWD firm, to Ms. Shultz and copied to Mr. Cohen, Ms. Lilley advised that in the subrogation matter involving Mr. Fritz the Arbitration Forums' panel awarded Erie Insurance \$93,049.19.

194. By email dated May 1, 2020, sent by Mr. Cohen to Respondent, Mr. Cohen, *inter alia*:

- a. forwarded the email he had received from Ms. Lilley; and
- b. stated to Respondent "[h]ere is the case we just talked about ... \$\$."

195. EMC Insurance mailed the \$93,049.19 check, made payable to Erie Insurance, to the SWD firm.

196. Sometime before May 7, 2020, Respondent retrieved the \$93,049.10 check before anyone else at the SWD firm could

access the check and note its receipt in the SWD firm's case management system.

197. Mr. Cohen prepared an invoice dated May 7, 2020, to the attention of Ms. Shultz, which requested that Erie Insurance issue a check in the amount of \$28,845.24 for the attorney fee owed in the Fritz matter, made payable to "Diamond Law PC," to be mailed to the post office box address.

198. By email dated May 7, 2020, sent by Mr. Cohen to Respondent, Mr. Cohen, *inter alia*:

- a. attached the invoice that he had prepared;
- b. instructed Respondent to mail to Ms. Shultz the \$93,049.10 check, the attached invoice, and a Form W-9; and
- c. provided the work address for Ms. Shultz.

199. Respondent did as Mr. Cohen instructed.

200. On or before May 27, 2020, Respondent received a \$28,845.24 check from Erie Insurance.

201. Respondent deposited this check into the Diamond operating account.

202. On May 27, 2020, Respondent issued to Mr. Cohen check number 2131, in the amount of \$14,422.62, made payable to Mr. Cohen, drawn on the Diamond operating account.

a. This check represented Mr. Cohen's share of the attorney fee for the property subrogation matter involving Erie Insurance.

203. Respondent retained as his share of the attorney fees for the property subrogation matter involving Erie Insurance the sum of \$14,422.62.

204. Respondent used \$14,422.62 in fees belonging to the SWD firm.

205. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE KHOROSEV MATTER

206. The SWD firm was retained to handle a property subrogation investigation and recovery related to Mr. Randy Khorosev.

207. Respondent and/or Mr. Cohen referred the property subrogation matter to other counsel.

208. Sometime in 2020, referral counsel obtained a recovery in the property subrogation matter involving Mr. Khorosev.

209. In or about June 2020, Respondent received a \$3,100 check from referral counsel, which check represented payment of a referral fee.

210. Respondent deposited the referral fee check into the Diamond IOLTA account.

211. On June 24, 2020, Respondent issued to Mr. Cohen check number 1052, in the amount of \$1,550, made payable to Mr. Cohen, drawn on the Diamond IOLTA account.

- a. This check represented Ms. Cohen's share of the referral fee.
- b. Respondent hand-wrote on the "FOR" section of the check "Khoroslev [sic] fee."

212. Respondent retained as his share of the referral fee \$1,550.

213. Respondent used \$1,550 in fees belonging to the SWD firm.

214. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE PAPPAS MATTER

215. In November 2017, Donegal retained the SWD firm to handle a subrogation investigation and recovery related to Mr. John Pappas' workers' compensation claim.

216. Mr. Pappas retained the law firm of Yost & Baill, LLP ("the Yost firm"), to represent him for any personal injury claims he had arising from the accident.

217. In SWD's case management system, Mr. Cohen was listed as the assigned attorney.

218. In April 2018, the SWD firm and the Yost firm entered into an agreement to jointly represent Mr. Pappas, which agreement set out, *inter alia*, a division of the attorney fees if there was an award or settlement.

219. In 2018, the Yost firm and the SWD firm commenced a lawsuit on behalf of Mr. Pappas in the District Court of Iowa in and for Woodbury County.

220. Sometime in March 2020, Mr. Pappas' personal injury lawsuit settled for the sum of \$75,000.

221. In connection with Mr. Pappas' matter the SWD firm had incurred expenses totaling \$38.52.

222. By email dated April 13, 2020, sent by Mr. Cohen to Michelle Hurley, Esquire, an attorney at the Yost firm, Mr. Cohen, *inter alia*:

- a. provided a breakdown of how much Donegal (\$28,050) and Mr. Pappas (\$25,000) were entitled to receive from the \$75,000 in settlement proceeds;
- b. advised that Ms. Hurley had to deduct the expenses that the Yost firm had incurred and that the amount that remained represented the

attorney fee, which was to be apportioned 40% to the Yost firm and 60% "to us"; and

- c. requested that the check be made payable to "Diamond Law" and be mailed to the post office box address.

223. By email dated April 21, 2020, sent by Mr. Cohen to Ms. Hurley and copied to Respondent, Mr. Cohen, *inter alia*:

- a. advised Ms. Hurley that he was moving and would be "on the road for about a week";
- b. requested that she email both him and Respondent when the fee check was mailed; and
- c. reiterated his request that the check be mailed to the post office box address.

224. By email dated April 29, 2020, sent by Ms. Hurley to Mr. Cohen and copied to Respondent, Ms. Hurley, *inter alia*, advised Mr. Cohen that the checks should be mailed the next day.

225. By email dated April 29, 2020, sent by Mr. Cohen to Ms. Hurley and copied to Respondent, Mr. Cohen, *inter alia*, reiterated his request that the settlement check be mailed to the post office box address and be made payable to "Diamond Law."

226. By email dated April 30, 2020, sent by Ms. Hurley to Mr. Cohen, and copied to Respondent, Ms. Hurley inquired if Mr. Cohen wanted to receive Donegal's check in addition to the attorney fee check.

227. By email dated April 30, 2020, sent by Mr. Cohen to Ms. Hurley and copied to Respondent, he answered that she should send two checks.

228. On April 30, 2020, Mr. Cohen and Ms. Hurley exchanged two additional emails, in which she confirmed the post office box address.

229. On May 18, 2020, Respondent, Mr. Cohen, and Ms. Hurley exchanged several mails regarding the delay in the receipt of the two checks mailed to the post office box address.

230. By email dated May 19, 2020, sent by Ms. Hurley to Respondent and Mr. Cohen, Ms. Hurley offered to reissue the two checks and to FedEx the checks if the mailing to the post office box address was not received by that Friday; however, she required a street address.

231. On June 2, 2020, Respondent, Mr. Cohen, and Ms. Hurley exchanged several emails regarding the fact that the two checks had not been received by Respondent and Mr. Cohen; Ms. Hurley again offered to reissue the two checks and mail

them by FedEx if provided with a street address.

232. By email dated June 2, 2020, sent by Respondent to Mr. Cohen and Ms. Hurley, Respondent requested that the two checks be sent by FedEx to Respondent's residence at 2134 Pine Street, Unit 4, Philadelphia, PA 19103, because the office was "in the middle of the riots."

233. Respondent received the two checks from the Yost firm, one in the amount of \$28,050 made payable to Donegal, and the second in the amount of \$12,991.02 made payable to Diamond Law.

234. Respondent delivered the \$28,050 check to Donegal.

235. Respondent deposited the \$12,991.02 check into the Diamond operating account.

236. On June 10, 2020, Respondent gave Mr. Cohen check number 2141, in the amount of \$6,495, made payable to Mr. Cohen, drawn on the Diamond operating account.

a. This check represented Mr. Cohen's share of the attorney fee.

237. Respondent retained as his share of the attorney fee \$6,496.02.

238. Respondent used \$6,496.02 in fees belonging to the SWD firm.

239. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE BROWN MATTER

240. In September 2019, Erie Insurance retained the SWD firm to handle a subrogation investigation and recovery related to Mr. Stephen Brown.

241. On or about November 5, 2019, Mr. Cohen settled Erie Insurance's subrogation claim for the sum of \$40,000.

242. On November 5, 2019, Respondent made the following entry in the SWD firm's case management system:

 this [sic] case was sent to us at the last minute. We filed to protect sol but there is no case. JMC to email Karen to bill Erie for the costs.

243. The November 5, 2019 entry was false in that Erie Insurance's subrogation claim had settled for \$40,000.

244. Based on this entry the subrogation matter involving Erie Insurance was marked closed.

245. By email dated November 6, 2019, sent by Mr. Cohen to Ms. Brosius, Mr. Cohen advised that the Brown matter was to be closed and that Erie Insurance was to be issued an invoice for a filing fee expense.

246. By email dated November 8, 2019, sent by Mr. Cohen to Ms. Pamela Ned, Claims Adjuster with Innovative Risk Management, Mr. Cohen, *inter alia*:

- a. attached a signed release agreement;
- b. requested that the settlement check be made payable to "'Erie Insurance Company'"; and
- c. directed that the settlement check be mailed to the post office box address.

247. On or before November 19, 2019, Respondent received the \$40,000 settlement check.

248. On November 19, 2019, the \$40,000 settlement check was sent to Erie Insurance via FedEx.

249. By email dated November 19, 2019, sent by Mr. Cohen to Ms. Shultz, Mr. Cohen, *inter alia*:

- a. advised that the \$40,000 settlement check was being sent to Erie Insurance via FedEx;
- b. attached an invoice that charged an attorney fee of \$11,200 and that directed that the check be made payable to Diamond Law, PC; and
- c. requested that the payment be mailed to the post office box address.

250. On or before November 25, 2019, Respondent received the \$11,200 check from Erie Insurance.

251. On November 25, 2019, Respondent went to a branch of BB&T and had an employee with that financial institution deposit the \$11,200 settlement check into the Diamond IOLTA account.

252. On November 26, 2019, Respondent gave Mr. Cohen check number 1043, in the amount of \$5,600, made payable to Mr. Cohen, drawn on the Diamond IOLTA account.

253. On November 26, 2019, Respondent issued to himself a check in the amount of \$5,600, drawn on the Diamond IOLTA account.

254. Respondent used \$5,600 in fees belonging to the SWD firm.

255. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE HOBAUGH MATTER

256. In February 2016, Eastern Alliance retained the SWD firm to handle a subrogation investigation and recovery related to Mr. Allen Hobaugh's workers' compensation claim.

257. Mr. Hobaugh retained the SWD firm to represent him for any personal injury claims he had arising from the accident, excluding his workers' compensation claim.

258. The SWD firm referred Mr. Hobaugh's personal injury matter to the law firm of Wayman, Irvin & McAuley, LLC ("the

Wayman firm").

259. The Wayman firm agreed to pay the SWD firm a referral fee of one-third of any fee that was generated from the representation of Mr. Hobaugh.

260. On October 2, 2019, Respondent made the following entry in the SWD firm's case management system:

this [sic] file should be closed.
Eastern Alliance is no longer a
client. All of their cases were
returned over a year ago. I am closing
this.

261. The October 2, 2019 entry was false in that Respondent and Mr. Cohen had referred Eastern Alliance's subrogation claim to the Wayman firm and that matter remained open.

262. Based on this entry the subrogation matter involving Eastern Alliance was marked closed.

263. By email dated October 29, 2019, sent to Mr. Cohen by Richard S. Canciello, Esquire, an attorney with the Wayman firm, Mr. Canciello, *inter alia*:

- a. advised that Mr. Hobaugh's personal injury matter had settled for the sum of \$35,000;
- b. stated that the attorney fee generated was \$11,666.67, and that the SWD firm's referral fee was \$3,888.89; and

c. requested a Form W-9.

264. By email dated October 31, 2019, sent by Mr. Cohen to Mr. Canciello, Mr. Cohen, *inter alia*:

- a. attached a Form W-9 for the Diamond firm; and
- b. requested that the check be mailed to the post office box address.

265. By email dated December 5, 2019, sent by Mr. Cohen to Mr. Canciello, Mr. Cohen, *inter alia*, reminded him that the check was to be mailed to the post office box address.

266. By email dated December 5, 2019, sent by Mr. Canciello to Mr. Cohen, Mr. Canciello, *inter alia*, inquired if the check should be made payable to "'Sacks Weston Diamond, LLC.'" "

267. In a reply email sent that day, Mr. Cohen advised Mr. Canciello that the check was to be made payable to "Diamond Law per the W-9."

268. On December 20, 2019, Mr. Cohen and Mr. Canciello exchanged several emails in which Mr. Canciello advised that Mr. Hobough had endorsed the settlement check, Mr. Cohen requested that Mr. Canciello use the post office box address, and Mr. Canciello confirmed that the referral fee payment would be mailed to the post office box address.

269. On December 27, 2019, Mr. Cohen and Mr. Canciello exchanged several emails in which Mr. Canciello advised that the referral fee check would be issued that day and Mr. Cohen informed Mr. Canciello that the check could be arranged for delivery on December 30, 2019.

270. Respondent received the \$3,888.89 referral fee check.

271. Respondent gave Mr. Cohen approximately one-half of the \$3,888.89 referral fee check.

272. Respondent retained approximately one-half of the \$3,888.89 referral fee check.

273. Respondent used fees belonging to the SWD firm.

274. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

**INSTANCES WHERE RESPONDENT MISAPPROPRIATED
LEGAL FEES BELONGING TO THE SWD FIRM**

THE O'NEILL MATTER

275. Respondent and the SWD firm were retained by Ms. Dana O'Neill to represent her for claims arising from the death of her minor son, Christian Robert O'Neill, when he fell down the steps of her home in July 2013.

276. In July 2015, Respondent filed a Complaint in the Philadelphia Court of Common Pleas that raised wrongful death

and survival claims, captioned ***Dana O'Neill, Administratrix of the Estate of Christian Robert O'Neill and Dana O'Neill, Individually and as Parent and Guardian of Christian Robert O'Neill, Deceased v. David L. Hackenberg, et al.***, docket number 150702250 ("the O'Neill lawsuit").

277. In December 2016, Respondent and counsel for the defendants participated in a mediation held before Mitchell Berger, Esquire.

278. As a result of this mediation, a tentative agreement was reached to settle the O'Neill lawsuit for the sum of \$100,000.

279. Thereafter, Ms. O'Neill was unwilling to agree to settle the O'Neill lawsuit for \$100,000 and to sign any paperwork to effectuate the settlement.

280. In December 2017, Respondent filed a Petition to Settle Wrongful Death and Survival Actions ("the First Petition to Settle").

281. Respondent explained in the First Petition to Settle the circumstances that led to an agreement to settle the O'Neill lawsuit for the sum of \$100,000, that Ms. O'Neill had complained to Respondent about having to satisfy a lien owed to the Department of Public Welfare ("DPW") that had

been reduced to \$23,000, and that Ms. O'Neill was no longer communicating with Respondent.

282. In January 2018, Respondent filed a Motion to Withdraw his appearance and the appearance of the SWD firm in the O'Neill lawsuit.

283. In March 2018, the court granted the Motion to Withdraw.

284. On March 26, 2018, Edward J. McGinn, Jr., Esquire, on behalf of the defendants in the O'Neill lawsuit, filed a Motion to Enforce Settlement.

285. In April 2018, Nicholas L. Palazzo, Esquire, and Michael A. DeFino, Esquire, filed their appearances on behalf of Ms. O'Neill in the O'Neill lawsuit.

286. In April 2018, Mr. Palazzo filed on behalf of Ms. O'Neill Plaintiff's Response in Opposition to Defendants' Joint Petition to Enforce Settlement ("the Response").

287. In May 2018, the parties agreed to a revised settlement agreement before the court addressed the merits of the Motion to Enforce Settlement.

288. Under the terms of the revised settlement agreement, the defendants would pay a total of \$125,000, and the SWD firm agreed to a reduced attorney fee of \$10,000 and payment of costs in the amount of \$8,961.15; in turn, Ms.

O'Neill agreed to release any legal malpractice claims that she might have had against Respondent and the SWD firm for Respondent's handling of the O'Neill lawsuit.

289. In November 2018, Mr. Palazzo filed Plaintiff's Petition to Settle Wrongful Death and Survival Actions ("the Second Petition to Settle").

290. In the Second Petition to Settle, Mr. Palazzo summarized the circumstances that led the parties to agree to settle the O'Neill lawsuit for \$125,000, requested that the court approve the settlement, and proposed that the settlement proceeds be distributed as follows:

- a. \$8,961.15 for payment of the SWD firm's costs;
- b. \$10,000 for payment of the SWD firm's attorney fee;
- c. \$8,333.33 for payment of his firm's attorney fee;
- d. \$23,000 for payment of DPW's lien;
- e. \$71,717.30 for payment to Ms. O'Neill in resolution of the wrongful death claim; and
- f. \$2,998.22 for payment to Ms. O'Neill in resolution of the survival claim (for a total payment of \$74,705.22 to Ms. O'Neill).

291. By email dated December 19, 2018, sent by Respondent to Mr. Palazzo, Respondent stated the following: "Assuming that the settlement will be approved, please call me to pick up my check when it becomes available."

292. By Order dated December 27, 2018, the court approved the Second Petition to Settle and authorized settlement of the O'Neill lawsuit.

293. On January 19, 2019, the SWD firm received two checks drawn on the IOLTA account for DeFino Law Associates PC, dated January 16, 2019, and made payable to the SWD firm.

294. Check No. 7613 was in the amount of \$8,961.15 and in payment of the SWD firm's costs.

295. Check No. 7614 was in the amount of \$10,000 and in payment of the SWD firm's attorney fee.

296. Respondent took possession of these checks.

297. Respondent endorsed these checks.

298. Respondent transacted these checks.

299. Respondent used the proceeds from these checks, which proceeds belonged to the SWD firm.

300. Respondent knowingly and intentionally misappropriated fees and costs belonging to the SWD firm.

301. On January 23, 2019, Respondent made the following entry in the SWD firm's case management system:

I sent all checks back to attorney. They were not correct. We are going to fee arbitrate the case. DO NOT CASH ANY OF THE CHECKS IF WE RECIEVE [sic] NEW ONES. HE IS NOT HONORABLE. (uppercase in original)

302. This entry was false in that Respondent had taken possession of the checks and negotiated both checks.

303. Respondent closed the file for the matter involving Ms. O'Neill.

304. Respondent deleted from the SWD firm's server all of the electronic files related to the O'Neill matter.

THE STATHAM MATTER

305. In September 2014, the SWD firm opened a file for a personal injury matter involving Mr. Naim Statham.

306. The file for Mr. Statham's personal injury case was assigned to Respondent.

307. On April 8, 2016, Respondent filed a lawsuit on behalf of Mr. Statham in the United States District Court for the Eastern District of Pennsylvania.

308. On April 29, 2016, defendants filed a Motion to Dismiss for Lack of Jurisdiction.

309. On May 18, 2018, Respondent filed a Stipulation of Dismissal without Prejudice.

310. On May 18, 2016, the court entered an Order granting the Motion to Dismiss for Lack of Jurisdiction as uncontested.

311. Mr. Statham's personal injury case was referred by Respondent to the Coleman Law Group, PLC ("the Coleman firm"), with an office in Alexandria, Virginia, because litigating Mr. Statham's personal injury claims required filing a lawsuit in Virginia.

312. In or about February 2019, the Coleman firm settled Mr. Statham's personal injury claims.

313. By email dated February 18, 2019, sent by Respondent to Richard Brahan, Esquire, an attorney at the Coleman firm, Respondent, *inter alia*:

- a. attached Respondent's Form W-9 "for payment of the Statham referral fee"; and
- b. requested that the check be mailed to Respondent marked "personal and confidential" because Respondent purportedly had to "deal with Naim on the fee on my end."

314. The Form W-9 that Respondent attached to Respondent's February 18, 2019 email was signed by Respondent and was for the Diamond firm.

315. By letter dated March 14, 2019, sent by Mr. Brahan to Respondent, Mr. Brahan, *inter alia*:

- a. enclosed check number 2377, in the amount of \$3,246.02, made payable to the SWD firm, drawn on the Coleman firm's escrow account; and
- b. stated that the enclosed check "represents the amount due your firm, as is detailed in the attached Settlement Agreement distribution memo."

316. Mr. Brahan's letter and the enclosed check were delivered to the SWD firm, and the check was given to Ms. Brosius.

317. On March 19, 2019, Respondent had a face-to-face conversation with Ms. Brosius regarding the \$3,246.02 check.

318. During this conversation Respondent:

- a. told Ms. Brosius that the check was to be made payable to the client and Respondent had to return the check to the Coleman firm;
- b. declined Ms. Brosius' suggestion to deposit the check and have the SWD firm issue a new one because Mr. Statham owed the SWD firm costs on another matter; and
- c. took possession of the \$3,246.02 check.

319. Respondent transacted the \$3,246.02 referral fee check issued by the Coleman firm.

320. Respondent used the proceeds from this check, which proceeds belonged to the SWD firm.

321. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

322. Respondent misrepresented to Ms. Brosius Respondent's reasons for wanting to take possession of the \$3,246.02 referral fee check.

THE REID MATTER

323. In July 2019, the SWD firm received a referral from the Law Offices of Joel J. Kofsky ("the Kofsky firm") for a legal matter that required an attorney licensed to practice law in New Jersey to enter an appearance in a civil case that was pending in the Superior Court of New Jersey, Law Division, Mercer County, captioned ***Sheena Reid, as Administrator of the Estate of Schlipher Reid and Sheena Reid in her own right v. Rudy Margiotti, et al.***, docket number MER-L-00096619 ("the Reid lawsuit").

324. The file for the Reid lawsuit was assigned to Respondent.

325. Sometime in July 2019, Respondent entered his appearance in the Reid lawsuit.

326. Sometime after Respondent entered his appearance in the Reid lawsuit, the Kofsky firm decided to transfer the

Reid lawsuit to another attorney licensed to practice law in New Jersey, at which time Respondent's involvement in the Reid lawsuit ceased.

327. Sometime prior to October 28, 2019, a settlement was reached in the Reid lawsuit.

328. On or about October 28, 2019, Glenn Valdes, Esquire an attorney at the Kofsky firm, had lunch with Jonathan Tobin, Esquire, an attorney at the SWD firm.

329. During this lunch, Mr. Valdes handed to Mr. Tobin check number 25997, in the amount of \$1,000, made payable to the SWD firm, drawn on an account with PNC Bank.

- a. This check was in payment of the work that the SWD firm had provided in connection with the Reid lawsuit.
- b. The "For" section of the check had the following hand-written notation: "Reid (19-1004)."

330. When Mr. Tobin returned to the SWD firm after having lunch with Mr. Valdes, Mr. Tobin gave Respondent the check he received from Mr. Valdes.

331. On or about October 28, 2019, Respondent deposited the \$1,000 check into the Diamond operating account.

332. Respondent used the proceeds from this check, which proceeds belonged to the SWD firm.

333. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE ROZEN MATTER

334. In accordance with an October 1, 2018 agreement between the SWD firm and the law firm of Cohen Kolodny Abuse Analytics, LLC ("the Cohen firm"), the SWD firm was entitled to receive a fee payment from the Cohen firm for a personal injury matter involving Mr. Ralph Rozen.

335. Sometime prior to December 17, 2019, a settlement was reached in the Rozen matter.

336. Pursuant to the October 1, 2018 agreement, the Cohen firm issued check number 1026, in the amount of \$6,384.46, made payable to the SWD firm, dated December 17, 2019, drawn on the Cohen firm's Attorney's Trust Account.

- a. The "For" section of the check had the following hand-written notation: "Rozen-counsel fee."

337. By no later than December 18, 2019, Respondent came into possession of the \$6,384.46 check.

338. On December 18, 2019, Respondent deposited the \$6,384.46 check into the Diamond operating account.

339. Respondent used the proceeds from this check, which proceeds belonged to the SWD firm.

340. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

THE CYZNER MATTER

341. In accordance with an October 1, 2018 agreement between the SWD firm and the Cohen firm, the SWD firm was entitled to receive a fee payment from the Cohen firm for a personal injury matter involving Mr. Irv Cyzner.

342. Sometime prior to January 28, 2020, a settlement was reached in the Cyzner matter.

343. Pursuant to the October 1, 2018 agreement, the Cohen firm issued check number 1072, in the amount of \$81,861.71, made payable to the SWD firm, dated January 28, 2020, drawn on the Cohen firm's Attorney's Trust Account.

- a. The "For" section of the check had the following hand-written notation: "CYZNER FEE."

344. By no later than January 29, 2020, Respondent came into possession of the \$81,861.71 check.

345. On January 29, 2020, Respondent transacted the \$81,861.71 check.

346. Respondent used the proceeds from this check, which proceeds belonged to the SWD firm.

347. Respondent knowingly and intentionally misappropriated fees belonging to the SWD firm.

**INSTANCES WHERE RESPONDENT MISAPPROPRIATED FUNDS
BY FALSIFYING EXPENSES**

THE GAIDEROWICZ AND HADLOCK MATTERS

348. The SWD firm was retained to handle personal injury claims on behalf of two different clients, Ms. Dolores Gaiderowicz and Ms. Ruth Hadlock.

349. On March 10, 2015, Respondent commenced a lawsuit in the Philadelphia Court of Common Pleas for the personal injury matter involving Ms. Gaiderowicz by filing a Complaint, captioned ***Stanley Gaiderowicz and Donna Vecchione, Individually and as Executors of the Estate of Dolores M. Gaiderowicz, deceased v. St. Joseph's Manor Nursing Home, et al.***, docket number 150301321 ("the Gaiderowicz lawsuit").

350. On April 25, 2017, Respondent commenced a lawsuit in the Philadelphia Court of Common Pleas for the personal injury matter involving Ms. Hadlock by filing a Complaint, captioned ***Ruth Ann Hadlock v. Thomas Lincoln, et al.***, docket number 170403590 ("the Hadlock lawsuit").

351. On March 12, 2018, Respondent and Mr. Mike Marinari exchanged five emails, in which emails, *inter alia*, Mr. Marinari conveyed to Respondent the amount he would charge Respondent to make repairs/renovations to Respondent's bathroom, bedroom, and gutters at Respondent's residence.

352. On March 28, 2018, Respondent and Mr. Marinari exchanged four emails, in which emails, *inter alia*:

- a. Respondent told Mr. Marinari that Respondent only needed repairs/renovations to Respondent's bedroom and that Respondent also had to hire someone to install a new fence/gate and to provide concrete services on Respondent's property; and
- b. Mr. Marinari responded that he could work on the bedroom repairs/renovation beginning the week of Monday, April 16th, and he could provide Respondent with an estimate for the fence/gate and concrete work.

353. On April 13, 2018, Respondent used the SWD firm's PayPal account, which was linked to the SWD firm's Attorney Office Account with Beneficial Bank, to pay Mr. Marinari \$2,000 for the work he would be performing at Respondent's residence.

354. By email dated April 13, 2018, sent by Respondent to Ms. Brosius, with a subject line of "credit card charge," Respondent wrote the following:

\$2,000.00 to Mike Marinari
Expert

1,500.00 on Gaiderwicz [sic]
500.00 on Hadlock

355. By email dated April 17, 2018, sent by Ms. Brosius to Respondent, Ms. Brosius inquired:

- a. if she should call Mr. Marinari to obtain his "TAX ID NUMBER"; and
- b. as to which Hadlock file to charge.

356. By two emails dated April 17, 2018, sent by Respondent to Ms. Brosius, Respondent:

- a. provided a social security number for Mr. Marinari; and
- b. identified which Hadlock file to charge.

357. By a second email to Respondent dated April 17, 2018, Ms. Brosius stated that she needed Ms. Marinari's address.

358. Respondent immediately sent a reply email in which he provided an address for Mr. Marinari.

359. The SWD firm incurred the expense of the \$2,000 payment Respondent made to Mr. Marinari using the SWD firm's PayPal account.

360. Respondent falsely claimed to Ms. Brosius that the \$2,000 PayPal payment to Mr. Marinari was for expert services provided in the personal injury matters involving Ms. Gaiderowicz and Ms. Hadlock.

361. Respondent knowingly and intentionally misappropriated \$2,000 from the SWD firm.

THE KIDD MATTER

362. The SWD firm was retained to handle a personal injury claim on behalf of Ms. Carol Kidd.

363. On December 21, 2017, Respondent commenced a lawsuit in the Superior Court of New Jersey, Law Division, Camden County, for the personal injury matter involving Ms. Kidd by filing a Complaint, captioned ***Carol Kidd v. Talvinder Ghuman, et al.***, docket number CAM-L-004883-17 ("the Kidd lawsuit").

364. On April 30, 2018, Respondent used the SWD firm's PayPal account to pay Mr. Marinari \$800 for work he performed at Respondent's residence.

365. Respondent communicated to Ms. Brosius that the \$800 paid to Mr. Marinari using the SWD firm's PayPal account

was for expert services that Mr. Marinari supposedly rendered in connection with Ms. Kidd's personal injury matter.

366. Ms. Brosius assigned this expense to the cost ledger for Ms. Kidd's personal injury matter.

367. In August 2018, Respondent hired Mr. Martin Tray to make certain repairs/renovations at Respondent's residence.

368. On August 13, 2018, Respondent issued check number 2096, made payable to Mr. Tray, in the amount of \$2,300, that was drawn on the Diamond operating account.

369. Respondent gave Mr. Tray the \$2,300 check to pay him for repairs/renovations he made at Respondent's residence.

370. Respondent took a photo of the \$2,300 check that Respondent gave to Mr. Tray.

371. On or about August 13, 2018, Respondent was involved in the preparation of an "Invoice" that made it appear that "Martin Trey [sic] Consulting" had billed the SWD firm \$2,300 for consulting services provided in connection with Ms. Kidd's personal injury matter.

372. Respondent provided to Ms. Brosius copies of the photo of the \$2,300 check and the "Invoice" and told Ms. Brosius that Respondent was to be reimbursed for having paid

\$2,300 for consulting services that were supposedly rendered in connection with Ms. Kidd's personal injury matter.

373. The SWD firm issued to Respondent a \$2,300 check to reimburse Respondent for having supposedly paid \$2,300 for consulting services rendered in Ms. Kidd's personal injury matter.

374. Ms. Brosius assigned this expense to the cost ledger for Ms. Kidd's personal injury matter.

375. Sometime before September 19, 2019, Respondent settled the Kidd lawsuit for \$110,000.

376. On September 19, 2019, Ms. Kidd signed a Statement of Distribution, thereby approving the proposed distribution of the \$110,000 as set forth in the Statement of Distribution.

377. The Statement of Distribution listed as a cost "\$3,100.00" for "Expert Fees."

378. This cost was for the payments Respondent made to Mr. Marinari and Mr. Tray, which Respondent falsely attributed as legitimate expenses to be assessed by the SWD firm against any recovery in Ms. Kidd's personal injury matter.

379. The \$3,100 for "Expert Fees" was deducted from the \$110,000 recovered in Ms. Kidd's personal injury matter and paid to the SWD firm before distribution was made to Ms. Kidd.

380. Respondent misappropriated \$3,100 that belonged to Ms. Kidd.

THE GAGE MATTER

381. The SWD firm was retained to handle a personal injury claim on behalf of Ms. Doreen Gage.

382. The personal injury matter involving Ms. Gage was handled by Respondent.

383. Respondent's residence at 2134 Pine Street, Unit 4, in Philadelphia, is a condominium and there is a condominium association that Respondent is affiliated with titled "Twenty-One Thirty-Four Pine Street Condo. Assoc." ("the Pine Street Condo. Assoc.").

384. In 2018, the Pine Street Condo. Assoc. maintained an insurance policy for Directors and Officers liability coverage ("the insurance policy") through The Hartford Mutual Insurance Companies ("Hartford Mutual").

a. The policy number for the insurance policy was 9165299.

385. Sometime before July 30, 2018, Respondent received a bill from Hartford Mutual for the insurance policy premium, which was \$500.

a. The customer billing ID number for the insurance policy was 309864.

386. On or about July 30, 2018, Respondent told Ms. Brosius that he needed her to issue a \$500 check, made payable to Hartford Mutual, to pay for medical records associated with Ms. Gage's personal injury matter.

387. On July 30, 2018, Ms. Brosius arranged for the SWD firm to issue check number 7213, in the amount of \$500, payable to Hartford Mutual.

- a. The "MEMO" section of this check had the following typed information: "PI: Gage, Doreen (210721)."

388. Ms. Brosius assigned this supposed "medical records" expense to the cost ledger for Ms. Gage's personal injury matter.

389. Ms. Brosius gave Respondent check number 7213.

390. Respondent crossed out the typed information on the "MEMO" section of check number 7213 and hand-wrote "309864," the customer billing ID number for the insurance policy.

391. Respondent used check number 7213 to satisfy the \$500 premium for the insurance policy.

392. The SWD firm discovered that Respondent falsely attributed as a legitimate expense for Ms. Gage's personal injury matter the \$500 check that Respondent requested be made payable to Hartford Mutual.

393. The SWD firm did not pass on to Ms. Gage the cost for the \$500 check that Respondent requested be made payable to Hartford Mutual.

394. Respondent knowingly and intentionally misappropriated \$500 from the SWD firm.

THE MAWUSI MATTER

395. The SWD firm was retained to handle a personal injury claim on behalf of Mr. Anum Mawusi.

396. On April 24, 2018, Respondent commenced a lawsuit in the Philadelphia Court of Common Pleas for the personal injury matter involving Mr. Mawusi by filing a Complaint, captioned **Anum Khalfani Mawusi v. David W. Turner, et al.**, docket number 180403429 ("the Mawusi lawsuit").

397. In August 2018, Respondent had elbow surgery, which was performed by a surgeon affiliated with the Rothman Institute.

398. Sometime before September 13, 2018, Respondent received a bill in the amount of \$211.84 for Respondent's elbow surgery from the Rothman Institute, which bill used the Rothman Institute's billing name, Reconstructive Orthopedics.

a. The invoice number for this bill was 830461.

399. On or about September 13, 2018, Respondent told Ms. Brosius that he needed her to issue a \$211.84 check, made

payable to Reconstructive Orthopedics, to pay for medical records associated with Mr. Mawusi's personal injury matter.

400. On September 13, 2018, Ms. Brosius arranged for the SWD firm to issue check number 7287, in the amount of \$211.84, payable to Reconstructive Orthopedics.

a. The "MEMO" section of this check had the following typed information: "Mawusi, Anum (#210198)."

401. Ms. Brosius assigned the supposed "medical records" expense to the cost ledger for Mr. Mawusi's personal injury matter.

402. Ms. Brosius gave Respondent check number 7287.

403. Respondent crossed out the typed information on the "MEMO" section of check number 7287 and hand-wrote "830461," the invoice number for the \$211.84 bill Respondent received from the Rothman Institute for Respondent's elbow surgery.

404. Respondent used check number 7287 to satisfy the \$211.84 bill he received from the Rothman Institute for Respondent's elbow surgery.

405. Ms. Brosius assigned this expense to the cost ledger for Mr. Mawusi's personal injury matter.

406. Sometime before August 2019, Respondent settled the Mawusi lawsuit for \$20,000.

407. On September 26, 2019, Mr. Mawusi signed a Statement of Distribution, thereby approving the proposed distribution of the \$20,000 as set forth in the Statement of Distribution.

408. The Statement of Distribution listed as a cost \$333.38 for "Medical Records."

409. This cost included the check Respondent obtained for \$211.84 to pay the Rothman Institute's bill for Respondent's elbow surgery, which payment Respondent falsely attributed as a legitimate expense to be assessed by the SWD firm against any recovery in Mr. Mawusi's personal injury matter.

410. The \$333.38 for "Medical Records" was deducted from the \$20,000 recovered in Mr. Mawusi's personal injury matter and paid to the SWD firm before distribution was made to Mr. Mawusi.

411. Respondent misappropriated \$211.84 that belonged to Mr. Mawusi.

THE LEMMA MATTER

412. In March 2010, the SWD firm was retained to handle a personal injury claim on behalf of Mr. Leonard Lemma.

413. Respondent generated the personal injury matter involving Mr. Lemma.

414. In 2012, Respondent had the SWD firm close the file for the personal injury matter involving Mr. Lemma because Mr. Lemma had passed away in November 2011.

415. On September 18, 2018, Respondent had the SWD firm open a new file for a personal injury matter purportedly involving Mr. Lemma, who supposedly slipped and fell on a wet floor visiting a friend at the "Palace Rehab" on September 17, 2018.

416. Respondent handled this file.

417. Respondent provided false information to the SWD firm when he claimed that Mr. Lemma was involved in a slip and fall incident that had occurred at the "Palace Rehab" on September 17, 2018.

418. On August 27, 2018, Respondent received from Mr. Tray a request through PayPal for a \$1,500 payment for the concrete work he had done at Respondent's residence.

419. On August 27, 2018, Respondent made a \$1,500 payment to Mr. Tray using Respondent's PayPal account that was connected to Respondent's American Express credit card account.

420. On or before October 18, 2018, Respondent presented to Ms. Brosius an invoice that Respondent had prepared, in which Respondent sought reimbursement of \$900 from a \$1,500

payment that Respondent had supposedly made to Mr. Tray for Mr. Tray's expert services in connection with the personal injury file opened under Mr. Lemma's name.

421. The invoice reflected a date of August 27, 2018, showed that Respondent had paid \$1,500 to Mr. Tray using Respondent's PayPal account, and noted that the payment was for "Expert Review and Report" for the personal injury file opened under Mr. Lemma's name.

422. Ms. Brosius assigned this expense to the cost ledger for the personal injury file opened under Mr. Lemma's name.

423. The SWD firm issued to Respondent check number 7335, in the amount of \$900, made payable to the Diamond firm, to reimburse Respondent for having supposedly paid Mr. Tray \$1,500 for expert services for the personal injury file opened under Mr. Lemma's name.

424. On or about September 17, 2018, Respondent received a two-page bill from Langhorne Physician Services ("Langhorne Services"), in the amount of \$93.63, for medical services that Respondent had received from Dr. Frank Ammaturo on August 1, 2018.

- a. The bill had an account number of 514205A11127.

- b. The name "Scott Diamond" appeared on both pages of the bill from Langhorne Services.

425. On or about October 2, 2018, Respondent told Ms. Brosius that Respondent needed her to issue a \$93.63 check, made payable to Langhorne Services, to pay for medical records for the personal injury file opened under Mr. Lemma's name.

426. Respondent presented to Ms. Brosius the bill that he received from Langhorne Services.

427. Respondent had altered the bill he presented to Ms. Brosius.

- a. Respondent removed Respondent's name from the first page of the bill.
- b. Respondent placed the name "Leonard Lemma" on the first page of the bill.

428. On October 2, 2018, Ms. Brosius arranged for the SWD firm to issue check number 7302, in the amount of \$93.63, payable to Langhorne Services.

- a. The "MEMO" section of this check had the following typed information: "Leonard Lemma."

429. Ms. Brosius assigned the supposed "medical records" expense to the cost ledger for the personal injury file opened under Mr. Lemma's name.

430. Ms. Brosius gave Respondent check number 7302.

431. Respondent crossed out the typed information on the "MEMO" section of check number 7302 and typed "Acct 514205A11127," the account number for the \$93.63 bill that Respondent received from Langhorne Services.

432. Respondent used check number 7302 to satisfy the \$93.63 bill he received from Langhorne Services.

433. On May 17, 2019, Respondent had the SWD firm close the personal injury file that had been opened under Mr. Lemma's name when Respondent made an entry in the SWD firm's case management system that Mr. Lemma "is dead."

434. Respondent knowingly and intentionally misappropriated \$993.63 from the SWD firm.

THE COATES MATTER

435. In 2010, the SWD firm was retained to handle a personal injury claim on behalf of Mr. Richard Coates.

436. The personal injury matter involving Mr. Coates was generated by Respondent.

437. In September 2012, Respondent obtained an arbitration award on behalf of Mr. Coates against the defendant, Mr. William Hamilton, IV.

438. Mr. Hamilton was uninsured and he had no known assets that could be executed upon to satisfy the arbitration award.

439. In 2019, Respondent received accounting services from Elliot L. Tonik, P.C., which was operated by Elliot L. Tonik, CPA.

440. Respondent owed Mr. Tonik \$1,895 for his company's accounting services.

441. By email dated July 23, 2019, sent by Respondent to Mr. Tonik, Respondent, *inter alia*:

- a. apologized for another delay in sending Respondent's payment of Mr. Tonik's bill;
- b. stated that the SWD firm would be sending Mr. Tonik a check; and
- c. requested that Mr. Tonik provide Respondent with his company's EIN.

442. By email dated July 23, 2019, sent by Mr. Tonik to Respondent, Mr. Tonik, *inter alia*, provided Respondent with Mr. Tonik's company's EIN.

443. On or about October 21, 2019, Respondent presented to Ms. Brosius an invoice dated June 3, 2019, that Respondent had prepared, which invoice purported to be from Mr. Tonik's company.

- a. On the invoice Respondent had placed a post-it note that had hand-written on the post-it note the EIN for Mr. Tonik's company.

444. The invoice billed the SWD firm \$1,895 for the following services supposedly rendered in connection with the personal injury matter involving Mr. Coates: review of deposition transcripts, deed and mortgage; asset investigation; and preparation of a report.

445. Respondent requested that Ms. Brosius have the SWD firm issue a check for \$1,895 made payable to Mr. Tonik's company and that the check be given to Respondent, which check Respondent would hand-deliver to Mr. Tonik.

446. Ms. Brosius assigned this expense to the cost ledger for the personal injury file involving Mr. Coates.

447. The SWD firm issued check number 7937, in the amount of \$1,895, made payable to Mr. Tonik's company, for having supposedly provided expert services for the personal injury matter involving Mr. Coates.

448. Respondent received check number 7937.

449. Respondent used check number 7937 to satisfy the \$1,895 bill Respondent owed Mr. Tonik for accounting services.

450. Respondent knowingly and intentionally misappropriated \$1,895 from the SWD firm.

451. By Respondent's conduct and criminal conviction as set forth in paragraphs 4 through 450 above, Petitioner believes and therefore avers that Respondent has violated the following Rules of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement:

- a. 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;
- b. RPC 1.15(d), which states that upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality

and notice applicable to the Fiduciary entrustment;

c. 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;

d. 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;

- e. RPC 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- f. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- g. Pa.R.D.E. 203(b)(1), which states that a conviction of a crime shall be grounds for discipline.

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 accordance with Rule 214(f)(1) on the sole issue of the extent of the final discipline to be imposed, and at the conclusion of said hearing, to make such findings of fact, conclusions of law, and recommendations for discipline 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

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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.

December 18, 2023
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