

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2735 Disciplinary Docket No. 3
: :
Petitioner : No. 8 DB 2020
: :
v. : Attorney Registration No. 26643
: :
JACK M. BERNARD, : (Out of State)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 8th day of September, 2020, Respondent having filed a Praecipe to Withdraw Objection, the Rule to Show Cause issued on August 3, 2020, is discharged. Upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Jack M. Bernard is suspended on consent from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 09/08/2020


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 8 DB 2020
v. :
: Atty. Reg. No. 26643
JACK M. BERNARD, :
Respondent : (Out of State)

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

Petitioner, Office of Disciplinary Counsel (“ODC”), by Thomas J. Farrell, Chief Disciplinary Counsel, and Gloria Randall Ammons, Disciplinary Counsel, and Respondent, Jack M. Bernard, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement (Pa.R.D.E.) 215(d) (“Joint Petition”), and respectfully represent that:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in

FILED
06/16/2020
The Disciplinary Board of the
Supreme Court of Pennsylvania

accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Jack M. Bernard, was born on March 12, 1933, and was admitted to practice law in the Commonwealth on November 23, 1977. His registered mailing address is 1550 Beacon Street, Apt. 6G, Brookline, MA 02446 (“Beacon Street address”).

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

SPECIFIC FACTUAL ADMISSIONS AND RULES VIOLATED

4. Respondent stipulates that the following factual allegations contained within the Joint Petition are true and correct, and stipulates that he has violated the Rules of Professional Conduct set forth in ¶¶ 13 and 31, *infra*.

CHARGE I

5. On or about September 25, 2017, Respondent withdrew \$1,000 from his PNC Bank IOLTA account number ending in 1185 (“IOLTA account”), creating a negative balance of \$935.78.

6. By letter to Respondent dated October 5, 2017, Kathryn Peifer Morgan, Esquire, Executive Director of the Pennsylvania Lawyers Fund for Client Security (“the Fund”), *inter alia*:

- a. enclosed a copy of the "Report" which indicated that a negative balance was created in Respondent's attorney trust account;
 - b. requested within ten business days a written documented explanation as to why the negative balance occurred;
 - c. requested a copy of the client ledger(s) with respect to each client matter discussed in the explanation;
 - d. stated that Respondent must verify that his statements are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsifications to authorities;
 - e. requested a copy of Respondent's monthly trust account bank statements for the last three months;
and
 - f. advised Respondent that if he failed to timely respond to the Fund's request or, if his explanation was unsatisfactory, the matter would be referred to ODC.
7. Respondent received Ms. Morgan's October 5, 2017 letter.
 8. Respondent failed to respond to Ms. Morgan's letter within 10 business days as requested.

9. By letter to Respondent dated October 19, 2017, Ms. Morgan stated that:

- a. Respondent had not responded to the Fund's October 5, 2017 letter requesting a response from him; and
- b. if he did not respond within five business days the matter would be referred to ODC.

10. By letter to Ms. Morgan dated October 16, 2017, which was received by the Fund on October 23, 2017, Respondent stated, *inter alia*, that:

- a. on September 22, 2017, he met with a representative of a prospective buyer of real property in Philadelphia owned by his clients who lived in Georgia;
- b. he prepared an Agreement of Sale and was presented with a check in the amount of \$1,000;
- c. he deposited the check in his IOLTA account, which cleared overnight;
- d. the next day the buyer's representative cancelled the transaction and Respondent agreed to refund the funds;
- e. several days later the check bounced;

- f. he telephoned the representative several times without success;
- g. thereafter, he deposited \$1,000 of his own funds into his IOLTA account in order to make the "check good"; and
- h. his secretary/assistant now manages his IOLTA account because she has been with him for several years and she was knowledgeable about banking and the IOLTA rules.

11. Under cover of Respondent's October 16, 2017 letter, he also provided partial statements for August, September and October 2017 and a copy of the deposit slip that covered the negative balance.

12. In the past, Respondent has had not less than ten overdraft notifications in regard to his IOLTA account.

13. By his conduct as alleged in Paragraphs 5 through 12 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.15(b), which states that 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; and

- b. RPC 1.15(h), which states 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.

CHARGE II

14. On April 25, 2019, ODC forwarded to Respondent a DB-7 Request for Statement of Respondent's Position ("DB-7 Letter") putting Respondent on notice of allegations that he violated RPC 1.15(b) and RPC 1.15(h) in regard to the overdraft set forth in ¶ 5.

- a. The DB-7 Letter requested that Respondent provide financial records including all ledgers for his IOLTA account.

15. Thereafter, Respondent provided some but not all of the requested financial records to ODC.

16. In September 2018, after a review of the partial financial documents that Respondent did provide, ODC requested that Respondent forward the missing financial information.

17. Thereafter, Respondent's attorney, Samuel C. Stretton, Esquire, requested that ODC provide the financial spreadsheets prepared by ODC's Auditor in order to assist Respondent in providing the missing financial information.

18. By letter dated November 5, 2018 to ODC, which Respondent received a copy of, Mr. Stretton stated that:

- a. he had met with Respondent in his office;
- b. Respondent was going to be working on getting the missing financial information; and
- c. he had hoped that the "material" would be ready in several weeks.

19. Thereafter, Respondent failed to forward the missing financial information to ODC.

20. By letter dated February 22, 2019 to Mr. Stretton, ODC again requested that Respondent forward the missing financial information within 10 days.

21. By letter dated March 6, 2019 to ODC, which Respondent received a copy of, Mr. Stretton stated, *inter alia*, that:

- a. Respondent had left Philadelphia and moved to Brookline, MA, to be near his daughter;

- b. Respondent had been hospitalized for knee surgery and that he would remain in Brookline;
- c. Respondent's new address was the Beacon Street address;
- d. Respondent was winding down his practice with the intent to end it;
- e. Respondent was seeking buyers for his practice;
- f. Respondent did not have the financial information requested by ODC; and
- g. inquired whether the disciplinary matter could be stayed permanently pending Respondent's retirement.

22. By letter dated May 29, 2019 to ODC, with a copy to Respondent, Mr. Stretton stated that:

- a. Respondent had given most of his files to two attorneys;
- b. Respondent was retiring and not going to renew his law license;
- c. Respondent was finishing one brief on a federal trial; and

- d. Respondent would be taking inactive status effective July 31, 2019.

23. By letter dated June 4, 2019 to Marcee D. Sloan, Board Prothontary, with a copy to Respondent, Mr. Stretton:

- a. enclosed Respondent's Application for Retirement ("Form DB-27"); and
- b. stated that there was an ongoing disciplinary matter, but that it would be resolved if Respondent went on retirement or inactive status.

24. By letter dated June 5, 2019 to Suzanne E. Price, Attorney Registrar, with a copy to Respondent, Mr. Stretton enclosed Respondent's original Form DB-27 and his 2018-2019 Pennsylvania Attorney's License card.

25. By Order dated June 11, 2019, Respondent was transferred to Retired status.

26. By letter dated June 12, 2019 to Respondent, Dana Belella, Deputy Attorney Registrar, *inter alia*, enclosed a copy of the Court's Order.

27. By letter dated June 27, 2019, ODC advised Mr. Stretton that the disciplinary file had been closed without disposition.

28. On July 15, 2019, Respondent filed a 2019-2020 Pennsylvania Administrative Change in Status Form and Pennsylvania Registration Office 2019-2020 Financial Data Amendment in which Respondent requested active status.

29. On or about July 16, 2019, Respondent resumed active status.

30. On September 19, 2019, Respondent filed a Chapter 7 bankruptcy petition on behalf of his client, Negiste Kahsal Habte, in the United States Bankruptcy Court of the Eastern District of Pennsylvania, No. 19-15862, beginning a new case.

31. By his conduct as alleged in Paragraphs 14 through 30 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 8.1(a), which states, in pertinent part, "... a lawyer in connection with a disciplinary matter, shall not knowingly make a false statement of material fact";
and
- b. RPC 8.4(c), which states it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

32. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of one year and one day.

33. Respondent hereby consents to that discipline being imposed upon him. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline, including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

34. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and Respondent's consent to receiving a suspension of one year and one day; and

- c. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a suspension of one year and one day.

35. Respondent has a record of discipline, which is an aggravating factor. In June 2015, Respondent received a public reprimand for violating former RPC 1.15(b), which stated that "a lawyer shall hold all RPC 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded." Respondent was also placed on probation for one year with conditions that he take the Bridge the Gap course, and take a CLE course in trust accounting.

36. If this matter were to proceed to a hearing, Respondent would testify to the following:

- a. he ordered announcements that he was retiring and would no longer be permitted to practice law in Pennsylvania;
- b. he advertised in the Legal Intelligencer, which ran for approximately one week, offering to sell his practice without an advance payment with a percentage

amount to be negotiated payable when billable or fee collected;

- c. he had many offers for his law practice and had been in negotiations with one attorney, who is licensed in multiple jurisdictions including Pennsylvania, to purchase his practice;
- d. at the present time negotiations with that attorney have not gone forward;
- e. he represented Ms. Habte free of charge because she was destitute, was a victim of predatory contractors and was being hounded by bill collectors;
- f. Ms. Habte had consulted with another bankruptcy attorney but she could not afford to pay the attorney from her monthly social security payment; and
- g. he was able to obtain a waiver of the bankruptcy filing fee for Ms. Habte and enabled her to receive a discharge of her debts.

37. Although there is no *per se* rule for discipline in this jurisdiction in regard to cases involving misrepresentations to ODC, a suspension of one year and one day is within the range of discipline

imposed on attorneys who have engaged in dishonest or deceptive behavior depending upon the aggravating and mitigating circumstances.¹ See ***Office of Disciplinary Counsel v. Mary Louise Johnson***, No. 154 DB 2008 (D.Bd. Rpt. 12/30/2009)(S.Ct. Order 4/16/2010)(respondent made misrepresentations as to the completion of a condition attached to an informal admonition; expression of remorse; no prior discipline; suspension of one year); ***Office of Disciplinary Counsel v. Arthur Joseph Werner***, 202 DB 2003, 77 Pa. D.&C.4th 430 (2005)(during the course of an investigation of a complaint alleging that the respondent failed to refund a fee and return a client file, the respondent sent copies of a fabricated letter and check to Disciplinary Counsel; the respondent expressed remorse for his conduct toward his client but did not acknowledge or express sincere regret for misleading Disciplinary Counsel; no prior history of discipline; suspension of one

¹ If Respondent were called to testify at the hearing, he would claim that it was not his intention to mislead ODC regarding his retirement but concedes that his behavior violated the Rules of Professional Conduct.

year and one day); ***Office of Disciplinary Counsel v. Edward T. Rowe, Jr.***, No. 97 DB 2007 (D.Bd. Rpt.7/12/2007)(S.Ct. Order 10/30/2007)(respondent, in response to a DB-7, misrepresented that funds he was required to hold in his escrow account to satisfy a lien on behalf of his client were in his escrow account when in fact he converted the funds; expression of remorse; no prior discipline; suspension of one year and one day); ***Office of Disciplinary Counsel v. Grace Smith Foltz***, No. 97 DB 2007 (S.Ct. Order 5/8/2008)(respondent, who comingled fiduciary funds and was repeatedly out of trust in her IOLTA account, provided Disciplinary Counsel with a number of false and fraudulent documents and made numerous false statements; two-year consent suspension); and ***Office of Disciplinary Counsel v. Stanley Silver***, No. 15 DB 2010 (S.Ct. Order 6/23/2010)(respondent continued to practice law after being suspended and falsely claimed that he had complied with his order of suspension; prior discipline of six-month suspension; two-year consent suspension).

Here, Respondent is 86 years old, has permanently moved to the Commonwealth of Massachusetts, and admittedly suffers from poor health. Under the circumstances, it is respectfully submitted that a


license suspension of one year and one day is sufficient to protect the public.

WHEREFORE, Petitioner and Respondent respectfully request that 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 a recommendation with the Supreme Court of Pennsylvania that Respondent be suspended for one year and one day.

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL

By 

Gloria Randall Ammons
Disciplinary Counsel

By 

Jack M. Bernard
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 8 DB 2020
v. :
: Atty. Reg. No. 26643
JACK M. BERNARD, :
Respondent : (Out of State)

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.

6/16/2020
Date

Gloria Randall Ammons
Gloria Randall Ammons
Disciplinary Counsel

5-30-2020
Date

Jack M. Bernard
Jack M. Bernard
Respondent



BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 8 DB 2020
v. :
: Atty. Reg. No. 26643
JACK M. BERNARD, :
Respondent : (Out of State)

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

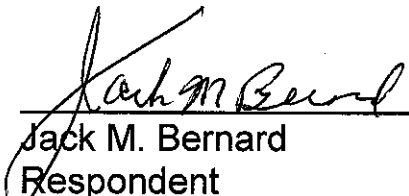
Respondent, Jack M. Bernard, hereby states that he consents to the imposition of a suspension of one year and one day as set forth in the Joint Petition, as jointly recommended by the Petitioner and Respondent in the Joint Petition in Support of Discipline on Consent, and further states that:

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 not presently consulted with counsel in connection with his current decision to consent to discipline although he has previously consulted with counsel regarding consent discipline;

2. He is aware that there is presently pending a proceeding at No. 8 DB 2020 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 against him continue to be prosecuted in the pending proceeding, he could not successfully defend against them.

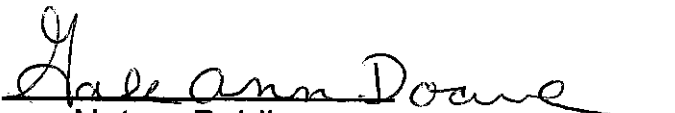


Jack M. Bernard
Respondent

Sworn to and subscribed

before me this 2

day of June, 2020.



Notary Public

