

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1442 Disciplinary Docket No. 3
Petitioner :
v. : No. 130 DB 2007
TROY R. DAUGHERTY, : Attorney Registration No. 73369
Respondent : (Bedford County)

ORDER

PER CURIAM:

AND NOW, this 25th day of February, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated November 5, 2008, it is hereby

ORDERED that Troy R. Daugherty is suspended from the Bar of this Commonwealth for a period of eighteen months and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

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

A True Copy Patricia Nicola

As of February 25, 2009

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 130 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 73369
	:	
TROY R. DAUGHERTY	:	
Respondent	:	(Bedford County)

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

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

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

I. HISTORY OF PROCEEDINGS

On December 3, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against Troy R. Daugherty, Respondent. The Petition charged Respondent with five counts of client misconduct, including misappropriation of entrusted funds. Respondent executed a Waiver, which was filed with the Office of the Secretary of the Disciplinary Board on December 7, 2007. Therein, Respondent acknowledged that he was

aware of the investigation into allegations of professional misconduct and agreed to waive the procedural requirements of Rules 208(a)(2) and 208(a)(3), Pa.R.D.E.

A pre-hearing conference was held on February 8, 2008. Respondent indicated his understanding that the factual allegations of the Petition were deemed admitted and he stipulated to the authenticity and the admissibility of Petitioner's 30 exhibits.

A disciplinary hearing was held on March 26, 2008, before a District IV Hearing Committee comprised of Chair Thomas S. Talarico, Esquire, and Members T. Warren Jones, Esquire, and William F. Ward, Esquire. Respondent appeared pro se.

The Hearing Committee filed a Report on July 8, 2008, finding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of 18 months.

This matter was adjudicated by the Disciplinary Board at the meeting on September 15, 2008.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 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 is Troy R. Daugherty. He was born in 1963 and was admitted to practice law in the Commonwealth in 1994. His attorney registration mailing address is 215 W. Penn Street, Bedford PA 15522-1227. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline consisting of an Informal Admonition administered on July 6, 2006, by Chief Disciplinary Counsel. Respondent was retained to represent clients in a bankruptcy action and neglected their cases, failed to return telephone calls, failed to return unearned fees and misrepresented to a client that the bankruptcy petition had been filed. Respondent returned the fee as a condition of the Informal Admonition.

The Eicher Matter

4. On March 23, 2006, Janet Eicher hired Respondent to represent her in a custody case then pending in another county. Pursuant to a fee agreement, Ms. Eicher paid Respondent \$750 as a retainer, and Respondent agreed to deposit the \$750 into an escrow account and draw monthly upon those funds at \$75 per hour for out of court time and \$100 per hour for in court time.

5. On March 24, 2006, Respondent deposited the \$750 check into his First National Bank IOLTA Account.

6. By June 15, 2006, Respondent had not taken any appreciable action on behalf of Ms. Eicher.

7. On June 15, 2006, Ms. Eicher sent Respondent a letter in which she dismissed him as her attorney because of his inaction on her matter and she requested that he return the \$750 to her.

8. Respondent did not timely return Ms. Eicher's funds.

9. On July 6, 2006, the balance in Respondent's IOLTA Account was reduced from \$1,754.77 to \$254.77 as a result of a check for \$1,500 clearing the account, which Respondent had issued to himself.

10. For the majority of the time between July 6, 2006 and October 31, 2006, the balance in Respondent's IOLTA Account was below \$750.

11. Respondent misappropriated Ms. Eicher's funds for his own personal use.

12. By letter of December 21, 2006, Respondent enclosed a check for \$750; apologized for the delay in refunding the money; and apologized for not following through with the work he agreed to do.

13. Respondent's check for \$750 was drawn on his Altoona First Savings Bank Attorney At Law Account, which was a personal account for Respondent and his wife and not an account in which funds entrusted to him by clients or third persons could be held separate from his own funds.

The Buser Estate

14. In October 2005, Park Williams retained Respondent to represent him in the administration of the Estate of Bart Buser. Mr. Buser passed away on October 6, 2005 and his Will named Mr. Williams as Executor.

15. On October 17, 2005, upon Respondent filing a Petition with the Bedford County Register of Wills Office, Letters Testamentary were granted to Mr. Williams as Executor of the Estate.

16. Respondent and Mr. Williams signed an agreement on October 26, 2005, whereby they agreed that Respondent's fee for services rendered would be four percent of the estate and Respondent would initially take a \$200 partial payment of his fee.

17. In August 2006, Respondent met with Mr. Williams and informed him that his legal fees for representing him were \$2,150; he provided Mr. Williams with a draft of a First and Final Account; and Respondent told Mr. Williams that he needed a check for \$4,084.69 for the remaining legal fees and for inheritance tax.

18. According to Respondent's draft of the First and Final Account, his attorney's fees were \$2,150 and Pennsylvania inheritance tax owed was \$2,262.77.

19. Mr. Williams gave Respondent a check for the funds requested and on August 17, 2006, Respondent deposited the check proceeds of \$4,084.69 into his IOLTA Account.

20. After he drafted the First and Final Account in August 2006, Respondent did not perform any additional legal services or pay any of the inheritance tax until sometime in mid-June 2007.

21. From August 18, 2006 until October 31, 2006 the balance in Respondent's IOLTA Account was below the \$4,084.69 entrusted to him.

22. Respondent issued to himself two checks totaling \$1,720.92, deposited them into his Attorney At Law Account and used the proceeds for his own purpose.

23. By Notice dated December 6, 2006, the Commonwealth of Pennsylvania Department of Revenue informed Mr. Williams that the Estate was in a "delinquent status," an Inheritance Tax Return had not been filed and he could be held liable for a monetary penalty. Respondent was sent a copy of the Notice.

24. During a December 6, 2006 telephone conversation about the Notice, Respondent told Mr. Williams that he would take care of the matter and pay whatever interest and penalties were due in regard to filing the Inheritance Tax Return late.

25. On January 26, 2007, Mr. Williams received another Notice of Delinquent Status from the Department of Revenue.

26. From the end of January 2007 until April 2007, Mr. Williams called Respondent about the Notices.

27. Respondent did not return any of the calls or otherwise communicate with Mr. Williams.

28. By letter dated March 7, 2007, the Department of Revenue informed Mr. Williams that he could be found in contempt for failing to file the Inheritance Tax Return, and if so, he could be subject to additional penalty and incarceration.

29. Mr. Williams sent Respondent a certified letter dated March 22, 2007, regarding the inheritance tax not being paid with the funds he had provided, the estate not being closed, Respondent not returning his calls, the three Notices from Revenue, and the possibility of taking legal action against Respondent if he did not reply to the letter.

30. Respondent did not respond to Mr. Williams' letter until sometime in June 2007.

31. On June 21, 2007, Respondent filed the Inheritance Tax Return and paid the tax due of \$2,283.42. On July 18, 2007, Respondent filed the First and Final Account and on August 20, 2007, the Account was confirmed and the administration of the Estate was closed by the Register of Wills.

The Helsel/Shippey Matter

32. In August 2006, Randy Helsel and his brother Calvin Helsel hired Respondent to prepare and record a deed between them and Ned and Jean Shippey for property they purchased from the Shippeys for \$90,000.

33. On September 1, 2006, Respondent informed the Helsels that based upon the sale price of the property, their portion of the transfer taxes would be \$900, his

attorney's fee would be \$300, and he would prepare and record the Deed within a few weeks.

34. On September 5, 2006, Respondent deposited the proceeds of two \$600 checks and a \$900 check into his IOLTA Account and withdrew \$300 in cash from the deposit.

35. As of September 5, 2006, Respondent was entrusted with \$1,800 on behalf of the Helsels and the Shippeys.

36. On September 7, 2006, Respondent issued to himself two checks for \$1,900 and \$300, unrelated to the real estate transaction and deposited the proceeds into his Attorney At Law Account and used the proceeds for his own use.

37. From September 7, 2006 until October 31, 2006, the balance in Respondent's IOLTA Account was below the \$1800 entrusted to him.

38. Respondent misappropriated the funds entrusted to him by the Helsels and Shippeys.

39. The Helsels contacted Respondent on various occasions between September 2006 and November 2006 regarding recording the deed, and on each occasion Respondent informed his clients that he had not recorded the deed because he had been busy, but would get to it, or words to that effect.

40. On December 1, 2006, Respondent recorded the deed. At that time, Respondent gave the Bedford County Recorder of Deeds Office his check drawn on his Attorney At Law Account.

41. The balance in Respondent's Attorney At Law Account on that date was four cents.

42. The check was returned to Respondent for insufficient funds.

43. Although Respondent knew in December 2006 that his check was returned, he did not provide the Bedford County Recorder of Deeds with a replacement check until June 25, 2007.

The Feathers Matter

44. On September 20, 2006, Anita Feathers retained Respondent to represent her in a Chapter 7 Bankruptcy. Respondent told her that he would charge a flat fee of \$600 and an additional \$299 for the filing fee.

45. Ms. Feathers paid Respondent \$250 toward his flat fee and the filing fee, which he deposited into his Attorney At Law Account, and she agreed to pay the balance in installments of \$25 per month beginning in October 2006.

46. On October 25, 2006, Respondent electronically filed a Chapter 7 Bankruptcy Petition on behalf of his client.

47. Respondent did not pay the required filing fee or include all of the documents necessary to complete the filing of the Petition.

48. By Order of the Bankruptcy Court dated November 13, 2006, Ms. Feathers' bankruptcy was dismissed, after notices to Respondent, due to Respondent's failure to timely file all of the required documents with the Clerk of Court.

49. Ms. Feathers received the dismissal Order and attempted to contact Respondent but was unable to speak with him.

50. On December 14, 2006, Ms. Feathers called Respondent and he informed her that if she paid him an additional \$299, he would re-file her petition. Ms. Feathers gave Respondent the additional funds in cash later that day.

51. Respondent misappropriated the \$299 in cash for his own use.

52. On December 15, 2006, Ms. Feathers called Respondent and asked him if he had re-filed her bankruptcy petition, to which he replied that he had.

53. In fact, Respondent had taken no action to re-file the petition.

54. On January 5, 2007, Ms. Feathers discovered that Respondent had not re-filed her petition, and shortly thereafter she retained new counsel to handle her matter.

55. Ms. Feathers contacted Respondent and requested that he refund to her the \$299 she paid him to re-file the petition.

56. Respondent sent a letter dated January 20, 2007 and enclosed a check for \$299 and apologized for his actions or lack thereof.

57. Respondent did not refund to Ms. Feathers the portion of the \$400 she had paid him for legal fees he did not earn until July 19, 2007, when he sent her a check for \$200.

The Sowers Matter

58. On May 31, 2006, Eugene Jason Sowers was sentenced to a period of incarceration of three to six years by a Westmoreland County Court of Common Pleas judge based upon Mr. Sowers' guilty plea to several crimes.

59. In early January 2007, Jenna Sowers, the wife of Mr. Sowers, contacted Respondent about representing her husband. Respondent agreed to: file a Post-Conviction Relief Act Petition; request that Mr. Sowers be transferred to a correctional institution closer to his wife; and try to have Mr. Sowers' sentence reduced.

60. Respondent requested \$500 for his services, which Mrs. Sowers gave to Respondent.

61. Thereafter Respondent did not communicate with his client about any of his legal matters.

62. Mrs. Sowers began calling Respondent in February 2007 and continued her communication until July 2007. On two occasions Respondent told Mrs. Sowers that he was working on the matters. On the other occasions Mrs. Sowers was unable to speak with Respondent and he did not return the telephone calls.

63. By a letter to Respondent dated April 17, 2007, Mrs. Sowers stated that she had been trying to contact Respondent, he had not filed the PCRA Petition, she wanted him to resign from the case and refund the \$500 and she asked that he call her or return the funds by April 20, 2007.

64. Respondent did not contact Mrs. Sowers or refund the money, nor did he inform her that he moved his law office.

65. Mrs. Sowers sent another letter to Respondent in July 2007, to which he never replied.

66. Respondent took no action to file a PCRA Petition, have Mr. Sowers transferred or have his sentence reduced.

67. On November 19, 2007, by Order of the Supreme Court of Pennsylvania, Respondent was transferred to inactive status, effective December 19, 2007. Despite receiving notice of the Order and its requirements, Respondent failed to comply with Rule 217, Pa.R.D.E., as to notifying clients, opposing counsel and others about his transfer to inactive status, and failed to file with the Disciplinary Board a certified statement that he had fully complied with the requirements.

68. Respondent failed to provide a Financial Net Worth Statement, as described in DBR Section 89.151(b)(6), and as directed by the Hearing Committee Chair at the pre-hearing conference on February 6, 2008.

69. Respondent admitted engaging in the misconduct and violating the Rules of Professional Conduct. He offered that he misappropriated the funds based upon his mistaken and unreasonable belief that he would restore his IOLTA account immediately or within a short period of time.

70. Respondent cooperated with Petitioner by admitting his misconduct and waiving the procedural requirements of the Pennsylvania Rules of Disciplinary Enforcement and the Board Rules.

71. Respondent repeatedly accepted responsibility for his misconduct.

72. Respondent demonstrated sincere remorse.

73. Respondent refunded to his clients the funds that they were entitled to receive.

74. Carol Ann Rose is an attorney who has practiced in Bedford County for nearly 18 years and has known Respondent professionally for ten years. She offered her credible testimony that Respondent had a "good" standing within the Bedford County bar.

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 - Failing to act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a)(3) - Failing to keep the client reasonably informed about the status of the matter.

3. RPC 1.4(a)(4) - Failing to promptly comply with reasonable requests for information.

4. RPC 1.5(b) - Failing to communicate the basis or rate of the fee to the client, in writing, before or within a reasonable time after commencing the representation.

5. RPC 1.15(a) - Failing to hold property of clients or third persons that was in the lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property.

6. RPC 1.16(d) - Failing to take steps to the extent reasonably practicable to protect a client's interests upon the termination of the representation.

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

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

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline charging Respondent with violations of the Rules of Professional Conduct based upon misappropriation of clients' funds and neglect of clients' cases. The uncontested evidence presented by Petitioner demonstrates clearly and convincingly that Respondent violated the Rules of Professional Conduct. Respondent stipulated and testified that he engaged in the misconduct.

The issue remaining before the Board is the appropriate discipline to be imposed upon the Respondent. The most egregious conduct committed by Respondent was his misappropriation of entrusted funds in the amount of approximately \$13,000. The

mishandling of client funds is determinatively held to be a serious offense. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 Pa. (1983). This Board has recognized that unauthorized dealings with client or third party funds by an attorney will generally result in the sanction of suspension or disbarment. The level of discipline depends upon the totality of the facts and consideration of any mitigating and aggravating circumstances. Cases frequently consider whether restitution was made, whether the respondent demonstrated an appreciable understanding of the nature of the misconduct and how it damaged the public trust, and whether a record of prior discipline existed. In re Anonymous No. 132 DB 88, 7 Pa. D. & C. 4th 331 (1990) and In re Anonymous No. 61 DB 92, 19 Pa. D. & C. 4th 494 (1993).

Aggravating factors considered by the Board in the instant matter include Respondent's Informal Admonition imposed in 2006 and his failure to fulfill requirements attached to his transfer to inactive status. Mitigating factors considered by the Board include: Respondent's full cooperation with Office of Disciplinary Counsel; his admission of wrongdoing and expressions of remorse; his acceptance of responsibility; his reimbursement to his clients of the funds they were entitled to receive.

The Board concludes from the totality of the circumstances that this is not a disbarment matter, as the mitigating factors are compelling and persuade against such a sanction. Respondent's cooperation with Petitioner in admitting misconduct and waiving procedural requirements effectuated an expedited disciplinary process, a benefit to both the legal profession and the public. Additionally, Respondent's cooperation and

expressions of remorse indicate self-reflection as to problems in his legal career and efforts to remedy these issues.

The Hearing Committee recommended an 18 month period of suspension. Review of the case law reveals that this recommendation conforms to similar misappropriation cases. In Office of Disciplinary Counsel v. Ronald B. Abrams, 153 DB 2000 (Pa. Jan. 28, 2003), Mr. Abrams was suspended for a period of 18 months for commingling and conversion of client funds, delay in distributing funds to clients and third parties, and misappropriation of funds of a family trust. The Board specifically noted Mr. Abram's cooperation and restitution. In Office of Disciplinary Counsel v. Samuel Fry, 49 DB 98, 668 Disciplinary Docket No. 3 (Pa. May 8, 2001), Respondent was suspended for one year and one day after he converted funds of his law firm. In Office of Disciplinary Counsel v. Peter D. Delaney, 79 DB 95, 323 Disciplinary Docket No. 3 (Pa. May 12, 1997), Mr. Delaney was suspended for one year and one day following his commingling and conversion of funds and misrepresentation to clients. An example of a case that resulted in a two year period of suspension is Office of Disciplinary Counsel v. William Boyd, 126 DB 2006, 1222 Disciplinary Docket No. 3 (Pa. Feb. 23, 2007). Therein, Mr. Boyd engaged in unauthorized dealing and misappropriation of \$23,500 of client monies.

It can be difficult to discern from the cases facts that compel a one year and one day suspension, as opposed to a two year suspension or something in between. The Board in the instant case wrestled with this particular conundrum and concluded that the facts favored the 18 month suspension instead of a lengthier suspension due to the

mitigation, and giving deference to the Committee's analysis of the facts as well as Petitioner's decision not to object to the Committee's recommendation. This length of suspension will provide protection to the public and require Respondent to apply for reinstatement and prove his fitness prior to practicing law in the future.


V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Troy R. Daugherty, be suspended from the practice of law for a period of eighteen months.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Jonathan H. Newman, Board Member

Date: November 5, 2008

Board Members Baer and Buchholz did not participate in the adjudication.

Board Members Brown, Cohen and Raspanti recused.

Board Member Bevilacqua dissented and would recommend a three year suspension.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 130 DB 2007
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	:	
v.	:	Attorney Registration No. 73369
	:	
TROY R. DAUGHERTY	:	
Respondent	:	(Bedford County)

DISSENTING OPINION

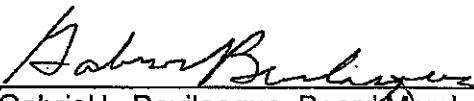
The majority of the Disciplinary Board recommends that Respondent be suspended from the practice of law for a period of 18 months. For the following reasons, I respectfully dissent.

Respondent has been practicing law since 1994; most of that time has been spent as a sole practitioner. In 2006 he had his first encounter with the disciplinary system. He received an Informal Admonition from Chief Disciplinary Counsel to address his neglect in bankruptcy cases wherein he was retained to represent clients and failed to return telephone calls, failed to refund unearned fees and misrepresented to one client that the bankruptcy petition had been filed. The instant disciplinary matter represents a continuation and escalation of Respondent's problems in ethically representing his clients. The uncontested evidence demonstrates clearly and convincingly that Respondent neglected five client matters and, most seriously, misappropriated funds of clients totaling \$13,000. Respondent's conduct in each client matter was similar in that he was retained

to achieve certain results, accepted monies from his clients and failed to promptly handle the matters, even after the clients frequently contacted Respondent requesting status checks of their matters. These matters were not difficult or complicated, yet Respondent did not take the steps necessary to follow through. This serial neglect, standing alone, may have resulted in a suspension of at least a year. It is my respectful opinion that Respondent's egregious mishandling of client funds necessarily requires a lengthier suspension to address the breach of trust that occurred.

The Board's responsibility to the public is paramount. I disagree with the majority determination that an 18 month period of suspension is adequate to remedy the harm inflicted on Respondent's clients. My recommendation is that Respondent be suspended for a period of three years. This length of suspension sends a stronger message to the legal profession and the public at large that Pennsylvania does not tolerate lawyers who engage in the mishandling of entrusted funds.

Respectfully submitted,

By: 
Gabriel L. Bevilacqua, Board Member

Date: November 5, 2008