

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1737 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 17 DB 2010
v.	:	
	:	Attorney Registration No. 83720
DAVID M. GILLILAND,	:	
Respondent	:	(Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 8th day of September, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 27, 2011, it is hereby

ORDERED that David M. Gilliland is suspended from the practice of law for a period of three years, the suspension is stayed in its entirety and he is placed on probation for a period of three years, subject to the following:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel.

2. The practice monitor shall do the following during the period of respondent's probation:

a. Meet with respondent at least monthly to examine his progress towards satisfactory and timely completion of client legal matters, including regular communication with clients in returning telephone calls and responding to written correspondence;

b. Periodically review all new client files, if applicable, to ensure that written fee agreements are being provided to all new clients respondent has not regularly represented;


c. Periodically examine respondent's law office organization and procedures to ensure that he is maintaining an acceptable tickler system, filing system, and other administrative aspects of his practice;

d. File quarterly written reports on a Board-approved form with the Secretary of the Board; and

e. Immediately report to the Secretary any violations by respondent of the terms and conditions of probation.

It is further ordered that the expenses incurred in the investigation and prosecution of this matter are to be paid by respondent.

A True Copy John A. Vaskov, Esquire
As Of 9/8/2011

Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 17 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 83720
	:	
DAVID M. GILLILAND	:	
Respondent	:	(Allegheny 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 2, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against David M. Gilliland. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of his representation of the Hunter Christian Memorial Trust. Respondent did not file an Answer to Petition.

A disciplinary hearing was held on June 21, 2010, before a District IV Hearing Committee comprised of Chair Richard A. Venditti, Esquire, and Members Edwin W. Smith, Esquire, and T. Warren Jones, Esquire. Respondent appeared pro se.

The Hearing Committee filed a Report on October 15, 2010, concluding that Respondent violated the Rules of Professional Conduct as contained in the Petition for Discipline, and recommending that he be suspended for a period of three years, the suspension stayed in its entirety, and probation for three years.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 19, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania 17106, 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 is David M. Gilliland. He was born in 1947 and was admitted to practice law in the Commonwealth of Pennsylvania in 1999. Respondent's attorney registration mailing address is 3912 Anderson Road, Gibsonia PA 15044-9413. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of professional discipline in Pennsylvania. He received an Informal Admonition in 2004 for violation of RPC 1.15(b), after he failed to promptly forward funds to his client.

4. In 2005, Respondent was retained to prepare various documents on behalf of the Hunter Christian Memorial Trust, cure defects in certain previously prepared documents and record said documents. The Hunter Trust is an organization which makes loans and grants to churches through the Christian Evangelistic Society of Allegheny County.

5. Although Respondent had not regularly represented the Hunter Trust, he did not communicate to the Trust, or to anyone on its behalf, in writing, the basis or rate of Respondent's fee, either before or within a reasonable time after commencing the representation.

6. By letter of October 28, 2005, Douglas F. Burns, Vice-Chairman and Secretary of the Trustees of the Hunter Trust, forwarded to Respondent the property descriptions for two parcels of real estate owned by the North Hills Christian Church as well as a third deed, and requested that Respondent prepare the mortgage document and mortgage note for this particular loan.

7. Mr. Burns' letter to Respondent dated October 28, 2005 was never returned to Mr. Burns.

8. Although Respondent prepared the documents and they were properly executed, Respondent did not record the documents on behalf of the Trust with the Recorder of Deeds of Allegheny County, Westmoreland County or other appropriate office.

9. Although Respondent prepared the documents, he failed to record, in ten different instances, the following documents concerning debts owed to the Trust:

(a) In about February 2006, a restated note from the Emmanuel Christian Church which had previously been misplaced in the Trust files;

(b) In about June 2006, executed mortgages from the North Hills Christian Church;

(c) In about June 2006, a note and mortgage from the Penn Township Christian Church;

(d) In about July 2006, a note and mortgage from the Emanuel Christian Church;

(e) In about July 2006, a note and mortgage from the Homeville Christian Church;

(f) In about September 2006, a mortgage satisfaction piece for a loan dated September 1995 to the Emanuel Christian Church;

(g) In about September 2006, a mortgage satisfaction piece for an April 1998 loan to the West Hills Christian Church;

(h) In about September 2006, a note and a Uniform Commercial Code (UCC) Financing Statement for a loan to the Discovery Christian Church;

(i) In February 2008, a note and mortgage from the Hazelwood Christian Church; and

(j) In about September 2008, a note and mortgage for a refinancing of a 2002 loan from the North Hills Christian Church.

10. In early November 2008, Mr. Burns telephoned Respondent and requested that Respondent prepare a note and mortgage in connection with a loan to the

North Hills Christian Church. During that same telephone conversation, Mr. Burns explained that the note and mortgage needed to be prepared before December 1, 2008.

11. Shortly before December 1, 2008, Mr. Burns telephoned Respondent inquiring as to the status of the note and mortgage for the loan to the North Hills Christian Church.

12. Mr. Burns was unable to speak with Respondent and left a voice mail message requesting that Respondent return the telephone call.

13. Respondent did not return Mr. Burns' telephone call, nor did he otherwise communicate with him.

14. Because Respondent did not prepare the note and mortgage as Mr. Burns requested, Mr. Burns on his own prepared the documents.

15. On or about December 3, 2008, while recording the new mortgage from North Hills Christian Church, Mr. Burns discovered that Respondent had failed to record the June 2006 mortgage from the North Hills Christian Church.

16. Thereafter, Mr. Burns made further inquiries and discovered that Respondent had failed to record the documents set forth in paragraph 9 above.

17. Shortly thereafter the Board of Trustees of the Hunter Trust voted to terminate Respondent's services.

18. In late December 2008, Mr. Burns contacted Respondent and during the conversation, Mr. Burns told Respondent that the Board of Trustees of the Trust had terminated his services and requested that Respondent return to him all of the Trust documents which Respondent had in his possession. Mr. Burns also told Respondent that, as an accommodation to Respondent, he would be willing to pick the documents up at

Respondent's office. Respondent told Mr. Burns that he was ill and that Mr. Burns should call him in January 2009.

19. On several occasions during the months of January and February 2009, Mr. Burns telephoned Respondent at his office, leaving voicemail messages, requesting that Respondent return the Hunter Trust files and that Respondent return his telephone calls.

20. Respondent did not return the files to Mr. Burns or anyone on behalf of the Trust, nor did Respondent return Mr. Burns' telephone calls.

21. By letter dated March 9, 2009 sent to Respondent by regular mail, Mr. Burns wrote to Respondent and stated, in part:

(a) That in December [2008] he requested that Respondent deliver the Trust's files to him;

(b) At that time, Respondent told him that, for health reasons, it would not be convenient for Mr. Burns to pick up the documents;

(c) That he had telephoned Respondent on several different occasions but Respondent had not returned his telephone calls;

(d) That Mr. Burns was requesting that the files be sent to him at the address on his letterhead but if Respondent would prefer that Mr. Burns pick the documents up "at [Respondent's] residence/office" Mr. Burns would be "happy to do so upon confirmation by [Respondent] of a convenient time to do so"; and,

(e) That Respondent should consider the letter to be a "formal request for the delivery of [the Hunter Trust] files."

22. Mr. Burns' March 9, 2009 letter was sent to Respondent at his address of 3912 Anderson Road, Gibsonia PA 15044, which is the address that Respondent provided to Mr. Burns and the address that Respondent provided to Attorney Registration.

23. Mr. Burn's March 9, 2009 letter was not returned to him by the U.S. Postal Service as undeliverable.

24. Thereafter, Respondent did not return the Trust files to Mr. Burns or anyone on behalf of the Trust, nor did Respondent return Mr. Burns' telephone calls or otherwise communicate with him.

25. By letter dated May 14, 2009 sent to Respondent by certified mail, return receipt requested, Mr. Burns wrote to Respondent and stated, in part, that Respondent had not responded to Mr. Burns' March 9, 2009 letter, Respondent had not returned the telephone calls to Mr. Burns or Don Brookshire, the Chairman of the Board of Trustees and Respondent had not returned the Hunter Trust files. Mr. Burns stated that if satisfactory arrangements were not made within 15 days of the letter, Mr. Burns would file a complaint with the "Supreme Court of Pennsylvania."

26. Mr. Burns' May 14, 2009 letter was sent to Respondent at his address of 3912 Anderson Road, Gibsonia PA 15044. It was returned to Mr. Burns by the U.S. Postal Service as "unclaimed."

27. By letter dated June 16, 2009, Respondent was notified by Petitioner that Mr. Burns had filed a complaint against him.

28. On July 29, 2009, Petitioner faxed to Respondent a copy of Mr. Burns' complaint, Mr. Burns' letter dated May 14, 2009, and Mr. Burns' letter dated March 9, 2009 to Respondent.

29. On July 29, 2009, Respondent received Petitioner's fax dated July 29, 2009 and the attachments thereto.

30. As of June 20, 2010, the day before the disciplinary hearing, Respondent had not returned Mr. Burns' telephone calls nor had he otherwise communicated with him or with anyone on behalf of the Hunter Trust.

31. As of June 20, 2010, Respondent had not returned the Hunter Trust files to Mr. Burns or anyone else on behalf of the Trust.

32. Because of Respondent's failure to act, the Hunter Trust assets in the amount of at least \$228,000 were placed at risk.

33. On February 18, 2010, Respondent was personally served with the Petition for Discipline.

34. Respondent failed to file an Answer to Petition.

35. On March 12, 2010, Respondent was sent a Notice of the pre-hearing conference, disciplinary hearing, and Board Order. This Board Order provided, among other things, that Respondent was able to exchange exhibits and names of any experts he intended to call as witnesses.

36. The notice and Board Order, sent by regular mail to Respondent's address, were not returned by the post office.

37. Thereafter, Marcee Sloan, Hearing Coordinator for the Disciplinary Board, telephoned Respondent at the telephone number which he provided to the Attorney Registrar and reminded him of the dates of the pre-hearing conference and disciplinary hearing.

38. On March 31, 2010, Respondent was personally served with Petitioner's Exhibits 1 through 14, which included the Notice of the hearings.

39. Respondent failed to appear at the pre-hearing conference on April 19, 2010, nor did he provide Petitioner with a list of witnesses.

40. Respondent testified at the disciplinary hearing and called three witnesses.

41. In order to record the mortgages on behalf of the Hunter Trust, Respondent "dealt with kids" in his neighborhood who "wanted to perform services."

42. Most of the individuals contacted by Respondent to perform said "services" were "probably high school age."

43. Respondent did not verify with these individuals that the documents were recorded, nor did he provide documentation or evidence that he had recorded the documents on behalf of the Hunter Trust.

44. Respondent underwent a heart catheterization in early December 2008, had bypass surgery in December and was placed on medication. He tried to go back to work following the surgery but was advised not to by his doctor.

45. Respondent was served with a divorce complaint in April 2010 which has impacted him emotionally.

46. Respondent believes he did not receive some of the documents sent by Mr. Burns but has no proof of this. He also believes he delivered documents to the security guard at Mr. Burns' apartment complex, but has no proof of this.

47. Respondent currently works full-time as a staff attorney for the Allegheny County Bar Foundation Juvenile Court Project. He began this employment in October 2009.

48. Eleanor Grainy, Esquire, is Respondent's director. She estimates that Respondent is responsible for approximately 120 cases. She described Respondent as a conscientious employee who does not neglect his cases.

49. Ms. Grainy was not aware of the specifics of the Respondent's misconduct.

50. James Alter, Esquire, is a hearing officer at the juvenile court and has witnessed Respondent performing his duties on a regular basis before the court. He described Respondent as a diligent attorney who responds promptly to the court and handles his duties appropriately.

51. Mr. Alter was unaware of Respondent's misconduct at issue in the hearing.

52. Tammy Chisco has known Respondent for several years through his representation of her daughter in the juvenile system. She testified that Respondent always performed his job duties diligently by returning telephone calls and attending hearings. She was unaware of the nature of Respondent's misconduct.

53. Respondent expressed deep regret for his actions.

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)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information.

4. 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.

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

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent arising out of his representation of the Hunter Trust. Petitioner bears the burden of proving by a preponderance of evidence that is clear and satisfactory, that Respondent violated the Rules of Professional Conduct. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981).

The facts of record clearly and convincingly demonstrate that Respondent engaged in professional misconduct and thereby violated the Rules of Professional Conduct. He was retained in 2005 to represent the Hunter Trust by preparing and recording documents and curing defects in other previously prepared documents. Respondent prepared the documents in question, but inexplicably failed to record them.

He explained that he did not take the documents to the courthouse, but gave them to some "young people" in the community to deliver to the courthouse. It is somewhat incredible that a professional would allow "kids" in the neighborhood to handle an important task such as recording documents, and it is equally unbelievable that Respondent did not verify that the documents had actually been recorded. Respondent's gross neglect came to light in 2008 when Douglas Burns, Vice-Chairman and Secretary of the Trustees, frustrated in his efforts to have Respondent prepare a mortgage document and note for a particular loan, was forced to prepare the documents on his own. He subsequently discovered Respondent's neglect in the prior matters.

Respondent's representation was terminated and he was asked to return the Hunter Trust files and documents. Despite frequent written and verbal requests from his client, and later Petitioner, Respondent has failed to remedy this situation. Respondent admits that his neglect put at least \$228,000 of the client's assets at risk.

In explanation of his conduct, Respondent testified that in early December 2008 he underwent a heart catheterization, had bypass surgery, and was placed on medications. He attempted to go back to work after the surgery but was advised by his doctors not to return to work so soon after the surgery. Respondent also referenced his divorce, which complaint was served upon him in April 2010. Despite these explanations, Respondent still has provided no credible reason as to why he neglected the Trust matters from 2005 until the end of 2008. His personal problems occurred at discrete times within the broader time frame, allowing him ample opportunity to responsibly complete his duties for the Hunter Trust. Although Respondent states he has become focused on the needs of his clients, he still has not returned the Hunter Trust documents.

Respondent has engaged in similar misconduct in the past, and received an Informal Admonition in 2004 for his failure, for nearly two years, to return funds to his client. He did so only after repeated requests from his client and the receipt of a letter of inquiry from Petitioner. This previous encounter with the disciplinary system does not appear to have transformed Respondent's methods of practicing law, as the misconduct in the instant matter is so similar.

Respondent currently works as a full-time staff attorney for the Allegheny County Bar Foundation Juvenile Court project. He functions as an advocate for parents who are involved in juvenile court dependency hearings. By all accounts, he is a diligent and responsible employee who performs his job duties in a satisfactory manner.

Respondent admitted that he neglected the Trust matters over at least a three-year period. In the matter of Office of Disciplinary Counsel v. Howard Goldman, No. 157 DB 2003, 78 Pa. D. & C. 4th 538 (2005), the Board stated that "in cases involving serial neglect of client matters..., the Pennsylvania Supreme Court routinely imposes suspensions of at least one year and one day, the minimum period of suspension necessary to trigger the requirements of a reinstatement hearing." See In re Anonymous No. 91 DB 1990 (W. David Deliman), 14 Pa. D. & C. 4th 597 (1992) (suspension for one year and one day for neglect and misrepresentations in cases of two clients); Office of Disciplinary Counsel v. Michael G. Bowen, Nos. 10 DB 2003 & 28 DB 2003 (Pa. July 29, 2004) (Suspension of one year and one day for neglect, failure to communicate and failure to account in six matters over a three year time period).

In making a recommendation of discipline, the Board is mindful of the fact that Respondent has been subject to prior discipline; that he neglected his client's matters; that he failed to forward his client's files to the client; that he did not provide a written fee

agreement to his client, and he placed his client's assets at risk. At the same time, we recognize that Respondent is making a valuable contribution of services to the Juvenile Court Project and is doing good work for that entity. We are persuaded that the sanction imposed should permit Respondent the opportunity to continue his work, with the recognition that any missteps will result in further involvement in the disciplinary system.

For these reasons, we recommend that Respondent be suspended for a period of three years, with the suspension stayed in its entirety and a three year period of probation imposed.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, David M. Gilliland, be Suspended from the practice of law for a period of three years; that the Suspension be stayed in its entirety and that he be placed on Probation for a period of three years, subject to the following conditions:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel.
2. The practice monitor shall do the following during the period of Respondent's probation:
 - a. Meet with the Respondent at least monthly to examine Respondent's progress towards satisfactory and timely completion of client legal matters, including regular communication with clients in returning telephone calls and responding to written correspondence;
 - b. Periodically review all new client files, if applicable, to ensure that written fee agreements are being provided to all new clients Respondent has not regularly represented;
 - c. Periodically examine Respondent's law office organization and procedures to ensure that Respondent is maintaining an acceptable tickler system, filing system, and other administrative aspects of Respondent's practice;
 - d. File quarterly written reports on a Board approved form with the Secretary of the Board; and

e. Shall immediately report to the Secretary any violations of the Respondent of the terms and conditions of probation.

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: 

R. Burke McLemore, Board Member

Date: April 27, 2011

Board Member Todd did not participate in the adjudication.