

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1345 Disciplinary Docket No. 3
Petitioner :
 : No. 97 DB 2007
v. :
 : Attorney Registration No. 75434
GRACE SMITH FOLTZ, :
Respondent : (Delaware County)

ORDER

PER CURIAM:

AND NOW, this 8th day of May, 2008, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated January 11, 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 Grace Smith Foltz is suspended on consent from the Bar of this Commonwealth for a period of two years and she shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy John A. Vaskov

As of: May 8, 2008

Attest:


Deputy Prothonotary

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

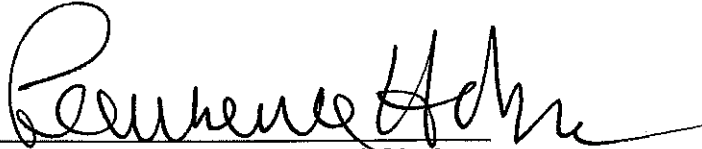
OFFICE OF DISCIPLINARY COUNSEL : No. 97 DB 2007
Petitioner :
v. : Attorney Registration No. 75434
GRACE SMITH FOLTZ :
Respondent : (Delaware County)

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 Laurence H. Brown, Carl D. Buchholz, III and Robert L. Storey, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on December 12, 2007.

The Panel approves the Joint Petition consenting to a Two Year Suspension and recommends to the Supreme Court of Pennsylvania that the attached 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.


Laurence H. Brown, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: January 11, 2008

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 97 DB 2007
Petitioner	:	
	:	
v.	:	
	:	Attorney Reg. No. 75434
GRACE SMITH FOLTZ,	:	
Respondent	:	(Delaware County)

**JOINT PETITION IN SUPPORT
OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215 (d)**

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Ramona Mariani, Disciplinary Counsel, and Respondent, Grace Smith Foltz (hereinafter, "Respondent"), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated 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 the aforesaid Enforcement Rules.

2. Respondent, Grace Smith Foltz, was born in 1963, and was admitted to practice law in the Commonwealth on March 1, 1995. Respondent is on active status. She maintained her office at 12 Garrett Road, Upper Darby, Delaware County, Pennsylvania 19082 until sometime in October of 2007. Currently Attorney Registration lists her office

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

address as P.O. Box 208, Ardmore, Pa 19003. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent's affidavit stating, *inter alia*, her consent to the recommended discipline is attached hereto as Exhibit A.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

4. By letter dated March 1, 2005, the Pennsylvania Lawyers Fund for Client Security ("the Fund") notified Respondent of its concern about an overdraft balance in her IOLTA Account.

5. The overdraft occurred because there were insufficient funds in the account to cover Check No. 1414, for \$745.00, issued to the Bureau of Citizen Immigration Services, dated December 30, 2004, for Respondent's client Addison Chandler ("Chandler").

6. By letter dated March 21, 2005, Respondent told the Fund that the overdraft occurred due to an error by an administrative staff member, who she claimed wrote the check for Chandler before actually depositing Chandler's check into the IOLTA account.

7. As support, Respondent attached bank statements and a Client Ledger ("CL") showing a credit to client Chandler in the amount of \$750.00 on February 5, 2005, but she failed to provide complete records evidencing the transaction.

8. By letter dated March 24, 2005, the Fund notified Respondent that it had referred the matter to Petitioner for further inquiry.

9. By letter dated April 5, 2005, Petitioner informally advised Respondent of its concerns in the matter and asked that she provide documents permitting Petitioner to evaluate the transactions in her accounts.

10. On April 18, 2005, Respondent delivered some of the requested documents to Petitioner.

11. By Request for a Statement of Respondent's Position (Form DB-7) dated May 9, 2005, Petitioner advised Respondent of its concerns arising from the check 1414 overdraft, her failure to maintain accurate records of her IOLTA transactions, her commingling of personal funds with entrusted funds in the IOLTA account, and her possible misappropriation of client or third party funds and requested that she produce additional records by May 29, 2005.

12. On May 31, 2005, Respondent submitted additional records in support of her responses and explanations.

13. On July 29, 2005, Respondent's attorney filed her verified answer to the DB-7 letter with additional documents.

14. In the answer, Respondent reiterated her previous claim that the overdraft occurred because her administrative staff sent check 1414 on behalf of Chandler without first waiting for his check to Respondent to clear.

15. Respondent's claims to the Fund and ODC were knowingly false, and the Chandler CL she previously supplied had been falsified; because in fact the only check Chandler wrote to Respondent was dated October 15, 2004, in the amount of \$1,000.00; and Respondent had utilized those funds for personal expenses and for the benefit of other clients.

16. On April 21, 2006, Respondent and her attorney met with Disciplinary Counsel Barbara Rosenberg and Investigator Daniel G. Richer, at which time Respondent

submitted additional documents, including fee agreements between herself and various clients.

17. In addition, Respondent falsely advised Petitioner that she had handled the finances of Modern Hair Designs (“MHD”), a client, who had an IRS problem, that the payees of the checks notated “MHD” were both 1099 and W-2 employees of MHD, and the client handled the withholding and tax payments for these wages, although she told the client how much to withhold.

18. The documents Respondent submitted to Petitioner on April 19, May 31 and July 29, 2005, and April 21, 2006, include copies of fronts and backs of cancelled checks, which bear memos attributing them to various client matters, fee agreements (including an Engagement Agreement for MHD dated August 5, 2005), deposit lists (“DL”), cancelled check (“CC”), check registers (“CR”), and client ledgers.

19. Many of the documents submitted by Respondent were altered versions of the original documents, were fabrications created in response to Petitioner’s document requests, and/or contained inaccurate information.

20. Respondent altered on certain of the checks the memos referring to dates of services or client identification, to add to or alter memo notations present when the checks were negotiated, including but not limited to:

- a. identifying checks payable to a church, veterinarian, and retailers to identify them as funds due to Respondent as fees rather than commingled personal funds or diversions of fiduciary funds; and
- b. inserting on checks issued to various individuals the phrase “Modern Hair Designs.”

21. The CL, DL and CR which Respondent provided to Petitioner contained false information as to the source, amount and case identification of deposits and identity of payees and the amount of payments.

22. Respondent fabricated the documents to conceal from Petitioner the true nature of the transactions in which she engaged and to prevent Petitioner from determining that Respondent had failed to hold intact client funds with which she had been entrusted, commingled fiduciary funds with her own, failed to maintain accurate contemporaneous records of her transactions involving fiduciary funds, and failed to maintain sufficient balances in her IOLTA account to support all fiduciary funds.

23. On July 18, 2006, Respondent appeared and testified under oath at Petitioner's office; at that time Respondent admitted that some of her previous representations with respect to MHD had been a "lie" and acknowledged improperly paying many of her own personal bills from her IOLTA account.

24. As a result of Respondent's statement and due to difficulties reconciling her records, on August 18, 2006, Petitioner issued a subpoena directly to Wachovia bank.

25. The records obtained from Wachovia were inconsistent with the records previously supplied by Petitioner, as described *infra* at paragraphs 19 and 20.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

26. Respondent violated the following RPCs and Pa.R.D.E.s:

- a. RPC 1.15(a) [pre-2005], which stated: A lawyer shall hold property of clients or third parties 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 representation;

- b. RPC 1.15(a) [post-2004], which states: A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later;
- c. RPC 1.15(b), which states: Upon receiving property of a client or third person (in connection with a client-lawyer relationship [post-2004]), 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 or third person, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property;

- d. RPC 1.15(c) [pre-2005], which stated: When, in the course of representation, a lawyer is in possession of property in which both the lawyer and another person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved;
- e. RPC 1.15(c) [post-2004], which states: When in connection with a client-lawyer relationship a lawyer is in possession of property in which two or more persons, one of whom may be the lawyer, claim an interest, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute;
- f. RPC 1.15(e) [post-2004], which states: The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying bank services charges on that account, and only in an amount necessary for that purpose. A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner. At all times

while a lawyer holds funds of a client or third person in connection with a client-lawyer relationship, the lawyer shall also maintain another account that is not used to hold such funds;

- g. RPC 8.1(a) [pre-2005], which states, in pertinent part: A lawyer is subject to discipline if the lawyer has made a materially false statement in, or if the lawyer has deliberately failed to disclose a material fact requested in connection with, ... any disciplinary matter;
- h. RPC 8.1(a) [post-2004], which states, in pertinent part: [A] lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact;
- i. RPC 8.1(b) [post-2004], which provides, in pertinent part, that [A] lawyer in connection with a disciplinary matter shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority;
- j. RPC 8.4(c) which states: It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- k. RPC 8.4(d) which states: It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

**SPECIFIC RECOMMENDATION FOR DISCIPLINE OF A TWO-YEAR
SUSPENSION**

Case law supports the imposition of a two-year suspension.¹ Although no case is directly on point, a two year suspension falls squarely within the range of suspensions imposed for comparable misconduct. For example, in *Office of Disciplinary Counsel v. Albert E. Hart*, No. 157 DB 1997 (2000) the respondent comingled and converted client funds. Hart initially lied to Disciplinary Counsel in both his answer to the DB-7 letter and in his answer to the Petition for Discipline. Subsequently, Hart admitted that many of his factual assertions were untrue. The Board recommended a three-year suspension, commenting with respect to his dishonesty that “[w]hile it is fortunate for Respondent that he finally admitted his misconduct, his initial lack of candor is a factor which cannot be overlooked.”

In *Office of Disciplinary Counsel v. Czmus*, 889 A.2d 1197 (Pa. 2005) Respondent was disbarred as a result of misconduct that the Court described as a “continuous pattern of deceit and dishonesty.” *Id.* at 1199. Czmus was a physician who had lost his license to practice medicine in the states of California and New York. Subsequently, Czmus attended Temple Law School. Czmus failed to disclose that he had attended medical school and had lost his licenses to practice medicine to either Temple or to the Pennsylvania and New Jersey board of bar examiners. In addition, respondent lied about his employment history to hide what would otherwise have been a lengthy gap in employment. Czmus passed both bar

¹ The Petition for Discipline included allegations that Respondent’s use of the firm name Foltz & Associates was misleading. Contested factual issues suggest that this matter, and the accompanying rule violations, should only be determined after an evidentiary hearing. Consequently, in the event that this petition is not approved ODC reserves the right to bring the appropriate charges at hearing. However, Petitioner believes that a finding that the advertising rules were violated as charged would not significantly alter the determination of the

examinations. When New Jersey attorney disciplinary authorities learned about his past, he conceded some errors, but continued to lie as to other matters to the investigators and even during the course of disciplinary proceedings in New Jersey. The Court commented that respondent's "level of fraud, which transcended professions and jurisdictions, requires disbarment." *Id.* at 1204.

In *Office of Disciplinary Counsel v. Arthur Joseph Werner*, No. 202 DB 2003 (2005), the respondent was notified of allegations that he had accepted employment from a client, failed to provide the services promised, terminated communication with the client, and failed to return the file and account for and refund the unearned fee. The respondent faxed to disciplinary counsel a copy of a letter to the client enclosing a refund check. Five months later, upon further inquiry and after service of subpoenas to determine the handling of the funds, Werner made the actual refund. Werner lied to the Hearing Committee and failed to demonstrate sincere remorse. He was suspended for one year and one day.

Respondent engaged in serious misconduct. She embarked on a pattern of fraudulent conduct which included providing false and misleading information and documentation to the Office of Disciplinary Counsel in an effort to hide improprieties in her trust account. The extent of her dishonesty in that respect is appreciably greater than that engaged in by either *Werner* or *Hart*. However, in contrast to *Werner* and *Hart*, there is no evidence that Respondent ever intentionally converted client funds. Further, no client came forward to complain about Respondent's representation.

In considering the appropriate level of discipline Respondent's proposed mitigation evidence should be considered as well. Respondent received her license to practice law in

appropriate level of discipline in this matter.

1995. During 1995 and 1996 she worked as a realtor for Prudential Fox & Roach. She then worked in the Cigna/Ace tax department as a tax accountant until May of 2001. Thereafter, Respondent opened her own practice. At the time she opened her practice Respondent had never practiced law or worked for a law firm. Respondent will testify that she has suffered humiliation and remorse as a result of her behavior. The magnitude of the disciplinary proceeding has affected Respondent's ability to sleep, eat and care about life. Respondent will testify that her stress has affected her marriage and her ability to interact as she wishes with her three children. Respondent has sought spiritual counseling from her minister and has asked her congregation to pray for leniency. Because of the disciplinary matter, Respondent has voluntarily closed her law firm and begun winding down her practice. Currently, she is concluding a handful of immigration and divorce cases while working out of her home. Respondent's cooperation is evidenced by her voluntary decision to enter into consent discipline.

Respondent's dishonesty, while serious, is appreciably less than that engaged in by Czmus, whose admission to the bar in the first place was predicated on a fraud. Nonetheless, her dishonesty requires a lengthy period of suspension requiring Respondent to petition for reinstatement and demonstrate fitness. It is respectfully submitted that a two-year suspension is sufficient considering all the facts and circumstances in the present matter.

WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:

- a. Approve this Petition; and
- b. File a recommendation for a two-year suspension and this Petition

with the Supreme Court of Pennsylvania.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION

Attorney Reg. No. 20955

Chief Disciplinary Counsel

Date: 11/28/07

By  Ramona Mariani

RAMONA MARIANI

Disciplinary Counsel

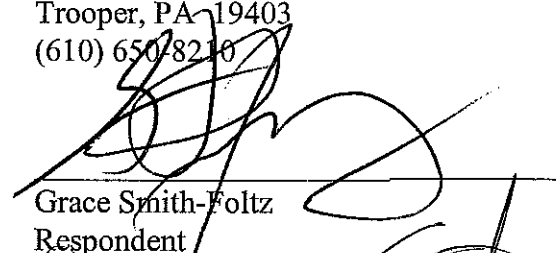
Attorney Registration Number 78466

Suite 170, 820 Adams Avenue

Trooper, PA 19403

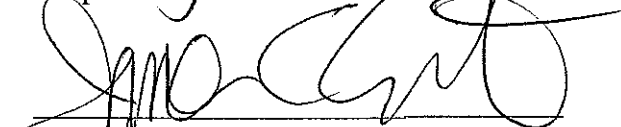
(610) 650-8210

Date: 12/4/07



Grace Smith-Foltz
Respondent

Date: 12/4/07



JAMES C. SCHWARTZMAN

JAMES C. SCHWARTZMAN

Respondent's Counsel

Attorney Registration Number 16119

Stevens & Lee, PC

1818 Market Street, 29th Floor

Philadelphia, PA 19103

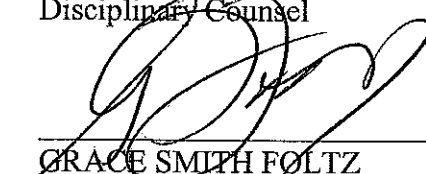
VERIFICATION

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

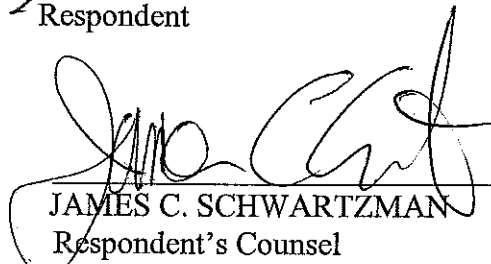
11/28/07
Date


RAMONA MARIANI
Disciplinary Counsel

12/4/07
Date


GRACE SMITH FOLTZ
Respondent

12/4/07
Date


JAMES C. SCHWARTZMAN
Respondent's Counsel

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 97 DB 2007
Petitioner	:	
	:	
	:	
	:	Attorney Reg. No. 75434
GRACE SMITH FOLTZ,	:	
Respondent	:	(Delaware County)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.2e (relating to service upon counsel).

First Class Mail Service, as follows:

James C. Schwartzman, Esquire
Stevens & Lee, PC
1818 Market Street, 29th Floor
Philadelphia, PA 19103

Elaine M. Bixler, Secretary
The Disciplinary Board of the Supreme Court of Pennsylvania
Two Lemoyne Drive, First Floor
Lemoyne, PA 17043

Dated: _____

12/10/07

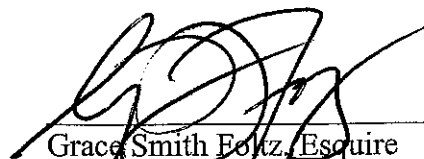


RAMONA MARIANI

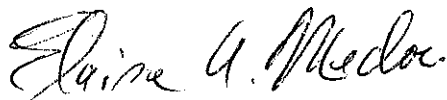
Disciplinary Counsel
Office of Disciplinary Counsel
Suite 170, 820 Adams Avenue
Trooper, PA 19403
(610) 650-8210
Attorney Reg. No. 78466

she could not successfully defend against them.

Signed this 7th day of December 2007.


Grace Smith Foltz, Esquire
Attorney Reg. No. 75434

Sworn to and subscribed
Before me this 7th day
of December 2007


Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
ELAINE A. MEDORI, Notary Public
City of Philadelphia, Phila. County
My Commission Expires March 27, 2010