

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1285 Disciplinary Docket No. 3
Petitioner :
 : Nos. 29 and 90 DB 2006
v. :
 : Attorney Registration No. 18676
EDWARD T. ROWE, JR., :
Respondent : (Westmoreland County)

ORDER

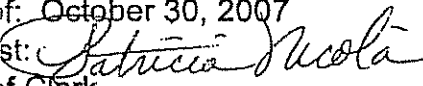
PER CURIAM:

AND NOW, this 30th day of October, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated July 12, 2007, it is hereby

ORDERED that Edward T. Rowe, Jr., 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: October 30, 2007

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	Nos. 29 DB 2006 & 90 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 18676
	:	
EDWARD T. ROWE, JR.	:	
Respondent	:	(Westmoreland County)

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 February 17, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Edward T. Rowe, Jr. The Petition charged Respondent with violations of the Rules of Professional Conduct based on allegations that he mishandled client funds. Respondent filed an Answer to Petition for Discipline on April 10, 2006. On May 10, 2006, a Stipulation in Lieu of Petition for Discipline was filed with the Board, along with a Joint

Motion to Consolidate filed by Petitioner and Respondent. The Board granted the Motion to Consolidate by Order of May 11, 2006.

A disciplinary hearing was held on November 1, 2006 before a District IV Hearing Committee comprised of Chair Marie Milie Jones, Esquire, and Members Larry D. Meredith, Esquire, and Gary Kalman Schonhaler, Esquire. Respondent was represented by John Allen Roth, Esquire. Respondent presented the testimony of Mark King, PhD., a licensed psychologist, and Joan Runco, Respondent's employee. Respondent testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on March 12, 2007, finding that Respondent engaged in professional misconduct and recommending that he be suspended for one year and one day.

Respondent filed a Brief on Exceptions on March 30, 2007.

Petitioner filed a Brief Opposing Exceptions on April 9, 2007.

This matter was adjudicated by the Disciplinary Board at the meeting on May 10, 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 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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, Edward T. Rowe, Jr., was born in 1948 and was admitted to practice law in the Commonwealth of Pennsylvania in 1974. His attorney registration mailing address is 2797 Leechberg Road, Lower Burrell, PA 15068. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline consisting of an informal admonition imposed in 2000 and an informal admonition imposed in 2002.

4. The Pennsylvania Department of Revenue obtained a judgment against Brenda Lowers in the Court of Common Pleas of Armstrong County, Pennsylvania in the amount of \$16,203.93 for unpaid wage and sales taxes.

5. On August 2, 1995, the Pennsylvania Department of Revenue filed a lien against "LOWERS BRENDA S T/A LOWERS TROPICAL FISH AND PET", in the amount of \$16,203.93.

6. In late 1995, Respondent was retained by Mrs. Lowers to represent her in her bankruptcy matter and to satisfy the lien and judgment.

7. In the months that followed, Mrs. Lowers remitted to Respondent a total amount of \$10,000. Of that total:

- a. Respondent received \$1,000 as his retainer for representing her in bankruptcy and to satisfy the lien; and,

b. Respondent agreed to hold the remaining funds received from Mrs. Lowers in his escrow account in order to satisfy the lien and judgment filed against Mrs. Lowers' property by the Department of Revenue.

8. Respondent deposited at least \$9,000 of the \$10,000 Mrs. Lowers provided to him into his Integra Bank account (subsequently National City Bank), captioned "Edward T. Rowe, Jr., Attorney Escrow Account".

9. Respondent was entrusted with \$9,000 on behalf of Mrs. Lowers as of about mid-1996.

10. Respondent did not use any of the \$9,000 Mrs. Lowers entrusted to him to satisfy the lien and judgment.

11. On June 27, 1996, Respondent filed on behalf of Mrs. Lowers a Chapter 7 Bankruptcy Petition with the United States Bankruptcy Court for the Western District of Pennsylvania.

12. Sometime prior to August 8, 1996, Respondent made an inquiry of the Attorney General's Office, on behalf of his client, about satisfying the lien.

13. By letter to Respondent dated August 8, 1996, Robert C. Edmundson, Senior Deputy Attorney General, addressed Mrs. Lowers' concerns regarding the Department of Revenue's tax claims, as follows:

a. "Unfortunately, the escrow fund which was established in the Fall of 1995 was not disbursed prior to the filing of the instant Chapter 7 Bankruptcy Proceeding. Therefore, an argument can be made that it in fact

constitutes property of the estate pursuant to Section 541 to be administered by the trustee.”

b. “To avoid any possible problem, I believe that the Debtor should file a Motion with the Court seeking authority to pay the escrow funds to the Commonwealth.”

14. Respondent took no action on behalf of Mrs. Lowers to obtain authority from the Bankruptcy Court to use the entrusted funds for the intended purpose of satisfying the lien and judgment, nor did he take any action to satisfy the lien and judgment, because Respondent believed that any attempt to obtain such authority would have failed due to discovery of substantial assets not listed in the Bankruptcy Petition.

15. By letter dated October 24, 1996, Respondent provided Mrs. Lowers with a copy of the Discharge of Debtor Notice, dated October 17, 1996, filed in her bankruptcy matter.

16. Sometime in 1996 or 1997, Respondent told Mrs. Lowers he had satisfied the lien.

17. Respondent, however, had not taken action to satisfy the lien.

18. After Mrs. Lowers entrusted Respondent with the \$9,000 to satisfy the lien and judgment, she was contacted approximately once per year by the Department of Revenue. On each occasion:

a. She was asked about satisfying the lien;

b. She stated that she had escrowed money with Respondent to satisfy the lien;

c. She contacted Respondent to inquire about the lien; and,

d. Respondent told her "everything had been finalized" or words to that effect.

19. In or about 1998 Mrs. Lowers and her husband agreed to sell their residence in Kittanning Township, Armstrong County Pennsylvania.

20. At about that time Mrs. Lowers learned from the attorney handling the closing on the sale of her residence that the lien and judgment had not been satisfied and the unsatisfied lien against the property might delay the sale.

21. Mrs. Lowers informed Respondent the lien was still unsatisfied.

22. Rather than satisfying the lien, Respondent prepared a letter dated March 27, 1998, addressed "To Whom It May Concern," in which he stated:

a. "I, Edward T. Rowe, Jr., have deposited in my escrow fund the sum of \$9,000, received from Rodney and Brenda Lowers for the purpose of satisfying the claim of the Commonwealth of Pennsylvania, for unpaid wage and sales tax."

b. "The financial enforcement section of Robert C. Edmundson has acknowledged that this sum would be sufficient to end this matter."

23. On or about April 1, 1998:

a. Respondent provided his March 27, 1998 letter to the closing agent to facilitate the sale of the house; and,

b. The closing was held on the Lowers' property.

24. By final decree dated February 28, 2001, the debtor's estate was closed.

25. On March 2, 2001, the final notices were sent by the Bankruptcy Court.

26. Respondent took no further action at that time to satisfy the lien and judgment on behalf of Mrs. Lowers.

27. By letter dated July 14, 2003, sent to Respondent by certified mail, return receipt requested, Mrs. Lowers:

a. reminded Respondent that he was still holding \$9,000 in escrow to pay the Department of Revenue's lien against Mrs. Lowers' property; and,

b. told Respondent she recently had been contacted by a bill collector about the lien against her property and she learned that the lien was still unsatisfied.

28. On August 12, 2003 Respondent received the letter and signed the return receipt.

29. Respondent did not reply to Mrs. Lowers' letter.

30. During the following periods Respondent's Escrow Account was below the \$9,000 amount Mrs. Lowers had entrusted to satisfy the lien and judgment that had been filed against her:

- a. From at least June 6, 1997, when the balance was \$7,339.55, through June 11, 1997, when the balance was \$6,339.55;
- b. From November 5, 1997, when the balance was \$5,688.03, through November 17, 1997, when the balance was \$5,507.03;
- c. From December 23, 1997, when the balance was \$6,174.18, through April 20, 1998, when the balance was \$2,868.98;
- d. From April 22, 1998, when the balance was \$8,758.10, through May 21, 1998, when the balance was \$1,585.97;
- e. From June 5, 1998, when the balance was \$2,831.52, through December 28, 1998, when the balance was \$463.82;
- f. From June 9, 1999, when the balance was \$1,390.54, through November 2, 1999, when the balance was \$6,708.99;
- g. From November 5, 1999, when the balance was \$1,434.39, through December 6, 1999, when the balance was \$757.08;
- h. From January 21, 2000, when the balance was a negative \$294.46, through July 27, 2000, when the balance was \$8,433.52;
- i. On August 22, 2000, when the balance was \$8,578.92 and on August 30, 2000, when the balance was \$8,866.32;
- j. From September 11, 2000, when the balance was \$8,266.32, through September 21, 2000, when the balance was \$7,458.82;

k. From October 10, 2000, when the balance was \$8,143.63, through April 10, 2001, when the balance was \$4.74;

l. From April 13, 2001, when the balance was \$362.24, through July 5, 2001, when the balance was \$16.74;

m. From July 2, 2002, when the balance was \$8,912.37, through July 24, 2002, when the balance was \$4,300.87;

n. From July 26, 2002, when the balance was \$5,406.37, through December 17, 2002, when the balance was \$2,065.67; and,

o. From April 11, 2003, when the balance was \$8,494.41 through at least February 18, 2004, when the balance was \$0.

31. During the time Respondent was entrusted with \$9,000 by Mrs. Lowers, he was not authorized to use the entrusted funds for any purpose other than satisfying the lien and judgment filed against her.

32. On or about May 1, 2004, Respondent issued a check drawn on his Citizens Bank of Pennsylvania account captioned "Jr., Esquire, Edward T. Rowe," made payable to Penn Credit Corporation in the amount of \$9,000, to satisfy the lien and judgment that had been filed against Mrs. Lowers by the Pennsylvania Department of Revenue.

33. By Order to Satisfy, dated May 28, 2004, the Attorney General directed the Prothonotary of Armstrong County to satisfy the lien and judgment that had been filed against Mrs. Lowers by the Commonwealth of Pennsylvania.

34. By letter dated January 16, 2004, Petitioner communicated Mrs. Lowers' allegations to Respondent and requested:

- a. A statement of position from Respondent; and,
- b. Periodic statements of the accounts in which Mrs. Lowers' funds were held by Respondent, together with any separately-maintained ledger or other document that would demonstrate that the funds he held in a fiduciary capacity were held inviolate by him during the period of entrustment.

35. By Statement of Position dated January 27, 2004, Respondent replied to Petitioner's January 16, 2004 letter and stated, among other things:

- a. "I have reviewed your letter of January 16, 2004, and the facts contained therein are true."
- b. "I am enclosing for your review random escrow account statements for the period involved. I have the funds in escrow and am prepared to send them to whomever appropriate. Please advise."

36. For the period beginning December 31, 2003, and ending January 29, 2004:

- a. The beginning balance in Respondent's Escrow Account was a negative \$3.98;
- b. The ending balance was a negative \$12.98; and,
- c. The only transaction that occurred during that statement period was a debit in the amount of \$9.00 for "account maintenance."

37. When Respondent issued his Statement of Position to Petitioner dated January 27, 2004, his statement "I have the funds in escrow and am prepared to send them to whomever appropriate", was a materially false statement which Respondent knew to be false at the time that he made it.

38. The "random" Escrow Account statements Respondent provided along with his Statement of Position dated January 27, 2004, covered only the following periods:

- a. April 29, 1999, through May 26, 1999;
- b. July 29, 2000, through August 29, 2000;
- c. September 28, 2001, through October 20, 2001; and,
- d. February 28, 2003, through March 28, 2003.

39. These four periodic statements of account covered periods during which Respondent's escrow account balance exceeded the \$9,000 amount with which he had been entrusted by Mrs. Lowers.

40. By failing to provide Petitioner with the requested periodic statements of account, Respondent failed to disclose material facts that had been requested in connection with Petitioner's investigation of Mrs. Lowers' complaint to Petitioner.

41. By letter to Respondent dated February 5, 2004, Petitioner asked him to supply the remainder of his periodic statements of account for his escrow account covering the time period that he was required to hold separate from his own property the funds entrusted to him by Mrs. Lowers.

42. By letter to Petitioner dated April 21, 2004, Respondent "enclosed...the escrow account statements still in my possession from 1996 to 2004."

43. Under cover of a letter dated May 11, 2004, Petitioner served upon Respondent a Subpoena Duces Tecum seeking the production of records pertinent to Respondent's handling of Mrs. Lowers' funds.

44. On June 1, 2005, Respondent, through his counsel, John Allen Roth, delivered to Petitioner a portion of the record that had been subpoenaed from him.

45. By letter dated June 10, 2005, Petitioner informed Respondent, through Attorney Roth, that the records Respondent had supplied in response to the subpoena were incomplete and additional information was being requested from Respondent.

46. By letter to Petitioner dated August 9, 2005, sent via Attorney Roth, Respondent stated, among other things, "I have, in accordance with what I believe to be approved Counsel standards, not saved financial records older than three (3) years."

47. Respondent failed to preserve, for a period of five years after termination of his representation of Mrs. Lowers, complete records of the separate accounts into which he had deposited the funds Mrs. Lowers entrusted to him.

48. On July 10, 2003, Respondent was appointed by the Court of Common Pleas of Westmoreland County to represent Steven M. Sistek in the appeal of his criminal conviction.

49. Mr. Sistek entered a plea of guilty to criminal homicide on July 1, 2003.

50. On July 9 and 10, 2003, a degree of guilt hearing was held and Mr. SisteK was found guilty of first degree murder and sentenced to life imprisonment.

51. On November 7, 2003, Respondent caused a Notice of Appeal to be filed on behalf of Mr. SisteK with the Pennsylvania Superior Court, at the case captioned Commonwealth of Pennsylvania v. Steven M. SisteK, seeking the withdrawal of Mr. SisteK's guilty plea.

52. By letter dated September 29, 2004, Respondent notified Mr. SisteK that the appeal had been filed with the Superior Court.

a. Respondent provided Mr. SisteK with a copy of the brief filed on his behalf.

b. Respondent informed Mr. SisteK that the Commonwealth had been granted an extension to file its brief on or before October 13, 2004.

53. By letter to Respondent dated October 4, 2004, Mr. SisteK stated that he had written to Respondent on numerous occasions, dating back to August 2003, whereby he requested copies of transcripts, pleadings and discovery documents which he claimed Respondent had not provided to him.

54. By letter dated October 25, 2004, Respondent informed Mr. SisteK that he had received Mr. SisteK's most recent correspondence and that he would forward to him copies of the requested documents in the near future.

55. From October 4, 2004 to January 31, 2005, Respondent failed to comply with Mr. SisteK's requests for information about his appellate matter.

56. By Order of Court dated January 31, 2005, the Superior Court denied Mr. Sisteck's appeal.

57. By letter dated February 1, 2005, Respondent provided Mr. Sisteck with a copy of the Superior Court decision filed on January 31, 2005.

a. Respondent advised Mr. Sisteck that the next step was to file a Petition for Allowance of Appeal with the Pennsylvania Supreme Court.

b. Respondent assured Mr. Sisteck that he would file a Petition for Allowance of Appeal on his behalf.

58. Respondent filed a Petition for Allowance of Appeal with the Supreme Court on or about March 3, 2005.

59. By letter dated March 10, 2005, the Office of the Prothonotary of the Supreme Court of Pennsylvania, Western District, informed Respondent that the Petition for Allowance of Appeal was rejected as having been untimely filed.

60. Respondent failed to inform Mr. Sisteck that the Court had rejected the Petition for Allowance of Appeal.

61. By letter dated May 27, 2005, Mr. Sisteck informed Respondent that he had not received the materials Respondent had assured him he would send.

62. By letter dated June 6, 2005, Mr. Sisteck expressed his concerns about Respondent's handling of his appeal to Westmoreland County Court of Common Pleas President Judge Daniel Ackerman.

63. By letter dated June 8, 2005, President Judge Ackerman informed Mr. Sisteck that he had forwarded the letter of June 6, 2005 to Judge John E. Blahovec.

64. By letter dated June 24, 2005, in response to Mr. Sisteck's inquiry, the Office of the Prothonotary of the Supreme Court of Pennsylvania, Western District, informed Mr. Sisteck that it appeared no Petition for Allowance of Appeal had been filed on his behalf.

65. On September 15, 2005, Respondent filed a Petition for Leave to File Petition for Allowance of Appeal Nunc Pro Tunc on behalf of Mr. Sisteck.

66. By Per Curiam Order of the Supreme Court of Pennsylvania dated November 15, 2005, the Petition for Leave to File Petition for Allowance of Appeal Nunc Pro Tunc was denied.

67. Respondent failed to inform Mr. Sisteck that the Supreme Court had denied his requests for relief.

68. Respondent introduced the expert testimony of Dr. Mark King, a licensed psychologist. Dr. King is a tenured professor at the University of Pittsburgh and maintains a private practice including psychotherapy and forensic psychological evaluation.

69. Dr. King met Respondent on two occasions, July 17, 2006, and July 25, 2006, at Dr. King's office.

70. Dr. King diagnosed Respondent with major depressive disorder and opined that it appeared Respondent had been depressed most of his life but that the

condition is affected by episodal incidents, specifically the death of Respondent's mother in 1998.

71. Dr. King testified to a causal connection between Respondent's depression and his misconduct.

72. The only part of Respondent's misconduct that Dr. King knew of was the mishandling of the funds of Mrs. Lowers. He was unaware of the conduct in the Sisteck matter as well as Respondent's conduct in misleading Petitioner during its investigation of the Lowers matter.

73. Dr. King agreed that Respondent's misconduct in the Lowers matter began in at least 1997 which pre-dated the beginning of the acute episode of depression triggered by the death of Respondent's mother in 1998.

74. Dr. King agreed that Respondent's reported financial difficulties would establish another explanation for his misconduct besides depression.

75. Joan Runco has been employed by Respondent on and off for the past 24 years. She testified that she was aware that he had family problems as well as financial problems, and ignored taking care of obligations such as income tax and payment of office bills.

76. Respondent testified on his own behalf.

77. Respondent has suffered from depression since early adulthood and has treated with a number of different physicians and psychologists throughout his adult years.

78. Respondent apologized for the manner in which he responded to Petitioner's request for information.

79. Respondent showed remorse for his misappropriation of funds and the misrepresentations he made to Mrs. Lowers.

80. Respondent made reimbursement to Mrs. Lowers.

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a) (which was in effect through December 31, 2004) - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

3. RPC 1.15(a) (which was in effect through April 22, 2005) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

4. RPC 1.15(b) (which was in effect through April 22, 2005) - Upon receiving property of a client or third person in connection with a client-lawyer relationship, 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 or third person, a lawyer shall promptly deliver to the client or third person any 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.

5. RPC 1.16(d) (which was in effect through December 31, 2004) - 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 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.

6. RPC 8.1(a) (which was in effect through December 31, 2004) - A lawyer is subject to discipline if the lawyer has made a materially false statement in, or if the lawyer has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar or any disciplinary matter.

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

8. Respondent did not meet his burden of proof relating to the Braun standard for mitigation. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989)

IV. DISCUSSION

This matter is before the Board for consideration of the charges of misconduct filed against Respondent relating to his actions in two client matters and in the investigation by Office of Disciplinary Counsel of such actions. Petitioner and Respondent entered into two stipulations which were admitted into evidence as Petitioner's Exhibit 1 and Exhibit 2. Exhibit 1 is a voluminous stipulation of fact regarding Respondent's conduct in connection with his representation of Brenda Lowers and his dealing with Office of Disciplinary Counsel. This stipulation of fact also contained Respondent's admission to violations of Rules of Professional Conduct 1.3, 1.15(a), 1.15(b), 1.16(d), 8.1(a) and 8.4(c). Exhibit 2 concerns Respondent's conduct in the Steven Sistek matter, wherein Respondent admitted to violating Rules of Professional Conduct 1.3 and 1.4(a).

Respondent presented the expert testimony of Dr. Mark King to establish that he suffered from depression during the time frame of the misconduct and the depression substantially caused the misconduct. Respondent also testified on his own behalf as to his depression. The evidence is clear that Respondent has suffered from episodes of depression during his adult years; however, the evidence is not clear and convincing that the depression caused Respondent's misconduct. Dr. King was not aware of the full extent of Respondent's misconduct in that he was only aware of the mishandling of Mrs.

Lowers' funds and not the Sistek matter and the material misrepresentations to Petitioner. This incomplete awareness weakens Dr. King's testimony regarding a causal connection. Dr. King further admitted that what he described as a triggering factor in Respondent's depression, his mother's death in 1998, occurred subsequent to the beginning of Respondent's misconduct in the Lowers matter in 1997. The evidence further suggests that Respondent experienced financial difficulties during the time frame of his misconduct, which suggests a reason for the mishandling of Mrs. Lowers' funds. The totality of the evidence presented does not establish by clear and convincing evidence that Respondent's depression substantially caused his professional misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

In determining the appropriate discipline, the Board is mindful that the sanction imposed in each case rests on the unique set of circumstances presented therein. The Board may find guidance in similar cases that have come before it bearing similar fact patterns. The matter of Office of Disciplinary Counsel v. Arthur Joseph Werner, No. 202 DB 2003, 77 Pa. D. & C. 4th 430 (2005) is helpful. Therein, Mr. Werner mishandled client funds and failed to carry out the work for which he had been retained and failed to surrender the file and the unearned portion of the fee that he had been paid. Upon receiving a request for a statement of position from Office of Disciplinary Counsel, Mr. Werner failed to provide the requested financial records and eventually sent ODC a back-

dated letter which implied that Mr. Werner had returned his client's money, when in fact he had not. The Board recommended a suspension of one year and one day, which the Supreme Court imposed.

Respondent's misconduct in the Lowers matter was serious and long-standing. He misappropriated Mrs. Lowers' money, misled her, and then compounded the problem by attempting to mislead Petitioner. Eventually, Respondent reimbursed his client, genuinely apologized for his actions and cooperated with Petitioner during the prosecution of the case. The Sistek case is much less egregious, but represents an on-going pattern of misconduct in that Respondent has received two prior informal admonitions since 2000 for similar conduct.

The Hearing Committee has recommended a suspension of one year and one day. The Board appreciates that the Committee has observed the demeanor of the witnesses and has made its recommendation after thoughtful analysis of the evidence. The Board concurs with the recommendation and finds it to be warranted by the circumstances.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Edward T. Rowe, Jr., 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: 

Gary G. Gentile, Board Member

Date: July 12, 2007

Board Member Cognetti did not participate in the adjudication.

Board Member Buchholz dissented and recommended a two year suspension.

Board Members Saidis, Newman and O'Connor dissented and recommended a three year suspension.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 29 DB 2006
Petitioner	:	No. 90 DB 2006
	:	
v.	:	Attorney Registration No. 18676
	:	
EDWARD T. ROWE, JR	:	
Respondent	:	(Westmoreland)

DISSENTING OPINION

Respondent, Edward T. Rowe, Jr., filed an answer admitting all the allegations of the Complaint.

In late 1995, the Respondent was retained to satisfy a lien and judgment in the amount of \$16,203.93, which had been entered by the Pennsylvania Department of Revenue on August 2, 1995 against Brenda Lowers. The Department had agreed to \$9,000 in full satisfaction. By mid 1996, the Respondent had been entrusted with the full \$9,000, which was held in the Respondent's escrow account. On May 1, 2004, Respondent issued the check to pay off the lien, approximately 8 years after the receipt of the funds.

Due to the following facts, I dissent for discipline substantially greater than the one year and one day recommended by the Hearing Committee and the Disciplinary Board:

1. In 1996 or 1997, the Respondent told Lowers that the lien was satisfied;
2. Approximately one time per year, after being contacted by the Department of Revenue, Lowers made an inquiry of the Respondent who told her every year that the lien had been satisfied.
3. In March 1998, Lowers sold her personal residence. Instead of paying the lien, the Respondent provided the settlement agent a letter indicating he had \$9,000 in escrow, which Revenue agreed to accept to satisfy the lien.
4. The Respondent's escrow account balance was below the \$9,000 entrusted to him on 15 occasions from June 6, 1997 to July 5, 2001.
5. The Hearing Committee found that Respondent deliberately failed to disclose material facts to Office of Disciplinary

Counsel and attempted to induce Office of Disciplinary Counsel to believe the \$9,000 was held the entire time in escrow. However, after making the finding, the Hearing Committee found as a mitigating fact that the Respondent cooperated with ODC "to a substantial measure regarding the stipulation of facts and consolidation of the Sistek matter".

6. The Respondent testified that financial issues from 1997 to 2004 were often not related to having funds available, but rather from procrastination and viewing matters as a nuisance. However, Dr. King acknowledged that in several of his progress notes in 2002-2003 Respondent indicated he had financial difficulties. This all occurred at a time when the Respondent admitted he was well aware of the inviolability of the rule of using a client's money for Respondent's own purposes.
7. The Respondent previously was involved with the disciplinary system. He received an informal admonition on August 24, 2000 and an informal admonition on June 20, 2002, which required, as a condition, the return of an unearned fee. The present case is a consolidation of two cases. The first, for which the facts were previously noted and the second, violation of the Rules of Profession Conduct 1.3 and 1.4a for failure to keep a client properly notified.

The Respondent converted Lowers' funds to his own use. He repeatedly lied to his client, misrepresented matters to the Office of Disciplinary Counsel and asked a real estate closing agent to rely on his false assurances.

It is my opinion that the difference between the Respondent facing disbarment for conversion of Lowers' money and the one year and one day recommended by the Board, is only the length of time it took to discover and investigate this matter. For eight years, the Respondent used Lowers' money and had eight years to put himself in a position to pay off the lien. Respondent, when he found himself in a hole, stopped digging instead of continually invading escrow until he was in so deep that he could not get out. I do not view this as a mitigating factor. Instead of disbarment, I would suspend the Respondent for a period of three years.

Respectfully submitted,

Date: July 12, 2007

By: 
Robert C. Saidis, Board Member

Board Members Newman and O'Connor join in this dissent.