

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1133 Disciplinary Docket No. 3
Petitioner :
v. : No. 153 DB 2005
: Attorney Registration No. 48672
STERLING ARTIST, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:


AND NOW, this 18th day of July, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 27, 2007, it is hereby

ORDERED that Sterling Artist be and he is suspended from the Bar of this Commonwealth for a period of one year and one day, 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.

A True Copy Patricia Nicola

As of: July 18, 2007

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1133 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	No. 153 DB 2005
	:	
STERLING ARTIST	:	Attorney Registration No. 48672
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 12, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against Sterling Artist, Respondent. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that Respondent neglected three client matters over the course of several years. Respondent filed an

Answer to Petition for Discipline on November 10, 2005. A Joint Petition for Discipline on Consent was filed by Petitioner on January 25, 2006. The Joint Petition was approved by the majority of a three member panel of the Disciplinary Board on February 2, 2006. On March 31, 2006, the Supreme Court entered an Order denying the Joint Petition for Discipline on Consent.

A disciplinary hearing was held on May 24, 2006 before a District I Hearing Committee comprised of Chair Edward C. Toole, Esquire, and Members Elizabeth K. Ainslie, Esquire, and Jonathan W. Hugg, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 26, 2006, finding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline and recommending that he be suspended for a period of one year and one day.

Respondent filed a Brief on Exceptions on November 16, 2006.

Petitioner filed a Brief Opposing Exceptions on December 1, 2006.

This matter was adjudicated by the Disciplinary Board at the meeting on March 20, 2007.

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 any 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 Rules.

2. Respondent, Sterling Artist, was born in 1957 and was admitted to practice law in the Commonwealth in 1987. His attorney registration address at the time of the hearing was 5400 Green Street, Third Floor, Philadelphia PA 19144.

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

4. Respondent has no history of discipline.

Charge I - Roberta A. Albany Matter

5. On or before February 6, 2001, Roberta A. Albany retained Respondent to represent her in a divorce action against her husband, Stephen A. Albany, Jr. Respondent orally advised his client that his fee for an uncontested divorce would be \$400 plus filing costs.

6. Although he had not previously represented his client, Respondent failed to provide her with a written agreement setting forth the basis or rate of his fee.

7. On February 6, 2001, Respondent filed a Complaint in Divorce in the Court of Common Pleas of Philadelphia County on behalf of Ms. Albany.

8. On April 24, 2001, Respondent filed an Affidavit of Signature on behalf of Ms. Albany.

9. Due to the untimely death of her mother-in-law, Ms. Albany decided not to complete the divorce proceedings.

10. On or about August 5, 2003, Respondent reinstated his client's Complaint in Divorce.

11. Respondent failed to file an Affidavit of Signature upon reinstating the complaint.

12. On or about September 25, 2003, Respondent filed with the Family Court Division of the Court of Common Pleas of Philadelphia County, a document entitled "Affidavit of Consent."

13. Respondent failed to wait until 90 days had expired before filing Plaintiff's Affidavit of Consent, as required by Pa.R.Civ. P. 1920.42(b).

14. The Affidavit of Consent stated that:

- a. an amended divorce complaint had been filed on February 6, 2001;
- b. the marriage of plaintiff and defendant was irretrievably broken and 90 days has elapsed since the date of the filing of the Complaint;
- c. "I consent to the entry of a final decree of divorce", and

d. "I understand that I may lose rights concerning alimony, division of property, lawyer's fees or expenses if not claimed before a divorce decree is granted."

15. The Affidavit of Consent included a verification that the statements contained therein were true and correct, and that the affiant understood that false statements were subject to criminal penalties for unworn falsification to authorities.

16. The signature line above the word "plaintiff" contained the handwritten name "Roberta Albany."

17. Roberta Albany did not sign her name to the signature line of the Affidavit of Consent.

18. By letter dated January 7, 2004, from Respondent to Mr. and Mrs. Albany, Respondent:

a. enclosed an affidavit of consent to be signed and returned to Respondent as soon as possible;

b. stated that the court did not have the former affidavits in its system and the affidavits must be refiled; and

c. advised that the Notice of Intent to Transmit Divorce Decree and Praecipe would be filed as soon as Respondent received the affidavits.

19. Respondent's statement to the effect that the court did not have the former affidavits in its system and the affidavits must be re-filed was false; Respondent knew the statement was false when he made it.

20. On January 8, 2004, Defendant's Affidavit of Consent was filed.

21. During a telephone conversation between Respondent and his client in January 2004, Respondent informed her that he needed additional funds to re-initiate the divorce proceedings, due to the passage of time.

22. From time to time, between January and April 2004, Ms. Albany left messages on Respondent's answering machine inquiring as to the status of her divorce. Respondent failed to promptly respond to the messages and to answer the reasonable requests for information about the divorce.

23. During the last week of April 2004, Respondent called his client's house and left a message with her son that he had just received Mr. Albany's affidavit.

24. Respondent failed to file Mr. Albany's affidavit with the court.

25. From time to time after April 2004, Ms. Albany called Respondent's office and left messages that she needed the divorce complaint.

26. Respondent failed to respond and to expeditiously complete the divorce.

27. By letter dated June 17, 2004, directed to Respondent, Ms. Albany:

a. complained that Respondent revealed confidential information about her to her estranged husband;

b. complained that Respondent had failed to respond to her telephone calls requesting information on the divorce; and

c. explained that she only owed Respondent \$150.

28. On July 21, 2004, Respondent filed Defendant's Affidavit of Consent.

29. Respondent failed to file the Notice of Intention to Request Entry of Divorce Decree and Praecipe to Transmit Record as required by Pa.R.Civ.P. 1920.42(d)(1).

30. By certified letter dated November 12, 2004, to Respondent, Ms. Albany wrote:

- a. complaining that Respondent had failed to file the Praecipe;
- b. requesting copies of the affidavits that were filed;
- c. explaining that she attempted to call Respondent's office and the number was disconnected; and
- d. stating that she would have to take further action herself to resolve the divorce.

31. Respondent failed to claim Ms. Albany's certified letter.

32. Respondent failed to take prompt action to complete Ms. Albany's divorce.

33. By letter dated March 21, 2005, to his client, Respondent:

- a. apologized for the long delay;
- b. enclosed an affidavit of signature form;
- c. asserted that the divorce would have been final last year but the clerk flagged it because of a miscalculation in waiting time; and
- d. asserted that the enclosed affidavit must be resubmitted before Respondent could file the Praecipe to Transmit the Divorce Decree.

Charge II - Rachelle Clinton and Anthony Clinton

34. On August 19, 2000, Rachelle Clinton was a passenger in a SEPTA bus that was involved in a motor vehicle accident.

35. On August 19, 2002, Elliott G. Williams, Esquire, instituted a civil action in the Court of Common Pleas of Philadelphia County by filing a praecipe for writ of summons on behalf of Rachelle Clinton and her husband, Anthony Clinton.

36. On or about November 14, 2002, Mrs. Clinton terminated Mr. Elliott and retained Respondent to represent her.

37. The fee agreement with Mrs. Clinton provided that Respondent would receive a contingent fee of one-third of the net recovery after deduction of costs.

38. Respondent failed to obtain a fee agreement with Mr. Clinton.

39. On February 7, 2003, Respondent filed a civil complaint on behalf of his client.

40. On or about April 17, 2003, an arbitration panel entered findings in favor of Rachelle and Anthony Clinton and against Defendant Shano Gordan, but awarded no damages.

41. On or about May 16, 2003, Respondent filed a Notice of Appeal from the April 17, 2003 arbitration panel decision.

42. Respondent informed Mrs. Clinton that he required immediate payment to pursue the appeal.

43. Mrs. Clinton provided Respondent with the requested payment.

44. Following a Settlement Conference which was conducted on October 3, 2003, the Honorable Norman Ackerman dismissed the arbitration appeal and remanded the case to arbitration.

45. On or before February 5, 2004, Respondent notified Barbara Rosenberg, Esquire, counsel for SEPTA, that the Clintons had agreed to settle their case.

46. Respondent's statement to Ms. Rosenberg was false and misleading in that the Clintons had not agreed to settle their case.

47. By facsimile letter dated February 5, 2004, Respondent notified the Arbitration Center that Clinton v. SEPTA had been settled.

48. On or about February 5, 2004, the case was marked as "settled" prior to arbitration.

49. By letter to Respondent, dated February 10, 2004, Ms. Rosenberg:

- a. confirmed that the case was settled for a total of \$15,000;
- b. informed Respondent that payment would be made upon receipt of an Order to Settle, Discontinue and End, Order to Satisfy, U.M.C. Release, and General Release; and
- c. enclosed a self-addressed stamped envelope for Respondent to forward all the described documents.

50. Respondent forwarded to SEPTA the Order to Settle, Discontinue and End and the Order to Satisfy Judgment.

51. On or about February 17, 2004, during a visit to the Clintons' home, Respondent, inter alia:

a. advised the Clintons that they should accept SEPTA's settlement offer; and

b. left copies of the Release and Trust Agreement and Release of all Claims for Mrs. Clinton to sign.

52. Respondent failed to explain the matter to the extent necessary to permit the Clintons to make informed decisions regarding the representation.

53. The Clintons did not sign the two releases prepared by SEPTA.

54. Respondent failed to inform Ms. Rosenberg that the Clintons refused to sign the releases.

55. By letter to Respondent dated February 18, 2004, the Clintons, inter alia;

a. expressed their dissatisfaction with Respondent's unprofessional conduct during Respondent's recent visit to their home;

b. requested a refund;

c. terminated Respondent's representation; and

d. requested that Respondent forward Mrs. Clinton's file to their new attorney, Brad Cooper, Esquire.

56. Respondent received this letter.

57. Respondent failed to forward Mrs. Clinton's file to Mr. Cooper.

58. On February 25, 2004, a Praecipe to Settle, Discontinue and End was entered.

59. Respondent failed to obtain the Clintons' written consent to settle, discontinue and end their lawsuit.

60. On or about February 25, 2004, SEPTA issued a check in the amount of \$15,000, payable to "Rachelle and Anthony Clinton & Sterling Artist, Esquire."

61. Respondent received this check.

62. Respondent failed to inform SEPTA that the Clintons had not agreed to settle their case for \$15,000.

63. Respondent failed to notify the Clintons of Respondent's receipt of the \$15,000 check from SEPTA.

64. Respondent failed either to promptly forward the settlement proceeds to the Clintons or to return the settlement check to SEPTA.

65. By letters to Respondent dated March 8, 2004 and April 1, 2004, Mr. Cooper requested that Respondent forward Mrs. Clinton's file.

66. Respondent received these letters.

67. Respondent failed to respond to these letters.

68. By letters to Respondent dated June 14, 2004, sent via certified mail, return receipt requested, the Clintons requested that Respondent forward Mrs. Clinton's file to Mr. Cooper.

69. Respondent received this letter on June 16, 2004.

70. Respondent failed to respond to this letter.

71. On or about September 16, 2004, Respondent endorsed the \$15,000 SEPTA settlement check and deposited all of the funds into his IOLTA account at Citizens Bank.

72. Respondent did not promptly deliver the settlement funds to the Clintons.

73. On or about September 1, 2005, Respondent delivered a \$10,000 check to Mr. Cooper, in purported settlement of the funds owed to the Clintons.

74. On September 2, 2005, pursuant to a subpoena duces tecum, Respondent provided his Citizens Bank records to Petitioner.

Charge III - Mary Washam Matter

75. On or before July 23, 2003, Reverend Mary Washam retained the law office of D. Louis Nicholson, Esquire, to secure an uncontested divorce.

76. Rev. Washam paid Mr. Nicholson in full for handling her divorce proceeding.

77. By letter dated July 23, 2003, Mr. Nicholson forwarded a Settlement Agreement to Rev. and Mr. Washam.

78. Respondent was an associate in Mr. Nicholson's law office.

79. Mr. Nicholson requested Respondent handle Rev. Washam's divorce.

80. On June 18, 2004, Respondent filed a complaint in divorce in the Court of Common Pleas of Cameron County on behalf of Rev. Washam.

81. From time to time after June 18, 2004, Rev. Washam called Mr. Nicholson's office requesting information about the status of her divorce.

82. Respondent failed to return Rev. Washam's telephone calls and respond to her reasonable requests for information.

83. At some time after June 18, 2004, Respondent left the employ of Mr. Nicholson.

84. Respondent failed to keep Rev. Washam informed about the status of her case.

85. By letter dated January 19, 2005, directed to Respondent, Rev. Washam:

a. explained that for many months she had tried unsuccessfully to secure an uncontested divorce;

b. stated that Respondent failed to inform her that he was no longer associated with Mr. Nicholson's law firm and to provide her with Respondent's new telephone number;

c. advised that she was disappointed with the unprofessional legal services Respondent had provided; and

d. requested that Respondent reply to her letter as soon as possible.

86. Respondent received Rev. Washam's letter.

87. Respondent failed to respond to Rev. Washam's letter.

88. Respondent failed to expeditiously handle Rev. Washam's divorce.

89. Respondent failed to cooperate with Petitioner's investigation in that he did not submit answers to the DB-7 Requests for Statements of Respondent's Position, failed to comply with Petitioner's request for client files and bank records and required Petitioner to hold a subpoena return hearing to obtain requested records and information.

90. Respondent cooperated with Petitioner by signing the Stipulations and admitting his wrongdoing.

91. Respondent testified that he suffers from diabetes and depression.

92. Respondent submitted a hospital discharge summary from Chestnut Hill Hospital dated September 9, 2002, which indicates a diagnosis of diabetes.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 - A lawyer shall provide competent representation to a client.
2. RPC 1.2(a) - A lawyer shall abide by a client's decision concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter.
3. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

4. RPC 1.4(a) - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

5. RPC 1.4(b) - A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

6. RPC 1.5(b) - When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

7. 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. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, 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.

8. RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, 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 that has not been earned.

9. RPC 3.2 - A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

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

11. RPC 8.4(b) - It is professional misconduct for lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

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

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline filed on October 12, 2005. The Petition charges Respondent with violations of numerous Rules of Professional Conduct arising out of his alleged neglect of three separate matters. Petitioner and Respondent have submitted Joint Stipulations of Fact and Law, wherein Respondent admits that he violated Rules of Professional Conduct during the course of providing representation in three client matters. Petitioner has met its burden of proof. The remaining issue is the appropriate discipline to address the misconduct.

The record demonstrates that Respondent engaged in a pattern of neglect and incompetence in three client matters over the course of several years. He failed to follow through on the Albany and Washam divorces, all the while misleading his clients about the status of their cases, or simply failing to communicate at all with his clients when they requested information. Had Respondent communicated with his clients they could

have made informed decisions regarding the representation and whether Respondent should continue to act in their interests.

Furthermore, Respondent acted in deliberately untruthful and unlawful ways that significantly cast doubt upon his fitness to practice law. For instance, Respondent forged Roberta Albany's signature on a court filing and then filed the document containing the false signature with the court. Respondent filed a discontinuance of the Clintons' case after he entered into a settlement on behalf of the Clintons without consulting them or obtaining authorization. He then advised his clients that they should accept the "settlement offer" in the amount that he had already accepted. After Respondent received a settlement check for the Clintons, he did not relinquish the monies for more than one and a half years. Respondent's misconduct is far more serious than simple incompetence, disorganization and non-communication.

Respondent failed to cooperate with Petitioner's investigation. He declined to answer the DB-7 Requests for Statements of Respondent's position and failed to provide the requested client files and bank records. Respondent's lack of cooperation resulted in Petitioner serving Respondent with a subpoena duces tecum and conducting a subpoena return hearing. Respondent did cooperate in subsequent proceedings by entering into the Stipulation with Petitioner and admitting his wrongdoing.

Respondent offered his own testimony concerning health issues related to diabetes and depression. Respondent offered no expert testimony to document these medical concerns. The Hearing Committee gave Respondent the opportunity post-hearing

to supplement the record; the only document Respondent supplied was a hospital discharge summary indicating a diagnosis of "diabetes". The date of the discharge summary was September 2002. As no competent evidence was submitted which would permit consideration of Respondent's assertion of physical/mental disabilities, the Board concludes that Respondent did not meet his burden of proof pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), and is not entitled to mitigation.

The Hearing Committee recommended a one year and one day period of suspension, based on its analysis that Respondent's serial neglect coupled with the knowing and willful misconduct required a stringent sanction. This analysis is sound and in line with disciplinary case law in Pennsylvania. In the matter of Office of Disciplinary Counsel v. Howard Goldman, 157 DB 2003, 1040 Disciplinary Docket No. 3 (Pa. Aug. 30, 2005), the respondent engaged in serial neglect and misrepresentation in four client matters over a period of four years. In two of the cases the respondent took ineffectual short cuts rather than following proper court procedures, and made misrepresentations to the clients in order to disguise his actions. In two other cases the respondent failed to take action on behalf of his clients. The respondent was suspended for one year and one day.

The totality of the record persuades the Board that a suspension of one year and one day is appropriate discipline. Such discipline will require Respondent to petition for reinstatement and prove his fitness before he is permitted to practice law in the future.

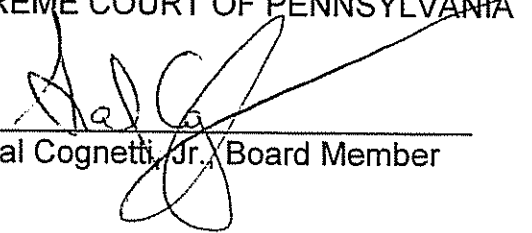
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Sterling Artist, be suspended from the practice of law for a period of one year and one day.

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: 
Sal Cognetti, Jr., Board Member

Date: April 27, 2007

Board members Saidis and Pietragallo recused.