

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 891 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 79 DB 2002
v.	:	
	:	Attorney Registration No. 60044
KAREN GWYN MUIR	:	
Respondent	:	(Centre 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 June 26, 2002, a Petition for Discipline was filed by Office of Disciplinary Counsel, Petitioner, against Karen Gwyn Muir, Respondent. The Petition charged Respondent with violations of the Rules of Professional Conduct based on allegations that

she converted funds belonging to her law firm. Respondent filed an Answer to Petition for Discipline on August 28, 2002.

A disciplinary hearing was held on January 21, 2003, before Hearing Committee 3.07 comprised of Chair David W. Reager, Esquire, and Members Richard W. Stevenson, Esquire, and Daniel J. Distasio, Esquire. Robert H. Davis, Jr., Esquire, represented Respondent.

Following briefing by the parties, the Hearing Committee filed a Report on May 22, 2003 and recommended that Respondent receive a Private Reprimand.

Petitioner filed a Brief on Exceptions on June 12, 2003 and requested oral argument. Respondent filed a Brief Opposing Exceptions on June 26, 2003.

Oral argument was held before a three-member panel of the Board chaired by Richard W. Stewart, Esquire, with Members Robert C. Saidis, Esquire, and Smith Barton Gephart, Esquire.

This matter was adjudicated by the Disciplinary Board at the meeting of August 26, 2003.

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, PA 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 that Rule.

2. Respondent was born in 1966 and was admitted to practice law in the Commonwealth in 1990. She maintains her office at 1315 West College Avenue, State College, PA 16801. She is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Beginning in or about 1996, Respondent became employed as a salaried associate in the firm of H. Amos Goodall, Jr., Esquire, in State College, Pennsylvania.

4. The Goodall Firm clients would on occasion give Respondent fees in a variety of forms, including cash, checks payable to the firm, or checks payable to Respondent.

5. The Goodall Firm expected any checks or cash received by employees that was due the firm to be paid over as soon as practicable. This expectation was at least implicitly known to Respondent from the beginning of her employment with the Goodall Firm.

6. From the time Respondent became employed with the firm, there was no specifically identified method or procedure for transferring client payments to the firm.

7. While an employee of the firm, Respondent had a reputation of being disorganized in her practice including the handling of funds.

8. Between 1996 and 1999, prior to the occasions at issue, Respondent had similar delays paying over client money to the firm, but was never informed that this practice was unacceptable.

MESSMER MATTER

9. In or about September 1999, Respondent, as an employee of the Goodall Firm, represented Alicia Messmer relative to an underage drinking citation.

10. Ms. Messmer's father, Charles Messmer, gave Respondent his personal check dated September 9, 1999, in the amount of \$500, and payable to Respondent, as the retainer fee Respondent requested for representation of Alicia Messmer.

11. By letter of September 15, 1999, Respondent acknowledged receipt of the \$500 retainer and set forth the fee and cost arrangement the Goodall Firm had with Ms. Messmer and the scope of representation.

12. Respondent knew that the \$500 Messmer check represented funds of the Goodall Firm and that the check should be timely given to the bookkeeper.

13. Respondent did not notify the firm of her receipt of the Messmer check at the time she received it.

14. Respondent endorsed the Messmer check for \$500 and on or about September 17, 1999 negotiated the check at a bank.

15. Respondent failed to provide the proceeds of the Messmer check to the Goodall firm.

16. Respondent personally utilized the entire \$500.

17. In or about December 2000, the Goodall Firm noted that their records reflected no receipt of the \$500 retainer and Ms. Messmer was sent a bill. Charles Messmer sent the firm a copy of his cancelled check of September 9, 1999 for \$500 and payable to Respondent.

18. In December 2000, Amos Goodall questioned Respondent regarding her receipt of the \$500 fee relative to Messmer. Respondent initially responded that she did not remember what had occurred.

19. In January 2001, Respondent left \$500 in cash and an attached slip with the notation "Messmer" on the bookkeeper's desk.

20. By Memorandum of February 22, 2001 to Amos Goodall, Respondent advised him that she felt that the \$500 in Messmer funds represented a reimbursement to her of some funds she had expended in December 1997 relative to the lease of a BMW automobile to which Mr. Goodall of the firm had agreed to make the lease payment.

21. Respondent admitted the impropriety of taking the \$500 and took responsibility for her actions.

ZELLER MATTER

22. In February 2000, the Goodall Firm was representing John Zeller and he gave Respondent \$500 in cash for fees. This payment was made at a location other than the offices of the firm.

23. Mr. Zeller did not request a receipt and none was given to him.

24. Respondent did not timely give the \$500 cash to the firm or explicitly make the firm aware that she had received these funds.

25. In June 2000, the firm billed Mr. Zeller for services rendered. Upon receipt of the bill, he called the firm's bookkeeper and related that he had paid Respondent in February 2000.

26. The bookkeeper then questioned Respondent in June 2000 about the fees paid by Mr. Zeller.

27. Respondent acknowledged having received those funds and represented that the funds were in a briefcase at her residence.

28. On January 3, 2001, Respondent left \$500 in cash on the bookkeeper's desk with a note indicating that the funds were for Zeller.

29. Respondent acknowledged that the 11 month delay in turning over the funds to the firm was clearly excessive.

TURNBAUGH MATTER

30. On December 14, 2000, Respondent represented Jeffrey Turnbaugh at a sentencing hearing and received \$812 in cash that was payable to the Goodall Firm as fees received.

31. Respondent did not give Mr. Turnbaugh a receipt.

32. Shortly after the sentencing, the bookkeeper questioned Respondent about the fees and she stated that she received \$812 which was in a coat at her residence.

33. On January 3, 2001, Respondent remitted to the firm \$812 for the Turnbaugh matter.

LOWERY MATTER

34. Brian Lowery gave Respondent \$1,000 in cash for fees at a preliminary hearing on December 20, 2000.

35. Respondent did not give Mr. Lowery a receipt.

36. Respondent did not advise the Goodall Firm of her receipt of the \$1,000.

37. In January 2001, the Goodall Firm billed Mr. Lowery for services rendered. Mr. Lowery, through his girlfriend, advised the firm that cash payment had already been made to Respondent in December.

38. On January 12, 2001, Respondent left \$1,000 in cash on the bookkeeper's desk for the Lowery matter.

ADDITIONAL FINDINGS

39. Seven character witnesses testified on behalf of Respondent. Five of these witnesses are attorneys in the State College area who have practiced with Respondent and referred cases to her. These witnesses know Respondent's reputation to be one of a hard-working, honest person who cares about her clients.

40. Respondent demonstrated shame and remorse through her words and actions at the hearing.

41. Respondent has learned that her sloppiness and inattention to the financial aspects of her practice was wrong. She has changed positively her practice relating to handling client funds and fee payments and keeps careful records of funds paid to her.

42. Respondent currently has her own law practice in State College handling mostly domestic and criminal matters. She is a contract counsel with the Public Defender's Office, represents parents in Children and Youth Services cases and provides pro bono services.

43. In none of the instances at issue were the rights of her clients or their representation compromised.

44. Respondent has no prior history of discipline.

III. CONCLUSIONS OF LAW

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

1. RPC 1.15(b) – Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is

entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

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

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with professional misconduct stemming from her conversion of law firm funds. Respondent admitted that her conversion of \$500 in fees in the Messmer case payable to her firm violated RPC 8.4(c), which prohibits engaging in dishonest conduct. She also admitted that her failure to timely pay fees over to her law firm in four matters was in each instance a violation of RPC 1.15(b), which requires the prompt payment of funds to those entitled to receive them. A Joint Hearing Stipulation was entered into by the parties, wherein Respondent stipulated to facts that support a finding that these Rules were violated. The question before the Board is the appropriate sanction for these violations.

The most egregious conduct is the admitted personal use of the \$500 Respondent received in September 1999 relative to her firm's representation of Alicia Messmer. These funds were immediately payable to the law firm. Instead, Respondent negotiated the check and utilized the proceeds. Respondent's employer confronted her in December 2000 and at that meeting Respondent did not recall what had happened. However, shortly thereafter she made restitution of \$500 to the firm.

Respondent explained in a memorandum to her employer that she knew the \$500 was payable to the firm, but she kept it because she believed the firm owed her monies in regard to a car lease incurred in December 1997. The Board finds this explanation to be incredible, as the car lease was incurred two years prior to Respondent's conversion, and this was the first time she raised the issue with her employer.

The other instances of misconduct center on Respondent's failure to timely pay over funds due to the firm. In the Messmer matter, there was a 15 month delay in payment to the firm. In the Zeller matter, she waited 11 months before paying the funds to the firm. In the Turnbaugh and Lowery matters, Respondent waited several weeks before turning over the monies. This shorter time period occurred around the time of Respondent's conversation with her employer in December 2000. In all of these cases, it was someone else, most usually the bookkeeper, who found these funds were not remitted to the firm.

The Hearing Committee found that the incident of taking the \$500 was a single aberration in an otherwise unblemished career and recommended a private reprimand. The Committee also emphasized Respondent's positive character evidence and her remorse. The Committee did not believe that Respondent presented a danger to the public that required suspension.

After review of the record and the oral argument, the Board is not convinced that private discipline adequately addresses the dishonest conduct inherent in this matter.

Respondent engaged in dishonest conduct which was knowing and intentional when she converted the Messmer funds to her own use, instead of paying the funds over to her law firm. She was aware of the wrongfulness of her actions when she engaged in them, and she did not attempt to rectify the situation until questioned by her law firm more than one year later. Although the amount of money is not large, as compared to other cases, Respondent's intent was no different than when an attorney takes large sums of money, that being to deprive the rightful recipient of the funds.

Respondent presented favorable mitigating circumstances. She was very remorseful and ashamed of her misconduct. Her character testimony was strong, and she demonstrated positive changes in her new law practice that remedy her carelessness with the funds of others.

While there is no per se discipline in Pennsylvania, the conversion of funds is a serious offense. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983). The taking of funds due a law firm is no less serious an offense than the conversion of client funds. In re Anonymous No. 32 DB 89, 13 Pa. D. & C. 4th 478 (1992). Conversion cases have resulted in a wide range of discipline. An attorney who took approximately \$7,500 in fees over a period of three years by failing to remit to his firm cash payments and checks received a three year suspension. In re Anonymous No. 32 DB 89, supra. Respondent's conduct was neither as extensive nor as egregious. In the matter of In re Anonymous No. 115 DB 2000, No. 718 Disciplinary Docket No. 3 (Pa. Jan. 31, 2002), an attorney was angry

with his firm and had his client who owed the firm money make a check for \$5,895.23 payable to the attorney instead of the firm. The attorney then converted the proceeds. This attorney was suspended for a period of one year.

After review of the nature of the misconduct and the mitigating factors in the context of the case law, the Board is persuaded that a short suspension of three months is appropriate.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Karen Gwyn Muir, be Suspended from the practice of law for a period of three 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: _____
Richard W. Stewart, Board Chair

Date: December 5, 2003

Board Member Rudnitsky did not participate in the adjudication of this matter.

PER CURIAM:

AND NOW, this 1st day of March, 2004, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 5, 2003, the Petition for Review and response thereto, it is hereby

ORDERED that Karen Gwyn Muir be and she is suspended from the Bar of this Commonwealth for a period of three months, and she 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.

Mr. Justice Baer dissents.