

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1216 Disciplinary Docket No. 3
Petitioner :
v. : No. 99 DB 2006
: Attorney Registration No. 35596
ANTHONY DENNIS JACKSON, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 23rd day of April, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 13, 2007, the Petition for Review and response thereto, it is hereby

ORDERED that Anthony Dennis Jackson is suspended from the Bar of this Commonwealth for a period of five years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola

As of: April 23, 2008

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 1216 Disciplinary Docket No. 3 |
| Petitioner | : | |
| | : | No. 99 DB 2006 |
| v. | : | |
| | : | Attorney Registration No. 35596 |
| ANTHONY DENNIS JACKSON | : | |
| Respondent | : | (Philadelphia) |

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On June 1, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Anthony Dennis Jackson, Respondent. The Petition for Discipline charged Respondent with violations of the Rules of Professional Conduct arising out of allegations

that Respondent mishandled an estate, converted funds owed to a beneficiary, and made misrepresentations to conceal the conversion. Respondent filed an Answer to Petition for Discipline on July 17, 2006.

On October 10, 2006, a Joint Petition for Discipline on Consent was filed by Petitioner. A three member panel of the Disciplinary Board granted the Joint Petition. By Order of January 18, 2007, the Supreme Court denied the Joint Petition for Discipline on Consent.

A disciplinary hearing was held on March 27, 2007, before a District I Hearing Committee comprised of Chair Douglas E. Ress, Esquire, and Members Jodi Isenberg, Esquire, and Butler Buchanan, Esquire. Respondent was represented by Samuel C. Stretton, Esquire. Petitioner introduced Joint Stipulations of Fact and Law with accompanying exhibits and rested its case. Respondent introduced evidence in mitigation of sanction. This included an expert witness.

Petitioner filed a brief to the Hearing Committee. Respondent did not file a brief, despite extensions given to him by the Committee. The Hearing Committee filed a Report on September 12, 2007, finding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of five years.

This matter was adjudicated by the Disciplinary Board at the meeting on November 7, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, 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 is Anthony Dennis Jackson. He was admitted to practice law in the Commonwealth in 1981. He maintains an office for the practice of law at 21 South 12th St., Suite 1050, Philadelphia Pa 19107. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline consisting of an informal admonition administered on September 12, 2006 for violations of Rules of Professional Conduct 1.3, 1.4(a)(4), 5.3(a) and 8.4(c) . Respondent was retained to file an appeal from the denial of disability benefits on behalf of a client and failed to do so.

4. Respondent was retained by Karen Robinson to represent her in administering the estate of Derek Robinson, her grandson.

5. Respondent failed to file an inheritance tax return for the estate or request an extension of time to do so within nine months after the date of death, as required by 72 Pa.C.S.A. §9136(d).

6. Respondent failed to file a verified inventory of all real or personal property of the decedent within nine months after the date of death, as required by 20 Pa.C.S.A. §3301(c) and 72 Pa.C.S.A. §9136(d).

7. Despite notice received from the Register of Wills for the year 2004, Respondent failed to file with the Register of Wills a Status Report of uncompleted administration, as required by Orphans Court Rules.

8. By Court Order dated August 7, 2003, the wrongful death action commenced by the Administratrix was settled for a gross sum of \$100,000, and included an approved distribution to one Derrick Walker, father of decedent, in the amount of \$33,285.34. The Court Order also decreed that all settlement drafts should be forwarded to Respondent for proper distribution.

9. Respondent received the settlement proceeds on or about August 9, 2003, and deposited the funds in his escrow account, but did not distribute the funds as ordered.

10. Respondent did not promptly deliver to Mr. Walker the funds he was entitled to receive. At that time Mr. Walker was incarcerated in the State Correctional Institution at Dallas, Pennsylvania.

11. Without Mr. Walker's knowledge, authorization or consent, Respondent misappropriated Mr. Walker's funds for his personal use.

12. Respondent used the funds to purchase, among other things, office supplies, food, gasoline, wine, tickets for movies and sporting events, hotel rooms, and formal wear.

13. This misappropriation was knowing and intentional.

14. Respondent commingled Mr. Walker's funds with his own funds by transferring Mr. Walker's funds into Respondent's business account and depositing his personal funds into the escrow account.

15. From time to time after Respondent's receipt of the settlement funds, Mr. Walker contacted Respondent and requested that Respondent send him his portion of the settlement funds.

16. Respondent failed to respond to Mr. Walker's requests.

17. From time to time after Respondent's receipt of the settlement funds, Mr. Walker's prison counselor contacted Respondent and requested that Respondent send Mr. Walker the settlement funds.

18. Respondent informed the prison counselor that he would visit Mr. Walker in prison, but Respondent never did so.

19. On or about June 17, 2005, Mr. Walker wrote to Petitioner complaining about Respondent's failure to distribute his money.

20. On or about July 21, 2005, Respondent deposited \$5,000 into Mr. Walker's prison account.

21. By letter to Respondent dated July 27, 2005, Petitioner informed Respondent that Mr. Walker had filed a complaint and requested that Respondent write to Mr. Walker and explain the status of his settlement proceeds.

22. Respondent received the July 27, 2005 letter from Petitioner.

23. On July 28, 2005, Respondent contacted Petitioner to discuss Mr. Walker's complaint, during which conversation Respondent agreed to deposit additional funds in Mr. Walker's prison account and to provide Petitioner with written proof the day that Respondent sent Mr. Walker his funds.

24. On or about July 29, 2005, Respondent deposited \$7,500 into Mr. Walker's prison account.

25. On or about August 24, 2005, Respondent deposited \$5,000 into Mr. Walker's prison account.

26. Respondent did not provide written proof to Petitioner that he deposited funds into Mr. Walker's account.

27. On September 16, 2005, Petitioner called Respondent about the situation, and Respondent apologized for not sending the requested information. Respondent explained that his oversight was due to the fact that he had "fallen in love" during the summer. Respondent agreed to send the documentation.

28. By letter of September 16, 2005, Respondent falsely advised Petitioner that a total of \$23,000 had been deposited into Mr. Walker's prison account. Respondent knew this statement was untrue at the time he made it.

29. On September 21, 2005, Respondent deposited \$5,000 into Mr. Walker's prison account, bringing the total deposited to \$22,500.

30. Respondent did not complete paying Mr. Walker until January of 2006, over two years after he received Mr. Walker's funds.

31. Respondent did not provide documents requested by Petitioner in a subpoena served on him on December 14, 2005.

32. Dr. Steven Samuel is a licensed psychologist who testified on behalf of Respondent. Dr. Samuel first saw Respondent on March 8, 2007, approximately three weeks prior to the disciplinary hearing, and at the time of the hearing he had seen Respondent approximately eight times.

33. Dr. Samuel opined that Respondent suffers from mild to moderate depression. He based his opinion on various tests performed on Respondent and information obtained from Respondent.

34. Dr. Samuel opined that the depression was based in part on Respondent's ten year separation from his wife and eventual divorce in 2005.

35. Dr. Samuel opined that the depression was a significant contributor to the misconduct, as Respondent was trying to self-treat himself by misappropriating money to make himself feel better.

36. Respondent did not receive any treatment for his depression prior to his contact with Dr. Samuel. He is currently receiving cognitive behavioral therapy once or twice a week and taking antidepressant medication.

37. Respondent testified on his own behalf.

38. Respondent's explanation for taking Mr. Walker's funds was that his office expenses, particularly the salaries of his secretaries, needed to be paid and he kept thinking that he would have money to do so from other legitimate sources, but when the money was not forthcoming from those sources, he used Mr. Walker's money to pay the secretaries. (N.T. 254-255).

39. Respondent recognizes that what he did was wrong and impermissible. (N.T. 255) He has learned that there is no justification for touching clients' money. (N.T. 264)

40. In attempting to express remorse for his misconduct, Respondent stated that "I don't think I hurt [Mr. Walker] because he is in prison...[and] has his money." Respondent testified that he was not trying to take advantage of Mr. Walker. (N.T. 260)

41. Respondent claims he did not know that he could place Mr. Walker's funds in a prison account. (N.T. 257-258)

42. Respondent stated that he would have been the last person to say that he was suffering from a mental illness and at the time of the pre-hearing conference stated that he did not believe he had a mental illness. (N.T. 259)

43. Respondent has been involved in his Philadelphia community for many years. He has held leadership roles in his church and was the Third Ward chairperson of the Democratic Party. He organized youth athletic teams and served as the athletic director for various youth sports teams. He has done pro bono work for the NAACP.

44. Four character witnesses testified on behalf of Respondent.

45. Samuel Mattaway is a licensed real estate broker and assessor for the City of Philadelphia Board Revision of Taxes. He has known Respondent since at least 1985. Mr. Mattaway testified credibly as to Respondent's good reputation in the community as a practicing lawyer. He believes that the balance of a person's worth is not one item of negativity but the cumulative times of their life experience.

46. W. Wilson Goode is the former Mayor of Philadelphia. He is currently the director of a national program called Amaci which mentors children of incarcerated parents. Mr. Goode knows Respondent from the community in which he lives, as well as being a member of the same fraternity. When Mr. Goode was mayor, Respondent sued him in that capacity when Respondent was the attorney for a group of residents in Philadelphia.

47. Mr. Goode described Respondent's involvement in youth activities in laudatory terms. Mr. Goode further credibly described Respondent as someone the people of the community trust, depend and rely on.

48. Frank Canty is an attorney licensed in Pennsylvania since 1977. He has known Respondent for 30 years. He testified credibly that Respondent has an excellent reputation in the community for being a truthful, honest, peaceful and law abiding person.

49. Mark Anthony King is a filmmaker who has known Respondent for many years. He testified credibly that Respondent has a good reputation in the community as a truthful and honest person and as a practicing lawyer.

50. Mr. Goode was aware of the full nature of Respondent's misconduct; the other witnesses did not know all of the particulars.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.
4. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.
5. RPC 1.15(a) – A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

6. RPC 1.15(b) – Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request of the client or third person, shall promptly render a full accounting regarding such property.

7. RPC 8.1(a) – An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.

8. RPC 8.4(b) – 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.

9. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

10. Respondent has failed to show clear and convincing evidence that he suffers from a psychological disorder which substantially caused his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989)

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of a Petition for Discipline filed against Respondent charging him with misconduct in the handling of an

estate, conversion of funds owed to a beneficiary of that estate, and misrepresentations to conceal the conversion. Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (PA 1981). Petitioner has established clear and satisfactory evidence of misconduct by way of stipulation and exhibits. The Rules violations are amply supported by the evidence.

The facts demonstrate that from August 19, 2003 to July 21, 2005, Respondent knowingly and intentionally converted \$33,285.34 belonging to Derrick Walker and used the converted funds for his personal benefit. After Mr. Walker filed a complaint with Petitioner, Respondent began to make repayment of the funds. Respondent was not forthcoming with Petitioner regarding his repayment, as he failed to provide written proof that he had deposited money into Mr. Walker's account, despite his assurance to Petitioner that he would do so. On one occasion Respondent falsely stated that he had deposited a total of \$23,000 into Mr. Walker's account, when in fact Respondent had only deposited a total of \$17,500.

Respondent attempted to achieve mitigation by invoking the Braun defense. The Hearing Committee concluded as a matter of law that Respondent did not meet his burden of providing clear and convincing evidence that he had a mental disorder that substantially caused the misconduct. Careful review of the record persuades the Board that the Committee did not err in making this conclusion. Respondent's expert witness, Dr. Steven Samuel, opined that Respondent had a mild to moderate depression and that such

depression caused Respondent to misappropriate money to make himself feel better. The Board does not find a factual basis for such a conclusion in the record. Respondent clearly and credibly testified that he needed the money to pay office expenses, specifically his secretaries' salaries. He was not using the money to feel less depressed. Additionally, Respondent testified that he never considered himself to be depressed or to suffer from a mental illness, though he did not object to Dr. Samuel's ultimate diagnosis.

While Respondent failed to prove mitigation under Braun, he did show substantial evidence of his involvement in many worthy community activities. Such evidence suggests that Respondent is a leader in his community to which he has contributed an abundance of time and effort outside of his law practice. His character witnesses testified credibly to his good reputation in the community as an honest, truthful and law abiding person, though three of the witnesses did not know the extent of the conduct engaged in by Respondent.

The answer to the question of disciplinary sanction starts with the nature of the misconduct and turns on the aggravating and mitigating factors. While any conversion of client money is offensive, this particular instance is even more so, as the beneficiary of the funds was incarcerated and had little opportunity to retrieve his money from Respondent without the intervention and assistance of others. Respondent's claim that he did not know prisoners could have prison accounts is dubious at best. A simple telephone call to the prison could have resolved the issue. The facts suggest that Respondent took advantage of Mr. Walker's imprisoned status, which is certainly an aggravating factor. In

expressing his remorse, Respondent stated clearly that what he did was wrong and impermissible, but on separate occasions under oath he stated that he did not believe Mr. Walker was hurt by Respondent's actions because Mr. Walker was in prison, and he eventually received his money.

Where, as here, an attorney converts funds, conceals the conversion, commingles client funds, and neglects client matters, the appropriate discipline is a lengthy suspension. Office of Disciplinary Counsel v. John T. Olshock, No. 28 DB 2002, 862 Disciplinary Docket No. 3 (Pa. Oct. 24, 2003), Office of Disciplinary Counsel v. C. Van Youngman, 20 Pa. D. & C. 4th (1994). The proper handling of client money goes to the heart of a lawyer's obligations to a client; it follows that the mishandling of such funds abuses the trust between the lawyer and the client. While disbarment has been ordered in commingling and conversion matters, the Board is not persuaded that it is warranted in the instant matter, nor has Petitioner made that argument. The difference between acts warranting disbarment and acts warranting a five year suspension can be difficult to discern, with the ultimate resolution resting on particular facts that strike the Board or the Court as worthwhile. In this case, the Board was persuaded that Respondent's positive contribution to his community means the difference between disbarment and suspension, so that a five year period of suspension is sufficient to protect the public and to deter Respondent from committing future bad acts.

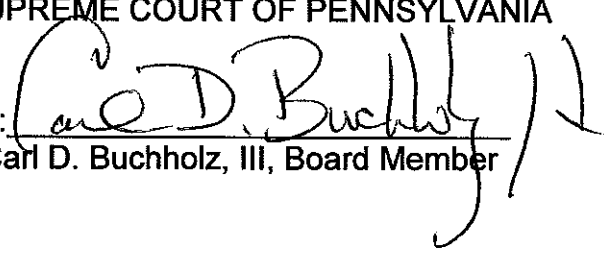
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Anthony Dennis Jackson, be suspended from the practice of law for a period of five years.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Carl D. Buchholz, III, Board Member

Date: December 13, 2007

Board Members Gentile and Jefferies did not participate in the adjudication.

Board Members Wright, Pietragallo and Cognetti dissented and would recommend a four year suspension.