BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 883 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 108 DB 2001
v.	:	
	:	Attorney Registration No. 38654
JONATHAN M. LEVIN	:	
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 August 8, 2001, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent, Jonathan M. Levin. The Petition charged Respondent with violations of the Rules of Professional Conduct based on Respondent's improper

handling of his escrow account. Respondent filed an Answer to the Petition on September 24, 2001.

A second charge was brought on a written Supplemental Joint Stipulation of Fact and Law dated April 27, 2002. With respect to this charge, Respondent waived the filing of a Form DB –3 Referral of Complaint to Reviewing Member of Hearing Committee and the filing of a Petition for Discipline. Respondent agreed that this charge and the Petition for Discipline filed on August 8, 2001 should be consolidated for hearing.

A disciplinary hearing was held on May 2, 2002 before Hearing Committee 1.04 comprised of Chair Robert L. Hickok, Esquire, and Members Denise D. Colliers, Esquire, and Michael J. Stack, III, Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following briefing by the parties, the Hearing Committee filed a Report on February 10, 2003, and recommended that Respondent be suspended for a period of eight months, followed by two years of probation with a practice monitor.

Petitioner filed a Brief on Exceptions on February 27, 2003. Respondent filed a Brief Opposing Exceptions and a Request for Oral Argument on April 7, 2003.

Oral Argument was held on May 5, 2003, before a three member panel of the Disciplinary Board chaired by Board Member Louis N. Teti, Esquire, and consisting of Board Members Marc L. Raspanti, Esquire and Laurence H. Brown, Esquire.

This matter was adjudicated by the Disciplinary Board at the meeting of May 14, 2003.

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, Pennsylvania, 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 was born in 1953 and was admitted to practice law in the Commonwealth in 1983. His address is 2nd Floor, 215 S. Broad Street, Philadelphia PA 19107. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has never been married, but he has one daughter who resides with him. Respondent is the sole caretaker of the child.

4. Respondent suffered emotional turmoil through the mid 1990's when his relationship with his daughter's mother ended and he then became involved with ongoing custody battles over his daughter. Respondent ultimately succeeded in winning full custody.

5. Respondent has practiced as a sole practitioner since 1987.

6. At the time of this disciplinary proceeding, Respondent employed a secretary and a receptionist in his law firm, and he had recently hired a part time bookkeeper.

7. During the years 1994 through 2000, Respondent did not have an accountant or bookkeeper work for him. His paralegal and secretary shared the responsibility of handling his bank accounts.

8. During the 1994-2001 time period, Respondent's bank had issued a MAC card on the wrong account, his escrow account, and the bank eventually corrected this mistake. Respondent claims that he did not know about unauthorized transfers of funds from his escrow account during the pertinent time periods in the 1990's. It appears uncontested that a MAC card was issued for the wrong account, but this does not excuse Respondent's mishandling or commingling of escrow account funds. Respondent had responsibility to oversee his accounts and review his bank records, and to correct any errors that might arise.

9. When Respondent received the DB-7 letter, he retained Vince Giusini, Esquire, to represent him. Mr. Giusini represented him until present counsel, Samuel C. Stretton, Esquire, entered his appearance in the fall of 2001. After he received the DB-7 letter, Mr. Giusini gave Respondent no direction and did not have him correct his banking and accounting practices.

10. During the time period from 1996 until the year 2000, Respondent did not hear anything from the Office of Disciplinary Counsel in reference to the Banner (as hereinafter described), case and was told by his former counsel, Mr. Giusini, that the complaint had "gone away".

11. The next time Respondent heard from the Office of Disciplinary Counsel was in November, 2000, regarding the Peterson case.

12. From at least January 31, 1995 to November 10, 1995, Respondent maintained an account at Glendale Bank, Account No. 1007897 (later Mellon Bank Account No. 2-018-117), said account captioned "Jonathan M. Levin, Attorney at Law" ("the Glendale account").

13. From at least August 8, 1995 to September 15, 1997, Respondent maintained an account at Royal Bank, Account No. 0001000678, said account captioned "Escrow Account" ("the Royal account").

CHARGE 1: THE BANNER MATTER

14. In or about October 1993, Thomas E. Banner retained Respondent to represent him in a personal injury matter arising from an accident occurring on February 19, 1993.

15. On October 14, 1993, Respondent filed a civil action on Mr. Banner's behalf, said action captioned ***Thomas Banner v. Young and City of Philadelphia,*** October Term, 1993, No. 1699.

16. In or about January 1995, the Banner case was settled for $50,000.00 with Mr. Banner signing the release agreement.

17. On or about March 14, 1995, Respondent received a settlement check from the City of Philadelphia in the amount of $50,000.00 made payable to "Thomas Banner and Jonathan M. Levin, Esq."

18. On or about March 17, 1995, Respondent deposited the settlement proceeds into the Glendale account.

19. Mr. Banner authorized Respondent to distribute the settlement proceeds as follows, in accordance with a Schedule of Distribution:

Thomas Banner	$12,017.08
Medical bills	$ 9,000.00
Medicare lien	$14,965.84
Total	$35,982.92

20. On June 8, 1995, the balance in the Glendale account was $64,954.21, $35,982.92 of which Respondent was required to maintain to cover the aforementioned disbursements.

21. On or about June 8, 1995, Respondent distributed check no. 598, made payable to Mr. Banner in the amount of "$12,017.18" (not "12,017.08" as stated on the Schedule of Distribution), and the check cleared the Glendale account on June 9, 1995, leaving an end-of-the-day balance of $49,937.03 in the Glendale account.

22. Thereafter, Respondent was required to hold $23,965.84 in trust on behalf of Mr. Banner.

23. Respondent made ledger entries of "7/28/95" for ten Glendale account checks (Nos. 1002, 1003, 1015-1022), payable to various medical providers and the City of Philadelphia in the total amount of $9,000, but none of those checks ever cleared the Glendale account.

24. On August 8, 1995, Respondent opened the Royal account by using a cashier's check drawn on the Glendale account to transfer $40,000.00 from the Glendale account to the Royal account.

a. The end-of-the-day balance on August 8 in the Glendale account was $7,724.02.

b. The two accounts had a combined total of $47,724.02.

c. Before Respondent transferred funds from the Glendale account to the Royal account, the Glendale account balance fell "out of trust" as to all client matters on five occasions, the longest being from May 24, 1995 to June 1, 1995.

d. The shortfalls in the Glendale account ranged from $1,388.35 (5/24/95) to $8,919.14 (6/16/95).

e. On November 10, 1995, Respondent closed the Glendale account without making any additional disbursements on behalf of Mr. Banner from that account.

f. During the three-month period from August 8, 1995 (Royal account opened) to November 10, 1995 (Glendale account closed), the cumulative balances in the Glendale account and the Royal account were almost always insufficient to cover the funds that Respondent was required to hold in escrow for and on behalf of his clients.

g. Respondent maintained sufficient funds in the Royal account to cover fiduciary entrustments only from September 12 to September 18, 1995 (7 days), from September 20 to October 15, 1995 (25 days), and on October 24, 1995 (1 day).

h. On August 8, 1995, the day the Royal account was opened, the cumulative balance from both accounts was deficient by $15,539.67.

i. On November 10, 1995, the day that the Glendale account was closed, the cumulative balance from both accounts was deficient by $17,138.95.

j. Between September 21 and October 24, 1995, 34 MAC withdrawals totaling $3,120.00 were debited to the Royal account, nine of which occurred from October 16 to October 23, 1995, when the Royal account was "out of trust" by no less than $9,231.75 and the Glendale account had a $0.00 balance.

25. Respondent knowingly and intentionally misappropriated fiduciary funds, and some of those funds were converted to Respondent's own use. When the account was already "out of trust," Respondent, for example, increased the fiduciary deficit by:

(a) transferring funds from his escrow account to his operating account to cover operating account overdrafts; and,

(b) issuing checks payable to himself.

26. Aetna Life & Casualty Insurance Company ("Aetna") was entitled to receive the $14,965.84 that Respondent was holding initially to satisfy the Medicare lien.

27. Upon settlement of Mr. Banner's case, Respondent failed to deliver promptly to Aetna the subrogation funds in the full amount.

28. Between June 1995 and December 1996, Aetna contacted Respondent on numerous occasions regarding payment of the Medicare lien. In January 1996, Aetna notified Respondent that it was then entitled to $20,618.63, instead of the original amount of $14,965.84.

29. Respondent failed promptly to make payment to Aetna.

30. During a December 18, 1996 telephone conversation with Rita Stone, an Aetna representative, Respondent agreed to reimburse Aetna in the amount of $20,618.63, in accordance with a monthly payment schedule. Respondent agreed to send Aetna a

check in the amount of $2,000.00 each month for 10 months, and $618.63 in the 11th month.

31. Respondent paid $7,000.00 towards the Medicare lien by making the following disbursements to Aetna from the Royal account:

Check Date	Check No.	Transaction Date	Check Amount
1/16/96 *[sic]*	1267	1/23/97	$2,000.00
2/25/97	1275	3/5/97	$2,000.00
4/ /97 *[sic]*	1301	5/5/97	$3,000.00

32. From November 10, 1995 (the day Respondent closed the Glendale account) to January 23, 1997 (the date that Respondent's first check to Aetna cleared the Royal account), the balance in the Royal account fell below $14,965.84 (the minimum amount of the lien and therefore the minimum amount of funds that Respondent was required to hold in trust) on five occasions from January 16 to January 25, 1996; March 15 to March 24, 1996; March 29 to March 30, 1996; May 2 to May 14, 1996; and June 10 to June 18, 1996. The shortfall initially occurred or increased on 16 separate dates.

33. During those five time frames, the end-of-the-day balance in the Royal account ranged from a high of $14,721.39 (3/29/96) to a negative balance of $2,992.39 (6/12/96).

34. During the first four time frames, Respondent did not have sufficient funds in the Royal account to cover the *Banner* Medicare entrustment because Respondent

made transfers of funds from the Royal account and wrote distribution checks in other client matters.

35. Respondent knowingly and intentionally converted funds belonging to Aetna.

36. In or around May 1997, the Medicare lien interest was transferred from Aetna to Mutual of Omaha Insurance Company ("Mutual").

37. By letter dated June 3, 1997, Clari Endrise of Mutual, *inter alia,* informed Respondent that Aetna no longer participated in the Medicare program, that Mutual was now handling the *Banner* matter, and that all future checks were to be made payable to Mutual.

38. As of the date of the hearing, Respondent had not made any payments to Mutual in satisfaction of the lien balance. He is currently holding money in his escrow account to cover the outstanding lien.

39. From August 8, 1995 (Royal account opened) to March 25, 1997, nearly a 20-month period, Respondent misappropriated from the Royal account fiduciary funds belonging to clients and third parties.

40. Over that 20-month period, the end-of-the-day balance in the Royal account was repeatedly "out of trust" in amounts ranging from $1,298.76 to $89.029.69.

a. The Royal account was "out of trust" for extensive periods of time, including from August 8 to September 11, 1995, and from October 26, 1995 to June 14, 1996.

b. From November 29, 1995 to January 25, 1996, no deposits were made to the Royal account, yet Respondent, *inter alia,* issued four checks made payable to himself in the combined amount of $11,300.00 and transferred funds, in the combined amount of $29,000.00 on 8 occasions; the account balance was reduced form $68,442.40 to $9,485.38, and the fiduciary deficit increased from $11,304.95 (11/29/95) to $43,169.95 (1/25/96).

c. From April 16, 1996 to May 7, 1996, no deposits were made to the Royal account, yet Respondent, *inter alia,* transferred funds, in the combined amount of $21,000.00, on 7 occasions; the account balance was reduced from $51,318.45 to $7,544.95, and the fiduciary deficit increased from $41,524.69 to $65,430.96.

d. The fiduciary deficit of $64,266.69 on June 4, 1996 was erased only after Respondent, on or about June 5, 1996, deposited two settlement checks, in the amount of $150,000.00 and $5,000.00, respectively, in an unrelated client matter (Fran Lerardi), although those checks were returned because of missing endorsements but later redeposited, with the funds being credited to the Royal account on June 19, 1996.

e. Thereafter, the Royal account fell "out of trust" on two occasions, from February 25 to February 26, 1997, and from March 21 to March 27, 1997.

f. On March 21, 1997, the Royal account was "out of trust" by $10,028.76.

41. Respondent knowingly and intentionally converted fiduciary funds, and some of those funds were converted to Respondent's own use.

42. Respondent commingled in the Royal account personal funds with funds belonging to clients, as follows:

a. On September 8, 1995, check no. 1000 made payable to S.H.T.C.A. in the amount of $1,833.00, and referenced in Respondent's ledger as "child care," cleared the account:

b. On January 1, 1996, check no. 1072 made payable to Florence Cairns for "Christmas gift" in the amount of $100.00 cleared the account;

c. On June 24, 1996, a referral fee in the amount of $1,200.00 was deposited into the account;

d. On June 25, 1996, an insurance company check made payable to Respondent only in the amount of $33,000.00 was deposited in the account;

e. On May 30, 1997, a Thomas Jefferson University Hospital check in the amount of $10,000.00, made payable to Respondent only, was deposited into the account; and,

f. On August 1, 1997, an insurance company check in the amount of $11,274 made payable to Respondent only, representing "costs and fees", was deposited into the account.

CHARGE II: THE PETERSON MATTER

43. Prior to March 21, 2000, Dwight Thomas Peterson, Esquire, had been representing Dymitr and Antonia Zeljazkow ("the Zeljazkows") in an uninsured motorist claim with Progressive Insurance Company ("Progressive"), Progressive claim # 981357708, resulting from an accident on March 27, 1998.

44. On or about March 21, 2000, Respondent called Mr. Peterson and informed him that the Zeljazkows had terminated his representation and that Respondent was now their new attorney.

45. Shortly thereafter, Respondent and Mr. Peterson signed a fee agreement in which Respondent agreed:

a. to pay to Mr. Peterson fifty (50%) percent of the attorney's fees earned by Respondent through settlement or arbitration; and,

b. to reimburse Mr. Peterson for his past expenses which were "in excess of Eight Thousand ($8,000.00) Dollars, upon proof of same."

46. In or around August 2000, the Zeljazkows' case settled for approximately $53,000.00.

47. On or about August 11, 2000, Respondent deposited the Zeljazkows' funds into the Royal account.

48. By letter to Respondent dated September 8, 2000, Mr. Peterson:

a. enclosed a summary of the costs that he had incurred in the matter;

b. listed the costs which he had already paid and attached copies of the corresponding check stubs;

c. enclosed copies of the invoices that had not yet been paid; and,

d. asked Respondent to forward a check to his office for fifty (50%) percent of Respondent's attorney's fee received from the case, plus $6,900.53, which represented the total amount of costs and expenses which Mr. Peterson had incurred while representing the Zeljazkows.

49. Respondent failed to respond to Mr. Peterson's letter, or to forward payment to Mr. Peterson in accordance with the fee agreement.

50. During a telephone call on or about September 19, 2000, Respondent told Mr. Peterson that Mr. Peterson's assistant could pick up the check for the money owed at 3:00 p.m. that day at Respondent's office.

51. Respondent failed to have the check available on that date.

52. By facsimile to Mr. Peterson dated September 20, 2000, Respondent stated, "You'll have your check w/in 30 days."

53. By check number 1718, dated November 29, 2000, drawn on the Royal account in the amount of $13,209.40, and made payable to Mr. Peterson, Respondent forwarded the funds Mr. Peterson was entitled to receive under the fee agreement.

54. On numerous occasions between August, 2000 and November 29, 2000, the balance in the Royal account fell below $13,209.40, and it had a negative balance at various times.

55. From May 17, 2000 to December 5, 2000, Respondent misappropriated from the Royal account fiduciary funds belonging to clients and third parties.

56. Over that six and one-half month period, the end-of-the-day balance in the Royal account was repeatedly "out of trust" in amounts ranging from $506.87 to $19,888.90.

57. Respondent knowingly and intentionally converted fiduciary funds.

58. Respondent commingled his funds with those of his clients and third parties, in that:

a. on several occasions Respondent deposited his payroll check from John F. Kennedy Memorial Hospital into his escrow account;

b. on several occasions Respondent deposited his "referral fee" income into his escrow account;

c. on or about November 21, 2000, Respondent deposited into his escrow account a check in the amount $11,070.00 from Mark Richardson, Esquire, which was labeled "loan" ;

d. on or about November 29, 2000, Respondent deposited into his escrow account a check in the amount $1,000.00 from Mr. Richardson, which was labeled "loan"; and,

e. on one occasion, Respondent deposited Mr. Richardson's payroll check from John F. Kennedy Memorial Hospital into his escrow account.

59. The loan from Mr. Richardson in the amount of $11,070.00, which was deposited on November 21, 2000, caused Respondent's escrow account to go "back into trust" with regard to the Peterson funds. On November 29, 2000, Respondent forwarded check #1718 to Mr. Peterson.

60. Respondent paid Mr. Peterson the funds that were due and owing to him after November 3, 2000, the date that Respondent was put on notice of the allegations in Petitioner's DB-7 letter. (N.T. 39)

61. Respondent knowingly and intentionally transferred fiduciary funds from his escrow account to his operating account to cover overdrafts in his operating account.

ADDITIONAL FINDINGS

62. Respondent introduced the testimony of his accountant and bookkeeper, numerous character witnesses, and his therapist, Robert Tanenbaum, Ph.D.

63. Byron Drayton, a certified public accountant, was retained by Respondent to review financial records and to act as Respondent's accountant.

64. Mr. Drayton made recommendations to Respondent regarding the organization of his accounting practices and banking accounts. Respondent has followed these recommendations.

65. Mr. Drayton currently oversees the financial and accounting aspects of Respondent's law offices, and comes in once or twice per month to review Respondent's records.

66. Mark Richardson is an attorney licensed to practice law in Pennsylvania. He is also an accountant.

67. Mr. Richardson has referred personal injury and criminal law matters to Respondent in the past, which matters were handled by Respondent in a proper fashion.

68. In 2001, Mr. Richardson began assisting Respondent in organizing his financial records.

69. Mr. Richardson described Respondent's excellent reputation in the community as a truthful and honest person and as a practicing lawyer.

70. In addition to the above witnesses, five character witnesses testified as to Respondent's excellent reputation in the community for truthfulness and honesty. Two of these witnesses, Mark Perry and Mark Schaffer, are practicing lawyers in Pennsylvania and have known Respondent for a number of years. Carl Graham is a former client of

Respondent who is currently employed by Respondent as a part-time bookkeeper. He was satisfied with Respondent's representation and found him to be an honest and truthful person. Vicky Richards is a former client and also found Respondent to be an excellent lawyer and truthful person. Percell Booth, a long-time friend of Respondent, described his reputation in the community as excellent, both as a practicing attorney and as a member of the community.

71. Dr. Robert Tanenbaum is a licensed clinical psychologist and met with Respondent during the time period of 1994 through 1996, the period of Respondent's custody litigation. Dr. Tanenbaum also evaluated Respondent in December 2001 and January 2002 for the purpose of preparing a report for this proceeding.

72. Respondent was under considerable stress during that time frame due to the uncertainty of the custody situation involving his daughter and the conduct of his former girlfriend.

73. Respondent's stress affected his ability to concentrate, organize and deal with paperwork.

74. Dr. Tanenbaum did not make a causal link between Respondent's misconduct and the stress he endured due to his custody litigation.

75. Respondent's escrow account is currently being maintained pursuant to Rule of Professional Conduct 1.15.

76. Since Respondent's account has been audited, to his knowledge all clients have been paid whatever monies have been due and owing, and all medical providers have been paid monies that are due and owing.

77. Respondent admitted that he had violated his responsibilities by not properly supervising his escrow account or having the proper people to handle his escrow account during the time period from 1995 through the year 2000.

78. Respondent now understands that personal bills cannot be paid out of an escrow account, and that referral fees should be held in his escrow account until distributed.

79. Respondent is embarrassed and humiliated by his conduct. Respondent has demonstrated remorse.

80. Respondent has no prior record of discipline.

III. CONCLUSIONS OF LAW

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

1. 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.

2. 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 of the client or third person, shall promptly render a full accounting regarding such property.

3. 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 Disciplinary Board on a Petition for Discipline charging Respondent with improper handling of his escrow account. Petitioner has the burden of proving ethical misconduct by evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Petitioner's evidence, consisting of joint stipulations of fact and law, exhibits, testimony of ODC Investigator Diane Calabrese, and testimony of Dwight Peterson, Esquire, proved that Respondent violated the Rules of Professional Conduct.

Respondent commingled funds in violation of RPC 1.15(a) by depositing his personal funds in his escrow accounts. Respondent admitted he failed to separate his funds from those of his clients and third parties. He further allowed the balances in his escrow accounts to fall below the amount of funds entrusted to him on behalf of Aetna, Attorney Peterson, and other clients and third parties. Respondent converted trust funds

and failed to promptly distribute funds to Aetna (and later Mutual of Omaha) and Attorney Peterson, thereby violating RPC 1.15(b).

Respondent's conversion of entrusted funds violated RPC 8.4(c), as his misappropriation of funds was knowing and intentional. The evidence demonstrates that the misappropriation occurred over lengthy periods of time and the frequency and amounts of the shortfalls were significant, varying in amounts ranging from $1,298.76 to $89,029.69 on 94 occasions between January 1995 and September 1997. From May 2000 to December 2000, the account was out of trust on 66 occasions in amounts ranging from $506.87 to $19,888.90. Respondent did admit that when he transferred funds out of the escrow account to his operating account to cover overdrafts, he knew that these transfers would cause his account to fall out of trust.

Respondent introduced evidence of Dr. Robert Tanenbaum, a licensed psychologist. Dr. Tanenbaum met with Respondent in 1994 for the purpose of determining custody of Respondent's minor child. Respondent saw Dr. Tanenbaum on four occasions during the custody dispute, with the last contact occurring in 1996. In December 2001 and January 2002, Dr. Tanenbaum evaluated Respondent for the purpose of producing a report for this disciplinary proceeding. Dr. Tanenbaum indicated that Respondent experienced stress at the time of the custody litigation in the mid-1990's, but this stress had abated by the end of 2001. Dr. Tanenbaum did not diagnose Respondent with a specific disorder, nor did he find a causal connection between a specific disorder and the misconduct. While Dr. Tanenbaum's testimony does not rise to the level required by Office of Disciplinary Counsel

v. Braun, 553 A.2d 894 (Pa. 1989), this testimony provides some background and context for the stress and turmoil Respondent was undergoing at the time, and why he may have been preoccupied with his personal life.

Although there is no per se rule for discipline in cases involving the mishandling of client funds, in determining the appropriate level of discipline, the Supreme Court of Pennsylvania will consider applicable precedents, "being mindful of the need for consistency in the results reached in disciplinary cases so that similar misconduct is not punished in radically different ways." Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983). Prior cases suggest that a range of public discipline has been imposed in misappropriation cases and the specific disciplinary action taken is fact-driven.

The Hearing Committee in this matter has recommended a suspension of eight months, followed by probation of two years and a practice monitor. The Committee was persuaded that certain events in Respondent's life, namely the custody battle for his daughter, provided some explanation for his dereliction of duties as regards his escrow account. The Committee was further impressed by the quality of the character testimony concerning his good reputation in the community, Respondent's lack of prior discipline in a legal practice spanning nearly twenty years, and his willingness to get his affairs in order with the help of an accountant and a fellow lawyer. The Committee was persuaded that Respondent was unlikely to repeat his errors in the future, and recommended probation with a practice monitor to ensure that Respondent stays on the right course.

Careful review of the record indicates that the reasons supporting the Committee's recommendation are sound. An important piece of information in the Board's review of this matter is that Respondent has recognized his wrongdoing and is fully aware of the concrete steps he must take to avoid misconduct in the future. Respondent voluntarily sought advice and services from fellow professionals to address his financial organization and his bank accounts. Respondent's cognizance of his own problems is crucial to his ability to practice law in an ethical manner in the future.

A fair reading of the record indicates that Respondent was a competent lawyer who enjoyed a good reputation for handling cases, but who was not paying attention to the details in his office. He has since remedied this situation. The Board recommends a ten month suspension as appropriate and further recommends that Respondent be placed on probation for a period of three years with a certified public accountant monitor. This sanction takes into consideration the seriousness of the offense yet is appropriate to protect the courts and the public from unfit attorneys.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Jonathan M. Levin, be suspended from the practice of law for a period of ten months, followed by three years probation, subject to the following conditions:

1. During the term of the suspension, Respondent shall pay the balance of the Medicare lien to Mutual of Omaha Insurance.

2. An independent certified public accountant shall be appointed by the Board to serve as a practice monitor.

3. The Board-appointed CPA shall be paid by Respondent.

4. The CPA monitor shall do the following during the period of Respondent's probation:

    a. Review Respondent's financial records, at least monthly, to ensure that no unauthorized transfers have taken place, that Respondent's escrow account is not out of trust, and that Respondent is in compliance with RPC 1.15;

    b. File quarterly written reports, on a Board approved form, with the Executive Director and Secretary of the Board; and,

    c. Shall immediately report to the Executive Director & Secretary of the Board any violation by the Respondent of the terms and conditions of probation.

It is further recommended that all 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:_____
Louis N. Teti, Member

Date: October 22, 2003

Board Members Cunningham, Rudnitsky and Watkins dissented and would recommend a one year and one day suspension.

Board Members Stewart and Peck dissented and would recommend a two year suspension.

Board Member Saidis dissented and would recommend a three year suspension.

Board Member Sheerer did not participate in the May 14, 2003 adjudication.

PER CURIAM:

AND NOW, this 18th day of February, 2004, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 22, 2003, the Petition for Review and response thereto, the request for a briefing schedule and oral argument is denied; and it is hereby

ORDERED that Jonathan M. Levin be and he is suspended from the Bar of this Commonwealth for a period of two years, 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.

Mr. Justice Nigro did not participate in this matter.