

IN THE SUPREME COURT OF PENNSYLVANIA

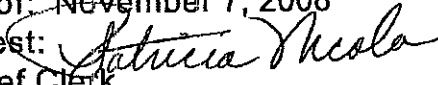
OFFICE OF DISCIPLINARY COUNSEL, : No. 1225 Disciplinary Docket No. 3
Petitioner :
 : No. 1 DB 2007
v. :
 : Attorney Registration No. 76349
JOSEPH JAMES DeSANTIS, :
Respondent : (Erie County)

ORDER

PER CURIAM

AND NOW, this 7th day of November, 2008, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated August 4, 2008, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is.

ORDERED that Joseph James DeSantis is suspended on consent from the Bar of this Commonwealth for a period of two years retroactive to June 8, 2007, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola
As of: November 7, 2008
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

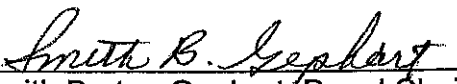
OFFICE OF DISCIPLINARY COUNSEL : No. 1 DB 2007
Petitioner :
v. : Attorney Registration No. 76349
JOSEPH JAMES DESANTIS :
Respondent : (Erie County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Smith Barton Gephart, William A. Pietragallo and Francis X. O'Connor, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on July 3, 2008.

The Panel approves the Petition consenting to two year suspension retroactive to June 8, 2007 and recommends to the Supreme Court of Pennsylvania that the attached Joint Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.


Smith Barton Gephart, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: August 4, 2008

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1225, Disciplinary Docket
: No. 3 – Supreme Court
Petitioner :
: No. 1 DB 2007 – Disciplinary
: Board
: and
: Complaint File Nos. C4-05-619,
: C4-06-116, C4-06-140, C4-06-153,
: C4-06-178, C4-06-220, C4-06-271,
: C4-06-309, C4-06-702, C4-06-824,
: C4-07-88, C4-07-89, C4-07-132,
: C4-07-232, C4-07-288 and C4-07-317
JOSEPH JAMES DESANTIS, : Attorney Registration No. 76349
Respondent : (Erie County)

JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT UNDER RULE 215(d), Pa.R.D.E

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

David M. Lame
Disciplinary Counsel
Suite 1300, Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 565-3173

and

Joseph James DeSantis, Respondent
c/o John E. Quinn, Esq., Counsel for Respondent
Portnoy & Quinn, LLC
One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

FILED

JUL 03 2008

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1225, Disciplinary Docket
: No. 3 – Supreme Court
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JOSEPH JAMES DESANTIS, : Attorney Registration No. 76349
:
Respondent : (Erie County)

JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT UNDER RULE 215(d), Pa.R.D.E

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, David M. Lame, Disciplinary Counsel, and Respondent, Joseph James DeSantis, (hereinafter, Respondent), by his counsel, John E. Quinn, Esquire, file this Joint Petition In Support Of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter, Pa.R.D.E.) and respectfully represent that:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement with the power and the 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 the aforesaid Rules.

2. Respondent was born on December 30, 1960, and was admitted to practice law in the Commonwealth of Pennsylvania on November 29, 1995. His attorney registration address as listed with the Disciplinary Board's Office of Attorney Registration is 9 Perry Street, Union City, Erie County, PA 16438. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By Order of the Supreme Court of Pennsylvania dated May 8, 2007 effective June 8, 2007 Respondent was, by consent and with the advice of counsel, placed on temporary suspension pursuant to Rule 214 (g), Pa.R.D.E.

4. Respondent, with the advice of counsel, agrees to enter into this Joint Petition.

BACKGROUND INFORMATION

5. Respondent was a sole practitioner with his principal office address at 9 Perry Street, Union City, Erie County, PA.

6. Respondent is a United States military veteran.

7. On May 9, 2005, Respondent appeared before Judge Stephanie Domitrovich of the Erie County Court of Common Pleas to represent Matthew Eastman at a guilty plea hearing for criminal case number CR-0000105-2005.

8. At that time, Respondent was visibly intoxicated and failed a Pre-Breath Test administered by the Sheriff's Office at the direction of the Court.

9. Respondent registered a blood alcohol level of .123%.

10. Judge Domitrovich suspended her regular court schedule for that morning and conducted a hearing as to whether Respondent was in contempt for his conduct.

11. By Order of Court entered May 9, 2005, amended on May 13, 2005, Respondent was found in contempt of court and sentenced to six (6) months incarceration in the Erie County Prison (hereinafter, ECP).

12. By the Court's amended Order of May 13, 2005 Respondent was released on parole with various conditions, which included that he obtain inpatient treatment at the Meadville Medical Center for as long as "medically necessary."

13. On September 8, 2005, a detainer was lodged against Respondent alleging that he violated the terms and conditions of his parole by being arrested and charged with violations of 18 Pa.C.S.A. §5104 (Resisting Arrest); 18 Pa.C.S.A. §5503(a) (Summary Disorderly Conduct); and, 18 Pa.C.S.A §2709(a)(1) (Summary Harassment).

14. On September 9, 2005, Respondent was incarcerated in the ECP.

15. On October 4, 2005, following a parole violation hearing, Respondent was committed to the ECP pursuant to the terms of the May 9, 2005 sentencing order less 48 days credit for time served.

16. Respondent remained incarcerated in the ECP until his parole on November 1, 2005 to an in-patient treatment facility.

17. As a result of his commitment in the ECP, Erie County Court of Common Pleas President Judge Elizabeth Kelly, by Order dated October 18, 2005, directed the

Office of Disciplinary Counsel to file an Application for the Appointment of a Conservator pursuant to Rule 321(a)(2)(ii), Pa.R.D.E., to protect the interests of Respondent's clients.

18. On October 19, 2005, the Application for the Appointment of Conservator was filed in the Civil Division of the Erie County Court of Common Pleas, at Miscellaneous Docket case No. 90036 of 2005. The Court scheduled a hearing on the application for October 25, 2005.

19. On October 25, 2005, Respondent and his counsel, Timothy Lucas, Esquire, were both present in Court at which time the Respondent informed Judge Kelly that he consented to the Appointment of a Conservator, based upon the averments in the application filed with the Court.

20. By Order entered on October 25, 2005, Judge Kelly granted the Application and appointed Michael J. Nies, Esquire, as Conservator to protect the interests of the clients of Respondent, with full powers and duties as set forth in Rules 322 and 324, Pa.R.D.E.

21. Following his appointment, Attorney Nies, with the assistance of the Erie County Bar Association, began the process of notifying Respondent's clients. Those clients were provided with forms to initiate, if they chose to do so, a complaint with the Office of Disciplinary Counsel, or a claim with the Pennsylvania Lawyers Fund for Client Security (hereinafter, the Fund), and/or a fee dispute claim with the Erie County Bar Association Fee Dispute Program.

22. Attorney Nies also took steps to assume control over Respondent's law practice-related bank accounts and the funds therein.

SPECIFIC FACTUAL ADMISSIONS AND RULES OF
PROFESSIONAL CONDUCT VIOLATED

Complaints Initiated by Office of Disciplinary Counsel
File Reference Nos. C4-05-619, C4-06-116 and C4-06-702

23. Respondent maintained three law practice related accounts, Northwest Savings Bank Account No. 2116016128; Northwest Savings Bank Account No. 2116016284; and, Northwest Savings Bank Account No. 2116023249.

24. Account No. 2116016128 and Account No. 2116023249 are designated as IOLTA Accounts, and Account No. 2116016284 is captioned as Respondent's law office account.

25. On January 3, 2005, Respondent deposited \$10,000 of personal money into his Northwest Savings Bank IOLTA Account No. 2116016128 (hereinafter IOLTA Account) by check number 5722 drawn on his Northwest Savings Bank Account No. 2116016284. (hereinafter, General Operating Account)

26. At the time of the deposit, the IOLTA Account contained funds entrusted to Respondent on behalf of clients.

27. On February 11, 2005, by check number 8865 drawn on his IOLTA Account and made payable to Kuhn, Kuhn & DeSantis in the amount of \$5,400, Respondent transferred entrusted money into his Northwest Savings Bank IOLTA Account No. 2116023249 (hereinafter, Real Estate Account) for the purposes of "covering" a deficiency in the Real Estate Account. The memo line on check number 8865 was annotated "Troyer to Miller closing to cover funds."

28. On February 11, 2005, Respondent's IOLTA Account did not contain any funds entrusted to Respondent for or on behalf of Troyer or Miller.

29. Thereafter, Respondent reimbursed his General Operating Account by personal check dated February 12, 2005 from his mother, Rose DeSantis, made payable to Kuhn, Kuhn & DeSantis in the amount of \$10,000 and deposited into Respondent's General Operating Account on February 22, 2005.

30. By transferring entrusted funds from his IOLTA Account, which were unrelated to the Troyer to Miller closing, into his Real Estate Account, Respondent misused funds entrusted to him on behalf of other clients in order to "cover" the Troyer to Miller real estate closing because the Real Estate Account at the time of the transfer did not have sufficient funds to pay out the appropriate amounts related to that closing.

31. Respondent reimbursed his IOLTA Account by depositing the proceeds of a teller check from Americo Federal Credit Union account held by Terri and Jason Miller, payable to Kuhn, Kuhn & DeSantis, PC in the amount of \$5,319 on February 11, 2005.

32. The proceeds from the American Federal Credit Union check were personal funds and unrelated to any client entrustment.

33. The deposit ticket for Respondent's IOLTA Account 2116016128 used for the Americo Federal Credit Union check deposit is annotated "Miller."

34. On February 22, 2005 by check number 8867 drawn on Respondent's IOLTA Account and payable to Kuhn, Kuhn & DeSantis in the amount of \$3,000, Respondent transferred money from his IOLTA Account into his General Operating Account.

35. The \$3,000 check was not related to any representation as the check's memo line is annotated "Blue to Pink per Joe."

36. By letter dated May 25, 2005, Kathryn J. Peifer, Executive Director with the Fund notified Respondent, in compliance with Rule 221, Pa.R.D.E. that an overdraft balance was created on his IOLTA Account [No. 2116023249 Real Estate Account]. Under cover of that letter, Respondent was provided with a photocopy of the Dishonored Escrow/Trust Check Reporting Form reflecting that his IOLTA Account had two overdrafts relating to Check Nos. 2154 drawn in the amount of \$580.00 and 2157 drawn in the amount of \$16.00.

37. Check No. 2154 created an overdraft to the account in the amount of \$426 and check No. 2157 caused an overdraft to the account in the amount of \$442.

38. In response to Ms. Peifer's request for information relating to the overdrafts, Respondent, among other things, admitted that:

(a) He was unexpectedly admitted to the hospital for approximately a month;

(b) During his absence he had left a few signed IOLTA Account checks for his secretary to pay the bills for the office and take care of any other matters that would have arisen; and,

(c) He directed his secretary to use one of the signed IOLTA checks to be drawn for \$1,000 and deposited into the Green Account (Real Estate IOLTA Account).

39. On July 6, 2005, Respondent transferred another \$5,000 from his IOLTA Account to his General Operating Account by check numbered 8953, payable to Kuhn, Kuhn & DeSantis for \$5,000.

40. The \$5,000 check was not related to any representation, and the check's memo line was annotated "Blue to Pink per Joe."

41. On July 11, 2005, Respondent by IOLTA Account check number 8955 made payable to Rich Lichte in the amount of \$13,000 and annotated "Payment for Car," Respondent misappropriated entrusted funds for personal use.

42. Concurrently with his payment of \$13,000 from his IOLTA Account to Mr. Lichte, Respondent issued a second check in the amount of \$6,995 from his General Operating Account also made payable to Mr. Lichte, and annotated "Payment for Car."

43. In his response to the June 29, 2005 letter of inquiry from Petitioner, Respondent, by letter dated July 7, 2005, provided the following information:

(a) During his absence from the office, May 9 through May 30, 2005, he kept signed IOLTA Account checks in his safe for his secretary to use "to keep things going";

(b) The IOLTA Account contained "untransferred" attorney fees along with entrusted funds belonging to clients; and,

(c) He authorized his secretary to use one of the pre-signed IOLTA Account checks in the amount of \$1,000 to be deposited into the overdrawn Real Estate IOLTA Account to "take care of the overdraft."

44. Petitioner sent Respondent a follow-up letter dated July 14, 2005 and requested additional documentary information to clarify Respondent's July 7, 2005 statement of position including a specific request to identify the nature and source of the "untransferred" attorney's fees Respondent stated were in the IOLTA account.

45. By letter dated August 5, 2005, Respondent admitted the following:

(a) He had sole signatory authority over said account;

(b) The IOLTA Account contained both client funds and funds belonging to the law firm; and,

(c) The IOLTA Account was "used for the management of the firm's income stream and for payment of filing fees and costs for clients."

46. By Respondent's maintenance of both "firm money" and entrusted funds in his IOLTA Account, he commingled funds.

47. Following Respondent's incarceration on the detainer, Respondent continued the depletion of his law practice-related accounts when on October 1, 2005, at the direction of Respondent, check No. 6135 from Respondent's General Operating Account was made payable to Darlene J. Wawrejko, Respondent's wife, in the amount of \$4,000.

48. Said payment of entrusted funds to his wife was not made to or on behalf of any client.

49. Although annotated "taxes" the check was negotiated and deposited into a private account.

50. On October 5, 2005, Respondent issued IOLTA Account check No. 9006 payable to Darlene J. Wawrejko, his wife, in the amount of \$7,164.90.

51. Said payment of entrusted funds to his wife was not made to or on behalf of any client.

52. Also on October 5, 2005, Respondent drew check No. 6147 from his General Operating Account payable to himself in the amount of \$4,000 and annotated "cash for himself."

53. Shortly after his appointment on October 25, 2005, the Conservator reviewed Respondent's available client information found in Respondent's office and concluded that Respondent should have approximately \$49,000 available in the three law practice related accounts for refunds to his former clients.

54. On October 20, 2005, Respondent's IOLTA Account check number 9006 to his wife cleared his IOLTA Account.

55. After check 9006 cleared the IOLTA Account, the bank balance was \$5,209.75 and Respondent's account was deficient in the amount of \$4,836.25.

56. After assuming control of the three law practice-related accounts on November 1, 2005, the Conservator determined that the combined total in the accounts was approximately \$9,000, of which only approximately \$4,500, was in Respondent's IOLTA account.

57. The Northwest Savings Bank Account records for the period ending November 30, 2005 show that Respondent's IOLTA Account balance was \$4,582.75.

58. By letter dated December 5, 2005, Respondent provided Petitioner with a response to the September 16, 2005 Supplemental Letter of Inquiry in which he stated that "it appears that our error in this matter was in leaving in the trust account funds that were designated as fees for a period of time in order to assist clients."

59. Respondent did not identify the nature and source of those fees as Petitioner had previously requested.

60. The December 31, 2005 IOLTA Account balance was \$4,582.75.

61. In early 2006, the Conservator informed Petitioner of the discrepancy and the lack of entrusted funds.

62. The Conservator also informed Petitioner that former clients of the Respondent had begun to make requests for a return of their client files and for refund of unearned fees or retainers for work that the Respondent had not done on their cases.

63. Due to the insufficient funds contained in all of Respondent's law practice-related bank accounts, the Conservator was unable to make any refund to the clients.

64. By and through a letter dated March 3, 2006 from Respondent's attorney, Timothy Lucas, to the Conservator, Respondent acknowledged that "something in excess of \$19,000" was owed by Respondent and that the Conservator had only been able to recover slightly in excess of \$8,000.

65. In that letter, Attorney Lucas explains that Respondent had paid personal funds over to Attorney Lucas in the amount of \$12,387, which Respondent believed to be the amount due and owing his former clients.

66. The remaining monies amounting to approximately \$29,000 are unaccounted for.

67. On June 30, 2006, Petitioner sent Respondent a Form DB-7 Letter of Inquiry alleging that Respondent had violated various Rules of Professional Conduct. Concurrently, ODC caused a Subpoena Duces Tecum to be issued to Northwest Savings Bank for the production of records, bank media, checks, and statements from Respondent's law practice-related accounts.

68. Petitioner received the financial records from Northwest Savings Bank

69. By letter dated July 10, 2006 in response to Petitioner's June 30, 2006 letter of inquiry, Respondent acknowledged that as a result of diseases and illnesses his "judgment was impaired as to his [my] ability to represent so many clients simultaneously (approximately 50)."

70. Despite knowing of his own physical and mental problems, Respondent, until his incarceration on September 9, 2005, continued to accept new cases along with the fees and retainers associated with those cases.

71. As a result of Respondent's misconduct described in paragraphs 23 to 70, Respondent has violated Rules of Professional Conduct 1.16(a)(2), 1.15(a), and 8.4(c).

Criminal Conviction
File Reference No. C4-06-1254

72. On September 16, 2005, a criminal complaint was filed against Respondent at OTN K 253894-4, charging him with the misdemeanor offense of resisting arrest in violation of 18 Pa.C.S.A. §5104, and the summary offenses of disorderly conduct in

violation of 18 Pa.C.S.A., §5503(a), and harassment in violation of 18 Pa.C.S.A. §2709(a)(1).

73. Respondent was alleged to have committed these acts against his Erie County Parole Officer.

74. As a result of the criminal charges, on September 8, 2005, Judge Domitrovich placed a detainer against Respondent and on September 9, 2005 Respondent was incarcerated in the ECP.

75. At the parole revocation hearing before Judge Domitrovich on October 4, 2005, Respondent admitted that while on medication for his bipolar disorder, he consumed alcohol in violation of a Court Order, and refused to comply with the directives of his parole officer.

76. As a result, Judge Domitrovich revoked Respondent's parole and ordered him committed to the Erie County Prison (ECP) pursuant to the terms of the May 9, 2005 Order of Court, giving him credit for forty-eight days time served.

77. A hearing on the charges filed against Respondent at OTN K 253894-4 was scheduled for June 30, 2006 before Erie County Magisterial District Judge Joseph R. Lefaiver.

78. Respondent, while represented by counsel, entered a plea of guilty to the charges of summary disorderly conduct and summary harassment.

79. After accepting his guilty plea, Judge Lefaiver sentenced Respondent to pay the fines and costs associated with the proceeding.

80. On December 28, 2006, Petitioner informed the Supreme Court of Respondent's convictions pursuant to Rule 214, Pa.R.D.E.

81. Pursuant to Rule 214(g), Pa.R.D.E., "Upon receipt of a conviction of any attorney for a crime other than a serious crime, the Court shall take such action as it deems warranted."

82. Because the crimes of which Respondent was convicted are not serious crimes, a rule to show cause why Respondent should not be placed on temporary suspension could not occur under Rule 214(d), Pa.R.D.E.

83. Because of the number of crimes and the circumstances under which they occurred, the parole revocation, and the still pending conservatorship, Petitioner strongly recommended in this particular instance that the Supreme Court seriously consider, pursuant to Rule 214(g), Pa.R.D.E., entering a rule directing that the Respondent show cause why he should not be placed on temporary suspension.

84. Petitioner further recommended that in view of the nature of the offenses described, in particular the adjudication of criminal contempt and subsequent revocation of parole, the Court refer this matter to the Disciplinary Board for the institution of a formal proceeding.

85. On March 2, 2007, the Supreme Court, pursuant to Rule 214(g), Pa. R.D.E., issued a Rule to Show Cause why Respondent should not be placed on temporary suspension.

86. On March 16, 2007, Respondent, through counsel, replied to the Rule and consented to be placed on temporary suspension.

87. By Order entered May 8, 2007, Respondent was placed on temporary suspension and the matter was referred back to the Disciplinary Board for the institution of a formal proceeding.

88. Respondent's criminal convictions form an independent basis for discipline pursuant to Rule 214, Pa.R.D.E., via Rule 203(b)(1), Pa.R.D.E., and his conduct also violates Rule of Professional Conduct 8.4(b).

Complaints by Respondent's Former Clients

Complaint of William G. Bricker File Reference No. C4-06-271

89. During June of 2005, William G. Bricker (hereinafter, Mr. Bricker) retained Respondent to handle a right-of-way matter involving a collapsing retaining wall on property Mr. Bricker owned in Erie County.

90. Respondent and Mr. Bricker verbally agreed that Mr. Bricker would pay Respondent a \$1,500 retainer.

91. Mr. Bricker, who was a Westmoreland County resident, never met personally with Respondent, but rather conducted all matters with Respondent over the telephone.

92. By a Bill for Services dated June 8, 2005 and sent to Mr. Bricker, Respondent confirmed the \$1,500 retainer previously quoted to Mr. Bricker.

93. By letter dated August 18, 2005, a written Agreement for Legal Services was provided to Mr. Bricker.

94. On or about August 22, 2005, Mr. Bricker paid Respondent by personal check numbered 127 made payable to "Kuhn, Kuhn & DeSantis" for \$1,500, and annotated "retainer."

95. On August 26, 2005, Mr. Bricker's check was negotiated and the proceeds were deposited directly into Respondent's IOLTA Account.

96. Respondent was then entrusted with \$1,500 on behalf of Mr. Bricker.

97. On September 9, 2005, Respondent was incarcerated in the ECP.

98. Respondent did not inform Mr. Bricker of his incarceration and inability to handle Mr. Bricker's legal matter.

99. Respondent performed no legal work of record on behalf of Mr. Bricker.

100. Respondent did not refund to Mr. Bricker any portion of the unearned fee.

101. Mr. Bricker requested the Conservator refund his entire \$1,500 retainer paid to Respondent.

102. The Conservator could not refund the money as Respondent's law practice-related accounts did not contain sufficient funds available to refund monies due to all of Respondent's former clients.

103. On December 14, 2006, as a result of a claim filed by Mr. Bricker, the Fund awarded Mr. Bricker \$1,385.

104. As a result of Respondent's misconduct described in paragraphs 89 to 103, Respondent has violated Rules of Professional Conduct 1.3, 1.4(a)(3), 1.15(a), 1.16(d) and 8.4(c).

Complaint of Kenneth E. Yoder
File Reference No. C4-06-178

105. On January 5, 2005, Respondent was retained by Kenneth E. Yoder (hereinafter, Mr. Yoder), for representation in a marital property settlement dispute related to a divorce proceeding previously filed in the Erie County Court of Common Pleas at docket number 975-A-1989.

106. Respondent previously entered his appearance at that docket number where he filed a motion in regard to the support matter.

107. A Bill for Services dated August 15, 2005 and related documents were sent to Mr. Yoder confirming that Mr. Yoder's new retainer fee was \$1,500.

108. Thereafter, Mr. Yoder:

- (a) Executed an Agreement for Legal Services;
- (b) Paid Respondent by a personal check numbered 2165, payable to Kuhn, Kuhn, & DeSantis in the amount of \$1,500; and,
- (c) Returned the checks and all papers to Respondent's office within a few days after he had received them.

109. The proceeds of Mr. Yoder's \$1,500 check were deposited into Respondent's IOLTA Account on August 15, 2005.

110. Respondent was then entrusted with \$1,500 on behalf of Mr. Yoder.

111. On September 6, 2005, Respondent drew IOLTA Account check No. 8982, payable to "Prothonotary" for \$100.50, annotated as "filing fee for Yoder v. Upperman."

112. The check was negotiated by the Erie County Clerk of Records on or about September 8, 2005.

113. The Erie County Prothonotary case docket information system does not show or reflect any filing made by Respondent on behalf of Mr. Yoder.

114. On September 9, 2005, Respondent was incarcerated in the ECP.

115. Respondent did not inform Mr. Yoder of his incarceration and inability to handle Mr. Yoder's legal matter.

116. Respondent performed no legal work of record on behalf of Mr. Yoder.

117. Respondent did not refund to Mr. Yoder any portion of the unearned fee.

118. Mr. Yoder requested the Conservator refund the entire \$1,500 retainer he paid to Respondent.

119. The Conservator could not refund the money as Respondent's law practice-related accounts did not contain sufficient funds available to refund monies due to all of Respondent's former clients.

120. On December 14, 2006, as a result of a claim filed by Mr. Yoder, the Fund awarded Mr. Yoder \$1,000.

121. As a result of Respondent's misconduct described in paragraphs 105 to 120, Respondent has violated Rules of Professional Conduct 1.3, 1.4(a)(3), 1.15(a), 1.16(d) and 8.4(c).

Complaint of Ronald R. Angelotti
File Reference No. C4-06-153

122. In August of 2005 Ronald R. Angelotti (hereinafter, Mr. Angelotti) retained Respondent to represent him in a divorce and property settlement proceeding.

123. Respondent and Mr. Angelotti agreed that Respondent would be retained for \$2,000.

124. Respondent had not previously represented Mr. Angelotti.

125. Respondent did not at that time or within a reasonable time thereafter provide Mr. Angelotti with a written document evidencing the basis or rate of his fee.

126. On August 25, 2005, Mr. Angelotti issued his personal check number 1337, payable to "Kuhn & DeSantis" in the amount of \$2,000, annotated as "Retainer."

127. On August 26, 2005, the proceeds of Mr. Angelotti's check were deposited into Respondent's IOLTA Account.

128. Respondent was then entrusted with \$2,000 on behalf of Mr. Angelotti.

129. On September 9, 2005 Respondent was incarcerated in the ECP.

130. Respondent did not inform Mr. Angelotti of his incarceration and inability to handle Mr. Angelotti's legal matter.

131. Respondent performed no legal work of record on behalf of Mr. Angelotti.

132. Respondent did not refund to Mr. Angelotti any portion of the unearned fee.

133. Mr. Angelotti requested the Conservator refund his entire \$2,000 retainer paid to Respondent.

134. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

135. On September 28, 2006, as a result of a claim filed by Mr. Angelotti, the Fund awarded him \$1,750.

136. As a result of Respondent's misconduct described in paragraphs 122 to 135, Respondent has violated Rules of Professional Conduct 1.3, 1.4(a)(3), 1.15(a), 1.16(d) and 8.4(c).

Complaint of Arlene B. Davis
File Reference No. C4-06-140

137. On August 16, 2004, Respondent was retained by Richard and Arlene Davis (hereinafter, Mr. and Mrs. Davis) to handle a bankruptcy matter and to work with the IRS to reduce their tax debt by an offer in compromise.

138. Mr. and Mrs. Davis agreed with Respondent's verbal terms of the representation, that being a \$950 retainer for each legal matter, against which Respondent would bill an hourly rate.

139. Mr. and Mrs. Davis agreed that the offer in compromise would be the first matter on which Respondent was to work.

140. By two separate Bill for Services from Respondent, each dated August 27, 2004, Mr. and Mrs. Davis agreed to the retention of \$950 for each matter.

141. On October 4, 2004, Mr. and Mrs. Davis paid Respondent the initial \$950 for the offer in compromise by their personal check, for which Respondent gave them his office Receipt numbered 214658 evidencing their payment.

142. Respondent was then entrusted with \$950 on behalf of Mr. and Mrs. Davis.

143. Also on October 4, 2004, Mr. and Mrs. Davis returned to Respondent the bankruptcy and IRS papers he had them complete.

144. Thereafter, Respondent had no further contact with Mr. and Mrs. Davis regarding either the bankruptcy or IRS matter until August of 2005.

145. In August 2005, Mr. and Mrs. Davis again met with Respondent about their two cases.

146. On September 2, 2005, Mr. and Mrs. Davis paid Respondent the other \$950 and Respondent again provided them with a Receipt, this one numbered 215162 evidencing their payment.

147. The proceeds of the \$950 check from Mr. and Mrs. Davis were deposited into Respondent's IOLTA Account.

148. Respondent was then entrusted with another \$950 on behalf of Mr. and Mrs. Davis.

149. On September 9, 2005, Respondent was incarcerated in the ECP.

150. Respondent did not inform Mr. and Mrs. Davis of his incarceration and his inability to continue handling their legal matters.

151. On October 14, 2005, Respondent caused a Chapter 7 Bankruptcy Petition to be filed on behalf of Mr. and Mrs. Davis at bankruptcy case number 05-15119, with Respondent listed as counsel of record.

152. Respondent performed no work on the offer in compromise on behalf of Mr. and Mrs. Davis.

153. Because of Respondent's incarceration, Mr. and Mrs. Davis retained new counsel to represent them in the bankruptcy.

154. Respondent did not refund to Mr. and Mrs. Davis any portion of the unearned fee paid by them for his representation on the offer in compromise.

155. Mr. and Mrs. Davis requested the Conservator refund the entire retainer they paid to Respondent.

156. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

157. On December 14, 2006, as a result of a claim filed by Mr. and Mrs. Davis the Fund awarded Mr. and Mrs. Davis \$950.

158. As a result of Respondent's misconduct described in paragraphs 137 to 157, Respondent has violated Rules of Professional Conduct 1.3, 1.4(a)(3), 1.15(a), 1.16(d) and 8.4(c).

Complaint of Kay L. Myers
File Reference No. C4-06-309

159. On September 9, 2005, Respondent was retained to represent Kay L. Myers (hereinafter, Ms. Myers), in an appeal from a Judgment entered by a Magisterial District Judge.

160. Respondent told Ms. Myers that he required a \$3,500 retainer to represent her.

161. By check numbered 10197 dated September 9, 2005, made payable to Kuhn, Kuhn & DeSantis in the amount of \$3,500, and annotated "Retainer," Brian K. Myers paid Respondent the agreed upon retainer for Ms. Myers' representation in the civil matter.

162. Respondent had not previously represented Ms. Myers.

163. Respondent did not at that time or within a reasonable time thereafter provide Ms. Myers or Brian Myers with a written document evidencing the basis or rate of his fee.

164. The \$3,500 Respondent accepted on behalf of Ms. Myers was entrusted funds and should have been deposited into his IOLTA Account.

165. On September 9, 2005, the proceeds of Brian Myers' check were deposited into Respondent's General Operating Account.

166. The same day Respondent accepted the \$3,500 on behalf of Ms. Myers he was taken into custody and incarcerated in the Erie County Prison.

167. Respondent did not inform Ms. Myers of his incarceration and his inability to handle her legal matter.

168. Respondent did not refund to Ms. Myers or to Brian Myers any portion of the unearned fee.

169. Respondent did no work of record on behalf of Ms. Myers.

170. Ms. Myers requested the Conservator refund the entire retainer paid to Respondent.

171. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

172. On December 14, 2006, as a result of a claim filed by Ms. Myers, the Fund awarded her \$3,500.

173. As a result of Respondent's misconduct described in paragraphs 159 to 172, Respondent has violated Rules of Professional Conduct 1.4(a)(3), 1.15(a), 1.16(d) and 8.4(c).

Complaint of Michelle S. Shatto
File Reference No. C4-06-220

174. On April 4, 2005, Respondent was retained by Ms. Michelle S. Shatto (also known as Michelle Brown) to handle the administration of her mother's estate.

175. Ms. Shatto executed an Agreement for Legal Services with Respondent, by which the agreed fee for Respondent was to be based upon five percent of the gross estate assets. If fees for time expended would exceed the five percent then Respondent would bill the additional amounts based upon an agreed hourly amount.

176. On April 26, 2005, Letters of Administration were issued and Respondent was listed as the attorney for the estate.

177. Shortly thereafter in early June of 2005, Ms. Shatto, in her individual capacity, also retained Respondent to represent her in a domestic matter on an hourly basis drawn against a retainer of \$800.

178. Respondent and Ms. Shatto did not execute an additional fee agreement.

179. Ms. Shatto, who had been divorced by Divorce Decree entered on August 16, 1999 at Erie County civil case No. 11106-1999, wanted to remarry. Respondent advised Ms. Shatto that because she had co-habitated with her ex-husband for a period of time after the divorce and they filed joint tax returns, she would have to "re-divorce."

180. In early June of 2005, Ms. Shatto paid Respondent by personal check in the amount of \$137, representing her initial payment towards his retainer to handle the "re-divorce" matter.

181. The \$137 was entrusted funds.

182. The proceeds of the \$137 check were not deposited into or maintained in Respondent's IOLTA Account.

183. On June 26, 2005, Ms. Shatto issued a second personal check this one numbered 976, made payable to Kuhn, Kuhn and DeSantis in the amount of \$200, and annotated "Divorce" as an additional payment toward the retainer.

184. The \$200 was entrusted funds.

185. The proceeds of the \$200 check were not deposited into or maintained in Respondent's IOLTA account.

186. On August 12, 2005, although the estate was not complete, Ms. Shatto, in response to Respondent's request for payment of his fee and costs, paid Respondent \$2,733.71 by her personal check numbered 959, and annotated "Estate," which represented payment by the Estate to Respondent for his previous and future work on the estate case.

187. The Agreement for Legal Services executed by Respondent and Ms. Shatto set Respondent's fee at five percent of the gross Estate, which according to the Petition for Granting of Letters filed by Respondent at the Erie County Register of Wills on April 26, 2005 set the Estate value at \$33,000.

188. On September 9, 2005 Respondent was incarcerated in the ECP.

189. As a result of Respondent's incarceration, Ms. Shatto retained new counsel to complete the Estate of her mother.

190. Respondent did not inform Ms. Shatto of his incarceration and his inability to handle her legal matters.

191. As a result of Respondent's incarceration, Ms. Shatto retained new counsel to complete her mother's estate.

192. Respondent did not refund to Ms. Shatto any portion of the unearned fee(s).

193. Respondent performed no work on behalf of Ms. Shatto in the "re-divorce" case.

194. Ms. Shatto requested the Conservator refund the retainers paid to Respondent in both legal matters.

195. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

196. On December 14, 2006, as a result of a claim filed by Ms. Shatto, the Fund awarded her a total of \$1,304.27 for both legal matters.

197. As a result of Respondent's misconduct in paragraphs 174 to 196, Respondent has violated Rules of Professional Conduct 1.4(a)(3), 1.15(a), 1.16(d) and 8.4(c).

Complaint of Tammy L. Buczynski
File reference No. C4-06-824

198. On September 8, 2004, Respondent was retained by Tammy L. Buczynski, Mark A. Buczynski, her husband, and Mark A. Buczynski, Jr., her son, to represent them in an appeal filed by Humes Chrysler Dodge Jeep & Trucks to the Erie County Court of Common Pleas from a civil judgment entered by a Magisterial District Judge at No. CV-94-04.

199. By an Agreement for Legal Services dated September 10, 2004, Ms. Buczynski agreed to pay Respondent a \$500 non-refundable retainer for the appeal against which Respondent would bill at the hourly rates listed in the agreement.

200. On September 8, 2004, Ms. Buczynski paid the non-refundable retainer by personal check in the amount of \$500.

201. By a Bill for Services dated January 19, 2005, Respondent billed Ms. Buczynski \$1,000 for an arbitration hearing to be scheduled.

202. On March 2, 2005, Ms. Buczynski paid Respondent \$1,000 by personal check as evidenced by a receipt from Respondent's law office numbered 215017 indicating thereon, "bal of retainer fee."

203. The proceeds of the check were deposited into Respondent's IOLTA Account.

204. Respondent was then entrusted with \$1,000 on behalf of Ms. Buczynski.

205. On August 10, 2005, at the request of Respondent, Ms. Buczynski, by another personal check, paid an additional \$512 for preparation and legal work for the pending arbitration hearing.

206. Respondent was then entrusted with an additional \$512 on behalf of Ms. Buczynski.

207. Respondent's ledger card reflects that the proceeds of the \$512 check were deposited into Respondent's General Operating Account rather than his IOLTA Account.

208. On September 9, 2005, Respondent was incarcerated in the ECP.

209. Respondent did not inform Ms. Buczynski of his incarceration and his inability to handle her legal matter.

210. Respondent did not refund to Ms. Buczynski any portion of the unearned fee.

211. Ms. Buczynski requested the Conservator refund the unearned fees.

212. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

213. On October 20, 2005, the Arbitration Hearing scheduled for October 27, 2005 was postponed because of Respondent's incarceration and inability to represent Ms. Buczynski.

214. As a result of Respondent's misconduct described in paragraphs 198 to 213, Respondent has violated Rules of Professional Conduct 1.3, 1.4(a)(3), 1.16(d) and 8.4(d).

Complaint of Patricia D. Burdick
File Reference No. C4-07-89

215. On August 15, 2005, during a meeting between Respondent and Patricia D. Burdick (hereinafter, Ms. Burdick), Ms. Burdick retained Respondent for the purposes of transferring by deed two parcels of property located in Warren County, Pennsylvania, to her son Thomas Burdick.

216. Respondent advised Ms. Burdick that:

(a) His fee to accomplish the deed transfer would be \$1,500; and,

(b) It would not take a substantial amount of time to complete the task of transferring the property as she requested.

217. Respondent had not previously represented Ms. Burdick in an individual capacity.

218. Respondent did not either at that time or within a reasonable time thereafter provide Ms. Burdick with a written document evidencing the basis or rate of his fee.

219. At the conclusion of the meeting, Ms. Burdick drew a personal check from her PNC Bank Account numbered 1394 and made the check payable to Kuhn, Kuhn & DeSantis for \$75, representing the payment of Respondent's consultation fee.

220. Although Respondent and Ms. Burdick had agreed to another meeting the following week, Respondent's secretary contacted Ms. Burdick by telephone and informed her that Respondent was unable to meet with her as previously discussed because of Respondent's unspecified personal reasons.

221. On August 18, 2005, Ms. Burdick paid Respondent by personal check numbered 1397, made payable to Kuhn, Kuhn & DeSantis, PC, in the sum of \$1,500 for the transfer of the deeds.

222. On August 19, 2005, the proceeds of the \$1,500 check from Ms. Burdick was deposited into Respondent's General Office Account.

223. Approximately one week later, Respondent's secretary again telephoned Ms. Burdick and informed her that she could pick up her file from Respondent's office because he had been hospitalized and was unable to proceed with her legal work.

224. Ms. Burdick obtained her file from Respondent's office and the documents she had previously provided to him.

225. Ms. Burdick was not given a refund of any portion of the \$1,500 she previously paid to Respondent.

226. The \$1,500 Respondent received from Ms. Burdick was not earned by him and should have been refunded to her at the time she retrieved her documents.

227. Ms. Burdick requested the Conservator refund the money she paid to Respondent.

228. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

229. On January 17, 2007, as a result of a claim filed by Ms. Burdick, the Erie County Bar Association Fee Dispute Committee conducted a hearing, after which it was determined that Respondent should refund to Ms. Burdick the sum of \$1,500 as he had not completed any work on her legal matter of the transference of the two deeds of real property.

230. On December 11, 2007, as a result of a claim filed by Ms. Burdick, the Fund awarded her \$1,500.

231. As a result of Respondent's misconduct described in paragraphs 215 to 230, Respondent has violated Rules of Professional Conduct 1.4(a)(3), 1.5(b), 1.16(d) and 8.4(c).

Complaint of Ricky L. Kent, Jr.
File Reference No. C4-07-132

232. On or about July 15, 2005, Respondent met with Ricky L. Kent, Jr. (hereinafter, Mr. Kent) for the purposes of discussing Mr. Kent's various family law matters, including, among other things, a divorce, support case and possible paternity action.

233. At the time of his meeting with Mr. Kent, Respondent was paid \$45 in cash as a fee for the consultation.

234. Mr. Kent and Respondent verbally agreed during the July 15, 2005 meeting, that Mr. Kent would hire Respondent as his attorney, paying him the sum of \$2,300 as a retainer against which Respondent would bill at an hourly rate.

235. At the conclusion of the July 15 meeting, Respondent gave Mr. Kent a bill for services confirming their verbal agreement.

236. Respondent and Mr. Kent further verbally agreed that Mr. Kent could make monthly installment payments toward the retainer balance.

237. On August 10, 2005, Mr. Kent made an installment payment in cash, of \$450, as evidenced by receipt number 215131.

238. The \$450 was entrusted funds.

239. The \$450 cash was not deposited into Respondent's IOLTA Account.

240. On September 8, 2005, Mr. Kent made another installment payment in cash, in the amount of \$500 as evidenced by receipt number 215167.

241. The \$500 was entrusted funds.

242. The \$500 cash was not deposited into Respondent's IOLTA Account.

243. On September 9, 2005, Respondent was incarcerated in the ECP.

244. Respondent did not notify Mr. Kent of his incarceration and his inability to handle his legal matter.

245. Although Respondent received payment of \$950 towards the retainer from Mr. Kent, he performed no work on behalf of Mr. Kent.

246. Respondent did not refund to Mr. Kent any portion of the unearned fee.

247. Mr. Kent requested the Conservator refund the \$950 paid to Respondent.

248. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

249. Mr. Kent currently has a claim pending before the Fund.

250. As a result of Respondent's misconduct in paragraphs 232 to 249, Respondent has violated Rules of Professional Conduct 1.4(a)(3), 1.15(a), 1.16(d) and 8.4(c).

Complaint of Kelly A. Murphy
File Reference No. C4-07-232

251. On or about August 5, 2005, Respondent met with Kelly Murphy (hereinafter, Ms. Murphy) for an initial consultation to discuss whether or not she had a valid civil action for losses and damages in the amount of approximately \$4,900.

252. At the conclusion of the consultation, Ms. Murphy executed a fee agreement by which she agreed to pay a \$1,000 nonrefundable retainer against which Respondent was to bill at his hourly rate.

253. Ms. Murphy and Respondent also agreed that no work would be performed on her case unless and until Respondent had received at least one half of the retainer plus the costs necessary to commence a civil action before a local Magisterial District Judge.

254. On August 15, 2005, Ms. Murphy, through her mother, paid Respondent \$500 by Corry Area Schools Federal Credit Union check number 1047, which was annotated as "one half retainer fee."

255. The proceeds of the \$500 check from Ms. Murphy were deposited into Respondent's IOLTA Account.

256. Respondent was then entrusted with \$500 on behalf of Ms. Murphy.

257. On September 9, 2005, Respondent was incarcerated in the ECP.

258. Respondent did not notify Ms. Murphy of his incarceration and his inability to handle her legal matter.

259. Respondent performed no work for Ms. Murphy and no civil action was ever filed by Respondent on her behalf.

260. Respondent did not refund to Ms. Murphy any portion of the unearned fee.

261. Ms. Murphy requested the Conservator refund the \$500 she paid Respondent.

262. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund money due to all of Respondent's former clients.

263. As a result of a claim filed by Mr. Murphy, the Erie County Bar Association Fee Dispute Committee by letter dated January 18, 2007, advised Ms. Murphy of its determination that she was due a refund of \$500 as Respondent had not provided her with any services to earn the \$500 previously paid.

264. Ms. Murphy presently has a claim pending before the Fund.

265. As a result of Respondent's misconduct described in paragraphs 251 to 264, Respondent has violated Rules of Professional Conduct 1.4(a)(3), 1.15(a), 1.16(d) and 8.4(c).

Complaint of Carl and Margaret Patterson
File Reference No. C4-07-317

266. On or about April 21, 2005, Respondent met with Carl and Margaret Patterson (hereinafter, Mr. and Mrs. Patterson) to discuss his representation of them in the transfer of real property that Mrs. Patterson's late mother (Ida Bretz) owned and which was still in her estate.

267. Mrs. Patterson was the personal representative for her late mother's estate.

268. The transfer of the property was to be a tax exempt transfer, from the estate to Mr. and Mrs. Patterson, then to their son.

269. Mr. and Mrs. Patterson previously were clients of Respondent.

270. At the conclusion of the April 21, 2005 meeting, there was an agreement for Respondent to represent Mr. and Mrs. Patterson in the deed transfer for the sum of \$656, which represented Respondent's fee and the costs associated with the transfer of the property.

271. Respondent was paid by personal check number 3863 drawn on a First National Bank Account and made payable to Kuhn & DeSantis in the amount of \$656.

272. Respondent deposited the proceeds of the check into his IOLTA Account.

273. Respondent was then entrusted with \$656 on behalf of Mr. and Mrs. Patterson.

274. Following the April 2005 meeting, Respondent did no work to effectuate the transfer of the real estate.

275. On or September 7, 2005, Respondent telephoned Mr. and Mrs. Patterson and requested a meeting with them, that day, in his office.

276. Later that same day, Mr. and Mrs. Patterson met with Respondent at his office, at which time Respondent informed them that he required an additional \$1,500 to effectuate the transfer of the property in question.

277. On September 7, 2005, Mr. and Mrs. Patterson paid Respondent the requested additional \$1,500 by check number 3914 payable to Kuhn, Kuhn & DeSantis in the amount of \$1,500, and annotated "Deed-Lake prop."

278. Respondent deposited the proceeds of the \$1,500 check from Mr. and Mrs. Patterson directly into his General Operating Account.

279. The \$1,500 from Mr. and Mrs. Patterson was entrusted funds and should have been deposited into Respondent's IOLTA Account until earned.

280. On September 9, 2005, Respondent was incarcerated in the ECP.

281. Respondent did not inform Mr. and Mrs. Patterson of his incarceration and his inability to handle their legal matter.

282. Respondent did not refund to Mr. and Mrs. Patterson any portion of the \$2,156 they previously paid to him.

283. In addition to obtaining his file from the Conservator, Mr. Patterson requested the Conservator refund the \$2,156 he paid to Respondent as Respondent did not perform the work he had been retained to do.

284. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

285. As a result of a claim filed by Mr. and Mrs. Patterson, the Erie County Bar Association Fee Dispute Committee by letter dated January 18, 2007, informed Mr. Patterson that, following its hearing, the Committee had determined that Respondent had wrongfully and improperly converted Mr. Patterson's funds without providing legal services for which he had been retained thus, Mr. Patterson was due and owing a refund of the entire amount he had paid to Respondent.

286. On December 11, 2007, as a result of a claim filed by Mr. and Mrs. Patterson, the Fund awarded them \$1,500.

287. As a result of Respondent's misconduct described in paragraphs 266 to 286, Respondent has violated Rules of Professional Conduct 1.4(a)(3), 1.15(a), 1.15(g), 1.16(d) and 8.4(d).

Complaint of Amanda L. Wilson
File Reference No. C4-07-88

288. On or about May 3, 2005, Respondent met with Amanda L. Wilson (hereinafter, Ms. Wilson), to discuss representing her at a custody matter involving her ex-husband which was scheduled before the Court of Common Pleas of Warren County on June 1, 2005 at 9:30 in the morning.

289. By letter dated May 3, 2005 to Ms. Wilson, Respondent provided her with a written document setting forth the terms of his representation and his fee of \$900.

290. The correspondence sent to Ms. Wilson was in duplicate so if she agreed to the terms she could sign and return a copy to Respondent.

291. The fee agreement stated that the fee was to be non-refundable and that Ms. Wilson could make installment payments.

292. Ms. Wilson agreed with the terms, signed and dated a copy of the Agreement for May 10, 2005, and returned the copy to Respondent.

293. Ms. Wilson also enclosed with her signed copy of the Agreement, her personal check numbered 574, dated May 10, 2005, in the amount of \$250.

294. On May 13, 2005, the proceeds of the \$250 check from Ms. Wilson were deposited into Respondent's IOLTA Account, thus entrusting Respondent with \$250 on behalf of Ms. Wilson.

295. By letter dated May 18, 2005 to Warren County Court of Common Pleas Judge William Morgan, Respondent's secretary, Nancy Malyuk, on behalf of Respondent, asked the Court to grant a continuance of the June 1, 2005, Amanda Wilson custody case then listed on the court's docket.

296. In the letter, Ms. Malyuk informed the Court that, because of "medical reasons," Respondent would be away from the office for an undisclosed time.

297. Ms. Malyuk had previously told Ms. Wilson that because of Respondent's medical problems, a continuance of her case would be necessary.

298. By letter dated June 7, 2005 from Ms. Malyuk, Ms. Wilson was informed that her custody hearing had been continued until July 20, 2005.

299. By that same letter, Ms. Malyuk, requested that Ms. Wilson telephone Attorney DeSantis about a week prior to the July hearing to set up an appointment with Attorney DeSantis to review her case.

300. The July 20, 2005 custody hearing was postponed until September 14, 2005 at the request of counsel for Michael Kiser (the Defendant).

301. Ms. Malyuk sent Ms. Wilson a letter dated July 20, 2005 notifying her of the new court date.

302. At no time during the summer of 2005 did Respondent communicate with Ms. Wilson about the case.

303. Although her case was continued two times, Ms. Wilson received a regular monthly billing statement from Respondent's office.

304. Ms. Wilson paid the monthly billing statements that were sent to her, thus fully paying her retainer of \$900, plus an additional \$156 which the billing statement listed as payment for subpoenas and paralegal time.

305. The IOLTA Account records obtained by Petitioner show the entire \$1,056 paid by Ms. Wilson was deposited into the IOLTA Account.

306. Respondent was then entrusted with \$1,056 on behalf of Ms. Wilson.

307. On September 9, 2005, Respondent was incarcerated in the ECP.

308. By letter dated September 12, 2005 to Judge Morgan, Ms. Malyuk requested another postponement of Ms. Wilson's September 14, 2005 hearing because Respondent was out of the office for an undetermined amount of time for "medical reasons."

309. Respondent did not inform Ms. Wilson of his incarceration and his inability to handle her legal matter.

310. Respondent did not notify the court that because of his incarceration he could not represent Ms. Wilson on September 14, 2005.

311. The court granted the request for postponement and rescheduled the Wilson hearing for November 16, 2005.

312. Respondent did not refund to Ms. Wilson any portion of the \$1,056 she paid to him.

313. Other than requesting continuances of her case, which were necessary because of his own personal medical situation and incarceration, Respondent did no work of record on behalf of Ms. Wilson, nor did he withdraw as her counsel.

314. As a result of a claim filed by Ms. Wilson the Erie County Bar Association Fee Dispute Committee by letter dated January 18, 2007, advised Ms. Wilson that the Committee determined that Respondent had performed no legal work on her behalf and as a result she was due a refund of the entire amount she paid to Respondent.

315. Ms. Wilson requested the Conservator refund the \$1,056 she had paid to Respondent.

316. The Conservator could not refund the money as Respondent's law practice-related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

317. On December 11, 2007, as a result of a claim filed by Ms. Wilson, the Fund awarded her \$1,056.

318. As a result of Respondent's misconduct described in paragraphs 288 to 317, Respondent has violated Rules of Professional Conduct 1.4(a)(3), 1.15(a), 1.16(a)(2), 1.16(d) and 8.4(c)

Complaint of Paula L. Smith
File Reference No. C4-07-288

319. On April 11, 2005, Respondent met with Paula Smith (hereinafter, Ms. Smith) to discuss representing her in a divorce case against her estranged husband, Steven Smith.

320. Respondent and Ms. Smith agreed that he would represent her for \$1,500.

321. Respondent and Ms. Smith also agreed that Respondent would not begin work on her case until she paid the full amount of \$1,500.

322. Respondent had not previously represented Ms. Smith.

323. Respondent did not at the meeting or within a reasonable time thereafter, provide Ms. Smith with a written document setting forth the basis or rate of his fee for the representation.

324. On April 11, 2005, Ms. Smith made two payments, and two additional payments on July 5, 2005 and September 20, 2005.

325. The four payments made by Ms. Smith totaled \$1,400, leaving her due and owing \$100.

326. The proceeds from the payments by Ms. Smith were deposited into Respondent's IOLTA Account.

327. The funds Respondent received from Ms. Smith were entrusted funds and were to be maintained in Respondent's IOLTA Account until earned.

328. Respondent did no work of record on Ms. Smith's behalf.

329. On September 9, 2005, Respondent was incarcerated in the ECP.

330. Respondent did not inform Ms. Smith of his incarceration and his inability to handle her legal matter.

331. Respondent did not refund to Ms. Smith any portion of the \$1,400 she paid to him.

332. Ms. Smith requested the Conservator refund the \$1,400 she paid to Respondent.

333. The Conservator could not refund the money as Respondent's law practice related accounts do not contain sufficient funds available to refund monies due to all of Respondent's former clients.

334. As a result of a claim filed by Ms. Smith by letter dated January 18, 2007, the Erie County Bar Association Fee Dispute Committee advised Ms. Smith that the Committee had determined that as Respondent had performed no legal work on her behalf, Ms. Smith was due a refund of the entire \$1400 she paid to Respondent.

335. Ms. Smith currently has a claim pending before the Fund.

336. As a result of Respondent's misconduct described in paragraphs 319 to 335, Respondent has violated Rules of Professional Conduct 1.4(a)(3), 1.5(b), 1.15(a), 1.16(d) and 8.4(c).

RULES OF PROFESSIONAL CONDUCT AND
RULE OF DISCIPLINARY ENFORCEMENT VIOLATED

Respondent by and through his counsel acknowledges and admits that his conduct described in the preceding paragraphs does by clear and convincing evidence violate the following Rules of Professional Conduct, and Rule of Disciplinary Enforcement.

Rule 1.3 Respondent failed to act with reasonable diligence and promptness while representing his clients.

Rule 1.4(a)(3) Respondent failed to keep his clients reasonably informed about the status of their legal matters.

Rule 1.5 (b) Respondent did not provide clients whom he had not previously represented with a written document evidencing the rate or basis of his fee either before commencing the representation or within a reasonable time thereafter.

Rule 1.15(a) Respondent failed to hold the property of his clients and third persons that was in his possession in connection with the attorney-client relationship separate from his own property. Further, Respondent failed to safeguard his clients' property once in his possession.

Rule 1.15(g) Respondent failed to place qualified funds into an IOLTA account.

Rule 1.16(a)(2) Respondent failed to decline acceptance of new cases and failed to withdraw from ongoing representations because his physical and/or mental condition materially impaired his ability to represent his clients.

Rule 1.16(d) Respondent did not, once his representation was terminated, refund to his clients any advance payment of fee that had not been earned or any

cost that had not been paid.

Rule 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.

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

Rule 8.4(d) It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

Rule 203(b)(1), Pa.R.D.E. It shall be grounds for discipline in an attorney if convicted of a crime which under Enforcement Rule 214 (relating to attorneys convicted of crimes) may result in suspension.

AGGRAVATING AND MITIGATING FACTORS

Respondent failed to hold entrusted funds separate from his own and misappropriated those funds for his own use. Respondent also accepted fees from clients, failed to do the work for which he was retained, and then was unable to return the unearned fees. In doing so, he engaged in dishonest conduct. The dishonest conduct created a deficiency not only in Respondent's IOLTA Account, but also his Real Estate and General Account. The accounts combined do not contain sufficient funds to effectuate refunds to Respondent's former clients following the appointment of a Conservator to safeguard the interests of those former clients.

There is no "per se" rule for discipline in Pennsylvania. See *Office of Disciplinary Counsel v. Lucariani*, 504 Pa. 271, 472 A.2d 186 (1983). However the

Disciplinary Board and the Supreme Court consider the misappropriation of client funds as a serious act of misconduct requiring the strictest disciplinary sanction. Our Supreme Court explicitly stated that the mishandling of client monies is a serious breach of public trust which will not be tolerated in this Commonwealth. ***Office of Disciplinary Counsel v. Lewis***, 493 Pa. 519, 426 A.2d 1138 (1981). Because there is no per se discipline in this Commonwealth, each disciplinary case is decided upon the facts presented by that case. If there were per se discipline, then Respondent DeSantis would most likely be disbarred for his case is similar to the factual scenario presented in the case of ***Office of Disciplinary Counsel v. Ewing***, 496 Pa. 35, 436 A.2d 139 (1981) in which former Attorney Ewing was disbarred because of his commingling of funds entrusted to him with personal funds, his indiscriminate use of those funds, and his inability to return the money when requested to do so.

In the instant matter, Respondent has provided substantial and credible mitigating evidence by way of doctors' reports and opinions, medical records, and a treating therapist report all of which point to Respondent's depression, and his alcohol addiction as factors which in the opinion of Dr. Richard A. Crocco, a Board Certified addiction psychiatrist, were "significant causative factors in bringing about the misconduct." Respondent's alcoholism and psychiatric disorders impinged upon his ability to carry out certain duties as an attorney and ultimately led to his misconduct. The records provided by Respondent, through his counsel, show by clear and convincing evidence that Respondent meets the burden of proof for mitigation as set forth in ***Office of Disciplinary Counsel v. Braun***, 520 Pa. 157, 553 A.2d 894 (1989).

Respondent's continued alcohol abuse after being found in contempt of court in May of 2005 significantly contributed to his violation of parole and resulting incarceration in the ECP. Respondent did not comply with the original terms of his parole in May of 2005 which directed him to continue treatment for his alcohol addiction. The incidents in the late summer of 2005 involving Respondent's Erie County parole officer were not the first time Respondent has acted irrationally. For example, the Court of Common Pleas of Erie County civil docket information for case number 16315 of 2002 reflects that Respondent's wife, Darlene Wawrejko, sought and obtained a temporary protection from abuse order by averring in her petition that on June 24, 2002, Respondent threw glass bottles at her, punched his mother in the stomach, cut himself with a pair of scissors, verbally abused and harassed his wife and other family members, and physically damaged various personal items belonging to his wife. The Erie County Court of Common Pleas entered a temporary protection from abuse order which excluded the Respondent from the marital residence and directed that he not abuse, harass, stalk or have any contact with his wife by any means, including third persons. On June 26, 2002, a complaint for indirect criminal contempt was filed by Sergeant Ken Staaf, an Erie County Deputy Sheriff, after Respondent was alleged to have had contact with his wife in violation of the explicit terms of the Court's order. As a result of the complaint for indirect criminal contempt, Respondent was released on \$15,000 bail and directed, as a condition, to seek assistance for his addiction. The indirect criminal contempt hearing was continued until September of 2002 because Respondent was seeking treatment. Respondent obtained treatment which, being satisfactory to both the court and his wife, permitted the Court to grant Ms. Wawrejko's motion to discontinue and withdraw the protection from abuse action in July of 2002, as well as the complaint for indirect criminal contempt in September of 2002.

In treatment records Respondent provided to Petitioner, Millcreek Community Hospital records show Respondent was voluntarily committed in February 2006 pursuant to §201 of the Mental Health Act as a result of delusional behavior. At that time, Dr. Dennis Borczon concluded that the Respondent was in need of continuing inpatient psychiatric hospitalization for his own personal safety and that Respondent had limited insight into his current psychiatric condition. He was admitted to Millcreek Behavioral Health Unit on February 7, 2006 pursuant to a §201 admission and prescribed a course of drug therapy, including Abilify, Trileptal, Zoloft, and Trazodone. Respondent's commitment pursuant to §201 was not the first instance in which Respondent was committed to the Millcreek Community Hospital Behavioral Unit as he had been previously involuntarily committed pursuant to §302 of the Mental Health Act in 2004. Respondent's 2004 involuntary commitment came as a result of suicidal ideation and delusions.

While in the Millcreek Community Hospital Behavioral Unit in February 2006, Respondent also obtained treatment at the Millcreek Community Hospital Detoxification Unit as a result of his substance abuse. In March of 2006, Dr. Haluk Aydin prescribed additional drug therapy for Respondent (Vistaril) for anxiety along with the other prescription drug therapy previously prescribed for Respondent. Respondent continued with the Millcreek Community Hospital partial hospitalization program until his discharge on May 12, 2006. At the time of his discharge from the partial hospitalization program, Respondent was being treated by Dr. Denniston, a private psychiatrist, in addition to the therapy provided by Millcreek Community Hospital. Respondent's diagnosis was that of a bi-polar disorder type 2, alcohol dependence, along with suffering from post traumatic

stress disorder as previously described. Respondent was to continue with his therapy with Dr. Denniston, along with the drug therapy previously prescribed and complemented by a new prescription for Hydrocodone PRN as of May 2006.

Following his completion of the Millcreek Community Hospital partial hospitalization program, Respondent relocated to West Palm Beach, Florida, to be closer to his family support network. While in West Palm Beach, Respondent, who is a veteran, sought treatment and assistance at the Veteran's Administration Hospital located there.

Through the VA, Respondent met, and has been treating with Dr. Richard Crocco, a Board Certified addiction psychiatrist. Dr. Crocco agreed with the Millcreek Hospital diagnosis, and further opined that Respondent was going through alcohol withdrawal in addition to his other illnesses. Dr. Crocco continued Respondent's prescriptive drug therapy and outpatient visits at the VA hospital. In his report of May 18, 2007, Dr. Crocco opined that Respondent's alcoholism and psychiatric disorders were significant causative factors in bringing about his misconduct leading to Respondent's violation of the Rules of Professional Conduct and criminal conviction.

Respondent has fully cooperated with the Office of Disciplinary Counsel during the pendency of its investigation into the allegations of his misconduct. He voluntarily agreed to a temporary suspension following the Pennsylvania Supreme Court's issuance of a Rule to Show Cause why he should not be placed on temporary suspension stemming from his criminal convictions. As of November 30, 2007, the Pennsylvania Lawyers Fund for Client Security has made awards totaling \$9,889.77 to Respondent's

former clients. Respondent has repaid the Fund the full principal together with the interest imposed by Rule 531, Pa.R.D.E., for the claims already adjudicated by the Fund.

Respondent is continuing in his course of treatment by maintaining contact with his treating therapist at the VA hospital.

By Respondent's agreement and acknowledgement to the within factual predicate, averments, and stipulated consent discipline, Respondent has enabled the Office of Disciplinary Counsel to streamline the disciplinary process and arrive at a result which fairly adjudicates Respondent's misconduct and attains the goals of the disciplinary system by protecting the integrity of the courts and the profession and, most importantly, the public. By agreeing to the consent discipline, Respondent has further agreed that his fitness to practice including his competence and mental health, will be "at issue" if and when Respondent should ever apply for reinstatement.

A COMPARISON OF OTHER CASES AND A SPECIFIC RECOMMENDATION FOR DISCIPLINARY SANCTIONS

Although Respondent's situation contains a criminal conviction component, the bulk of Petitioner's case against Respondent is his neglect of client files, his mishandling, comingling and misappropriation of client funds, his failure to return unearned fees and his acts of dishonesty. The criminal conviction was a piece of the larger problem involving Respondent's continuing threat to the public if he was allowed to continue as a lawyer without obtaining expert medical help for his addiction and psychiatric disorder. Psychiatric disorders or addictions can never fully absolve the attorney of sanctions for misconduct, although under *Braun*, they can mitigate the sanction to be imposed.

A review of other cases having similar facts as the instant case indicates that suspensions ranging from one year to three years have been imposed.

In the matter of *Office of Disciplinary Counsel v. Foti*, No. 89 DB 2001, 69 Pa. D. & C.4th 278 (Pa. 2003), the Supreme Court of Pennsylvania suspended Mr. Foti for three years after he misappropriated and converted client funds while failing to deliver settlement proceeds to clients. Mr. Foti suffered from depression at the time of the misconduct.

In the matter of *In Re Anonymous No. 56 DB 1994 [Linda Gertrude Roback]*, 28 Pa. D. & C.4th 398 (1995), Ms. Roback was suspended for three years after she took monies that were to be deposited into her clients' accounts in order to fund her cocaine addiction. This occurred over the course of four years. The Disciplinary Board found and recommended to the Supreme Court, who agreed with the Board, that a causal connection was proven between Roback's cocaine addiction and her misconduct.

In the case of *In Re Anonymous No. 66 DB 1984 [John C. Albert]*, 17 Pa. D. & C.4th 414 (1992), Mr. Albert, who suffered from a bipolar disorder, was suspended for 2½ years by the Supreme Court for his misconduct in depositing estate monies into a personal account, then withdrawing the monies to satisfy personal obligations. The Supreme Court agreed with the Disciplinary Board's recommendation that Mr. Albert met the standard for *Braun* mitigation.

In a 2006 decision, the Supreme Court in the matter of ***Office of Disciplinary Counsel v. Ronald I. Kaplan***, No. 39 DB 2005, suspended Mr. Kaplan for a period of one year and one day as a result of misuse and theft of funds of at least five separate clients. It was found that Mr. Kaplan suffered from a depressive disorder which impacted upon his ability to make proper decisions regarding entrusted client funds. The Disciplinary Board recommended that a suspension of one year and one day which required Respondent to seek reinstatement and prove his fitness was appropriate. The Supreme Court agreed.

In ***Office of Disciplinary Counsel v. Paul Robert Giba***, No. 52 DB 2003 Mr. Giba, like Respondent had no prior disciplinary history. Mr. Giba also paid restitution and expressed sincere remorse. Giba's misconduct, like that of Respondent, impacted the reputation of the legal community as a whole. Mr. Giba, like Respondent, suffered from a depressive disorder that impacted upon his decisions concerning client funds. (Giba involved only four clients but the dollar amount of his IOLTA Account deficiency was in excess of \$100,000). The Supreme Court suspended Mr. Giba for a period of two (2) years.

It is the goal of the disciplinary system to protect the public and to preserve the integrity of the profession. In addition to Respondent's misuse and misappropriation of client funds, Respondent has been convicted of two separate violations of the crimes code. Respondent's actions have adversely impacted the integrity of the profession in and around the Erie County area, necessitating the need to have a Conservator appointed, for the Erie County Bar Association to assist in returning client files to Respondent's former clients, and for the Pennsylvania Lawyers Fund for Client Security

to process and pay numerous claims regarding Respondent's mishandling and misappropriation of client funds.

Taking into account Respondent's misconduct in conjunction with his proffered mitigation, an appropriate disciplinary sanction is a suspension of two years retroactive to the effective date of his temporary suspension (June 8, 2007). A suspension of this duration will protect the public and preserve the integrity of the profession. Most importantly, Respondent will be required to proceed through the reinstatement process and prove that he has the moral qualifications, competency and learning in the law required for admission in this Commonwealth and that his underlying addiction and psychiatric problems have been abated to the extent that he can function again as a lawyer within the confines of the Rules of Professional Conduct.

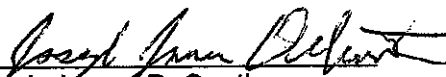
Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL


PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By 
David M. Lane
Disciplinary Counsel

and

By 
Joseph James DeSantis
Respondent

and

By 
John E. Quinn, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1225, Disciplinary Docket
: No. 3 – Supreme Court
Petitioner :
: No. 1 DB 2007 – Disciplinary
: Board
: and
: Complaint File Nos. C4-05-619,
: C4-06-116, C4-06-140, C4-06-153,
: C4-06-178, C4-06-220, C4-06-271,
: C4-06-309, C4-06-702, C4-06-824,
: C4-07-88, C4-07-89, C4-07-132,
: C4-07-232, C4-07-288 and C4-07-317
: :
JOSEPH JAMES DESANTIS, : Attorney Registration No. 76349
: :
Respondent : (Erie County)

VERIFICATION

The statements contained in the foregoing Joint Petition In Support Of Discipline On Consent Under Rule 215(d), Pa.R.D.E. are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

JUNE 25 2008
Date

6/16/08
Date

6/18/08
Date

David M. Lame
David M. Lame
Disciplinary Counsel

Joseph James DeSantis
Joseph James DeSantis
Respondent

John E. Quinn
John E. Quinn, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
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: C4-07-232, C4-07-288 and C4-07-317
: :
JOSEPH JAMES DESANTIS, : Attorney Registration No. 76349
: :
Respondent : (Erie County)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

Respondent, Joseph James DeSantis, hereby states that he consents to the sanction of a suspension for two years retroactive to June 8, 2007 as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:


1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with counsel in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a proceeding involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;
3. He acknowledges that the material facts set forth in the Joint Petition are true; and,
4. He consents because he knows that if the charges against him continue to be prosecuted he could not successfully defend against them.
5. The Joint Petition includes all current cases opened by ODC against Respondent.



Joseph James DeSantis
Respondent

Sworn to and subscribed
before me this 16
day of June, 2008.



Notary Public

