

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 650, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 153 DB 1999
	:	
	:	Attorney Registration No. [ ]
v.	:	
	:	
[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

On December 21, 1999, a Petition for Discipline was filed by Office of Disciplinary Counsel, Petitioner, against [ ], Respondent in these proceedings. The Petition charged Respondent

with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement in two matters relating to mishandling of client funds, failure to surrender property of a client and failure to notify a client of Respondent's transfer to inactive status.

A disciplinary hearing was held on May 23, 2000, before Hearing Committee [ ] comprised of Chair [ ], Esquire, and Members [ ], Esquire, and [ ], Esquire. Petitioner was represented by [ ], Esquire. Respondent did not appear.

The Committee filed a Report on July 24, 2000 and found that Respondent violated the Rules as charged in the Petition for Discipline. The Committee recommended that Respondent be disbarred.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting held on September 26, 2000.

## 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, is invested, pursuant to 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 the aforesaid Rules.

2. Respondent was born in 1960 and admitted to practice law in Pennsylvania in 1989. His attorney registration address is [ ].

3. By Order of the Supreme Court of Pennsylvania dated July 16, 1998, effective August 15, 1998, Respondent was transferred to inactive status pursuant to Rule 111(b), Pa.R.C.L.E., for failure to comply with his Continuing Legal Education requirements.

4. By Order of the Supreme Court of Pennsylvania dated March 16, 2000, Respondent was suspended from the practice of law for a period of one year and one day.

5. By Order of the Supreme Court of Pennsylvania dated June 26, 2000, Respondent was suspended from the practice of law for a period of one year and one day to run consecutive to the suspension previously imposed by the Supreme Court on March 16, 2000.

**The [A] Matter**

6. In August of 1997, Respondent agreed to represent [A] in a suit against the [B].

7. In February of 1998, a settlement was reached in the amount of \$1,250.

8. By letter dated February 17, 1998, Respondent advised his client that a settlement had been reached in the amount of \$1,250.

9. By cover letter dated July 21, 1998, Attorney [C] representing the [B], forwarded to Respondent a check for \$1,250 for settlement and release of all claims by [A] against the [B].

10. Thereafter Respondent failed to inform his client that the settlement check had been received.

11. Respondent failed to deliver to [A] his share of the settlement in the amount of \$837.

12. On July 21, 1998, Respondent deposited into his [D] Bank account captioned “[Respondent], IOLTA Trust” the sum of \$837, which had been entrusted to him on behalf of [A].

13. From approximately July 21, 1998 through September 20, 1998, Respondent held [A's] monies.

14. On or about September 21, 1998, Respondent had a zero balance in his IOLTA Trust account.

15. Respondent used the \$837 in entrusted funds of [A] for his own purposes and had not forwarded the funds to his client.

16. Between April 1998 and October 1998, [A] attempted to contact Respondent regarding the settlement funds.

17. To date Respondent has not accounted for the funds.

**The [E] Matter**

18. In approximately April of 1997, Respondent assumed representation of [E] regarding personal injuries sustained in an automobile accident.

19. By letter dated May 21, 1998, Respondent sent [E] a Complaint in Civil Action for [E's] review, along with an Affidavit to sign.

20. In or about May of 1997, Respondent filed a Complaint in Civil Action on

behalf of [E].

21. From that time until August of 1998, Respondent represented [E] in the matter.

22. By Order of the Supreme Court of Pennsylvania dated July 16, 1998, Respondent was transferred to inactive status for failure to comply with Continuing Legal Education requirements.

23. Respondent failed to notify [E] pursuant to Rule 217, Pa.R.D.E., of his transfer to inactive status.

24. After August 1998, [E] made efforts by letter and facsimile to contact Respondent, but Respondent did not respond.

25. By certified letter to Respondent dated December 10, 1998, [E]

- a) Notified Respondent that he was discharged;
- b) Advised Respondent that he wanted his file records turned over to new counsel;
- c) Requested that Respondent call him about releasing [E's] records.

26. Respondent did not respond to the letter nor did he forward [E's] records to

him.

27. By Order of Court dated October 20, 1998, President Judge [F] of the Court of Common Pleas of [ ] County appointed a conservator for Respondent's files.

28. Respondent did not appear at the disciplinary hearing held on May 23, 2000. Respondent was personally served with the Petition for Discipline on January 10, 2000 and was personally served with a notice of disciplinary hearing on April 17, 2000.

### III. CONCLUSIONS OF LAW

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

1. RPC 1.15(b) - Failing to promptly deliver to a client or third person any funds or other property that a client or a third person is entitled to receive and, failing to promptly render a full accounting regarding such property, upon request by a client or third person.
2. RPC 8.4(c) - Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.
3. RPC 1.16(d) - Failing to take steps to the extent reasonably practicable to protect a client's interests upon termination of the representation.
4. Pa.R.D.E. 217(b) - Failing to notify all clients involved in pending litigation or administrative proceedings of the attorney's transfer to inactive status.

### IV. DISCUSSION

This matter is before the Disciplinary Board upon a Petition for Discipline charging Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement based on allegations that he commingled and converted settlement funds of a client and failed to notify a client of his transfer to inactive status.

Respondent did not appear at the disciplinary hearing. The testimony of Investigator [G] established that Respondent was personally served with the Petition for Discipline and the notice of the hearing. Petitioner presented the testimony of [A], [E], and [C] to establish by clear and convincing evidence that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement.

In the [A] matter, the evidence demonstrates that Respondent represented [A] and settled the case on his behalf for \$1,250. Respondent received the proceeds of the settlement and failed to inform his client. Subsequently Respondent deposited the funds into his IOLTA account and withdrew the entire balance. Respondent's client never received his monies despite repeated requests.

In the [E] matter, the evidence demonstrates that Respondent represented [E] in a personal injury case. During the pendency of the matter Respondent was transferred to inactive status for failure to fulfill his CLE requirements. Respondent did not notify his client of his inactive status nor did he respond to correspondence or return his client's file when requested to do so.



Respondent's misconduct is very serious, especially in the [A] matter, wherein he converted the entire proceeds of his client's settlement. Misappropriation of client funds is a very serious offense as it is a breach of the trust that is the core of the attorney-client relationship. Such misconduct requires a strong sanction. *Office of Disciplinary Counsel v. Keller*, 509 Pa. 573, 506 A.2d 872 (1986).

The matter before the Board today is not Respondent's first entanglement with the disciplinary system of this Commonwealth. Respondent was suspended from the practice of law for a period of one year and one day by Order of the Supreme Court dated March 16, 2000. The suspension was imposed as a result of Respondent's conviction in the Court of Common Pleas of [ ] County of possession of controlled substance and possession of drug paraphernalia. In a separate disciplinary matter, Respondent was suspended for one year and one day by Order of Supreme Court dated June 26, 2000, after he failed to appear for an Informal Admonition and failed to appear for the disciplinary hearing relating to that matter. Prior to these suspensions, Respondent was transferred to inactive status for failure to comply with the requirements of Continuing Legal Education.

Respondent's misconduct is further aggravated by his failure to appear at the instant disciplinary hearing. The sum total of the evidence of record presents a picture of an attorney who has no interest in retaining his privilege to practice law. The public must be protected from contact with this kind of lawyer. For these reasons the Board recommends that Respondent be disbarred. This sanction requires Respondent to petition for reinstatement and prove his fitness as an attorney

if he desires to practice law in Pennsylvania.

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.

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: \_\_\_\_\_  
Duke George, Jr., Member

Date: December 18, 2000

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Board Members Elliott and Morris did not participate in the September 26, 2000 adjudication.

PER CURIAM:

AND NOW, this 20th day of February, 2001, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 18, 2000, it is hereby

ORDERED that [Respondent] be and he is DISBARRED from the Bar of this Commonwealth, 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.