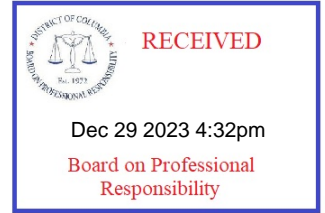


**DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY**



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**In the Matter of**

**ROBERT B. FITZPATRICK, ESQUIRE,** : **Disciplinary Docket No. 2019-D201**

**Respondent**

**A Member of the Bar of the District of  
Columbia Court of Appeals.**

**Bar Number: 40410**

**Date of Admission: 1/05/1968**

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**AMENDED SPECIFICATION OF CHARGES<sup>1</sup>**

The disciplinary proceedings instituted by this petition are based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar R. X and XI, § 2(b).

1. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar Rule XI. Pursuant to D.C. Bar R. XI, § 1(a), jurisdiction is found because Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on January 5, 1968, and assigned Bar number 40410.

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<sup>1</sup> Per the Board’s December 28, 2023 Order, Disciplinary Counsel has replaced Respondent’s clients’ full names with “unique identifiers,” which are the initials of each client’s first and last name. *See* Board Rule 19.8(g)(i)(e). While there are new facts in this matter that were not included in the original Specification of Charges, Disciplinary Counsel has made no other amendments to its charges.

2. At all times listed herein, Respondent maintained and was sole signatory of a PNC Bank IOLTA (account number ending 2782).

3. On June 5, 2019, Respondent deposited a check in the amount of \$36,000 into his IOLTA account. That same day, Respondent presented for payment a check to his law firm for \$24,000. Because the \$36,000 deposit did not immediately clear, there were insufficient funds in the account, and the \$24,000 check caused an overdraft.

4. By letter dated June 7, 2019, PNC Bank notified Disciplinary Counsel of the overdraft of Respondent's IOLTA. On June 18, 2019, Disciplinary Counsel forwarded the overdraft notice to Respondent.

5. On August 29, 2019, Disciplinary Counsel wrote to Respondent and requested a substantive, written response explaining the circumstances of the overdraft. Respondent provided a written explanation.

6. On November 27, 2019, Disciplinary Counsel issued Respondent a subpoena *duces tecum* directing him to provide copies of financial records relating to his IOLTA from October 31, 2018 through November 1, 2019.

7. On January 21, 2020, Respondent submitted a response containing some, but not all, of the subpoenaed financial records. Respondent stated that he was still gathering fee agreements that he would provide.

8. On February 12, 2020, Disciplinary Counsel asked Respondent for the remaining documents. On February 24, 2020, Respondent provided some, but not all, fee agreements. He stated that he was searching for more, and that he would continue to produce them.

9. On March 10, 2020, Disciplinary Counsel wrote to Respondent and asked for his outstanding financial records. Disciplinary Counsel raised concerns about the approximately \$12,000 that he maintained in his IOLTA and asked for financial records to explain the nature of those funds.

10. On May 26, 2020, Respondent wrote to Disciplinary Counsel, acknowledged that certain fee agreements were missing, and proposed contacting clients to confirm the terms of their representation.

11. In his May 26 email, Respondent also stated that he had additional billing records. He stated that, upon reviewing them, he discovered instances in which they showed “recorded billable time[,] but inexplicably no transfer from [IOLTA] to operating.” Respondent proposed that he would “write checks to the clients in question” and “spell out exactly person-by-person” how he proposed to address the issue. Respondent, however, did not identify the affected clients.

12. The next day, Respondent provided additional financial records. The documents consisted of a general ledger purporting to account for the funds in

Respondent's IOLTA as of December 31, 2019. The records also contained some, but not all, individual client ledgers and invoices for the clients identified in his ledger.

13. According to Respondent's general ledger, as of December 31, 2019, the \$11,711.96 in his IOLTA was comprised of funds associated with 22 clients. The amount reflected in the ledger matched the balance of Respondent's IOLTA at the time.

14. Respondent's financial records, although incomplete, showed that Respondent's IOLTA contained both earned and unearned client funds.

15. Specifically, according to Respondent's records (as of December 31, 2019), Respondent maintained in his IOLTA fees that he had earned years earlier for the following clients:

- a. O.B.: \$2,514.02, earned in full by December 2015;
- b. R.T.: \$580.33, earned in full by around February 2016;
- c. C.L.: \$375, earned in full by around April 2017;
- d. H.S.: \$110, earned in full by around April 2018; and
- e. S.A.: \$600, earned in full by around May 2018.

16. According to Respondent's records (as of December 31, 2019), Respondent also held unearned fees in his IOLTA that he had never refunded to the clients whose matters had concluded, including:

- a. N.S.: approximately \$537.45, held since February 2012;
- b. P.P.: \$149.99, held since August 2012;

- c. P.F.: \$42.49, held since July 2013;
- d. C.M.: \$16.66, held since September 2013;
- e. D.J.: \$940.81, held since March 2014;
- f. A.R.: approximately \$302.08, held since October 2014;
- g. K.Y.: \$145.42, held since June 2015;
- h. P.R.: \$361.25, held since July 2016;
- i. D.S. (“2<sup>nd</sup> case”): \$1,196.50, held since June 2017;
- j. D.K.: approximately \$210, held since January 2019; and
- k. D.F.: \$1,020, held since January 2019.

17. Regarding the remaining funds in Respondent’s IOLTA, Respondent’s financial records were internally inconsistent, incomplete, or insufficient to provide a complete understanding of the nature of those funds.

18. On June 16, 2020, Respondent again proposed contacting his clients and issuing refunds, and contacting all the clients for whom he was missing fee agreements.

19. On January 18, 2022, Disciplinary Counsel wrote to Respondent and reminded him of his obligations under D.C. Rule of Professional Conduct 1.15. Disciplinary Counsel alerted Respondent to the funds in his IOLTA that (based on his records) were earned and never removed from the IOLTA, or unearned and never returned to the client. In the letter, Disciplinary Counsel asked Respondent to verify the extent to which he had earned or refunded client funds. Disciplinary Counsel reiterated its request for any additional financial records, including fee agreements.

20. On April 15, 2022, Respondent replied to Disciplinary Counsel.

However, Respondent did not confirm whether the unearned fees were ever earned, and he failed to provide any additional financial records.

21. Instead, Respondent presented a “plan of action” by which he would transfer earned funds to his operating account. Respondent again proposed contacting clients about their advanced fees and confirming the terms of the representation. He said that this would all be “memorialized in writing” and shared with Disciplinary Counsel.

22. As part of his plan, Respondent also proposed reviewing his records to determine whether any fees were unearned and said that he would contact the clients to confirm the terms of representation. Respondent said that if he confirmed that any funds were earned, he would transfer them to his operating account. For those funds for which there was “no agreement” that they were earned, Respondent stated that he would refund them to his clients. He stated that this too would be memorialized in writing and shared with Disciplinary Counsel.

23. On April 18, 2022, Disciplinary Counsel wrote to Respondent and reminded him that under Rule 1.15, funds that were his own should be transferred to his operating account.

24. On April 27, 2022, Disciplinary Counsel wrote to Respondent and again asked for his outstanding financial and accounting records, including missing

fee agreements. Disciplinary Counsel reminded Respondent of his obligation to hold client funds separate from his own and agreed to Respondent's "plan of action" to consult with each client, refund unearned fees, and share the writings with Disciplinary Counsel by July 27, 2022.

25. Disciplinary Counsel enclosed with its April 27, 2022 letter a subpoena *duces tecum* for his financial records from November 2019 through the present.

26. On May 4, 2022, Respondent emailed Disciplinary Counsel and stated that he would be sending a check in the amount of \$361.25 to client P.R., who he said had "no recollection whether she ever received" the funds. Respondent provided a copy of his emails with P.R., which showed that P.R. was entitled to a refund of \$361.25 in December 2016, Respondent had no record of ever refunding her, and P.R. had no recollection of ever receiving a refund.

27. Respondent never issued a refund to P.R. or otherwise disbursed the funds from his IOLTA.

28. On May 4, 2022, Respondent asked Disciplinary Counsel to advise whether he could transfer funds from his IOLTA to his personal account regarding nine of the clients. Respondent proposed that before transferring any of the funds, he would write to the client and provide any invoice that "apparently was not sent."

29. On May 5, 2022, Disciplinary Counsel replied and agreed that

Respondent should separate earned and unearned fees, and unearned fees should be refunded. Disciplinary Counsel reminded Respondent of his April 15, 2022 “plan of action” to contact his clients and distribute the funds in his IOLTA accordingly.

30. On July 13, 2022, Respondent wrote to Disciplinary Counsel and again asked if he could transfer a portion of funds from his IOLTA to his operating account.

31. On July 14, 2022, Disciplinary Counsel wrote to Respondent, agreeing that he could transfer the funds that he earned and reminded him again of his April 15, 2022 “plan of action.”

32. Between July 27 and August 1, 2022, Respondent sent Disciplinary Counsel approximately 30 emails and other correspondence. Respondent’s submissions included further responses to Disciplinary Counsel’s letter of April 27, 2022. Respondent also provided communications with his former bookkeeper and additional financial records. However, the Respondent’s submissions had little to no additional information regarding the nature of the funds in his IOLTA. Respondent also provided some fee agreements, but they were incomplete, and many were illegible.

33. In his submissions, Respondent identified laptops and physical locations where the remainder of his financial records and fee agreements might be



stored.

34. Respondent's submissions also included a July 27, 2022 email from Respondent to client S.A., in which Respondent disclosed that he would be transferring \$600 of earned fees to his operating account.

35. Respondent never transferred or disbursed S.A.'s money from his IOLTA.

36. Respondent also forwarded a July 27, 2022 email to client K.Y. In the email, Respondent claimed that he was cleaning up his financial records when he "discovered that there were monies in the firm's trust account that were apparently never invoiced . . . ." Respondent offered K.Y. the option to receive a refund or permit Respondent to keep the money.

37. Respondent never issued a refund to K.Y. or otherwise transferred or disbursed the funds from his IOLTA.

38. On July 28, 2022, Disciplinary Counsel wrote to Respondent and asked how he determined what clients were never invoiced, and to provide Disciplinary Counsel the relevant financial records. That day, the Respondent stated that he would respond as soon as his schedule permitted, but never did so.

39. Respondent never provided refunds to the other clients whose unearned funds remained in his IOLTA.

40. Moreover, Respondent failed to provide all the communications he promised as part of his “plan of action.” Although Respondent provided Disciplinary Counsel some communications with clients P.R., S.A., and K.Y., he failed to provide evidence that he consulted with any other client regarding the handling of their fees or to confirm the terms of their representation.

41. On September 15, 2022, Disciplinary Counsel wrote to Respondent and again requested that he provide copies of the outstanding communications with his clients pursuant to his plan. Disciplinary Counsel again asked for his outstanding financial records. Respondent failed to respond.

42. From December 2018 through March 2023, Respondent continued to deposit and withdraw funds in his IOLTA.

43. By March 31, 2023, Respondent’s IOLTA balance had grown to \$43,556.96.

44. To date, Respondent has failed to provide Disciplinary Counsel with complete and accurate financial records of the funds in his IOLTA. Respondent never provided Disciplinary Counsel with any of the records he claimed were stored in laptops or offsite storage sites.

45. Respondent’s conduct violated the following District of Columbia Rules of Professional Conduct:

- a. Rule 1.15(a) (commingling) in that Respondent failed to hold client funds in his possession separate from his own;
- b. Rule 1.15(a) (record-keeping) in that Respondent failed to maintain complete and accurate financial and accounting records;
- c. Rule 1.15(c) in that Respondent failed to promptly return unearned client fees;
- d. Rule 1.16(d) in that Respondent failed to refund unearned advance client fees after termination of the representation; and
- e. Rule 8.4(d) in that Respondent engaged in conduct that seriously interfered with the administration of justice by failing to respond to Disciplinary Counsel's requests for information and to provide information requested by Disciplinary Counsel.

Respectfully submitted,

/s/ Hamilton P. Fox, III

Hamilton P. Fox, III  
Disciplinary Counsel

/s/ Ebtehaj "Eby" Kalantar

Ebtehaj "Eby" Kalantar  
Assistant Disciplinary Counsel  
OFFICE OF DISCIPLINARY COUNSEL  
515 Fifth Street, N.W.  
Building A, Room 117  
Washington, D.C. 20001  
(202) 638-1501

## **VERIFICATION**

I declare under penalty of perjury under the laws of the United States of America that I verily believe the facts stated in the Specification of Charges to be true and correct. Executed on the 29th day of December 2023.

*/s/ Ebtchaj "Eby" Kalantar*  
Ebtchaj "Eby" Kalantar  
Assistant Disciplinary Counsel