

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

|                                |   |                                     |
|--------------------------------|---|-------------------------------------|
| OFFICE OF DISCIPLINARY COUNSEL | : | No. 376, Disciplinary Docket No. 3  |
| Petitioner                     | : | Supreme Court                       |
|                                | : |                                     |
| v.                             | : | No. 87 DB 2001 – Disciplinary Board |
|                                | : |                                     |
| PAUL L. HAMMER                 | : | Attorney Registration No. 10415     |
| 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 September 25, 2000, Respondent was sent a letter of inquiry by Office of Disciplinary Counsel, setting forth allegations which if proven, would constitute violations of the Rules of Professional Conduct. The Letter of Inquiry requested Respondent to provide specific financial information and records concerning his IOLTA account. Respondent

submitted a Statement of Position on November 7, 2000, with various attachments, but did not provide any other documentation as requested by Office of Disciplinary Counsel.

Office of Disciplinary Counsel caused the issuance of a Subpoena/Subpoena Duces Tecum to Respondent and PNC Bank. Respondent filed a claim of privilege and objection on December 14, 2000, to which Office of Disciplinary Counsel filed a Response on December 22, 2000. The matter was referred to Hearing Committee 4.09 Member Thomas King, Esquire, to determine the validity of the Subpoena. On April 16, 2001, the Member determined that the claims of privilege and objections were denied. Respondent did not comply with the subpoena.

On June 7, 2001, Petitioner filed with the Disciplinary Board a Petition for the Issuance of a Rule to Show Cause Why Respondent Should Not be Placed on Temporary Suspension pursuant to Pa.R.D.E. 208(f)(5). Respondent filed an Answer on July 12, 2001 and Petitioner, on July 19, 2001, sought judgment on the pleadings and in the alternative, filed a Response to Respondent's Answer.

On March 31, 2004, the Board issued a Recommendation to the Supreme Court that Respondent be placed on temporary suspension.

The Supreme Court entered an Order on August 12, 2004 and directed Respondent to comply with the subpoena issued by the Court.

On September 20, 2004, Petitioner sent a letter to the Supreme Court informing the Court that Respondent did not comply with the subpoena. On October 13, 2004, the Supreme Court entered an Order placing Respondent on temporary suspension.

Respondent requested accelerated disposition of this matter on October 18, 2004.

On November 17, 2004, Office of Disciplinary Counsel filed a Petition for Discipline against Paul L. Hammer, Respondent. The Petition charged Respondent with professional misconduct arising out of his failure to comply with a Supreme Court Subpoena and Order, and his failure to properly hold entrusted funds for his client. Respondent filed an Answer and Response to Petition for Discipline on December 21, 2004.

A disciplinary hearing was held on January 31, 2005 before Hearing Committee 4.06 comprised of Chair Craig E. Coleman, Esquire, and Members Timothy Geary, Esquire, and Anthony Logue, Esquire. Respondent was represented by Stanton D. Levenson, Esquire.

The Committee filed a Report on July 5, 2005, finding that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement as charged in the Petition for Discipline and recommending that he be disbarred.

Respondent filed a Brief on Exceptions on July 18, 2005. Petitioner filed a Brief Opposing Respondent's Exceptions on July 27, 2005.

This matter was adjudicated by the Disciplinary Board on August 23, 2005.

## 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 PA 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Paul L. Hammer, was born in 1935 and was admitted to practice law in the Commonwealth of Pennsylvania in 1967. Respondent's address is 518 Frick Building, Pittsburgh PA 15219. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a prior history of discipline consisting of a public censure in 1977 and a public censure in 1999. The subject of the 1999 censure was Respondent's conviction in the United States District Court for the Western District of Pennsylvania of the crime of Willful Failure to File a Timely Income Tax Return for 1992.

4. On March 31, 2004, the Disciplinary Board issued a recommendation to the Supreme Court of Pennsylvania finding that Respondent refused to comply with a valid subpoena, and that the Supreme Court should enter an Order, pursuant to Pa.R.D.E. 208(f)(5), placing Respondent on temporary suspension.

5. By Order dated August 12, 2004, the Supreme Court directed Respondent to appear at the Office of Disciplinary Counsel at a date and time specified by

Disciplinary Counsel to comply with a Subpoena Duces Tecum issued on November 28, 2000.

6. The Supreme Court's Order further directed that if Respondent failed to comply with the Subpoena, the Office of Disciplinary Counsel was directed to inform the Supreme Court, whereupon an Order would be entered placing Respondent on temporary suspension.

7. By separate Order also dated August 12, 2004, the Supreme Court dismissed as moot all pending Motions challenging the Disciplinary Board's March 31, 2004 Recommendation.

8. Petitioner and Respondent agreed that the date and time for Respondent to present himself at the Office of Disciplinary Counsel to comply with the Supreme Court's August 12, 2004 Order would be September 10, 2004 at 4:00 p.m.

9. On September 10, 2004, Respondent appeared at the Office of Disciplinary Counsel. Present at this meeting were David N. Lame, Esquire, Office of Disciplinary Counsel; Brian J. Kline, Investigator with Office of Disciplinary Counsel; William Friedman, Esquire, Office of Disciplinary Counsel; Respondent; and a court reporter. All of the proceedings were recorded by the reporter and there were no off the record discussions.

10. Respondent stated, "I have nothing to say. I am present. I have a briefcase here. That is all I have to say."

11. Mr. Lame inquired as to whether Respondent would produce the documents contained in the subpoena of November 28, 2000, to which Respondent responded, "I have already responded."

12. Mr. Lame stated on the record that although Petitioner appeared and brought with him a briefcase, no documentation was provided to Office of Disciplinary Counsel.

13. Respondent stated, "I have given all the responses I choose to give." The matter was concluded.

14. Respondent did not open his briefcase at any time.

15. Respondent did not produce and identify the documents required by the Subpoena Duces Tecum.

16. On January 2, 1996, Trudi Maier was involved in a two car accident in which she sustained personal injuries. Shortly thereafter, Respondent was retained to represent Ms. Maier in a civil action against Dr. Kasperbauer, the driver of the other vehicle.

17. Respondent and Ms. Maier entered into a Contingency Fee Agreement with an agreed upon fee of forty percent of any recovery and reimbursement of expenses.

18. On December 9, 1997, Respondent filed on behalf of Ms. Maier a Praecipe for Writ of Summons against Dr. Kasperbauer in the Court of Common Pleas of Allegheny County.

19. Respondent negotiated a settlement wherein Ms. Maier was to receive a total gross settlement of \$42,000 minus attorney fees of forty percent and reimbursement of expenses. Settlement was to be distributed as \$32,000 in cash and a separate annuity in the amount of \$10,000. This settlement was with Dr. Kasperbauer's insurance company, Erie Insurance Exchange. The annuity is not at issue in this matter.

20. Respondent, on October 28, 1998, filed a Praecipe to Settle and Discontinue Ms. Maier's civil action.

21. By check dated October 28, 1998 in the amount of \$32,000 and made payable to Respondent and Ms. Maier, Erie disbursed to Respondent the funds representing the settlement of Ms. Maier's claim.

22. On October 28, 1998, Respondent negotiated the settlement check and deposited the proceeds of \$32,000 into his PNC IOLTA Account.

23. The check was endorsed by both Ms. Maier and Respondent.

24. After deduction of Respondent's attorney fees in the amount of \$16,800 and advanced expenses in the amount of \$312.12, Respondent was entrusted with \$14,887.88 on behalf of Ms. Maier.

25. The entrusted amount was to be held in trust for Ms. Maier and for her creditors to whom Respondent, on behalf of Ms. Maier, agreed to protect and pay any outstanding liens.

26. Respondent's IOLTA Account bank statement had an ending date of January 20, 1999 which reflected an ending balance in the amount of \$12,466.44.

27. As of January 20, 1999, Respondent's account was deficient in the amount of \$2,421.44 in regard to his entrustment on behalf of Ms. Maier.

28. Respondent's IOLTA account bank statement had an ending date of February 17, 1999 and reflected an ending balance in the amount of \$8,092.75.

29. As of February 17, 1999, Respondent's account was deficient in the amount of \$6,795.13 with regard to his entrustment on behalf of Ms. Maier.

30. Respondent's IOLTA account bank statement had an ending date of March 19, 1999, and reflected an ending balance in the amount of \$4,592.75.

31. As of March 19, 1999, Respondent's account was deficient in the amount of \$10,295.13 with regard to his entrustment on behalf of Ms. Maier.

32. Respondent's IOLTA Account bank statement had an ending date of April 21, 1999, and reflected an ending balance in the amount of \$4,592.75.

33. As of April 21, 1999, Respondent's account was deficient in the amount of \$10,295.13 with regard to his entrustment on behalf of Ms. Maier.

34. On May 6, 1999, Respondent made a partial distribution to Ms. Maier in the amount of \$2,650.

35. Following the distribution to Ms. Maier, Respondent was still to be entrusted with \$12,237.88 on behalf of Ms. Maier.

36. After the \$2,650 disbursement to Ms. Maier, the balance of Respondent's IOLTA Account was reduced to \$1,942.75, thereby creating a deficiency with respect to the entrustment on behalf of Ms. Maier in the amount of \$10, 295.13.



37. Respondent's IOLTA Account bank statement had an ending date of May 19, 1999, reflecting an ending balance in the account of \$772.43.

38. As of May 19, 1999, Respondent's account was deficient in the amount of \$11,465.45, with regard to his entrustment on behalf of Ms. Maier.

39. The ending balances reflected on Respondent's IOLTA Account bank statements bearing ending dates of June 21, 1999, August 20, 1999, and September 21, 1999, evidence that Respondent continued to be out of trust with respect to his entrustment on behalf of Ms. Maier.

40. A "ledger balance" as reflected on Respondent's IOLTA Account bank statement having an ending date of October 20, 1999, reflects that on September 24, 1999 there was a balance of only \$117.55 in the account.

41. As of September 24, 1999, Respondent's account was deficient in the amount of \$12,120.33, with regard to his entrustment on behalf of Ms. Maier.

42. On October 18, 1999, a deposit unrelated to his representation of Ms. Maier and in the amount of \$225,000 was made to Respondent's IOLTA Account so that the ending balance as of October 20, 1999 was \$225,117.55.

43. On November 18, 1999, Respondent made a second partial disbursement to Ms. Maier from his IOLTA Account in the amount of \$2,500.

44. Following the partial disbursement of \$2,500 to Ms. Maier, Respondent was still to be entrusted with \$9,737.88 on her behalf.

45. Respondent's IOLTA Account bank statement having an ending date of August 22, 2000, reflects an ending balance in the amount of \$155.35.

46. As of August 22, 2000, Respondent's IOLTA Account was deficient in the amount of \$9,582.53 with regard to his entrustment on behalf of Ms. Maier.

47. On July 14, 2001, Respondent made a third and final disbursement of settlement funds to Ms. Maier in the amount of \$3,722.26.

### III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(3) – Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline.

2. Pa.R.D.E. 203(b)(4) – Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master shall be grounds for discipline.

3. RPC 1.15(a) – 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.

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

IV. DISCUSSION

Before this Board for consideration is the matter of Paul L. Hammer, who is charged with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of his actions in a personal injury matter and his subsequent failure to abide by a subpoena.

On March 31, 2004, the Disciplinary Board forwarded to the Supreme Court of Pennsylvania its recommendation that as a result of Respondent's refusal to comply with a valid Subpoena Duces Tecum, he should be placed on temporary suspension pursuant to Rule 201(f)(5), Pa.R.D.E. On August 12, 2004, the Supreme Court entered two separate orders. The first Order directed Respondent to appear at the Office of Disciplinary Counsel at a date and time specified by Disciplinary Counsel and to comply with a Subpoena Duces Tecum issued on November 28, 2000. The Order also directed that if Respondent failed to comply with the Subpoena Duces Tecum, Petitioner was to inform the Supreme Court and an order would be entered placing Respondent on temporary suspension. The second Order of August 12, 2004 dismissed as moot all pending motions challenging and any responses thereto, the Disciplinary Board's March 31, 2004 recommendation.

Respondent and Petitioner agreed that Respondent would present himself at the Office of Disciplinary Counsel on September 10, 2004 at 4:00p.m. to comply with the Supreme Court's Order of August 12, 2004. Respondent appeared at such time with a briefcase. Respondent did not open the briefcase nor did he identify its contents.

Petitioner asked Respondent if he complied with the Court's order by producing the documentation requested in the Subpoena. Respondent replied "I have nothing to say. I'm present. I have a briefcase here. That's all I have to say." Petitioner again asked Respondent to produce the documents. Respondent stated "I have already responded." Petitioner then asked Respondent if he did not have documentation or did he just refuse to answer any further questions. Respondent stated "I have given all the responses I choose to give." The matter was concluded at that time.

It was the responsibility and the duty of Respondent to comply with the subpoena by not only producing but identifying records subject to the Subpoena Duces Tecum. Respondent contends he did comply by appearing at Petitioner's office with a briefcase. Inquiries were made of Respondent as to whether he had the documentation. Respondent engaged in gamesmanship in his refusal to give a straight forward answer. He did not open his briefcase, even though he now alludes to the fact that the documents were contained therein. Petitioner did its duty by asking for the documents. There was no obligation to physically wrestle documents from Respondent's briefcase or person. Respondent defied the Supreme Court's order and in so doing has violated the Rules of Disciplinary Enforcement.

In the Maier matter, the record is clear that Respondent entered into a settlement on behalf of his client for a total of \$42,000, of which \$32,000 was to be a cash settlement and \$10,000 an annuity settlement. Respondent deposited the \$32,000 settlement into his PNC IOLTA Account and he withdrew his fee in the amount of \$16,800

and his expenses in the amount of \$312.12 which was agreed upon by the parties. The issue herein involves the entrustment of \$14,887.88 of these funds by Respondent on behalf of Ms. Maier from that point forward.

Respondent made several partial disbursements to Ms. Maier in the amounts of \$2,650 in May 1999, \$2,500 in November 1999 and \$3,722.26 in July 2001. There was some testimony of potential liens in Ms. Maier's case and Respondent's authority to negotiate and settle those liens. Ultimately the liens were paid. At no time did Ms. Maier give her permission to Respondent to use her entrusted funds for any other purpose. Whether or not there were liens, Respondent had the duty to safeguard Ms. Maier's settlement funds.

The record is clear that Respondent misappropriated the funds in which he was entrusted. A spreadsheet prepared by Investigator Brian Kline of the Office of Disciplinary Counsel shows that Respondent was out of trust as early as January 20, 1999, approximately three months after settling Ms. Maier's case and receiving the entrusted funds. Respondent continued to be deficient in his entrustment through September 1999. In October 1999 he made a deposit into the IOLTA Account of \$225,000 unrelated to his representation of Ms. Maier in October 1999. This enabled him to make disbursements to Ms. Maier. A ledger balance as reflected on Respondent's IOLTA Account bank statement and bearing an ending date of October 20, 1999 shows that on September 24, 1999, Respondent's balance was only \$117.55. This marked the lowest point to which Respondent's account balance fell during the period of time covered by the PNC Bank

records. Respondent did not hold in violate the settlement funds he received on behalf of Ms. Maier.<sup>1</sup>

Relevant case law in Pennsylvania indicates that there is no per se discipline when an attorney engages in mishandling of client funds. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983). The Supreme Court has made equally clear that commingling and conversion of entrusted funds is considered a serious breach of public trust, so that most often the sanction imposed on an attorney who engages in such misconduct is a form of public discipline. Office of Disciplinary Counsel v. Lewis, 426 A.2d 1138 (Pa. 1981). The punishment may be disbarment. Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997).

Aggravating factors are present in this matter in the form of Respondent's prior discipline. Respondent received a public censure in 1977 and a public censure in 1999. The Board weighs this prior discipline with the caveat that the 1977 censure occurred nearly thirty years ago and the 1999 censure was for a criminal conviction having no relation to the facts of the instant matter. Respondent presented no testimony or evidence regarding mitigation.

The case of Office of Disciplinary Counsel v. William M. Gross, 605 Disciplinary Docket No. 3 (Pa. Dec. 23, 2003) is similar to the instant matter. Mr. Gross was a long time practitioner and was charged with, among other things, the mishandling of

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<sup>1</sup> Review of exhibits submitted by Petitioner reveal acts of commingling by Respondent in the John and Sherry Brown case, which is not the subject of this Petition for Discipline. See Pet. Ex. 14 -19. The Board considers this to be an aggravating factor.

client funds, failure to respond to a subpoena, and conduct involving dishonesty, fraud, deceit or misrepresentation. After receiving settlement funds, Mr. Gross failed to properly disburse the funds to the appropriate parties. He deposited funds in his escrow account and failed to maintain them. After investigation by Office of Disciplinary Counsel, Mr. Gross failed to respond to a Subpoena Duces Tecum directing him to produce certain financial information. The Court ordered that Mr. Gross be disbarred. While the case against Mr. Gross involved fifteen separate matters, Mr. Gross had no disciplinary history.

The evidence of record in the instant matter is sufficient to recommend disbarring Respondent, retroactive to October 13, 2004, the date of Respondent's temporary suspension. His acts of misconduct, as well as his demeanor and attitude in handling his disciplinary proceeding, suggest that he is not fit to practice law at this time.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Paul L. Hammer, be disbarred from the practice of law, retroactive to October 13, 2004.

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: \_\_\_\_\_  
Smith Barton Gephart, Board Member

Date: September 29, 2005

Board Members Wright and Pietragallo did not participate in the August 23, 2005 adjudication.

Board Member Nordenberg did not participate in the August 23, 2005 adjudication.



PER CURIAM:

AND NOW, this 5<sup>th</sup> day of January, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 29, 2005, the Petition for Review and response thereto, it is hereby

ORDERED that PAUL L. HAMMER be and he is DISBARRED from the Bar of this Commonwealth retroactive to October 13, 2004, 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.

Former Justice Nigro did not participate in this matter.