

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2157 Disciplinary Docket No. 3
Petitioner	:	
	:	Nos. 2 DB 2015
v.	:	
	:	Attorney Registration No. 65597
JOHN E. GOMOLCHAK,	:	
Respondent	:	(Erie County)

ORDER

PER CURIAM:

AND NOW, this 21st day of August, 2015, upon consideration of the Recommendation of the Three Member Panel of the Disciplinary Board dated August 5, 2015, John E. Gomolchak is suspended from the practice of law for a period of one year and one day. The suspension is stayed in its entirety, and he is placed on probation for a period of one year, subject to the following conditions:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel.
2. The practice monitor shall do all of the following during the period of Respondent's probation:
 - a. Periodically examine Respondent's law office organization and procedures to ensure that he is maintaining an acceptable tickler system, filing system, and other administrative aspects of his practice;
 - b. Meet with Respondent at least monthly to examine his office and escrow accounts, client ledgers, and other financial

records to ensure that all such records are being properly maintained and that fiduciary and non-fiduciary funds are being properly segregated, handled and disbursed in accordance with Pa.R.P.C. 1.15;

c. Meet with Respondent at least monthly to examine progress towards regular client contact and satisfactory and timely completion of clients' legal matters;

d. File quarterly written reports on a Board approved form with the Secretary of the Board; and

e. Immediately report to the Secretary of the Board any violations of the terms and conditions of probation.

A True Copy Patricia Nicola
As Of 8/21/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2157 Disciplinary Docket No. 3

Petitioner : No. 2 DB 2015

v.

JOHN E. GOMOLCHAK,

: Attorney Registration No. 65597

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

William R. Friedman
Disciplinary Counsel
Suite 1300, Frick Building
437 Grant Street
Pittsburgh, PA 15219
(412) 565-3173

and

John E. Gomolchak, Esquire
Respondent
I.D. No. 65597
3854 Walker Boulevard
Erie, PA 16509
(814) 864-4550

FILED

JUL 13 2015

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. 2157 Disciplinary Docket No. 3

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Respondent : (Erie County)

JOINT PETITION IN SUPPORT OF DISCIPLINE
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Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and William R. Friedman, Disciplinary Counsel, and Respondent, John E. Gomolchak, file this Joint Petition in Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E., and respectfully represents as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), 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, John E. Gomolchak, was born in 1959. He was admitted to practice law in the Commonwealth of Pennsylvania on November 23, 1992. Respondent's attorney registration mailing address is 3854 Walker Boulevard, Erie,

PA 16509. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

I. THE EMMA L. WEAVER TRUST
FILE REFERENCE #C4-13-411

3. On October 15, 2000, Emma L. Weaver (hereinafter, decedent) died testate in Erie County, Pennsylvania.

4. Decedent's Last Will and Testament named decedent's sister, Bernadine Juniewicz (hereinafter, Ms. Juniewicz) as the Executrix of decedent's estate.

5. Further, decedent's Last Will and Testament, in part, created a testamentary trust for the benefit of Ms. Juniewicz and upon Ms. Juniewicz's death, the balance of the Trust was to be distributed 60 percent to "Erie Shriners Hospital for Crippled Children" and 40 percent to the "St. George Roman Catholic Church and/or School."

6. Lawrence C. Bolla, Esquire represented Ms. Juniewicz in her capacity as Executrix of decedent's estate, which was opened on October 23, 2000.

7. Mellon Bank was named in the Will as the trustee of the Trust. However, when Mellon renounced its appointment as trustee, by Order of the Court dated December 6, 2000, Respondent was appointed as the substitute Trustee.

8. On December 7, 2000, Mr. Bolla withdrew his appearance on behalf of Ms. Juniewicz.

9. On December 18, 2000, Tammi L. Elkin, Esquire entered her appearance on behalf of Ms. Juniewicz.

10. On March 11, 2003, Ms. Elkin, on behalf of Ms. Juniewicz filed an estate audit statement in the Orphans' Court of Erie County, Pennsylvania, which stated, among other things, that the balance of decedent's estate was \$44,881.88 which was to be distributed to Respondent to hold as Trustee.

11. On March 11, 2003, Ms. Elkin, on behalf of Ms. Juniewicz filed a First and Final Account in decedent's estate.

12. Decedent's estate was closed on April 28, 2003.

13. On November 6, 2008, Ms. Juniewicz died. Respondent did not, at that time, or anytime thereafter inform any representative of Shriners Hospitals for Children (hereinafter, Shriners Hospitals) that Ms. Juniewicz had died.

14. By letter dated November 5, 2010, Michele S. Davis, the Estate and Trust Paralegal for Shriners Hospitals, wrote to Respondent inquiring as to the status of the administration of decedent's Trust.

15. Respondent did not respond to Ms. Davis' letter, nor did he advise her or any representative of Shriners Hospitals as to the status of decedent's Trust.

16. A representative of Shriners Hospitals telephoned Respondent on February 7 and 17, 2011, requesting that he return the calls and provide information with regard to the status of decedent's Trust.

17. Respondent did not respond to said telephone calls nor did he otherwise communicate with Shriners Hospitals.

18. By letter dated March 14, 2011, Bradley K. Buethe, Esquire, an attorney for Shriners Hospitals, wrote to Respondent requesting information with regard to decedent's Trust

19. On June 1, 2011, Respondent had a telephone conversation with Ms. Davis, in which Respondent stated that the balance in the Trust was approximately \$10,000 and that he would prepare an informal accounting to be sent out the following week.

20. Respondent did not send the informal accounting to the representatives of Shriners Hospitals or advise them as to how he was handling the administration of decedent's Trust.

21. By letter dated September 12, 2011, Ms. Davis wrote to Respondent explaining that she was following up on the conversation she had with Respondent on June 1 in which she requested an update on the status of the Trust. Respondent did not respond to Ms. Davis' letter.

22. When Ms. Davis did not hear from Respondent, by letter dated November 21, 2011, she wrote to Respondent, again explaining that Respondent had indicated that an informal accounting would be forthcoming. Respondent did not respond to Ms. Davis's letter.

23. In March and September of 2012, Respondent had telephone conversations with a representative of Shriners Hospitals.

24. In the Fall of 2012, Gene J. Herne, Senior Deputy Attorney General with the Commonwealth of Pennsylvania Office of Attorney General Charitable Trust and Organization Section telephoned Respondent several times and left messages requesting that Respondent return the telephone calls. Respondent did not return Mr. Herne's telephone calls.

25. On March 27, 2013, a representative of Shriners Hospitals telephoned Respondent regarding the status of decedent's Trust. At that time, Respondent

informed the representative, among other things, that he would make it a priority to prepare the accounting of decedent's Trust.

26. Respondent began to assemble the statements for the investment account and sort through the file in regard to the request for distribution from the life tenant.

27. After his discussion with the representative of Shriners Hospitals, Respondent closed the investment account so as to liquidate the funds for distribution.

28. Respondent could not make distribution immediately, until he had prepared an accounting.

29. By letter to Respondent dated April 16, 2013, Mr. Herne informed Respondent that the Office of the Pennsylvania Attorney General would file a Motion to Compel Accounting regarding decedent's Trust.

30. When Respondent learned that Mr. Herne would file a Motion to Compel Accounting, Respondent was "not concerned as he was working toward that goal."

31. In April 2013, Respondent received a check in the amount of \$7,909.46 from USA Financial Security Corporation representing the balance of the funds in the Emma Weaver Trust.

32. At a meeting at the Office of Disciplinary Counsel on June 11, 2013, Respondent informed Angelea Allen Mitas (Counsel-in-Charge, District IV) and Brian J. Kline (Auditor, Investigator, District IV) that he (Respondent) was preparing an accounting for decedent's Trust and would file it in a few weeks. This was the same date that Respondent received a Public Reprimand as will be described in more detail below.

33. Respondent thereafter, failed to negotiate and deposit the proceeds of the check received from USA Financial Securities Corporation and as a result, the check became "stale" and he needed to request a replacement check.

34. On or about March 7, 2014 Respondent filed the First and Final Account for the Emma L. Weaver Trust. Thereafter, on or about April 25, 2014 the Pennsylvania Attorney General's Office filed objections to the First and Final Account and the Court of Common Pleas of Erie County scheduled a hearing for June 24, 2014 before the Honorable Elizabeth K. Kelly.

35. Following the filing of the objections to the First and Final Account, Respondent had discussions with the Attorney General's Office with regard to making distributions from the Trust.

36. It was not until on or about May 20, 2014, that Respondent deposited the proceeds of the check in the amount of \$7,910.64 representing the shares to be distributed to the Shriners Hospitals and St. George Roman Catholic Church.

37. By Order dated June 26, 2014, Judge Kelly ordered that the objections to the First and Final Account had been resolved and that the Attorney General's objections were withdrawn. Judge Kelly further ordered that Respondent make prompt distribution of the remaining balance in the Trust as follows: \$4,693.58 to Shriners Hospitals and \$3,129.05 to St. George Roman Catholic Church, with Respondent to receive \$50.00 as reimbursement for filing fees.

38. Under cover of letters dated July 2, 2014, Respondent sent to Shriners Hospitals and St. George Roman Catholic Church checks representing their shares of the Trust as set forth in Judge Kelly's June 26, 2014 Order.

39. By his conduct as set forth in Paragraphs 3 through 37 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.3 - "A lawyer shall act with reasonable diligence and promptness in representing a client."

(b) Rule of Professional Conduct 1.15(e) – "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, including but not limited to Rule 1.15 Funds, 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 the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment."

II. SPECIFIC RECOMMENDATION FOR A STAYED SUSPENSION OF ONE YEAR AND ONE DAY, WITH ONE YEAR PROBATION

40. Respondent has a record of discipline.

41. On June 11, 2013, Respondent received a public reprimand for failing to diligently pursue the handling of the Estate of Robert T. East, Jr. In his handling of the East Estate, Respondent failed to diligently pursue the estate, failed to properly communicate with the client and failed upon termination of the representation, to return the client's file. He was thus found to have violated Rules of Professional Conduct 1.3, 1.4(a)(4), 1.4(b) and 1.16(d).

42. Respondent's misconduct in handling the Emma L. Weaver Trust occurred during the same time period in which he was aware that he was to receive a public reprimand for his failure to promptly administer the East Estate.

43. Respondent recognizes that his delay in handling the Weaver Trust has had a negative impact on both the Shriners Hospitals as well as St. George Roman Catholic Church.

44. At the same time, significantly, the Office of Disciplinary Counsel has found no evidence of misappropriation. However, Respondent's failure to promptly administer the Weaver Estate, and make distribution, when he received the funds, prevented both the Shriners Hospitals as well as St. George Roman Catholic Church to have the benefit of the funds that they could have put to good use.

45. Since 1997, Respondent ran his office as a sole practitioner. Respondent's wife had worked for him as his secretary, answering the telephone and doing light typing as well as filing.

46. Respondent has a son with special needs and when his son's health becomes endangered, Respondent and his wife dedicate their efforts to their son's care. This was Respondent's situation with regard to his handling of the termination of the Weaver Estate as well as his failure to communicate with the Shriners Hospitals.

47. Respondent's wife no longer works at his office and insofar as they thought it would be a temporary situation, Respondent made no allowance for

replacing her. Respondent's phones went unanswered and messages were not taken or received.

48. Attorneys with a record of discipline who have engaged in neglect of client matters have generally received discipline ranging from a private reprimand to suspension for one year and one day, depending upon the aggravating and mitigating factors. See *In re Anonymous No. 47 DB 91*, 18 Pa. D. & C.4th 418 (1993) (private reprimand imposed on an attorney who failed to act diligently, to communicate with a client, and to return a second client's property after termination of the representation; attorney had previously received two private reprimands and one informal admonition but expressed remorse, admitted her misconduct, presented favorable character testimony, and had physical problems that coincided with part of the time period of her misconduct); *In re Anonymous No. 43 DB 92*, 32 Pa. D. & C.4th 130 (1995) (private reprimand and one-year probation with a practice monitor imposed on an attorney who failed to act diligently, to communicate with his clients in two matters, and to return property to two clients following termination of his representation; attorney had previously received two informal admonitions and a private reprimand for similar misconduct but the attorney's clients were not prejudiced, the attorney's misconduct arose from his lack of administrative skill, and the attorney would respond in a structured environment); *Office of Disciplinary Counsel v. Edward C. Meehan, Jr.*, No. 26 DB 2006 (Recommendation of the Three-Member Panel of the Disciplinary Board 6/27/2006) (S.Ct. Order 9/18/2006)

(Joint Petition in Support of Discipline on Consent accepted and Respondent Meehan received a public censure for failing to act diligently in two criminal cases, to communicate with one client, and to provide transcripts and other related documents to a second client; Respondent Meehan previously received an informal admonition and a private reprimand for similar misconduct and failed to cooperate with Petitioner's investigation; Respondent Meehan hired additional staff to assist him with his caseload); **Office of Disciplinary Counsel v. Neil Jokelson**, Nos. 58 and 102 DB 1998 (D.Bd. Rpt. 12/22/2000) (S.Ct. Order 2/26/2001) (Respondent Jokelson received a public censure and three years' probation with a practice monitor for failing to act diligently and communicate with his clients in two matters; Respondent Jokelson had a history of prior discipline consisting of two informal admonitions and two private reprimands, but presented compelling character testimony and demonstrated significant changes in his office management); **Office of Disciplinary Counsel v. Michael S. Geisler**, 614 A.2d 1134 (Pa. 1992) (Respondent Geisler, who faced 21 counts of lack of diligence and failure to communicate, was suspended for six months to be followed by one-year probation with a practice monitor; Respondent Geisler's youth, inexperience, and lack of prior record were substantial mitigating factors that our Supreme Court weighed in deciding against the imposition of more substantial public discipline); and **Office of Disciplinary Counsel v. Michael G. Bowen, Nos. 10 and 28 DB 2003**, 73 Pa. D. & C.4th 335 (2004) (Respondent Bowen was suspended for one year and one day for incompetence, lack of diligence, failure to communicate, and failure to account

or refund unearned fees in six client matters; in aggravation, Respondent Bowen had previously received a private reprimand for similar misconduct and failed to take responsibility, to show remorse, to file answers to the Petitions for Discipline, and to address his office management problems).

49. Respondent's misconduct in handling the Weaver Trust overlapped with his misconduct in handling the East Estate. Although his failure to address the problems with his handling of the Weaver Trust, despite his discipline in the East Estate matter, and, his meeting with representatives of the Office of Disciplinary Counsel on June 11, 2013 is just as troublesome as the misconduct itself, a suspension of one year and one day, stayed in its entirety, concurrent with one year probation while being supervised by a practice monitor, would ensure that Respondent faithfully complies with the Rules of Professional Conduct. Respondent's failure to do so would be catastrophic to Respondent's practice, and result in serious consequences for his family.

50. It is submitted that, given the personal problems faced by Respondent herein, his apparent lack of office management support and the fact that there is no allegation of misappropriation in either the East Estate or the Weaver Trust, it is appropriate that Respondent receive a suspension of one year and one day which is stayed in its entirety, and that Respondent be placed on probation for a period of one year, subject to supervision of a practice monitor.

WHEREFORE, Petitioner and Respondent respectfully request that:

(a) Pursuant to Pa.R.D.E. 215(e) and 215(g), a Three Member Panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent receive a stayed suspension of one year and one day with probation for one year, subject to the following conditions:

(i) Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel;

(ii) Practice Monitor shall do the following during the period of Respondent's probation:

- a. Periodically examine Respondent's law office, organization, and procedures to ensure that Respondent is maintaining an acceptable tickler system, filing system, and other administrative aspects of Respondent's practice;
- b. Meet with Respondent at least monthly to examine his office and escrow accounts, client ledgers, and other financial records to ensure that all such records are

being properly maintained and that fiduciary and non-fiduciary funds are being properly segregated, handled and disbursed in accordance with Rule of Professional Conduct 1.15;

- c. Meet with Respondent at least monthly to examine Respondent's progress toward satisfactory and timely completion of client legal matters and regular client contact;
- d. File quarterly written reports on a Disciplinary Board approved form with the Secretary of the Board; and,
- e. Immediately report to the Secretary any violations by Respondent of the terms and conditions of probation.

(b) Failure to comply with the above conditions shall be grounds for reconsideration of this matter under the specific provision of Enforcement Rule 203(b)(2);

(c) Costs shall be paid by Respondent; and,

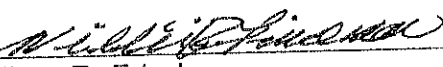
(d) Pursuant to Pa.R.D.E. 215(i), a Three Member Panel of the Disciplinary Board enter an Order for Respondent to pay the necessary expenses incurred in the investigation of the prosecution of this matter as a

condition to the grant of the Petition, and that all expenses be paid by Respondent before the imposition of discipline under Pa.R.D.E. 215(g).

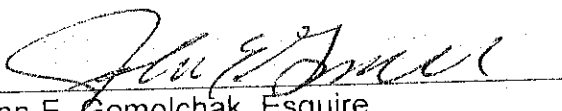
Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By 
William R. Friedman
Disciplinary Counsel

and

By 
John E. Gomolchak, Esquire
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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Petitioner : No. 2 DB 2015

v.

JOHN E. GOMOLCHAK,

: Attorney Registration No. 65597

Respondent : (Erie County)

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

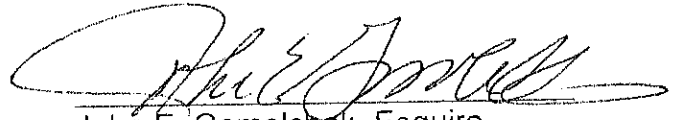
Respondent, John E. Gomolchak, hereby states that he consents to the imposition of a suspension of one year and one day which is stayed in its entirety and be placed on probation for a period of one year, subject to supervision of a practice monitor as jointly recommended by Petitioner, Office of Disciplinary 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 been advised to consult with counsel in connection with the decision to consent to the imposition of discipline;

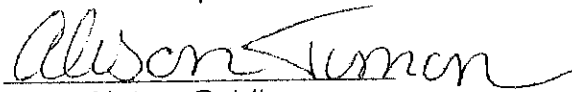
2. He is aware that there is a pending proceeding involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

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 pending against him continue to be prosecuted in the pending proceeding, he could not successfully defend against them.


John E. Gomolchak, Esquire
Respondent

Sworn to and subscribed
before me this 2
day of July, 2015.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Alison Timon, Notary Public
City of Erie, Erie County
My Commission Expires April 27, 2019
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

BEFORE THE DISCIPLINARY BOARD OF THE
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JOHN E. GOMOLCHAK,

: Attorney Registration No. 65597

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.

7-9-15

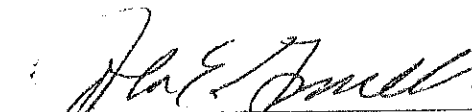
Date



William R. Friedman
Disciplinary Counsel

7-7-15

Date



John E. Gomolchak, Esquire
Respondent

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	:	
v.	:	
JOHN E. GOMOLCHAK,	:	Attorney Registration No. 65597
	:	
Respondent	:	(Erie County)

ORDER

PER CURIAM:

AND NOW, this _____ day of _____, 2015, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated April 6, 2015, it is hereby:

ORDERED that said John E. Gomolchak, of Erie County, Pennsylvania, receive a stayed suspension of one year and one day with probation, subject to the following conditions:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel.

2. Practice Monitor shall do the following during the period of Respondent's probation:

(a) Periodically examine Respondent's law office, organization, and procedures to ensure that Respondent is maintaining an acceptable tickler system, filing system, and other administrative aspects of Respondent's practice;

(b) Meet with Respondent at least monthly to examine his office and escrow accounts, client ledgers, and other financial records to ensure that all such records are being properly maintained and that fiduciary and non-fiduciary funds are being properly segregated, handled and disbursed in accordance with Rule of Professional Conduct 1.15;

(c) Meet with Respondent at least monthly to examine Respondent's progress toward satisfactory and timely completion of client legal matters and regular client contact;

(d) File quarterly written reports on a Disciplinary Board approved form with the Secretary of the Board; and,

(e) Immediately report to the Secretary and violations by Respondent of the terms and conditions of probation.

Failure to comply with the above conditions shall be grounds for reconsideration of this matter under the specific provision of Enforcement Rule 203(b)(2).

Costs shall be paid by Respondent.