

J-8-2021
IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2626 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 112 DB 2019
	:	Attorney Registration No. 47805
	:	
v.	:	(Fayette County)
	:	
DONALD B. MOREMAN,	:	
	:	ARGUED: March 10, 2021
Respondent	:	

ORDER

PER CURIAM

DECIDED: MARCH 18, 2021

Upon consideration of the Report and Recommendations of the Disciplinary Board and following oral argument, Donald B. Moreman is disbarred from the Bar of this Commonwealth and he shall comply with the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

Judgment Entered 03/18/2021


DEPUTY PROTHONOTARY

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 112 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Registration No. 47805
	:	
DONALD B. MOREMAN	:	
Respondent	:	(Fayette 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

By Petition for Discipline filed on August 14, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent with professional misconduct based on his criminal conviction in the Court of Common Pleas of Fayette County for forgery, theft by deception, and theft by unlawful taking. Respondent filed a response to Petition on September 9, 2019.

Following a prehearing conference on October 11, 2019, a District IV Hearing Committee ("Committee") conducted a disciplinary hearing on November 12,

2019. Petitioner introduced seven exhibits. Respondent appeared pro se, introduced eleven exhibits, and testified on his own behalf.

Petitioner filed a Brief to the Committee on January 6, 2020, and recommended that Respondent be disbarred. Respondent filed a Brief to the Committee on January 30, 2020, and recommended that he receive a public reprimand or in the alternative, a suspension for one year from the effective date of the temporary suspension.

By Report filed on April 17, 2020, the Committee recommended that Respondent be disbarred as a result of his criminal conviction.

Respondent filed a Brief on Exceptions on May 8, 2020, and requested that the Board reject the Committee's recommendation and impose a public reprimand or recommend to the Supreme Court that he be suspended for one year from the effective date of his temporary suspension.

Petitioner did not take exception to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting held on July 23, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is vested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 rules.

2. Respondent is Donald B. Moreman, born in 1960 and admitted to practice law in the Commonwealth in 1986. Respondent's attorney registration mailing address is 440 Englishman Hill Rd., Connellsville PA 15425.

3. Respondent has no history of discipline.

4. By Order of the Supreme Court of Pennsylvania dated July 30, 2019, effective August 29, 2019, Respondent was placed on temporary suspension from the practice of law, pursuant to Rule 214(d)(2), Pa.R.D.E. Petitioner's Exhibit ("PE") 1.

5. At all times relevant, Respondent was the treasurer for the Pleasant Valley Masonic Hall Association. Petition for Discipline ("PD") 4; Respondent's Answer ("RA") 4; N.T. 11, 13.

6. Respondent and two other officers, Kenneth Brooks and Warren Vail, were jointly responsible for disbursements from Pleasant Valley's checking account at Scottdale Bank & Trust Company. RA 5.

7. Respondent's signature and the signatures of Mr. Brooks and Mr. Vail were required on all checks drawn on Pleasant Valley's checking account. PD 6; RA 6; PE 7.

8. From about June 7, 2017 through August 10, 2018, Respondent forged the signatures of Mr. Brooks and Mr. Vail on seventy-five checks drawn on Pleasant Valley's checking account, and thereby obtained for his own benefit the use of \$30,156.19 belonging to Pleasant Valley. PE 2; PE 7-8.

9. From June 26, 2017 through September 23, 2018, on eight occasions, Respondent made unauthorized disbursements from Pleasant Valley's checking account and savings account in the amount of \$19,594.99 for his own benefit. PE 2; PE 7-8.

10. Respondent illegally obtained a total of \$49,594.99 from Pleasant Valley's bank accounts for his own use and benefit. PE 2; PE 6; PE 7.

11. On January 24, 2019, a criminal information was filed against Respondent in the Court of Common Pleas of Fayette County, charging him with seventy-five counts of Forgery, in violation of 18 Pa.C.S.A. § 4101(A)(2); four counts of Theft by Deception, in violation of 18 Pa.C.S.A. § 3922(A)(1); and four counts of Theft by Unlawful Taking, in violation of 18 Pa.C.S.A. § 3921(A)(1). This matter was filed at Docket No. CP-26-CR-0000127-2019. PE 2.

12. On April 8, 2019, Respondent entered a plea of guilty to seventy-five counts of Forgery, four counts of Theft by Deception, and four counts of Theft by Unlawful Taking. PE 4; PE 5; PE 6; PE 7.

13. The seventy-five counts of Forgery were felonies of the second degree, each punishable by imprisonment of up to ten years. PE 2.

14. The eight counts of theft were felonies of the third degree, each punishable by imprisonment of up to seven years. PE 2.

15. On April 8, 2019, Respondent was sentenced to serve thirty-six months of Intermediate Punishment, with 545 days to be served on house arrest with electronic monitoring, restitution of \$49,594.99, and courts costs and fees. PE 5; PE 6; PE 7.

16. Prior to Respondent's guilty plea, he paid the required restitution in full. N.T. 39. Respondent currently is serving the balance of his criminal sentence. N.T. 22.

17. Respondent testified at the disciplinary hearing that he entered a plea of guilty to the charges and agreed that the plea was a violation of the ethical rules and that he engaged in misconduct. N.T. 14, 26-27, 31. He further testified that he takes full responsibility for his misconduct, has been subject to shame, has been the subject of media coverage, and has had "clients running away in droves." N.T. 21.

18. Respondent qualified this testimony by also testifying. "I freely admit that I engaged in misconduct; however, the misconduct was not as it would appear." N.T. 14.

19. Respondent referred to the amount he improperly took and to which he entered a plea of guilty as "the amount which is claimed, the \$49,500," rather than state that he improperly took \$49,594.99. N.T. 16.

20. Respondent further diluted the veracity of his acceptance of responsibility and remorse by explaining that he entered a plea of guilty for a variety of reasons, including that he wanted to avoid jail time and the district attorney "threatened" to remove that option (N.T. 18, 20); he was hopeful to receive a "slap on the wrist" but the district attorney was running for re-election and wanted to make an example of

Respondent as an attorney (N.T. 23-24, 39); and Respondent believed the court made examples of defendants who were professionals. N.T. 37.

21. In explanation of his criminal actions, Respondent claimed that there were occasions when he had to use his own funds, through his credit card, to buy items necessary for the functioning of Pleasant Valley, and when he paid himself back using Pleasant Valley's funds, it was "deemed to be theft." N.T. 26. Respondent claims that he "did not do something which was premeditated in an effort to take something that wasn't mine." N.T. 27, 30.

22. In response to the Committee's question as to why he did not raise this as a defense in his underlying criminal matter, Respondent testified that his attorney in that matter advised him not to. N.T. 30-31, 48.

23. When asked by the Committee if his position on the day of the disciplinary hearing was that the \$49,594.99 he took was used for the operation of Pleasant Valley, Respondent answered "Yes." N.T. 28. Respondent further testified that he paid off his credit card that he used to buy items for Pleasant Valley. N.T. 29.

24. When asked by the Committee if it was his position that the restitution he paid to Pleasant Valley created a windfall for that organization, Respondent answered, "Yes, it did." N.T. 44.

25. Respondent's testimony that he is remorseful and accepts responsibility for his actions is not credible.

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) – Conviction of a crime shall be grounds for discipline.

IV. DISCUSSION

In this matter, the Board considers the Committee's recommendation to disbar Respondent for his violation of Rule 203(b)(1), Pa.R.D.E., based on Respondent's criminal conviction of a total of eighty-three counts of forgery, theft by deception, and theft by unlawful taking in the Court of Common Pleas of Fayette County on April 8, 2019. Respondent's conviction is conclusive evidence of his commission of a crime, and incontrovertible evidence of his professional misconduct. ***Office of Disciplinary Counsel v. Harold E. Casety, Jr.***, 512 A.2d 607, 609 (Pa. 1986). Further, Respondent by his Answer to the Petition for Discipline and testimony at the disciplinary hearing acknowledged and admitted that his criminal conviction violated the rules. Respondent challenges the Committee's disbarment recommendation and contends that a lesser sanction is warranted by the facts and circumstances of this matter.

As there is no dispute that Respondent committed a crime and is subject to discipline, the Board's task is to determine the appropriate level of discipline, bearing in mind that the recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating, ***Office of Disciplinary Counsel v. Joshua Eilberg***, 441 A.2d 1193, 1195 (Pa. 1982), and to "examine the

underlying facts involved in the criminal charge to weigh the impact of the conviction upon the measure of discipline.” ***Office of Disciplinary Counsel v. Frank Troback***, 383 A.2d 952, 953 (Pa. 1978). Despite the fact-intensive nature of the endeavor, consistency is required so that similar misconduct “is not punished in radically different ways.” ***Office of Disciplinary Counsel v. Robert S. Lucarini***, 472 A.2d 186, 190 (Pa. 1983). Upon review of the totality of the circumstances in this matter, we conclude that disbarment is warranted.

The record establishes that Respondent was one of three individuals whose signature was required on checks drawn on a checking account maintained by the Pleasant Valley Masonic Hall Association, of which he was the treasurer. Over a period of approximately fourteen months, Respondent forged seventy-five (75) checks drawn on that account. Respondent also made eight improper transfers and withdrawals of funds from Pleasant Valley’s checking and savings accounts. By his illegal, criminal conduct, Respondent obtained \$49,594.99 for his personal use. Respondent entered a guilty plea to the seventy-five counts of forgery and the eight counts of theft. Each of the forgery counts was a felony of the second degree, punishable by a maximum incarceration of up to ten years. Each of the theft counts was a felony of the third degree, punishable by a maximum incarceration of up to seven years. For his crimes, Respondent was sentenced to thirty-six months of Intermediate Punishment, which included 545 days to be served on electronic monitoring. Respondent was further sentenced to restitution of \$49,594.99 to Pleasant Valley. Respondent made full restitution following his preliminary hearing when the charges were held for court. At the time of the hearing, Respondent was serving the balance of his sentence.

Respondent urges this Board to consider his mitigating circumstances, which he contends support a disciplinary sanction less than the disbarment recommended by the Committee. In advocating for a lesser sanction than disbarment, Respondent asserts that (1) he only entered into the guilty plea to avoid incarceration; (2) he made restitution to Pleasant Valley; (3) he is remorseful; (4) he has evidence of good character in the community; (5) he has no history of prior discipline; and (6) his conduct was an isolated event.

Upon our review, the circumstances related to Respondent's guilty plea do not warrant consideration as mitigating factors. Respondent made clear that he blames various factors for his decision to enter a guilty plea, including the district attorney "threatening" to remove the intermediate punishment of no jail time, his fear he would be held as an example by a district attorney in an election year, and his status as an attorney and the court's treatment of professional defendants. These factors may well have informed Respondent's decision to enter a guilty plea; they do not provide a basis for this Board to reduce Respondent's disciplinary sanction. Rather, Respondent's testimony underscores that despite his guilty plea, he does not accept responsibility for his criminal activities.

Contrary to Respondent's assertions that he accepted responsibility for his criminal actions and is remorseful, the record establishes that he attempted to disclaim responsibility for his criminal conduct. Although Respondent stated on the record that he was remorseful, describing his shame and loss of clients, his credibility on these points is diluted by testimony that revealed Respondent's position as that of an injured party, who used Pleasant Valley's monies to reimburse his own funds that he claimed he spent on necessities for the organization, and who views his reimbursement of monies to Pleasant

Valley as a “windfall” to that organization. When asked why he did not raise this defense against the criminal charges, Respondent claimed “My attorney advised not to.” N.T. 31. Respondent made excuses and rationalizations for his actions. Never once on the record did Respondent unequivocally own up to his misconduct. As the Committee trenchantly observed, Respondent’s offered mitigation as to his responsibility and remorse in actuality constitutes aggravation of discipline, due to his attempts to diminish his culpability.

Respondent’s argument on restitution likewise must fail. While the record demonstrates that Respondent made Pleasant Valley whole, restitution was made in Respondent’s own self-interest after he was charged with multiple counts of forgery and theft and said charges were held for court at his preliminary hearing. Respondent admitted that he made restitution “just to make it go away...because up until that time I was hopeful that if there was a full restitution, maybe a slap on the wrist, maybe asked to resign from the group...and we can move forward.” N.T. 39. The fact that Respondent made restitution would be more compelling in mitigation had Respondent’s act of doing so been of his own volition at some earlier point in time. And, as emphasized above, Respondent views Pleasant Valley as not being entitled to the restitution, thereby negating any possible interpretation of restitution being made in good faith because it was properly owed.

Respondent’s argument that his good character in the community must mitigate his disciplinary sanction is meritless, as he offered neither the testimony nor the written statement of any member of his community, client or otherwise, to demonstrate that he is a person of good character. Respondent’s own statements that clients supported him through his criminal and disciplinary processes are self-serving and not compelling. It

must be noted that Respondent also testified that his clients were “running away in droves” following news of his criminal conduct.

We also reject Respondent’s position that his criminal conduct was a one-time occurrence. Respondent’s eighty-three counts of criminal activity over a period of fourteen months compel a different conclusion, as an event cannot be considered isolated if it occurs scores of times. Rather, we conclude Respondent’s conduct was a pattern of repeated misconduct to misappropriate funds from Pleasant Valley for over a year.

Respondent has practiced law in Pennsylvania for three decades without discipline. This lack of disciplinary history is properly considered in mitigation when determining the appropriate discipline to be imposed. However, we conclude that this evidence cannot overcome the egregious circumstances of this matter and does not sway the Board’s conclusion that disbarment is warranted. ***Office of Disciplinary Counsel v. Jonathan F. Altman***, 228 A.3d 508 (Pa. 2020).

In aggravation, we find that Respondent lacked credibility and failed to demonstrate remorse and acceptance of responsibility for his repeated criminal activities. Despite his attempts to have the Committee and this Board reinterpret the circumstances of his misconduct and his guilty plea, Respondent’s criminal conviction is conclusive and he cannot revisit the underlying facts to produce a more palatable version of his egregious behavior.

While there is no *per se* discipline in Pennsylvania, the Court has disbarred attorneys for the theft of entrusted funds and forgery. See ***Office of Disciplinary Counsel v. Peter Quigley***, 161 A.3d 800 (Pa. 2017); ***Office of Disciplinary Counsel v. Robert Monsour***, 701 A.2d 556 (Pa. 1997); ***Office of Disciplinary Counsel v. James Knepp***, 441 A.2d 1197 (Pa. 1982).

In ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872 (Pa. 1986), the attorney in the course of representing an estate, forged the endorsement of a beneficiary of the estate on an \$8,165.93 check drawn on the estate account. Keller then deposited the check into his trust account and converted the funds to his own use. For that conduct, and the misappropriation of an additional \$10,400 entrusted to him in another matter, the Court disbarred Keller.

In the recent matter of ***Office of Disciplinary Counsel v. Anthony S. Rachuba, IV***, 45 DB 2019 (D. Bd. Rpt. 3/10/2020) (S. Ct. Order 6/3/2020), the Court disbarred Rachuba for misappropriating entrusted funds from an estate on four occasions through forgery of the executor's signature on checks and engaging in a series of deceptive acts to hide his misconduct. The Board found that Rachuba's theft and his attempts to hide his actions established "Respondent's wholesale rejection of his duties to the profession" and warranted the most severe level of discipline. Bd. Rpt. at p. 23. Rachuba failed to appear for his disciplinary hearing, which constituted an aggravating factor and further supported Rachuba's disbarment. Here, such aggravating factor is not at issue because Respondent appeared for his hearing. However, Respondent's testimony on his own behalf does not impel us to recommend a sanction other than disbarment, as he failed to forthrightly acknowledge his misconduct.

As disbarment is the most severe form of disciplinary sanction, the Board recognizes its responsibility to exercise caution and recommend disbarment only in the most egregious matters. ***Matter of Leopold***, 366 A.2d 227, 231 (Pa. 1976). Respondent's seventy-five separate acts of forgery and eight separate acts of theft, by which he stole \$49,594.99, and his attempts to avoid rather than accept responsibility warrant imposition of the most severe sanction.

The primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct. ***Office of Disciplinary Counsel v. Akim Czmus***, 889 A.2d 1197 (Pa. 2005). Upon the totality of the facts and circumstances of this particular matter, and guided by decisional law, the Board concludes that disbarment fulfills the purpose of the disciplinary system.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Donald B. Moreman, be Disbarred from the practice of law in this Commonwealth.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Celeste L. Dee, Member

Date: 7/31/2020