

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 315, Disciplinary Docket No. 3 -
Petitioner	:	Supreme Court
	:	
	:	No. 53 DB 1997 and 74 DB 1999 -
	:	Disciplinary Board
v.	:	
	:	Attorney Registration No. []
[ANONYMOUS]	:	
Respondent	:	([] 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

[], Respondent in these proceedings, was convicted in both state and federal court of improperly taking funds of estates or individuals for which he was involved as counsel or as a court-appointed guardian. By Order of the Supreme Court dated April 24, 1997, Respondent was placed on temporary suspension as a result of his conviction in the United States District Court for the [] District of Pennsylvania. By Order of the Supreme Court dated June 15, 1999, Respondent's state

conviction was referred to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E. and was directed to be consolidated with the federal conviction. Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent on July 19, 1999 and charged him with violation of Pa.R.D.E. 203(b)(1) and R.P.C. 8.4(c). Respondent filed an Answer on October 7, 1999.

A disciplinary hearing was held on June 9, 2000, before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Respondent made a pro se appearance. Petitioner was represented by [], Esquire.

The Committee filed a Report on November 1, 2000 and found that Respondent violated Rule 203(b)(1), Pa.R.D.E and RPC 8.4(b) as charged in the Petition for Discipline. The Committee recommended that Respondent be disbarred retroactive to May 24, 1997, the effective date of Respondent's temporary suspension.

No Briefs on Exceptions were filed by the parties

This matter was adjudicated by the Disciplinary Board at the meeting of January 17, 2001.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania 15219, is invested, under Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), 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 that Rule.

2. Respondent was born in 1950 and was admitted to practice law in Pennsylvania in 1983. His residence address is []. Respondent is divorced and the father of three pre-teenage children. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. On July 3, 1996, an Information was filed at No. [] in the United States District Court for the [] District of Pennsylvania by which Respondent was charged with one count of Bank Fraud in violation of Title 18, United States Code, Section 1344. Respondent was charged with withdrawing approximately \$100,000 from various estates and individuals of whom he was the court-appointed guardian. This was alleged to have occurred between January of 1993 and February of 1996.

4. On July 11, 1996, Respondent entered a plea of guilty to the Information.

5. On January 28, 1997, Respondent was sentenced by Hon. [A] to imprisonment for a total of 24 months, to begin on February 13, 1997, supervised release for three years after the incarceration, and an assessment of \$50. The Court found that Respondent was unable to make restitution.

6. On October 23, 1996, a one-hundred-five (105) count Information was filed against Respondent in the [] County Court of Common Pleas.

7. The Information charged Respondent with: Theft by Deception, 18 Pa.C.S. § 3922(a)(1)(2)(3); Theft by Failure to Make Required Disposition of Funds Received, 18 Pa.C.S. §3927; Theft by Unlawful Taking, 18 Pa.C.S. §3921(a); Unsworn Falsification to Authorities, 18 Pa.C.S. §4904(a)(1)(2); and, Misapplication of Entrusted Property and Property of Government or Financial Institution, 18 Pa.C.S. §4113.

8. The basis for the charges related to Respondent's appropriation and misuse of funds from the estates of individuals for whom he was the court-appointed guardian. The amounts involved totaled approximately \$160,000.

9. On February 7, 1997, Respondent entered guilty pleas and was sentenced. He was re-sentenced on February 19, 1999 by Hon. [B] to 2 to 4 months incarceration on each of the 15 third degree felony counts of Theft by Deception, the sentences to run consecutive to each other and to the federal sentence imposed in January of 1997; 1 to 3 months incarceration on the remaining counts of Theft by Deception, the sentences to run concurrent with the sentences on the other counts of Theft by Deception; 12 months probation on each of the consolidated counts of Unsworn Falsification and Misapplication of Entrusted Property, to run concurrent; and, 1,200 hours of community service and costs.

10. By Order of the Supreme Court of Pennsylvania dated April 24, 1997, Respondent was placed on temporary suspension, pursuant to Rule 214(d)(2), Pa.R.D.E., as a result of his criminal conviction in the United States District Court for the [] District of Pennsylvania.

11. By Order of the Supreme Court dated June 15, 1999, Respondent's criminal conviction in the Court of Common Pleas of [] County was referred to the Disciplinary Board, pursuant to Rule 214(f)(1), Pa.R.D.E. The Court's Order directed that this matter be consolidated with the disciplinary matter that was the subject of the Court's Order of April 24, 1997.

12. Respondent's legal career commenced in 1983. He was employed simultaneously by [C] and the public defender's office of [] County.

13. Respondent was employed for approximately eight years as the solicitor for the [D] representing the agency's clientele.

14. Respondent entered private practice in 1992 as a sole practitioner. His areas of concentration were Orphan's Court work, family law, and criminal defense.

15. Respondent desired to build a guardianship practice and to this end he accepted court appointments as guardian of the person or estate, or he represented people in those capacities.

16. Between January 1993 and February 1996, Respondent withdrew monies from accounts at financial institutions under the names of the various estates and individuals of whom he was the court-appointed guardian.

17. Respondent fraudulently billed numerous estates for legal work that was never performed. He inflated fees and filed misleading pleadings in the Orphans' Court.

18. In explanation, Respondent testified that he was building a practice and he used money from some of the estates to manage the practice. (N.T. 52) Respondent described this as taking an advance fee that he assumed he would earn over time. (N.T. 52)

19. Respondent also described a situation where he conspired to inflate charges and kick back funds to an individual in matters in which that person had received fiduciary appointments from the court. (N.T. 55, 56)

20. Respondent was in distress and uncomfortable with his actions (N.T. 53); however, he determined that this was the price of doing business. (N.T. 56)

21. Respondent admitted that he used poor judgment and committed criminal actions by taking these funds. (N.T. 53, 54)

22. Respondent has no history of discipline.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rule of Disciplinary Enforcement:

1. Respondent's convictions are punishable by up to one year imprisonment and are serious crimes pursuant to Pa.R.D.E. 214(i).
2. Pursuant to Pa.R.D.E. 203(b)(1), Respondent's convictions of serious crimes are an independent ground for discipline.

As a result of Respondent's criminal conduct, he also violated the following Rule of Professional Conduct:

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

IV. DISCUSSION

This matter is before the Disciplinary Board upon a Petition for Discipline charging Respondent with violations of the Rules of Disciplinary Enforcement and Rules of Professional Conduct based on his convictions for theft by deception, failure to make required disposition of funds received, unlawful taking, unsworn falsification to authorities and misapplication of entrusted property and property of government and financial institutions.

In light of Respondent's convictions, there is no question presented as to whether misconduct occurred. Pa.R.D.E. 203(b)(1) provides that conviction of a serious crime shall be grounds for discipline. A serious crime is defined by the Rules as a crime punishable by imprisonment of one year or more in this or any other jurisdiction. Rule 214(e), Pa.R.D.E., specifies that a certificate of conviction of an attorney for a serious crime shall be conclusive evidence of that crime. When a disciplinary action is commenced against an attorney based on a criminal conviction, the Board does

not engage in a retrial of the underlying facts of the crime. The Board's responsibility is to determine the appropriate measure of discipline relative to the seriousness of the crime. The focal issue is whether the attorney's character is so damaged by the misconduct as to render him or her unfit to practice law. Office of Disciplinary Counsel v. Casety, 511 Pa. 177, 512 A.2d 607 (1986).

This issue balances a concern for the public with a respect for the substantial interest of an attorney in maintaining his or her privilege to practice law. Office of Disciplinary Counsel v. Lewis, 492 Pa. 519, 426 A.2d 1138 (1981). It is appropriate for the Board to examine any aggravating or mitigating circumstances present in this matter.

The actions which resulted in Respondent's criminal convictions reflect wrongdoing and a very serious lack of judgment. Respondent engaged in a course of conduct that spanned approximately three years in which he improperly took at least \$100,000 and as much as \$160,000, from twenty-six estates or persons for whom he was the court appointed guardian. He accomplished this by withdrawing monies from the estate accounts under his control, fraudulently billing estates, inflating fees, and filing misleading pleadings. The record is clear that Respondent recognized the improprieties of his actions while he was involved in the conduct and did not curtail his activities. His illegal conduct was a serious affront not only to the subjects of his guardianships, but also to the judges who placed their trust in him when appointing him to the guardianships, and to the legal profession in general.

As in most cases of extreme misconduct, the choice of discipline ranges from a lengthy suspension to disbarment, but there is no per se disbarment for substantial misappropriation of funds. Office of Disciplinary Counsel v. Chung, 548 Pa. 108, 695 A.2d 405 (1997). What must be emphasized in this matter is that Respondent's actions involved a breach of public trust. As

articulated by the Supreme Court in the case of Office of Disciplinary Counsel v. Lewis, 492 Pa. 519, 426 A.2d 1138 (1981):

A client must be able to look to his attorney for sound advice; know that the attorney will pursue the client's interests vigorously and effectively; and rest assured that any financial transaction carried out on the client's behalf will be scrupulously honest, will be fully accounted for at the client's request, and will involve full and immediate payment of funds that are due and owing the client. This public trust that an attorney owes his client is in the nature of a fiduciary relationship involving the highest standards of professional conduct.

Id. at 529, 426 A.2d at 1143.

The record reveals nothing of a mitigating nature to lessen the discipline that is warranted by the convictions. Respondent had little to offer in way of explanation and stated that the costs associated with the build-up of his law practice necessitated his use of entrusted funds. Respondent offered the testimony of [E], Esquire and twelve letters in support of his character. Unfortunately, no amount of character testimony will overcome the fact that Respondent committed theft of entrusted funds. Respondent has no history of discipline and an otherwise unblemished record of practice since his admission in 1983. This factor is insignificant in contrast to the deplorable nature of Respondent's misconduct.

Disbarment is an extreme sanction which must be imposed only in the most egregious cases as it represents a termination of the license to practice law without a promise of its restoration at any future time. Office of Disciplinary Counsel v. Kissel, 497 Pa. 467, 442 A.2d 217 (1982). It has been deemed appropriate where the misconduct involves the types of breach of trust exhibited in this case.

Office of Disciplinary Counsel v. Costigan, 526 Pa. 16, 584 A.2d 297 (1990), Office of Disciplinary Counsel v. Keller, 509 Pa. 573, 506 A.2d 872 (1986).

The record in this case compels the disbarment of Respondent. He has thoroughly breached the public trust with regard to his handling of the matters entrusted to him. By his actions he has shown himself to be unfit to practice law.

For the reasons as set forth above, the Board recommends that Respondent be disbarred retroactive to May 24, 1997, the effective date of his temporary suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be disbarred from the practice of law in the Commonwealth of Pennsylvania retroactive to May 24, 1997.

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: _____
M. David Halpern, Member

Date: June 7, 2001

Board Member Caroselli did not participate in the January 17, 2001 adjudication.

PER CURIAM:

AND NOW, this 2nd day of August, 2001, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 7, 2001, it is hereby

ORDERED that [Respondent] be and he is DISBARRED from the Bar of this Commonwealth retroactive to May 24, 1997, 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.