

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2179 Disciplinary Docket No. 3
Petitioner :
v. : No. 112 DB 2013
: Attorney Registration No. 56692
JAMES FRANCIS DONOHUE, :
Respondent : (Butler County)

ORDER

PER CURIAM

AND NOW, this 7th day of July, 2015, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated June 10, 2015, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Pa.R.D.E. 215(g), and it is

ORDERED that James Francis Donohue is suspended on consent from the Bar of this Commonwealth for a period of three years, and he shall comply with all the provisions of Pa.R.D.E. 217.

A True Copy Patricia Nicola
As Of 7/7/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

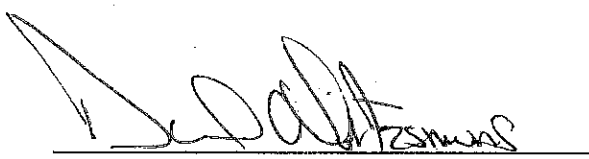
OFFICE OF DISCIPLINARY COUNSEL : No. 112 DB 2013
Petitioner :
v. : Attorney Registration No. 56692
JAMES FRANCIS DONOHUE :
Respondent : (Butler County)

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 David A. Fitzsimons, David E. Schwager, and P. Brennan Hart, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on May 4, 2015.

The Panel approves the Joint Petition consenting to a three 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.



David A. Fitzsimons, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 6/10/2015

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
: No. 112 DB 2013
Petitioner : (File Reference No. C4-13-32)
: and
: File Reference Nos. C4-13-558
v. : & C4-13-853
: Attorney Registration No. 56692
JAMES FRANCIS DONOHUE, :
: (Butler County)
Respondent :

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
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and

John E. Quinn, Esquire
Portnoy & Quinn, LLC
Three Gateway Ctr., Ste. 2325
401 Liberty Ave.
Pittsburgh, PA 15222
(412) 765-3800

FILED

MAY 04 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, :
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JAMES FRANCIS DONOHUE, :
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Respondent :

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and William R. Friedman, Disciplinary Counsel, and James Francis Donohue, Esquire, Respondent, and Respondent's counsel, John E. Quinn, Esquire, file this Joint Petition in Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E, and respectfully represent 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, James Francis Donohue, was born on July 25, 1961. He was admitted to practice law in the Commonwealth of Pennsylvania on December 1, 1989. Respondent's attorney registration mailing address is 101 E. Diamond Street, Suite 214, Butler, PA 16601.

3. Respondent is on active status. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

4. On or about September 18, 2009, Beau Burgunder (hereinafter, Mr. Burgunder), then 17 years of age and a minor, was involved in an automobile accident in an automobile driven by Anthony Fedorka (hereinafter, Mr. Fedorka), and Mr. Burgunder suffered personal injuries.

5. On or about October 27, 2009, Respondent agreed with Sandra L. Burgunder (hereinafter, Ms. Burgunder), Mr. Burgunder's mother, to represent Mr. Burgunder.

6. Following Respondent's communications with Viking Insurance Company, Mr. Fedorka's automobile insurance carrier, and Allstate Insurance Company, Ms. Burgunder's automobile insurance carrier, the matter was settled.

7. On or about December 19, 2011, Respondent received a settlement check in the amount of \$15,000.00 from Viking Insurance Company, which Respondent deposited into his Citizens Bank IOLTA Account (hereinafter, IOLTA Account).

8. Respondent's 20 percent attorney's fee with regard to the \$15,000 recovery on behalf of Mr. Burgunder, was \$3,000 and thus Respondent was entrusted with \$12,000 on behalf of Mr. Burgunder.

9. On January 9, 2012, Respondent deposited or caused to be deposited into his IOLTA Account the proceeds of a settlement check in the amount of \$50,000.00, made payable to "Beau Burgunder and Attorneys, The Law Office of James Donohue," which Respondent received from Allstate Insurance Company.

10. Respondent's 33 percent attorney's fees with regard to the \$50,000 settlement on behalf of Mr. Burgunder was \$16,500 and at that time Respondent was entrusted with \$33,500 in connection with the \$50,000 settlement.

11. Thus, at that time, Respondent was entrusted with a total of \$45,500 on behalf of Mr. Burgunder.

12. By check dated February 2, 2012, in the amount of \$5,000.00, Respondent sent to Mr. Burgunder a portion of the settlement proceeds.

13. Shortly after receiving the check in the amount of \$5,000, Mr. Burgunder telephoned Respondent inquiring as to when he might receive the balance of the settlement.

14. In that telephone conversation, Respondent told Mr. Burgunder that he should receive the balance of the settlement in "about a month" or words to that effect.

15. In early March, Mr. Burgunder telephoned Respondent again inquiring as to when he might receive the balance of the settlement, and in that telephone conversation, Respondent told Mr. Burgunder that he should receive the balance in "about a week," or words to the effect.

16. Approximately one week later, Mr. Burgunder telephoned Respondent leaving a voicemail message asking Respondent to return his telephone call and to let Mr. Burgunder know when he might receive the balance of the settlement.

17. Respondent did not return Mr. Burgunder's telephone call nor did he otherwise communicate with him.

18. When he did not hear from Respondent, in April 2012, Mr. Burgunder contacted Attorney Gary T. Vanasdale.

19. On April 3, 2012, Mr. Vanasdale telephoned Respondent inquiring as to the status of the matter, at which time, Respondent told Mr. Vanasdale that the reason for the delay in Mr. Burgunder receiving a settlement was because Respondent was negotiating the subrogation lien.

20. On April 12, 2012, Respondent was entrusted with \$38,971.04 on behalf of Mr. Burgunder but due to disbursements made by Respondent which were not made to or on behalf of Mr. Burgunder, the balance in his IOLTA Account was at least \$14,567.50 below the entrusted amount.

21. On or about April 12, 2012, Respondent sent to Mr. Burgunder a check drawn on Respondent's IOLTA Account in the amount of \$38,831.04, which represented the remaining funds with which Respondent was entrusted on behalf of Mr. Burgunder.

22. Respondent deposited personal and/or other entrusted funds into his IOLTA Account in April 2012, in order to have sufficient funds to pay Mr. Burgunder the proceeds that were due to him from his settlement.

23. By letters dated April 17, April 20, May 4, and May 17, 2012, Mr. Vanasdale wrote to Respondent, stating, in part, that he had been retained by Mr. Burgunder and requested that Respondent return Mr. Burgunder's file to him.

24. Respondent did not send Mr. Burgunder's file to Mr. Vanasdale until on or about January 25, 2013, after Respondent was contacted by Petitioner.

25. On March 9, 2004 Gage Suchonic (hereinafter, Mr. Suchonic), sustained personal injuries as a result of an automobile accident while he was employed by Vogel Disposal Service (hereinafter, Vogel).

26. In or about 2006, Respondent undertook representation of Mr. Suchonic in connection with a worker's compensation claim stemming from the work related motor vehicle accident of March 9, 2004. The claim was for an unpaid bill of Advantage Chiropractic Center which entity had treated Mr. Suchonic for accident related injuries.

27. In 2010, after Respondent had completed settlement of the third party action, the chiropractic expense claim was lost at a hearing before a worker's compensation judge. Respondent thereafter appealed to the worker's compensation appeal board. While the appeal was pending, Respondent and the worker's compensation carrier, Zurich Insurance, settled the matter for the gross sum of \$2,500.00.

28. In November 2010, Respondent received the settlement proceeds from Zurich Insurance, distributed \$1,250.00 to himself and Mr. Suchonic in accordance

with their agreement and was to hold the \$1,250.00 for payment to Advantage Chiropractic Center.

29. By August 9, 2011, the balance in Respondent's IOLTA Account was \$744.50 below the entrusted amount, due to disbursements made by Respondent which were not made to or on behalf of Mr. Suchonic. Thereafter, by check dated November 10, 2011, Respondent issued a check made payable to Advantage Chiropractic Center, in the amount of \$1,250.00, disbursing the remaining funds on behalf of Mr. Suchonic with which Respondent had been entrusted.

30. In July 2011, Respondent represented Katherine Leihgeber in a dispute with Bob Taylor t/d/b/a/ Taylor Lumber Company.

31. In July 2011, Respondent was entrusted with \$2,500.00 in cash to be paid to Mr. Taylor upon resolution of the dispute with Ms. Leihgeber.

32. In November 2011, Ms. Leihgeber and Mr. Taylor reached an agreement with regard to their dispute.

33. Respondent did not deposit the cash into a client escrow account and did not otherwise segregate the cash monies from his own.

34. By check dated January 11, 2012, in the amount of \$2,500.00, made payable to "Breonna C. Frisk, Esq.," Respondent disbursed funds to Attorney Frisk, Mr. Taylor's counsel.

35. On August 14, 2011, Rose M. Jackson (hereinafter, decedent) died in Butler County Pennsylvania. At the time of her death, she resided in Cranberry Place, a skilled nursing facility.

36. Prior to decedent's death, Virginia Jackson Nanni (hereinafter, Ms. Nanni), decedent's daughter, paid funds on her mother's behalf to Cranberry Place for her mother's care.

37. By check dated October 26, 2011, in the amount of \$5,485.30, and made payable to "Estate of Rose M. Jackson/Virginia Jackson," Cranberry Place refunded to Ms. Nanni the unused portion of the funds she paid to them on behalf of decedent.

38. Shortly thereafter, Ms. Nanni consulted with Respondent with regard to the refund check that she had received from Cranberry Place.

39. At the same time, Ms. Nanni informed Respondent that she (Ms. Nanni) had purchased her mother's home in October 2010.

40. Respondent told Ms. Nanni that she would need to open an estate in order to negotiate the \$5,485.30 check.

41. In November 2011, Ms. Nanni endorsed the \$5,485.30 check over to Respondent for Respondent to maintain in trust until the funds could be distributed to her or to be used to pay any inheritance tax that might be due.

42. In February 2012, Respondent deposited or caused to be deposited the proceeds of the \$5,485.30 check into his IOLTA Account and thus was entrusted with that amount on behalf of Ms. Nanni.

43. On various occasions in 2012 and 2013, Ms. Nanni contacted Respondent with regard to the \$5,485.30 check.

44. On those occasions that Ms. Nanni was able to speak with Respondent, he informed her that he was "working on her mother's estate," or words to that effect.

45. On May 21, 2012, the balance in Respondent's IOLTA Account was at least \$5,418.47 below the entrusted amount on behalf of Ms. Nanni, due to disbursements made by Respondent which were not made to or on behalf of Ms. Nanni or the Estate of Ms. Jackson.

46. By letter dated September 19, 2013, Ms. Nanni wrote to Respondent inquiring as to the status of the \$5,485.30 check.

47. On September 20, 2013, Ms. Nanni spoke with Respondent and during that conversation, Respondent told Ms. Nanni that he would return the proceeds of the check to her.

48. By check dated November 1, 2013, in the amount of \$5,485.30, Respondent distributed to Ms. Nanni the funds with which Respondent had been entrusted on her behalf and/or on behalf of the Estate of Ms. Jackson.

49. By check number 1011 dated December 25, 2011, in the amount of \$4,500.00, and annotated "gift," Elizabeth Donohue gave Respondent money as a gift.

50. Respondent deposited or caused to be deposited the proceeds of the \$4,500.00 check into his IOLTA Account.

51. By check number 874 dated April 19, 2012, in the amount of \$5,000.00, made payable to Respondent, and annotated "gift," Elizabeth Donohue gave Respondent the sum of \$5,000.00.

52. Thereafter, Respondent deposited or caused to be deposited the proceeds of the \$5,000.00 check into his IOLTA Account.

53. Respondent deposited at least \$9,500 of personal funds into his IOLTA Account in order to replace entrusted funds.

54. Respondent did not maintain a complete check register or a separately maintained client ledger.

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED

55. By his conduct as alleged in paragraphs 4 through 54 above, Respondent has violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

(b) Rule of Professional Conduct 1.15(c) - Complete records of the receipt, maintenance, and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later.

(c) 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.

(d) Rule of Professional Conduct 1.15(h) – A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.

(e) Rule of Professional Conduct 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

AGGRAVATING AND/OR MITIGATING FACTORS

56. Respondent acknowledges that his misconduct reflects adversely on his fitness as an attorney and reflects poorly on the legal profession.

57. Respondent admits that he commingled personal funds with client funds.

58. Respondent has otherwise cooperated with Petitioner, as is evident by Respondent's admissions herein and is consenting to receiving a three year suspension.

59. Respondent is remorseful for and embarrassed by his misconduct and understands that he should be disciplined, as is evidenced by his consent to receiving a three year suspension.

60. Respondent has no disciplinary history.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

61. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for a period of three years.

62. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania.

63. The suspension of three years will ensure that Respondent adheres to the Rules of Professional Conduct in his professional representation of clients.

APPLICABLE PRECEDENT

64. The primary function of the lawyer disciplinary system is to determine the fitness of an attorney to continue to practice law. In that way, it serves to protect the public and the courts from unfit lawyers. ***Office of Disciplinary Counsel v. Lucarini***, 472 A.2d 186 (Pa. 1983). A determination of discipline rests on the totality of the unique circumstances of a particular matter. ***Office of Disciplinary Counsel v. Valentino***, 730 A.2d 479 (Pa. 1999). In order to properly assess discipline, the aggravating and mitigating factors must be weighed and considered in the final discipline. ***In Re Anonymous, No. 124 DB 1997***, 47 Pa. D. & C.4th 338 (1998).

65. In the matter of ***Office of Disciplinary Counsel v. Wilbert H. Beachy, III***, No. 95 DB 2003, the Disciplinary Board of the Supreme Court of Pennsylvania addressed the issue of the handling of client funds and in its Report dated September 16, 2005, found that respondent violated Rules of Professional Conduct 1.15(a) and 1.15(b). In one matter, respondent's client entrusted \$8,000 to him to pay restitution in connection with crimes with which the client had been charged. Respondent did not pay the restitution but returned most of the \$8,000 to the client's successor counsel three months after receiving it, during which time respondent's IOLTA Account was deficient at varying times. In another matter, respondent was paid an advance of \$1,500 for a domestic relations matter, most of which he deposited into his attorney account and which at the time his attorney account had a

negative balance. The client terminated respondent's services but respondent did not return the unearned portion of the fee until four months later. The Board stated that these two incidents of misconduct, "standing alone . . . would not merit suspension," but respondent's prior discipline caused the Disciplinary Board to assess the matter, such that it recommended that respondent be suspended for a period of two years. By Order dated November 29, 2005, the Supreme Court of Pennsylvania ordered that respondent be suspended from the Bar for a period of two years.

66. In *Office of Disciplinary Counsel v. James Robert Michael*, No. 48 DB 2008, the Disciplinary Board found that respondent commingled and misappropriated approximately \$100,000 over a four year period but respondent provided credible **Braun** mitigation. On December 18, 2009 the Board recommended that respondent be suspended for a period of five years with one year of retroactivity. By Order dated April 8, 2010 the Supreme Court suspended respondent for a period of three years with two years of retroactivity. In that matter, two Justices dissented, preferring a five year suspension as recommended by the Board.

67. In the matter of *Office of Disciplinary Counsel v. Patricia L. Datsko*, No. 74 DB 2008, the Disciplinary Board of the Supreme Court of Pennsylvania found that respondent mishandled client funds, violating Rules of Professional Conduct 1.15(a) and 1.15(b). This matter included misconduct in handling two

client matters as well as misconduct in connection with further investigation by Office of Disciplinary Counsel. In an estate the Board found that respondent delayed in handling the estate which the Board stated was "not a difficult or complicated matter." In the other client matter, respondent failed to promptly refund the unearned portion of the fee paid to respondent. By the further investigation by Office of Disciplinary Counsel, the Board found that respondent's IOLTA Account was out of trust 52 times over a period of eight months and had a negative balance on 20 occasions. Moreover, respondent deposited \$29,300 of personal funds into her IOLTA Account over an eight month period. The Board stated that the mishandling of client funds requires imposition of public discipline. The Board recommended that respondent be suspended from the practice of law for a period of three years and by Order dated October 15, 2009, the Supreme Court of Pennsylvania agreed.

WHEREFORE, Petitioner and Respondent respectfully request that:

(a) Pursuant to Rules 215(e) and 215(g), Pa.R.D.E., a three member panel of the Disciplinary Board approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court:

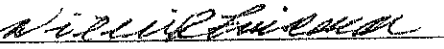
(i) Suspend Respondent from the practice of law for a period of three years.

(b) Pursuant to Rule 215(i), the three member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation and 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 Rule 215(g), Pa.R.D.E.


Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL


PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By 
William R. Friedman
Disciplinary Counsel

and


By
James Francis Donohue, Esquire
Respondent

and


By
John E. Quinn, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
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OFFICE OF DISCIPLINARY COUNSEL, :
: No. 112 DB 2013
Petitioner : (File Reference No. C4-13-32)
: and
: File Reference Nos. C4-13-558
v. : & C4-13-853
: Attorney Registration No. 56692
JAMES FRANCIS DONOHUE, :
: (Butler County)
Respondent :

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.

4-30-15

Date



William R. Friedman
Disciplinary Counsel

4-30-15

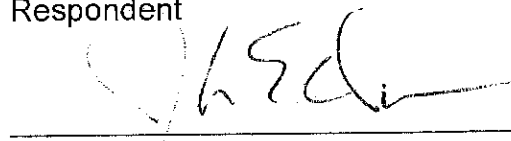
Date



James Francis Donohue, Esquire
Respondent

4/30/15

Date



John E. Quinn, Esquire
Counsel for Respondent

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JAMES FRANCIS DONOHUE, :
: (Butler County)
Respondent :

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


Respondent, James Francis Donohue, hereby states that he consents to a three year suspension, 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; and he is fully aware of the implications of submitting the consent; and, he has consulted with counsel in connection with the decision to consent to 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.


James Francis Donohue, Esquire
Respondent

Sworn to and subscribed
before me this 30
day of April, 2015


Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Kathy Jo Prichard, Notary Public
City of Butler, Butler County
My Commission Expires April 11, 2019
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES