

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1002, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 165 DB 2003
v.	:	
	:	Attorney Registration No. 33976
JAMES A. BOLDEN	:	
Respondent	:	(Philadelphia)

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 October 31, 2003, Office of Disciplinary Counsel filed a Petition for Discipline against James A. Bolden, Respondent. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that he utilized his position as the executor of an estate to benefit himself at the expense of the heirs.

Respondent filed an Answer to Petition on December 1, 2003, admitting that he withdrew almost \$80,000 in excess of his entitlement.

A disciplinary hearing was held on April 7, 2004 before Hearing Committee 1.03 comprised of Chair James A.A. Pabarue, Esquire, and Members Alexander B. Giacobetti, Esquire, and Stephen A. Feldman, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Committee filed a Report on September 16, 2004, finding that Respondent violated the Rules of Professional Conduct and recommending that he receive a public censure.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of November 17, 2004.

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, 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 said Rules of Disciplinary Enforcement.

2. Respondent, James A. Bolden, was born in 1937 and was admitted to practice law in the Commonwealth of Pennsylvania in 1981. He maintains his principal office at 1989 N. 63rd St. Philadelphia, PA 19151. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior history of discipline.

4. On September 2, 1989, Dr. Victor Dunston died in Virginia.

5. Decedent's will, drafted by Respondent, appointed Respondent executor and designated Philip Dunston and Walter Dunston as beneficiaries under their father's will.

6. Decedent entrusted Respondent with the original will, which was lost in Respondent's office.

7. Respondent engaged the services of his law partner, Emmanuel Coker, and his law firm, Bolden & Coker, as counsel to the estate.

8. Respondent did not enter into a written fee agreement with his firm.

9. Respondent did not maintain accurate and complete contemporaneous records of the time and nature of the services which he provided in his capacity as executor and which he and Mr. Coker provided counsel to the estate.

10. Respondent advised the heirs that his fee for administering estate would be five percent of the estate's value.

11. Decedent's estate, per Inventory, included approximately \$133,000 in liquid assets; a property located on N. 63rd St. in Philadelphia, valued at approximately \$60,000; containing a dental office, equipment and an apartment, and a dental practice

operated out of that property, for a total of \$201,939.92; interest in a property located in Virginia which was an asset of the estate of Dorothy Lomax; and at least two life insurance policies.

12. In December 1989, Respondent filed a Petition to probate a copy of the will, and Letters Testamentary were issued.

13. In December 1989, Respondent opened a Meridian Bank checking account, captioned Estate of Victor Dunston DDS Dec'd, into which he deposited the proceeds of liquidation of certain decedent's assets.

14. Between December 1989 and October 1992, Respondent advertised the Grant of Letters; garnered decedent's assets, collected and distributed the proceeds of decedent's life insurance policies and Veteran's benefits; filed decedent's outstanding income tax returns; addressed legal matters in Virginia; accompanied heirs to remove personalty from the Virginia property; sold the assets of the dental practice; and paid estate obligations.

15. Respondent was unable to produce accurate and complete records of receipts and disbursements of estate assets; liabilities and income and of expenses he incurred and paid on behalf of the estate.

16. Respondent did not file an Inventory and Inheritance Tax return or pay inheritance tax within nine months of date of death, as required by law.

17. Between December 1989 and February 1991, Respondent drew thirty-seven checks, totaling \$85,607.96, on the estate account, payable to his firm, cash, his secretary Vivian Scott, or himself, which he annotated as payments for attorney's fees, executor's fees and administrative expenses.

18. Of these amounts, Respondent attributed \$44,325 to his counsel fee, \$10,500 to his executor's commission, and \$16,500 to secretarial services, for a total of \$71,325, which is over 35% of the value of the estate.

19. A portion of the remaining \$13,328 was for reimbursement to Respondent for expenses incurred on behalf of the estate and paid from law firm funds, which Respondent is unable to fully document.

20. Respondent informed Philip and Walter Dunston that he would not charge by the letter or phone call but would charge a flat percentage of the estate, in order to get as much of the estate's money to the heirs as possible.

21. From time to time during the administration of the estate, Philip and Walter Dunston called Respondent to ascertain the progress of estate administration, to request verification of payment of inheritance taxes and to request that Respondent account for and distribute their inheritance to them.

22. Respondent failed to provide an accounting and verification of tax payments and to advise when distribution would be made.

23. Walter Dunston advised Respondent that he wanted to purchase Philip Dunston's interest in the Philadelphia property.

24. Respondent told the heirs that there was not enough money in the estate to fund the purchase.

25. Prior to 1997, Respondent did not disclose to Philip and Walter the value of estate assets, the fees he was charging for managing and selling the real estate or the amount of funds which he had disbursed from the estate to himself, his firm, and Vivian Scott, and he did not make distributions to them of estate principal.

26. Respondent led the Dunstons to believe that the only source of payment to them from the estate would be the sale of the Philadelphia and Virginia properties.

27. On one or two occasions, Respondent gave the heirs checks in small amounts drawn on law firm accounts, totaling \$525 to Philip and \$540 to Walter, which he characterized as "loans" from himself to the heirs, to be repaid from the final distributions of the estate, and for which Respondent reimbursed himself from the estate account.

28. In February 1990, Respondent entered into an agreement with Charles Champion, DDS, to operate the dental practice, pursuant to which office expenses, including the salary of the office administrator were to be deducted prior to payment of the estate's portion of the proceeds, and in January 1991, agreements to purchase dental equipment for \$500 and patient files for \$2,500, which Dr. Champion paid as of July 1, 1991.

29. In or about 1991, Respondent closed the estate account, and failed to maintain estate funds in a separate account captioned in the name of the fiduciary.

30. Respondent commingled the estate's funds with his own in a CoreStates Bank account, captioned Bolden & Coker Counselors at Law and a PNC Bank account captioned Bolden & Coker Escrow account.

31. In April 1991, settlement was held on the sale of 1143 N. 63rd St. to Dr. Charles Norris of Haddington Community Health Services, Inc., for a sale price of \$70,000, at which time:

a. Respondent, as Executor, took back a \$65,000 mortgage requiring monthly payments of \$637.07 and a balloon payment of \$60,000 in May 1996.

b. Seller received \$680.73 in cash;

c. Respondent and Mr. Coker advised the title company that they would be responsible for inheritance tax for the estate;

d. Dr. Norris purchased personalty of the office for \$1,000.

32. In May 1991, Respondent sold additional equipment to Arthur Case, DDS., for \$850.

33. Respondent collected not less than \$5,245.63 for sale of equipment, patient files and other assets, and rent.

34. Respondent failed to remit those funds to the heirs.

35. Between 1991 and 1996, Respondent collected mortgage payments from Dr. Norris totaling not less than \$38,224.20.

36. Between June 1991 and May 1997, Respondent made periodic payments

totaling \$17,496.50 to Walter Dunston and totaling \$18,239 to Philip Dunston, amounting to \$35,736, by checks drawn on the firm's operating account, as distribution of the mortgage and rent payments less a monthly administrative fee.

37. In November 1992, Respondent received the proceeds of the sale of the Virginia real estate, in the amount of \$34,003.94, which he did not deposit into the estate account.

38. Respondent distributed to each of the heirs a check for \$10,000, drawn on the operating account, under cover of letters dated November 20, 1992, in which he:

a. described the checks as "your share from the proceeds of the sale of the property in Lynchburg, Virginia";

b. stated that he would forward a check for inheritance taxes in the amount of \$8,003.44 and that the remaining \$6,000 will be for attorney's fees and costs associated with probate; and

c. concluded, "Finally, I am expecting some rental income which will be mailed to you upon receipt."

39. On November 23, 1992, Respondent issued a check on the operating account in the amount of \$8,238.29, payable to the Register of Wills for payment of inheritance tax.

40. Respondent did not remit the remaining \$5,764.65 from the proceeds of the Virginia property to the heirs.

41. On November 27, 1992, Respondent filed a PA Inheritance Tax Return which, inter alia;

a. listed total assets in the amount of \$243,739.92, including the Virginia real estate at a value of \$41,800, but excluding the dental practice, office supplies and equipment;

b. claimed an executor's commission of \$10,000 and attorney fees of \$44,325;

c. in Schedule I, claimed deduction for purported administrative expenses such as "secretarial/clerical cost" of \$16,500, travel expenses of \$4,810, and payments to Vivian Bush of \$6,222; and

d. after all claimed deductions and payment of tax, and net of the real estate, left \$30,650.54 for distribution to the heirs.

42. Respondent did not provide a copy of the return to the heirs.

43. The Department of Revenue questioned the deductions for fees charged by Respondent, to which Respondent responded by letter dated April 12, 1993. (Ex. P-20).

44. In August 1993, the Department of Revenue issued a Notice of Inheritance Tax Appraisal, Allowance or Disallowance of Deductions and Assessment of Tax, which, inter alia;

a. removed the Virginia property as an estate asset, and the expenses related to it were removed as liabilities of the estate;

b. reduced the \$1,230 deduction for Maintenance of Property by one-half;

c. reduced the legal fees from \$44,325 to \$20,000, but stated, "Further fees may be charged for completed work and further work", and

d. assessed tax of \$7,490.62 and interest in the amount of \$1,911.51 with credit for \$6,326.78 for tax and \$1,911.51 in interest, resulting in additional interest of \$68, with payment due of \$1,231.84.

45. The net principal receipts to Respondent totaled not less than \$81,289.81, which is over 41% of the gross estate, exclusive of the Virginia property.

46. By letter dated January 6, 1994, Respondent advised Philip Dunston that the Department of Revenue sought additional payment of \$1,253.52, which Respondent would pay and deduct from Mr. Dunston's monthly "estate check"; Respondent did not reveal that the payment was due to his errors in the tax return and underpayment of tax.

47. Between 1994 and 1996, the Department of Revenue issued several Notices advising Respondent of interest and taxes due.

48. Respondent failed to make additional tax and interest payment until July 1996, when he issued a check on the operating account for \$1,405.25; and September 9, 1996, when he paid the balance due of \$316.71.

49. Prior to June 1998, Respondent did not prepare a Final Account of the estate and provide it to the beneficiaries with a Family Settlement Agreement or file it in the Orphans' Court.

50. Dr. Norris failed to make mortgage payments timely and to make the balloon payment due in May 1996. In June 1996 Respondent extended a twelve month lease at \$650 per month to Dr. Norris without prior notice to and approval of the heirs.

51. By letter to Mr. Coker dated August 4, 1996, Philip Dunston asked that Respondent provide an accounting and documentation, that he transfer the property to Philip and Walter Dunston so that they could have it sold by a realtor, and that he conclude the estate.

52. On August 12, 1996, Philip Dunston went to Respondent's office and reviewed the estate file, at which time he saw a draft of the inheritance return and other documents which reflected the extent of the estate assets and the fees which Respondent was charging the estate.

53. By letter dated September 3, 1996, Respondent advised Philip Dunston that the estate had been concluded and the deed, which he was holding in escrow, would be transferred to Philip and Walter Dunston.

54. Respondent did not provide an accounting to the Dunstons.

55. By letter of September 9, 1996, Respondent advised Dr. Norris that the estate was closed, rental payments should be made to Bolden & Coker, and upon expiration of the lease in May 1997, correspondence concerning the property should be addressed to the beneficiaries, to whom the deed would be transferred.

56. Thereafter, Philip and Walter Dunston retained Duane Morris LLP to represent them in their claims against Respondent.

57. Between December 1996 and December 1998, Duane Morris repeatedly demanded that Respondent provide a full accounting and documentation of transactions of the estate, and distribute to the heirs the balance of estate assets.

58. In January 1997, Respondent demanded that Dr. Norris execute a deed back to the beneficiaries and entered into a lease with Mercy Health Corporation, for four payments of \$800 each, without approval of the court.

59. Respondent did not deposit into the estate account the funds received on account of the rental of the dental office and sale of the practice, equipment and property.

a. Respondent issued checks to the heirs on the operating account in the amount of \$395 each for two months on account of the Mercy lease.

b. By letter to the Dunstons dated February 3, 1997, Respondent advised them that he had entered into the Mercy lease and intended to cease managing the property.

60. Under cover of a letter to Duane Morris dated February 13, 1997, Respondent forwarded a check drawn on his escrow account payable to Walter Dunston, in the amount of \$2,500, stated that he was holding \$47,998.86 for distribution to the heirs, and claimed that he had been handling the Philadelphia property without compensation since April 1991.

61. By letter dated March 20, 1997, Respondent notified Duane Morris that he was disbursing the estate funds to the heirs.

62. By letter to the Dunstons dated March 20, 1997, Respondent sent directly to each heir a check in the amount of \$23,999.43, drawn on this escrow account, which amount Respondent referred to as the remainder of the estate.

63. In March 1997, Respondent secured and filed a deed transferring the N. 63rd St. property from Haddington to the Dunstons and notified the tenant to pay rent directly to them.

64. On April 18, 1997, Duane Morris filed suit by Writ of Summons in the Philadelphia Court of Common Pleas on behalf of the Dunstons against Respondent, Mr. Coker and the firm.

65. On March 26, 1998, Duane Morris filed in the Philadelphia Orphans' Court a Petition for Order to Compel the filing of an Account.

a. On March 27, a decree issued awarding a Citation to Show Case Why an Account should not be Filed returnable April 27, 1998.

b. On May 5, 1998 Duane Morris filed a Motion for an Order Directing Respondent to File an Accounting.

c. On May 8, 1998, a Decree issued requiring Respondent to file his Account by June 7, 1998.

d. Respondent failed to comply timely with the March 27 and May 8 Decrees.

e. Respondent requested extensions of time to respond, which the court did not grant.

f. On June 15, 1998, Duane Morris filed a Petition for Citation to show Cause Why a Writ of Attachment Should not be Filed.

g. On June 18, 1998, a Decree issued returnable July 20, 1998.

h. On June 22, 1998 Respondent filed his First and Final Account, which was not in the form required and did not include a complete list of all checks issued to Respondent and his firm.

i. On July 2, 1998, Respondent filed his Answer in Response to the Petition for Citation to Show Cause Why a Writ of Attachment Should not be Filed.

j. By Order dated July 30, 1998, the court denied the Petition for Citation and denied issuance of the Writ of Attachment because the Account had not been filed.

k. On July 31, 1998, Duane Morris filed Objections to the First and Final Account.

l. By Decree dated September 10, 1998, Respondent was ordered to restate his Account in conformity with Sup. Ct. O.C. Rule 61 and Phila.O.C. Rule 61.1 within fifteen days, and that matter was placed on the audit list for October 1998.

m. Respondent did not timely comply with the September 10 order.

66. In September 1998, Duane Morris took Respondent's deposition.

67. Respondent :

a. testified the dental office generated no income after his appointment;

b. denied that he had decedent's original will;

c. claimed that he had retained his firm to represent himself as executor because he believed that it would be more economical and he thought it was a simple estate to administer;

d. claimed that he had advised the beneficiaries that he would charge the estate \$150 per hour, plus expenses;

e. stated he could not locate his time records for services to the estate, which were maintained by his clerical staff;

f. testified that dental office patient files and equipment had been misplaced or lost;

g. claimed that he had charged a \$10,000 commission based on his belief that he was entitled to 5% of the estate.

h. admitted that he had not disclosed to the beneficiaries prior to their retention of counsel the fact that he claimed attorney's fees of \$44,325.

68. On October 2, 1998, Respondent filed a Revised First and Final Account of the Estate, which was not in the form required by the Rules.

69. Respondent submitted seven volumes of Exhibits to the Account,

including all records in his possession concerning the administration of the estate and costs and expenses advanced by Respondent and paid from the estate account.

70. On December 4, 1998, Duane Morris filed Objections to the Revised Account which included an analysis of the items for which Respondent claimed credits in the various accounts and Duane Morris' position with respect thereto.

71. By Decree dated December 11, 1998, the Honorable Petrese Tucker ordered that Mr. Coker provide documentation in support of the disbursements reflected in the Revised First and Final Account; depositions be conducted, and all discovery be completed within 30 days.

72. On January 11, 1999, Respondent filed his Response to the Objections to the Revised Account, which included a second Revised First and Final account. This was not in the form required by the Rules.

73. On July 19 and 20 and August 4 and 5, 1999, hearings were held before Judge Tucker on the Objections to the Account.

74. On July 13, 2000, Judge Tucker filed an Adjudication which,

- a. found that Respondent and Mr. Coker failed to state an Account in proper form, even after being given three opportunities to do so; grossly mismanaged the estate; failed to timely file inheritance tax returns and fiduciary income tax returns, commingled assets, failed to timely produce documentation in support of disbursements, failed to properly invest estate assets and expeditiously administer the estate, charged excessive executor's

commissions and fees and exhibited behaviors guaranteed to obfuscate, delay and complicate the proceedings;

b. disallowed \$11,998.95 of the claimed Debts of Decedent in the amount of \$15,147.95 as duplicative and unsupported;

c. disallowed \$19,689.50 of the claimed Administrative expenses, which totaled \$20,223.50 as duplicative and unsupported;

d. surcharged Respondent \$2,152.92 for interest and penalties for late payment of inheritance taxes;

e. disallowed \$15,721.70 of Respondent's claimed counsel fees in the amount of \$30,721.70 and directed Respondent to refund the excess;

f. disallowed Respondent's executor's commissions in the amount of \$10,500 and directed Respondent to refund the excess;

g. assessed interest on the disallowed sums in the amount of \$37,910.97;

h. corrected income receipts for operation of the dental practice from \$35,733.50 to \$47,305.50 and disallowed expenses of \$6,222.52; and

i. ordered Respondent to make distribution of \$226,270.43 to the beneficiaries.

75. Both parties filed Exceptions to the Adjudication, briefs in Support and Responses to exceptions.

76. On November 15, 2000, a hearing on the Exceptions was held before Honorables Anne E. Lazarus and Edmund Pawelec.

77. By Final Order and Opinion Sur Exceptions dated January 25, 2001, Judge Lazarus:

a. dismissed Respondent's Exceptions to the Adjudication as "totally devoid of merit";

b. ordered that Respondent refund an additional \$4,224.40 plus the improperly distributed insurance proceeds to the estate;

c. imposed statutory interest for 7 1/2 years on \$47,000 his firm withheld from the estate;

d. found that counsel fees awarded to the firm by Judge Tucker were unwarranted and ordered \$15,000 credited back to the estate;

e. appointed Mary Jane Barrett, Esquire, as auditor to file a Schedule of Distribution; and

f. ordered that Respondent reimburse the estate in accordance with the filed schedule of distribution.

78. On August 30, 2001, Ms. Barrett filed a Schedule of Distribution.

79. On September 11, 2001, Duane Morris filed a Petition to Assess Counsel Fees, Expert Fees and Costs.

80. On September 17, 2001, Respondent filed Objections to the schedule of Distribution.

81. By Decree dated October 23, 2001, Judge Lazarus dismissed the Objections to the Schedule of Distribution.

82. By Decree and Opinion dated November 7, 2001, Judge Lazarus found that defendants engaged in dilatory, obdurate and vexatious conduct during the administration of the Estate of Victor Dunston and during the subsequent proceedings initiated by petitioners to settle the estate.

83. Judge Lazarus ordered defendants to pay fees in the amount of \$15,000 and expert costs in the amount of \$2,500.

84. The defendants did not comply with the Order.

85. By Order dated December 14, 2001, Judge Lazarus directed that within thirty days of the Order the defendants reimburse the estate \$161,331.44 for the benefit of the heirs and \$17,500 for counsel and expert fees.

86. Respondent did not comply with the Order.

87. On January 29, 2002, Duane Morris filed a Petition for Writ of Attachment, and a Decree issued dated January 31, 2002, returnable March 18, 2002.

88. On February 11, 2002, Duane Morris docketed the December 14, 2001 Order as a judgment against Defendants.

89. On March 13, 2002, Respondent filed his Response to Petition for Writ of Attachment.

90. On February 15, 2002, Respondent's law firm filed a Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the Eastern District of Pennsylvania.

91. By Decree dated April 23, 2002, Judge Lazarus issued an Attachment against Defendants to show cause why they should not be held in contempt for failure to comply with the December 2001 Order, returnable May 30, 2002.

92. After a hearing on May 30, 2002, the parties entered into a Stipulation and Agreed Order dated June 26, 2002, in which the parties stipulated to the total amount owed by the defendants to the estate and set forth lump sum and periodic payment terms.

93. Respondent made payments pursuant to the Agreed Order.

94. By Decrees dated January 7, 2003 and August 26, 2003, Judge Lazarus ordered the defendants to show cause why they should not be held in contempt for failure to comply with the terms of the Stipulations and Agreed Order entered in June 2002.

95. Respondent and Duane Morris reached an agreement to reduce the amount of his payments.

96. Respondent made partial payment of \$120,000 and owes approximately \$40,000.

97. Respondent testified on his own behalf.

98. Respondent was commissioned in the Marine Corps in 1960 and retired as a captain, one of the first African American officers in the Marine Corps.

99. Respondent obtained a Master's and a Doctorate in Psychology from Temple University.

100. Respondent served as director of the Bureau of Higher Education and Planning under Governor Shapp.

101. Respondent served as a full professor in the Temple University Psychology Department, eventually chairing the counseling psychology department. He retired in 2000 after 28 years at Temple.

102. Over the course of the years Respondent served as assistant to the president of Temple and to the provost of Temple.

103. Respondent expressed remorse and accepted responsibility for his actions. He admits that he mishandled the estate and did a number of things wrong, including taking money that he was not entitled to. Respondent had no real explanation except that he believed the case got away from him, as at the time he was also busy with Temple University business.

III. CONCLUSIONS OF LAW

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

1. RPC 1.5(a) – A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.
2. 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.

3. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

4. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.

5. RPC 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or to do so through the acts of another.

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

7. 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 to consider charges against Respondent that he withdrew funds from an estate constituting approximately 40% of the estate assets, to which he was not entitled; misrepresented to the heirs the availability of

funds for distribution; failed to account for the funds he withdrew, and resisted efforts of counsel for the heirs to secure an accounting and restitution. Respondent engaged in extensive cooperation with Petitioner and entered into a lengthy stipulation of the facts of this matter. The uncontroverted evidence establishes that Respondent utilized his position as executor of the estate of Victor Dunston to benefit himself at the expense of the two heirs, who are the sons of the deceased. While Respondent did perform services for the estate, he withdrew from estate funds amounts well in excess of legitimate fees, while failing to account for and distribute funds to the heirs. The probate value of the estate was approximately \$202,000 and included \$133,000 in liquid assets. During the first fourteen months of estate administration, Respondent withdrew a total of \$78,274 in fees and undocumented expenses from the estate account by checks payable to himself, his firm of Bolden & Coker, his partner and an employee. Much of this amount was taken well before Respondent could have known the amount of work involved in the administration of the estate.

The facts of this case are extremely serious. Respondent was unable to clearly explain to the Hearing Committee the thought process that led him to the conclusion he was entitled to the amounts he took. At no time did Respondent account to the heirs for estate funds, instead responding to their inquiries by advising them falsely that no funds were on hand for distribution. Respondent then doled out small amounts from his law firm accounts as purported "loans" to be repaid from estate proceeds. It was only after extensive and continuous litigation, resulting in court rulings against Respondent, that he

commenced repayment of the funds to the estate. Respondent has made partial restitution of approximately \$120,000. There is an outstanding amount of approximately \$40,000 due to be repaid. Although Respondent did make significant repayment, he did not make the first payment until 1997, after the heirs retained counsel, and seven years after the funds would otherwise have been available to the heirs. Additionally, Respondent made no further payments until June 2002 after the extensive litigation in Orphan's Court.

Respondent presented mitigating evidence. He has been practicing law since 1981 without incident. He has a distinguished work history. Respondent served honorably in the Marine Corps, becoming one of the first African-American Marines to be commissioned as a captain. He obtained a Master's and a Doctorate in Psychology from Temple University. Respondent served as Director of the Bureau of Higher Education and Planning for the Commonwealth of Pennsylvania. He later served as assistant to the president of Temple University and later the assistant to the provost at Temple. Respondent served as full professor and Chairman of the counseling psychology department at Temple, retiring in 2000 after 28 years. As Chairman, he developed a course of legal and ethical issues in counseling and psychotherapy and taught that course at Temple. Respondent stopped working for a period of time to spend full time with his wife, who has cancer. Respondent expressed remorse and understands the gravity of his acts of misconduct. As noted above, he cooperated fully with Petitioner.

The Hearing Committee recommended a public censure, in light of what it termed the sufficient mitigating factors. This recommendation was supported by Petitioner, although no case law was cited to the Hearing Committee wherein a respondent received a public censure for similar actions. Throughout its brief to the Hearing Committee, Petitioner stated how serious this case is, detailing Respondent's unethical actions, misrepresentations and dishonest conduct. Petitioner went through the extensive litigation engaged in by the heirs to receive their funds from the estate of their father. This took years to accomplish, considering Mr. Dunston died in 1989. Petitioner even opined that Respondent did not appear to comprehend or acknowledge the nature of his misconduct, although the Hearing Committee found otherwise. Petitioner then cited Respondent's impressive educational and work history, his cooperation with disciplinary authorities, his good faith and substantial efforts to make restitution pursuant to court order, and based on these factors recommended public censure as appropriate discipline.

Based on careful review of the record in this matter, the Board simply cannot conclude that a public censure is appropriate in a case of this magnitude, even in light of the mitigating circumstances. Respondent withdrew approximately \$80,000 of entrusted funds to which he was not entitled. That is the gravamen of this matter, but additionally Respondent engaged in other serious misconduct. Cases involving abuse of a fiduciary relationship for the benefit of the respondent, failure to account and failure to distribute fiduciary funds have consistently resulted in public discipline.

In the matter of Office of Disciplinary Counsel v. Daniel J. Evans, 152 DB 2000, 810 Disciplinary Docket No. 3 (Pa. Feb. 28, 2003), the respondent, who was executor to an estate, failed to represent the estate diligently, misappropriated \$90,000, and failed to provide an accounting upon the beneficiary's requests. Mr. Evans claimed the estate owed him substantial sums for work in connection with renting the estate's property, and he further claimed that he was not aware he was taking more than he was entitled to. The Supreme Court disbarred Mr. Evans.

In the matter of Office of Disciplinary Counsel v. Olshock, No. 28 DB 2002, No. 862 Disciplinary Docket No. 3 (Pa. Oct. 24, 2003), the respondent converted over \$22,000 from an estate by issuing to himself checks signed in blank by the executor, in addition to the fees which he charged. Prior to the disciplinary investigation, Mr. Olshock disclosed to the heirs his withdrawal of \$16,500 and repaid the money. Mr. Olshock expressed sincere remorse. The Supreme Court suspended him for a period of three years.

In the matter of Office of Disciplinary Counsel v. Robert G. Young, No. 6 DB 2001, No. 780 Disciplinary Docket No. 3 (Pa. Nov. 14, 2002), the respondent converted \$6,000 from an estate. The respondent subsequently reimbursed the estate in full and took no fee prior to the disciplinary investigation. The Board found that this attorney had been practicing for 29 years without incident and was sincerely remorseful. The Board concluded that a public censure was appropriate discipline, as he did reimburse the funds

and never received a fee for his legal services on the inheritance tax matter. The beneficiaries did not complain about the respondent's actions and no interested party suffered any prejudice as a result of the misconduct. The Supreme Court imposed a public censure. Clearly the facts of the Young matter are much less egregious than the instant matter. Respondent engaged in multiple acts of misconduct concerning the estate and interested parties were prejudiced by Respondent's actions.

The Board concludes, based on the totality of the facts and circumstances of this matter that a suspension for a period of three years is warranted. This sanction accounts for the egregious misconduct engaged in by Respondent, tempered by Respondent's mitigating circumstances. This sanction requires Respondent to petition for reinstatement and prove his fitness if he desires to practice law in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, James A. Bolden, be Suspended from the practice of law for a period of three years.

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: _____
Marvin J. Rudnitsky, Vice-Chair

Date: January 25, 2005

Board Members Brown and Pietragallo dissented and would recommend one year and one day suspension with the condition of full restitution to clients.

Board Member Saidis dissented and would recommend disbarment.

Board Member Nordenberg did not participate in the November 17, 2004 adjudication.

PER CURIAM:

AND NOW, this 19th day of April, 2005, upon consideration of the Report and Recommendations of the Disciplinary Board dated January 25, 2005, it is hereby

ORDERED that JAMES A. BOLDEN be and he is SUSPENDED from the Bar of this Commonwealth for a period of three years, 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.