

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

In the Matter of

JOHN E. ROSENBAUM, ESQUIRE

Respondent,

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

Bar Number: 457617

Date of Admission: 02/06/1998

Disciplinary Docket No. 2015-D090

SPECIFICATION OF CHARGES

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). Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI. Pursuant to D.C. Bar R. XI, § 1(a); jurisdiction is found because:

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on February 6, 1998, and assigned Bar number 457617.
2. Respondent is also a member of the California Bar. For all relevant time periods, Respondent resided in California.

The facts giving rise to the charges of misconduct are as follows:

Background on the Petit Estate

3. On March 4, 2005, Gerard Petit, a U.S. citizen of French ancestry, died in Northampton County, Pennsylvania. Mr. Petit died intestate with no known heirs and principal assets over \$1.8 million.

4. The Northampton Orphan's Court in Pennsylvania appointed Annette Landes, Esq., a local attorney, as the Estate Administrator. She performed various functions to close the estate, including paying state and federal taxes, paying the Estate's debts, and identifying potential heirs, all of whom lived in France.

5. During the administration of the Estate, a French genealogical company, Archives Genealogiques Andriveau ("Andriveau"), claimed it had performed genealogical research in France that entitled it to a percentage of the estate assets and threatened litigation.

6. On September 23, 2011, the Administrator retained Richard Denman, Esq. as "Special Counsel" to the Estate to address Andriveau's claims and advise about administering the Estate.

7. Mr. Denman opined that Andriveau had no viable claim, but he nonetheless recommended that the Estate should establish a "reserve" of funds, to be held and maintained by a "fiduciary," which could be used, if necessary, to respond to future potential claims.

Respondent Agreed to Serve as the "Fiduciary" to the Estate

8. In October 2011, Mr. Denman contacted Respondent, who agreed to serve as a fiduciary to the Estate to assist with maintaining and disbursing the Estate funds to the heirs.

9. Mr. Denman and Respondent had known each other since college, and Respondent had served as the best man at Mr. Denman's wedding. At the time he agreed to serve as the fiduciary, Respondent did not have a full-time job.

10. On October 25, 2011, Mr. Denman emailed the Administrator with a copy to Philippe Farcy, who was one of the heirs' grandsons. Mr. Farcy lived in the United States, spoke English, and was coordinating with the Administrator on behalf of the family members in France.

Mr. Denman confirmed with Mr. Farcy and the Administrator that Respondent would serve as the “private fiduciary and temporary custodian of [Estate] funds.”

11. At all relevant times, Respondent identified himself to the Administrator, the heirs, and related parties as “John E. Rosenbaum, Attorney at Law and Fiduciary to the Estate.”

The Administrator and Mr. Denman Recommended that the Court Establish a \$450,000 “Reserve” and Disburse the Other Estate Funds

12. In November 2011, with the Administrator’s consent, Mr. Denman traveled to France as “Special Counsel” to the Estate to meet personally with each of the five heirs, who were all between the ages of 62 and 102.

13. Mr. Denman confirmed the identity of the heirs and had each heir sign a release to receive disbursements from the Estate.

14. On November 23, 2011, Mr. Denman emailed Mr. Farcy and copied Respondent. Mr. Denman told Mr. Farcy that he would “transfer [the Estate funds] immediately to private fiduciary Rosenbaum” to maintain a \$450,000 “reserve” and disburse around \$800,000 to the heirs. Mr. Denman assured Mr. Farcy, “I never worry about reserves, especially when they are under Fiduciary control.”

15. On December 2, 2011, the Administrator and Mr. Denman signed an “Estate Escrow Agreement” drafted by Mr. Denman. The Agreement provided that the parties would establish a \$450,000 “Reserve” from the Estate funds, which would be maintained by a private “Fiduciary.”

16. On December 27, 2011, the Administrator filed the First and Final Formal Account for the Estate. After settling all debts and paying attorneys’ fees and expenses, including federal taxes and Pennsylvania inheritance taxes, approximately \$1.3 million remained to be disbursed to the heirs.

17. On January 12, 2012, the Administrator filed a “Petition for Adjudication / Statement of Proposed Distribution” and a proposed Schedule of Distribution with the court. The Petition proposed disbursing \$919,515.52 to the heirs and holding \$450,000 of Estate principal in “reserve” in an escrow account. The Petition explained that the \$450,000 “reserve” would be held by an escrow agent for three years, so it could be used to defend against any later claims against the Estate. After three years, the reserve “funds [would] be released to the heirs, less any expenses required in defense of the claims presented.”

The Court Ordered the Estate’s Assets to be Disbursed

18. On January 27, 2012, the Northampton County Court issued a Decree of Confirmation and Distribution, approving the proposed Schedule of Distribution and ordering that the Petit Estate’s \$1.3 million of remaining assets be disbursed as follows:

<u>ORDERED DISBURSEMENT</u>	<u>AMOUNT</u>
Principal to Marie Louise Lions, (Aunt)	\$180,845.47
Income to Marie Louise Lions, (Aunt)	\$49,033.41
Principal to Colette Veran (Cousin)	\$180,845.47
Income to Colette Veran (Cousin)	\$49,033.41
Principal to Etiennette Gardey (Cousin)	\$180,845.47
Income to Etiennette Gardey (Cousin)	\$49,033.41
Principal to Raoul Jean Lions (Cousin)	\$90,422.74
Income to Raoul Jean Lions (Cousin)	\$24,516.70
Principal to Nicole Lions Bezier (Cousin’s Widow)	\$90,422.74
Income to Nicole Lions Bezier (Cousin’s Widow)	\$24,516.70
Amount from Principal to Reserve / Escrow	\$450,000.00
<u>TOTAL:</u>	<u>\$1,369,515.51</u>
Total Principal to Heirs:	\$723,381.89
Total Income to Heirs:	\$196,133.62
Total Principal to Reserve / Escrow:	\$450,000.00

19. In February 2012, Mr. Denman had each French heir sign a general power of attorney, written only in English, that specifically authorized him to (1) “receive funds on [the heir’s] behalf in a Washington, D.C., USA Bank of America Trust Account, then distribute them

and maintain them,” (2) “maintain financial, litigation and administrative reserves per agreements,” and (3) “delegate John E. Rosenbaum [Respondent] as Fiduciary . . . to effect certain instructions from Mr. Denman under this document or other agreements.”

20. Mr. Denman presented the powers of attorney to the Administrator and claimed that the heirs had signed the powers of attorney so that Mr. Denman could facilitate the transfer of funds to them in France. Mr. Denman also said that each heir had waived any conflict that existed by his serving as special counsel to the Estate and as an attorney-in-fact for the heirs.

21. Respondent knew that the heirs had signed powers of attorney with Mr. Denman.

Respondent Failed to Disburse the Funds in Accordance with the Court’s Order

22. On February 6, 2012, Respondent opened a “Client Funds Account” with JP Morgan Chase, Account Number -9829, titled “John Rosenbaum Attorney at Law Disbursement Account.”

23. On February 10, 2012, the Administrator caused the Estate’s assets (\$1,369,151.51) to be wired to Mr. Denman’s IOLTA account.

24. On February 13, 2012, Mr. Denman transferred \$858,000 from his IOLTA account to Respondent’s 9829 Disbursement Account, leaving \$511,151.51 of the Estate funds in Mr. Denman’s IOLTA account.

25. Respondent created five Chase savings accounts—one for each heir. On February 27, 2012, Respondent funded each heir sub-account with transfers from the main 9829 Disbursement Account, as follows:

Heir Sub Account and Account No.	Amount
Etienne Gardey; By John Rosenbaum Attorney at Law Agent; Acct # 6911	\$200,000
Marie Lions; By John Rosenbaum Attorney at Law Agent; Acct # 6515	\$200,000
Raoul Lions; By Rosenbaum Attorney at Law Agent; Acct # 6507	\$200,000
Nicole Bezier; By Rosenbaum Attorney at Law Agent; Acct # 6903	\$100,000
Colette Veran; By Rosenbaum Attorney at Law Agent; Acct, # 6432	\$100,000

Respondent left \$58,000 in the 9829 Disbursement Account.

26. Between February 2012 and May 2013, Respondent disbursed \$124,000 to the heirs in a series of 13 wire transfers for \$9,500 and one wire transfer for \$500. Respondent told the heirs that the wire transfers were “advances” or “loans.”

27. In the same time period, between February 2012 and May 2013, Respondent disbursed \$405,374.40 to Mr. Denman, to himself, and to pay expenses—mostly Respondent’s and Mr. Denman’s hotel, airfare, and dining charges for travel to France and New York. Respondent also disbursed \$75,000 to Mr. Farcy as a “special custodial benefitter fee.”

28. During this period, Respondent sent periodic invoices to Mr. Denman for “Fiduciary Services,” which he charged at \$400 per hour and were approved by Mr. Denman. His charges included time he spent driving to the bank to get cashier’s checks, driving to the post office to send cashier’s checks, legal research, drafting settlement agreements, and conferring with Mr. Denman on legal issues. During the same period, Mr. Denman sent requests to Respondent to disburse Estate funds to pay Denman’s fees, which Respondent paid. Respondent did not provide the heirs or the Estate Administrator with copies of his invoices or Mr. Denman’s requests for fee disbursements, nor did he provide an accounting to show what he disbursed to himself and Mr. Denman. Respondent’s withholding of funds from the heirs and disbursements to himself and Mr. Denman were not authorized by the heirs or the Estate Administrator and violated the January 27, 2012 Decree of Confirmation and Distribution.

29. Respondent made false and misleading statements to the heirs about disbursing the Estate funds. By way of example, Mr. Denman and Respondent told the heirs that if they demanded direct payment of the Estate funds, “the French fiscal authorities will be alerted to a ‘situation,’” and Mr. Denman would be “obligated, BY INTERNATIONAL TREATY, to give the

French government 70%.” Respondent further told the heirs that disbursing the funds directly to them “[wa]s not legally sustainable conduct . . . [and] may even be criminally sanctionable in the USA and France.” He told the heirs that he needed to hold their funds in the U.S. to avoid the 70% “special French Tax” and that the funds needed to remain in the USA while he worked to minimize “the confiscatory French tax exposure.” In fact, under the relevant U.S. – France tax treaty, the heirs were not subject to French inheritance taxes on distributions from the Petit Estate.

30. Respondent concealed and suppressed information about how he was disbursing the Estate funds. By way of example, he withheld accountings of his disbursements, including the “fees” he paid to himself and Mr. Denman. After an heir asked Respondent to account for disbursements from the heirs’ account, he cited “administrative expenses” (without further explanation), and he said that her inquiry constituted an “inappropriate comment on the administration and distribution of the estate;” he was required to “charge [her] account specially;” and additional inquiries would “serve[] only to incur costs directly allocable to [her] . . . thereby reducing [he]r ultimate distribution from the Estate.”

The Heirs Filed a Complaint Against Respondent and Mr. Denman

31. On May 20, 2013—after Respondent had disbursed more than \$400,000 to himself and Mr. Denman—attorneys for four of the five heirs filed a motion with the Northampton County, Pennsylvania Court of Common Pleas for a preliminary injunction to freeze the accounts in Respondent’s control. The motion alleged that there had been an “unexplained disappearance and dissipation of [the beneficiaries’ funds]” and that Respondent and Mr. Denman had made “unauthorized withdrawals from Petitioners’ inheritances and/or wasteful and unnecessary expenditures.”

32. The court granted the motion the same day, freezing the accounts in Respondent's control.

33. On May 20, 2013, the heirs' attorneys also filed a Petition for Review, asking the court to disgorge the funds in Respondent's control, to terminate him and Mr. Denman as Estate fiduciaries, and to assess a "surcharge" against them and the Administrator for funds that were improperly diverted. The Petition alleged that "Mr. Denman and [Respondent] have breached and are breaching their fiduciary duties owed to the Estate and Petitioners and are fraudulently committing waste with Petitioners' inheritances and the Escrow account."

34. On June 28, 2013, the court ordered JP Morgan Chase Bank to "unfreeze" a single heir sub-account, the -6432 account Respondent held for Colette Veran, who had not joined the other heirs' motion for an injunction.

**Respondent Disbursed Additional Funds
from an Heir's Account to His Personal Checking Account**

35. On July 3, 2013, Respondent transferred \$88,789.01 from the Veran -6432 account to his personal checking account at Chase Bank, Account No. -4038, which held personal, non-client funds.

36. The same day, on July 3, 2013, Respondent sent \$7,500 to Colette Veran by wire transfer and paid a \$45.00 wire transfer fee.

37. Respondent disbursed no other funds to Ms. Veran. He disbursed the remaining \$81,244.01 of Ms. Veran's funds from his personal checking account to himself or to Mr. Denman.

**Respondent Made False Statements to the
Client Security Fund Commission for the State Bar of California**

38. On February 6, 2019, Disciplinary Counsel sent Respondent a letter listing all the disbursements he made from the Petit Estate funds based on his bank records and asking him to

explain and provide his complete accounting records related to the disbursements. The opening sentence of the letter informed Respondent that the “matter remain[ed] under investigation.”

39. On February 18, 2019, Respondent asked Disciplinary Counsel for an extension of time to respond, which was granted until April 8, 2019.

40. On March 18, 2019—while his response to Disciplinary Counsel was still pending—Respondent sent a letter to the Client Security Fund Commission for the State Bar of California wherein he falsely represented that Disciplinary Counsel had “after extensive review, determined that there was no evidence of misconduct.”

41. Respondent’s actions, as described above, satisfy the elements of Wire Fraud in violation of 18 U.S.C. § 1343 (individual commits wire fraud if he, “having devised . . . any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings . . . for the purpose of executing such scheme or artifice . . .”).

42. Respondent’s conduct violated the following Pennsylvania Rules of Professional Conduct:¹

- a. Rule 1.5(a), in that Respondent charged and collected an unreasonable and/or clearly excessive fee;

¹ Under D.C. Rule 8.5(b)(1) (Choice of Law), the rules to be applied for “conduct in connection with a matter pending before a tribunal” are “the rules of the jurisdiction in which the tribunal sits.” Here, the Estate was in Pennsylvania, and Respondent acted as a “Fiduciary” to the Estate. He controlled the Estate funds, which a Pennsylvania court had ordered disbursed to administer the Pennsylvania Estate. Accordingly, his conduct was “in connection” with a matter pending before a Pennsylvania tribunal, and Pennsylvania Rules apply. In the alternative, should the Board or Court conclude that D.C. Rules apply, Disciplinary Counsel charges Respondent with violating the corresponding D.C. Rules, which are substantively comparable to the Pennsylvania Rules.

b. Rule 1.15(b) (Misappropriation), in that Respondent failed to appropriately safeguard the funds he received as the “Fiduciary” to the Petit Estate and in so doing recklessly or intentionally misappropriated the funds;

c. Rule 1.15(b) (Commingling), in that Respondent failed to hold Rule 1.15 funds separate from the lawyer’s own property;

d. Rule 1.15(e) in that Respondent, acting as a fiduciary, failed to promptly deliver estate funds that the beneficiaries were entitled to and failed to render a full accounting upon request;

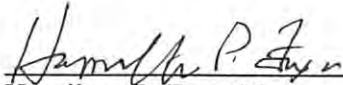
e. Rule 8.4(a), in that Respondent knowingly assisted another to violate and/or attempt to violate the Rules of Professional Conduct;

f. Rule 8.4(b), in that Respondent committed a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, namely Wire Fraud (18 U.S.C. § 1343);


g. Rule 8.4(c), in that Respondent engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation; and

h. Rule 8.4(d), in that Respondent engaged in conduct that was prejudicial to the administration of justice.

Respectfully submitted,



Hamilton P. Fox, III
Disciplinary Counsel




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Assistant Disciplinary Counsel

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VERIFICATION

I do affirm that I verily believe the facts stated in the Specification of Charges to be true.



Sean P. O'Brien
Assistant Disciplinary Counsel

Subscribed and affirmed before me in the District of Columbia this __3rd__ day of January

2020.



My Commission Expires



Notary Public