

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 655, Disciplinary Docket No. 3
Petitioner	:	Supreme Court
	:	
v.	:	Nos. 34 DB 2001 and 120 DB 2001
	:	Disciplinary Board
	:	
KEITH ACTON HALTERMAN	:	Attorney Registration No. 69307
Respondent	:	(Philadelphia)

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 May 2, 2001, Office of Disciplinary Counsel, Petitioner, filed a Petition for Discipline, docketed at No. 34 DB 2001, against Keith Acton Halterman, Respondent. This

Petition was based on Respondent's conviction of possession of a controlled substance. On September 7, 2001, Petitioner filed a second Petition for Discipline, docketed at 120 DB 2001, against Respondent. This Petition charged Respondent with continuing to practice law after transfer to inactive status for non-compliance with CLE, and engaging in misconduct in representing clients during the period 1997 to 2001. By Order of the Disciplinary Board dated November 13, 2001, these Petitions were consolidated for hearing.

On November 26, 2001, Petitioner and Respondent filed a joint Petition for temporary suspension with the Supreme Court based on these proceedings, and by Order dated December 28, 2001, Respondent was placed on temporary suspension.

A disciplinary hearing was held on November 27, 2001, before Hearing Committee 1.21 comprised of Chair Peter Samson, Esquire, and Members Caroline Kunz Reeves, Esquire, and Joseph N. Bongiovanni, III, Esquire. Respondent appeared pro se.

The Hearing Committee filed a report on January 28, 2003, and recommended that Respondent be suspended for a period of not less than two years from the date of his temporary suspension.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of March 26, 2003.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg PA 17101, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent was born in 1960 and was admitted to practice law in the Commonwealth of Pennsylvania in 1993. His current address is 2632 Alden Road, Bryn Athyn, PA 19001. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania

3. By Order of the Supreme Court of Pennsylvania dated July 20, 2000, Respondent was transferred to inactive status pursuant to Pa.R.C.L.E. 111, for failure to comply with CLE requirements.

No. 34 DB 2001 Criminal Conviction

4. On August 3, 2000, Respondent was charged in Bucks County with possession of a controlled substance (cocaine), in violation of 35 Pa.C.S.A. §780-113(a)(16).

5. The charges arose when Respondent lost his wallet, which contained the cocaine, was turned over to Bucks County Courthouse Security. When confronted, Respondent admitted that the wallet and cocaine belonged to him.

6. On January 5, 2001, Respondent was convicted in the Court of Common Pleas of Bucks County, of the crime of possession of a controlled substance.

7. Respondent was sentenced to payment of a fine in the amount of \$1,000, plus costs.

8. Respondent has a prior history of criminal charges, consisting of a guilty plea to DUI in 1988 resulting in ARD, and a conviction of DUI in 1990.

No. 120 DB 2001 Charge I: Transfer to Inactive Status

9. By Notice dated October 1, 1999, the Pennsylvania Continuing Legal Education Board advised Respondent that he had not completed his CLE requirements for the compliance year ending December 31, 1999, and, if he failed to complete his CLE requirements, he would be transferred to inactive status.

10. By Notice dated December 31, 1999, the CLE Board reminded Respondent that he had failed to complete his CLE requirements by December 31, 1999.

11. By Notice dated February 25, 2000, the CLE Board advised Respondent that his name would be on a list of non-compliant attorneys submitted to the

Pennsylvania Supreme Court of Pennsylvania after May 25, 2000, with a recommendation that the Court enter an order to inactivate his license.

12. Respondent failed to complete his CLE requirements.

13. By Order dated July 20, 2000, the Supreme Court ordered that Respondent be transferred to inactive status pursuant to Rule 111, Pa.R.C.L.E., effective August 19, 2000.

14. Elaine M. Bixler, Executive Director and Secretary of the Disciplinary Board, mailed to Respondent a certified letter dated July 20, 2000, which enclosed the Supreme Court Order, information regarding compliance with CLE Rules, and Rule 217 of the Rules of Disciplinary Enforcement, setting forth notice provisions.

15. Respondent received actual notice of his transfer to inactive status in July 2000.

16. Thereafter, Respondent continued to represent clients and accept new representations.

17. Respondent did not notify his clients that he was on inactive status and unable to practice law. Until at least January 2001, he maintained a law office.

No. 120 DB 2001 Charge II:
Misconduct in Litigation and Failure to Withdraw

18. In the Matter of Fleet Mortgage Corp. v. Charles and Emily Echols:
- a. Commencing in or about June 1996, Respondent represented Mr. and Mrs. Echols in a state court foreclosure action.
 - b. In March 1997, judgment was entered in favor of plaintiff and against Respondent's clients in the amount of \$57,250.45.
 - c. On five occasions between April 1997 and October 2000, writs of execution were issued, and sheriff's sales were scheduled.
 - d. On each occasion, Respondent filed a bankruptcy action on behalf of the Echols, and a Suggestion of Bankruptcy in the state court, which stayed the sale.
 - e. Thereafter, Respondent did not pursue the bankruptcy actions by filing complete schedules and taking other steps required by law.
 - f. On each occasion, Fleet Mortgage filed a Motion to Lift the Automatic Stay, to which no response was filed; when the motion was granted, the writ of execution was reissued and the sheriff's sale was rescheduled.
 - g. On each occasion, the bankruptcy was dismissed.
 - h. Respondent failed to advise Mr. and Mrs. Echols of his inability to continue to represent them in state court due to his transfer to inactive status.
19. In the Matter of James McCoy v. Adella McCoy:

- a. In November 1997, Mr. McCoy retained Respondent to represent him in a divorce action, at which time Mr. McCoy paid Respondent \$300 as a retainer. (Ex. P-29).
- b. In November 1997, Mr. McCoy paid Respondent an additional \$579.50, which Respondent acknowledged as full payment of the fee and applicable costs. (Ex. P-30).
- c. Respondent failed to promptly file a divorce action on behalf of Mr. McCoy.
- d. The sole marital asset was real estate. Respondent advised Mr. McCoy that he would take necessary action to cause the property to be sold.
- e. Respondent failed to communicate with Mr. McCoy concerning a property settlement agreement or to take any other action to compel the sale of the marital property.
- f. Between November 1997 and September 1999, Mr. McCoy and/or his girlfriend called Respondent frequently and left messages with a receptionist and on Respondent's voicemail requesting a return call.
- g. Respondent failed to return Mr. McCoy's calls.
- h. In September 1999, Respondent went to Mr. McCoy's home, secured Mr. McCoy's verification on a Complaint in Divorce, and told him that his case would move forward.
- i. Respondent failed to promptly file the divorce Complaint.

- j. From September 1999 through December 2000, Mr. McCoy called Respondent's office on numerous occasions to inquire as to the status of the matter.
- k. On many occasions Respondent was unavailable, and Mr. McCoy left messages requesting a return call.
- l. Respondent failed to respond to most of those calls, except that, subsequent to November 1999, Respondent advised Mr. McCoy that he was having problems having Mrs. McCoy served with the divorce Complaint and that Respondent would do so himself.
- m. These statements were misleading, in that Respondent had not yet filed the divorce action.
- n. In February 2000, Respondent advised Mr. McCoy that he was unfamiliar with the status of the case and would look into the matter and call back, but he failed to do so.
- o. On March 23, 2000, Respondent filed a Complaint in Divorce on behalf of Mr. McCoy.
- p. Respondent failed to file proof of service of the Complaint on Mrs. McCoy.
- q. In March 2000, Respondent advised Mr. McCoy that he would send papers about the case in the mail, but he failed to do so.
- r. Thereafter, Mr. McCoy called Respondent on numerous occasions concerning the case, but Respondent failed to respond to Mr. McCoy's messages.

s. Respondent failed to notify Mr. McCoy of his transfer to inactive status, to advise him to secure new counsel in his case, to petition to withdraw his appearance in the divorce action, and to refund to Mr. McCoy the unearned portion of the fee and costs.

t. By certified letters dated December 13, 2000 and January 29, 2001, received by Respondent's agent, Mr. McCoy asked that Respondent communicate with him within ten days about the status of his case.

u. Respondent failed to respond to these letters.

20. In the Matter of Kathleen McCreesh v. Joseph A. McCreesh, Jr.:

a. In or about November 1997, Respondent commenced representing Kathleen McCreesh in a pending divorce action for which she had retained the firm of Joel Every & Associates, P.C. ("the Every firm"), by whom Respondent was then employed.

b. Carol A. Haltrecht, Esquire, represented Mr. McCreesh.

c. Respondent failed to enter his appearance in the case until March 1998.

d. On various occasions between March and December 1998, Attorney Haltrecht filed Petitions for Special Relief and for Contempt against Ms. McCreesh.

e. Respondent failed to respond to those petitions until December 22, 1998.

- f. On December 28, 1998, Respondent filed a Petition to Withdraw as Ms. McCreesh's counsel, which was denied.
- g. In October 1999, Respondent attended a settlement of real estate owned by the parties, at which time Respondent received a settlement check which was to be endorsed by him and Attorney Haltrecht and deposited into escrow.
- h. Respondent failed to take action to have the check forwarded to Attorney Haltrecht for her execution and to have the check deposited into an escrow account.
- i. On February 4, 2000, Respondent transmitted to Ms. McCreesh the Final Decree entered in the McCreesh divorce action on January 31, 2000.
- j. Between March and May 2000, Ms. McCreesh transmitted to Respondent at least three requests for information and action in her case.
- k. Respondent did not respond to those requests.
- l. Respondent failed to advise Ms. McCreesh and Attorney Haltrecht of his transfer to inactive status and to withdraw as counsel for Ms. McCreesh, and he continued to hold himself out as Ms. McCreesh's counsel.
- m. In August and September 2000, Ms. McCreesh asked that Respondent return documents to her.

n. By certified letter dated September 14, 2000, Ms. McCreesh discharged Respondent as her counsel and asked that he release her file.

o. Respondent advised Ms. McCreesh that the judge would not permit Respondent to withdraw so close to her court date of September 25.

p. In September 2000, Respondent appeared in court concerning the case, at which time Respondent advised Ms. McCreesh that she should execute certain documents, including a power of attorney in his favor with respect to certain transactions.

q. Thereafter, Respondent failed to communicate with Ms. McCreesh.

r. By certified letter dated January 10, 2001, Ms. McCreesh again discharged Respondent as her counsel.

s. By certified letter dated February 2, 2001, Ms. McCreesh again asked that Respondent account to her for the escrow proceeds from the sale of the real estate and release her documents.

t. Respondent failed to respond, to account, and to release the documents.

21. In the Matter of Gerald Logue v. Allstate Insurance Co., et al.:

a. In or about October 1998, Respondent, who was still employed by the Every firm, was retained by Mr. Logue to represent him in claims against various parties, including Allstate Insurance Company

("Allstate") and Keystone Financial Mortgage Company ("Keystone"), relating to disclaimer of insurance coverage for fire damage to Mr. Logue's residence.

b. Respondent and Mr. Logue entered into a contingent fee agreement which provided, inter alia, that counsel would advance costs of litigation.

c. Respondent failed to file suit promptly.

d. In or about 1999, Respondent advised Mr. Logue that he had filed suit against Allstate and Keystone.

e. In fact, Respondent had not filed suit at that time, and that advice constituted a misrepresentation.

f. In about January 2000, Mr. Logue discovered that Respondent had not filed suit on his behalf.

g. Mr. Logue confronted Respondent, at which time Respondent first advised him that he had filed suit. Respondent then stated that he had not done so because Mr. Every would not advance the filing fee, but that Respondent would file suit.

h. Mr. Logue provided Respondent with a check for the costs of filing suit.

i. In April 2000, Respondent filed suit by writ of summons on behalf of Mr. Logue against Allstate and Keystone.

j. The discovery deadline in the case was set for January 8, 2001.

k. Mr. Logue questioned Respondent as to whether Lloyds of London, Keystone's umbrella insurer, should be joined as a

defendant, at which time Respondent advised him that a separate suit would have to be filed against Lloyds in federal court.

l. Respondent failed to file suit against Lloyds.

m. Thereafter, Respondent left the employ of the Every firm, and took the Logue file with him.

n. Respondent failed to advise Mr. Logue of his transfer to inactive status and to withdraw as counsel in the case.

o. Respondent failed to file a Complaint and to conduct or respond to discovery.

p. On September 5, 2000, a Pre-Trial Order was entered, providing, inter alia, that Respondent was to file his Pre-Trial Memorandum by January 19, 2001.

q. By letter dated December 18, 2000, defense counsel forwarded to Respondent a Stipulation to Dismiss the case.

r. By Order dated December 29, 2000, Allstate's Motion to Compel Discovery was granted, pursuant to which Respondent was required to respond to discovery within thirty days or suffer sanctions.

s. In January 2001, Allstate filed a Praecipe and Rule upon Plaintiff to File a Complaint within Twenty Days, and Respondent was so notified.

t. Respondent failed to file a timely Pre-Trial Memorandum and a Complaint.

u. Respondent failed to advise Mr. Logue that he had not filed a Complaint or a Pre-Trial Memorandum.

v. In January 2001, at Mr. Logue's deposition, Respondent advised Mr. Logue that he should stipulate to the dismissal of Allstate as a defendant, that Respondent would pursue Mr. Logue's claims against Keystone, and that the case was scheduled for trial in April.

w. Upon Respondent's advice, Mr. Logue entered into the stipulation, which was filed on January 18, 2000.

x. Thereafter, and continuing until Mr. Logue became aware of Respondent's inactive status in mid-February, 2000, Mr. Logue attempted daily to contact Respondent to discuss the matter and to secure his complete file.

y. Respondent did not respond.

z. On March 5, 2001, a Stipulation of Dismissal of Allstate, to which Respondent consented, was approved.

aa. Thereafter, Mr. Logue was unable to secure new counsel in the matter.

22. In the Matter of Blake Christoph v. Christine Christoph:

a. By agreement executed by Respondent in November 1999, Mr. Christoph retained the Every firm to represent him in a divorce action.

b. At the time he retained Respondent, Mr. Christoph advised Respondent that he and his wife were resolving the financial issues in their divorce by mediation, and that all he required of Respondent was the divorce action and the drafting of the written agreement.

- c. Mr. Christoph paid the firm's \$1,000 retainer and advanced costs of \$229.50 by checks dated November 18, 1999, in the amount of \$729.50, payable to Respondent; and January 19, 2000, in the amount of \$500, payable to the Every firm.
- d. Respondent failed to remit the \$729.50 check to the Every firm as required by his contract of employment.
- e. Respondent failed to promptly file a Complaint in Divorce on behalf of Mr. Christoph.
- f. In March 2000, Respondent filed a Complaint in Divorce on behalf of Mr. Christoph, which was served on Mrs. Christoph in April 2000.
- g. Respondent failed to promptly file proof of service.
- h. Respondent failed to promptly secure Mrs. Christoph's execution of an Affidavit of Consent and file such affidavit.
- i. On numerous occasions during the representation, Mr. Christoph asked Respondent about the status and progress of the divorce action.
- j. On each occasion, Respondent led Mr. Christoph to believe that Respondent was handling the matter expeditiously.
- k. When Respondent left the Every firm, Respondent advised Mr. Christoph that Respondent would continue to handle the case.
- l. Respondent failed to advise Mr. Christoph of his transfer to inactive status and to withdraw his appearance in the matter.

- m. In July 2000, Respondent advised Mr. Christoph that he would complete a necessary redraft of the separation agreement.
- n. Thereafter, Mr. Christoph attempted to reach Respondent by telephone and by visiting his office and leaving messages for Respondent.
- o. Respondent failed to respond promptly and to advise Mr. Christoph of his transfer to inactive status.
- p. In or about September 2000, Respondent released Mr. Christoph's file to him.
- q. By certified letter dated September 8, 2000, signed for by Respondent's agent, Mr. Christoph advised Respondent that he had retained new counsel, and requested that Respondent refund \$700 of the fee.
- r. Respondent failed to respond to that letter and to account for or refund any portion of the fee.

23. In the Matter of Diane Guzman v. Albert Alessandrine General

Contracting:

- a. In April 2000, Ms. Guzman retained Respondent to pursue a claim against Alessandrine Contracting for failure to perform on a construction contract.
- b. At the time, Respondent told Ms. Guzman that he would file it within a week.

- c. Respondent failed to promptly file suit on behalf of Ms. Guzman.
- d. From mid-April to mid-June 2000, Respondent repeatedly advised Ms. Guzman that he had filed suit and would provide her with the papers.
- e. That advice was false and misleading.
- f. In June 2000, Respondent filed suit on behalf of Ms. Guzman by writ of summons, and an arbitration hearing in the matter was scheduled for February 20, 2001 .
- g. In late June 2000, Respondent released the file to Ms. Guzman.

24. In the Matter of John Falcone v. Harvey Kleinberg, M.D., Laurence McKinney, M.D., Keta Amin, D.C., and Healthwise Medical Centers ("Healthwise"), et al.:

- a. In June 2000, Mr. Falcone retained Respondent to substitute as his counsel in a pending medical malpractice action.
- b. At the time that Respondent was retained, there was an outstanding Order against plaintiff, compelling responses to pending discovery requests by August 15, 2000.
- c. Respondent failed to enter his appearance promptly and to respond to the discovery requests.
- d. In August 2000, Respondent entered his appearance for Mr. Falcone.

- e. Respondent failed to advise Mr. Falcone, opposing counsel, and the court of his transfer to inactive status.
- f. In August 2000, counsel for Drs. Kleinberg and McKinney, Healthwise and Dr. Amin filed Preliminary Objections to plaintiff's Amended Complaint.
- g. Respondent failed to respond to the Preliminary Objections.
- h. By Orders dated October 20 and 25, 2000, various portions of the Amended Complaint were stricken, and plaintiff was ordered to file an Amended Complaint within twenty days.
- i. Respondent failed to file an Amended Complaint.
- j. Respondent failed to respond to discovery requests and conduct discovery on behalf of his client.
- k. From August through November 2000, Respondent failed to cooperate in scheduling his client's deposition and repeatedly cancelled scheduled deposition dates without agreement of the noticing parties.
- l. In October and November 2000, defendants filed several motions for sanctions and motions to compel discovery and to compel plaintiff's deposition, to which Respondent did not respond, and which were granted by orders which also imposed sanctions.
- m. In October 2000, Drs. Kleinberg and McKinney filed a Motion for Summary Judgment, to which Respondent failed to respond, and which was granted on December 4, 2000.

n. In December 2000, Dr. Amin filed a Motion for Summary Judgment, to which Respondent failed to respond, and which was granted in January 2001.

o. Commencing in or about Fall 2000, Mr. Falcone attempted to contact Respondent by telephone and by visiting his office.

p. Respondent failed to communicate with Mr. Falcone, to respond to his requests for information as to the status of his case, and to advise Mr. Falcone of the entry of summary judgment against him.

q. By letter dated January 26, 2001, Respondent advised Mr. Falcone that an arbitration hearing was scheduled in his case in March 2001, and that he should make an appointment with Respondent.

r. This advice was misleading, in that all defendants had been granted summary judgment.

s. Thereafter, Mr. Falcone tried to contact Respondent by telephone and by visiting his office to secure his file, but Respondent failed to return the calls or to make the file available.

25. In the Matter of Eileen Carr v. Peter H. Carr:

a. On July 12, 2000, Respondent entered his appearance on behalf of Ms. Carr in a pending divorce action.

b. Saul Levit, Esquire, and Lawrence D. Dodds, Esquire, of

Schnader Harrison Segal & Lewis LLP ("the Schnader firm") represented Mr. Carr.

c. Respondent failed to advise his client, the Schnader firm, and the court of his transfer to inactive status, and to withdraw as counsel for Ms. Carr.

d. In July 2000, the Schnader firm served upon Respondent Defendant's Preliminary Objections to the Complaint in Divorce and related matters.

e. Respondent failed to respond to the Preliminary Objections, although he advised Mr. Dodds in October 2000 of his intention to do so.

f. In November 2000, Respondent secured an additional twenty days to file a responsive brief to the Preliminary Objections, but he failed to file a brief and was precluded from arguing the matter.

g. In January 2001, Respondent sent to Mr. Dodds and the court a proposed order by agreement, dismissing the divorce action with prejudice.

h. By Order dated January 22, 2001, the divorce action was dismissed.

26. In the Matter of Brett Kratchman v. Natalie Khaham:

a. Respondent entered his appearance for defendant and filed Defendant's Answer, New Matter and Counterclaim in the Kratchman matter on July 28, 2000.

b. Respondent failed to advise his client and opposing counsel of his transfer to inactive status and consequent inability to represent Ms. Khaham.

c. Neither party appeared at arbitration on December 28, 2000, and the case was dismissed.

27. In the Matter of Commonwealth v. Jeremy Sweet:

a. In September 2000, Mr. Sweet and his mother, Esther Perrine, met with Respondent to discuss representation of Mr. Sweet in a criminal matter.

b. Respondent failed to inform Mr. Sweet that Respondent was ineligible to practice law.

c. Respondent advised Mr. Sweet that his fee would be \$500.

d. Respondent failed to provide Mr. Sweet with a written fee agreement.

e. In September 2000, Respondent appeared on behalf of Mr. Sweet at a bail hearing.

f. On November 30, 2000, Respondent appeared before a District Justice as counsel for Mr. Sweet to waive a preliminary hearing.

g. Respondent failed to withdraw his appearance despite receiving notice from the Office of Disciplinary Counsel of his ineligibility to practice.

h. In December 2000, Respondent filed an entry of appearance on behalf of Mr. Sweet, and Mr. Sweet's waiver of arraignment.

- i. In February 2001, Respondent called a Bucks County Assistant District Attorney to discuss the case.
- j. In February 2001, the Bucks County District Attorney's Office advised Respondent that he was ineligible to represent Mr. Sweet and that Respondent should withdraw his appearance.
- k. Thereafter, Respondent called Ms. Perrine and advised her that he would not be able to represent Mr. Sweet at a scheduled hearing because he was ineligible to practice.

General Findings

- 28. Respondent has a history of cocaine and alcohol use dating to his college years.
- 29. This cocaine use escalated until September 2001, when he checked into the Horsham Clinic to receive treatment.
- 30. Respondent participated in a partial hospitalization program, requiring his presence at the facility for six hours per day, five days per week. This program lasted for three weeks.
- 31. Respondent attends individual and group therapy, as well as monthly visits to a psychiatrist. He currently takes anti-depression medication.
- 32. Respondent has no history of prior discipline.

III. CONCLUSIONS OF LAW

By his conduct as set forth above in No. 34 DB 2001, Respondent violated the following Rule of Disciplinary Enforcement:

1. Pa.R.D.E. 203(b)(1) – Respondent’s conviction for possession of a controlled substance constitutes a conviction of a serious crime and is an independent basis for discipline.

By his conduct as set forth above in No. 120 DB 2001, Charge I, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

1. RPC 5.5(b) – A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.
2. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.
3. Pa.R.D.E. 203(b)(3) – Willful violation of any other provisions of the Enforcement Rules shall be grounds for discipline, via Pa.R.D.E. 217(b), 217(c), 217(d), 217(e), and 217(j).

- (a) Pa.R.D.E. 217(b) – Failing to promptly notify all clients who are involved in pending litigation or administrative proceedings, and the attorneys for each adverse party in such matter, of his inactive status.
- (b) Pa.R.D.E. 217(c) – Failing to promptly notify of a transfer to inactive status all persons to whom a fiduciary duty is or may be owed, and all other persons with whom the attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing.
- (c) Pa.R.D.E. 217(d) – Engaging as an attorney in a new matter after transfer to inactive status.
- (d) Pa.R.D.E.(e) – Failing to file a verified statement with the Disciplinary Board showing compliance with all of the requirements of Rule 217.
- (e) Pa.R.D.E. 217(j) - Engaging in law-related activities after transfer to inactive status, except as provided under the Rule.

By his conduct set forth above in No 120 DB 2001, Charge II, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.4(a) - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.
2. RPC 1.4(b) – A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.
3. RPC 1.5(b) – When a 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.
4. RPC 1.15(a) – A lawyer shall hold property of clients or third persons that is in a lawyer’s possession separate from the lawyer’s own property.
5. RPC 1.15(b) – Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. A lawyer shall promptly deliver to the client or third person any funds or other 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.
6. RPC 1.16(a)(1) – A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client, if the representation will result in violation of the Rules or other law.
7. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests.

8. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the clients.

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

IV. DISCUSSION

This matter is before the Board in a consolidated proceeding on two Petitions for Discipline. The first Petition is before the Board for a determination of the appropriate discipline for Respondent's conviction of possession of cocaine. The second Petition contains two charges. The first relates to Respondent's transfer to inactive status and his failure to comply with the Enforcement Rules requiring notification to clients and others of his status. The second charge sets forth a pattern of misconduct in Respondent's representation of clients during the period 1997 to 2001. The Petition sets forth ten cases in which Respondent either failed to represent clients competently and diligently or communicate with clients and properly explain matters to them; failed to respond to discovery and comply with resultant court orders; failed to withdraw when discharged or when no longer eligible to practice law and to promptly return files and refund unearned fees. Respondent is also charged with making misrepresentations to clients.

Respondent's violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement have been established both by an extensive stipulation and by

Respondent's testimony at the disciplinary hearing. The Board must now determine the appropriate sanction to address Respondent's misconduct.

Respondent was admitted to the bar in 1993 and by late 1997 developed a pattern of accepting cases, providing initial services, and then permitting the files to stagnate. Respondent then misrepresented to clients the status of their matters. He failed to withdraw from many of the cases subsequent to his transfer to inactive status in July 2000. Respondent's pattern of misconduct continued even after his arrest for possession of cocaine in August 2000 and his conviction in January 2001. Respondent finally ceased practice in early 2001.

Respondent began using cocaine on an occasional basis in college. During law school he increased his use of the drug until he was using it every weekend, although Respondent believed that his professional life was not affected by his drug use. Respondent's cocaine use did adversely impact his personal life and eventually resulted in his arrest and conviction for possession of cocaine. After his arrest and conviction, Respondent went into a total shutdown, as he described it, where he was hiding from his problems and pretending to go to work. He was aware of his problems with CLE, but kept telling himself that he would find money to pay for it and never did. Respondent continued to take new cases to support himself, but was in denial about his problems.

Respondent's situation became worse over time and he shut his office down in early 2001. In April of 2001, his wife asked him to leave the house. In May of 2001, he

saw a physician who diagnosed him with depression and prescribed Celexa, an anti-depressant. Respondent at this time did not deal with his substance use. Respondent believes that his substance use increased in the spring of 2001. In September 2001, Respondent's family confronted him and convinced him to go to Horsham Clinic. Respondent enrolled in a partial hospitalization program where he would go to the Clinic from 9 a.m. until 3 p.m. five days per week for three weeks.

At the date of the hearing, which was approximately six weeks subsequent to his discharge from the clinic, Respondent admitted that he was still struggling with his addiction and depression. He further stated that he knew he was not fit to practice law. Respondent attends group therapy every week at Horsham Clinic and sees a therapist for individual sessions twice per month. He also sees a psychiatrist once a month.

It is clear from Respondent's testimony that his use of cocaine led to a downward spiral of inattentiveness to client matters, denial, and greater use of drugs and alcohol. However, Respondent has not established by clear and convincing evidence that his substance abuse caused his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). In Braun, the Supreme Court held that a psychiatric infirmity may be a mitigating factor in the dispositional phase of a disciplinary proceeding, provided the condition is a causal factor in the misconduct. Respondent's evidence includes only his own testimony and a discharge summary from Horsham Clinic. No expert opinion is offered in the summary as to a nexus between Respondent's present condition and his

misconduct, nor is there an opinion as to Respondent's prognosis. Even giving credit to Respondent for the sincerity of his commitment to overcome his problems, the evidence is insufficient to meet his burden of proving that his cocaine and alcohol use caused his misconduct.

Respondent's unauthorized practice of law, neglect of client matters and misrepresentations to clients, combined with his criminal conviction for possession of cocaine, warrant a lengthy suspension. Respondent has admitted that he is clearly unfit to practice law at the present time. At the time of the hearing, Respondent's identification of his problems and efforts to secure treatment were very recent and his sobriety new to him. He was unable to demonstrate any consistent ability to maintain sobriety. A long separation from the practice of law is necessary to ensure that Respondent is committed to recovery and will not repeat his misconduct.

The Board recommends that Respondent be suspended for a period of three years, retroactive to December 28, 2001, the date of his temporary suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Keith Acton Halterman, be suspended from the practice of law for a period of three years retroactive to December 28, 2001.

It is further recommended that the Respondent pay the expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Louis N. Teti, Member

Date: July 29, 2003

Board Member Newman did not participate in the March 26, 2003 adjudication.

PER CURIAM:

AND NOW, this 9th day of October, 2003, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 29, 2003, it is hereby

ORDERED that KEITH ACTON HALTERMAN be and he is SUSPENDED from the Bar of this Commonwealth for a period of three years, retroactive to December 28, 2001, 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.