

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2112 Disciplinary Docket No. 3
Petitioner :
v. : No. 115 DB 2013
: Attorney Registration No. 1818
HOPKIN T. ROWLANDS, JR., :
Respondent : (Luzerne County)

ORDER

PER CURIAM:

AND NOW, this 30th day of January, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 21, 2014, the Petition for Review and responses thereto, it is hereby

ORDERED that Hopkin T. Rowlands, Jr., is suspended from the Bar of this Commonwealth for a period of one year and one day 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.

The Motion to Reopen the Record is DENIED.

A True Copy Patricia Nicola
As Of 1/30/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 115 DB 2013
Petitioner	:	
	:	
v.	:	Attorney Registration No. 1818
	:	
HOPKIN T. ROWLANDS, JR.	:	
Respondent	:	(Luzerne 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 20, 2013, Office of Disciplinary Counsel charged Hopkin T. Rowlands, Jr., with violations of Rules of Professional Conduct 1.5(a)(2), 1.7(a)(2), 1.8(a), 1.15(b), 1.15(e), 1.16(b)(1), 1.16(d), 8.4(b) and 8.4(c). Respondent filed an Answer to Petition for Discipline on September 24, 2013.

A disciplinary hearing was held on December 6, 2013, before a District III Hearing Committee comprised of Chair Stephen Jennings, Esquire, and Members Barbara A. Zemlock, Esquire, and Timothy P. Polishan, Esquire. Respondent appeared *pro se*.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 9, 2014, concluding that Respondent violated Rules of Professional Conduct 1.8(a) and 8.4(c) and recommending that he be suspended for a period of one year and one day.

Respondent filed a Brief on Exceptions on May 5, 2014.

Petitioner filed a Brief Opposing Exceptions on May 19, 2014.

This matter was adjudicated by the Disciplinary Board at the meeting on July 26, 2014.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, 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 said Rules of Disciplinary Enforcement.

2. Respondent is Hopkin T. Rowlands, Jr. He was born in 1938 and was admitted to practice law in the Commonwealth of Pennsylvania in 1963. He maintains his

office for the practice of law at DaVinci Building, 480 North Main Street, Wilkes-Barre, Luzerne County, PA 18705. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no history of professional discipline in Pennsylvania during fifty (50) years of practice.

4. Fern Knoll Cemetery Association ("Fern Knoll") is a non-profit Pennsylvania corporation which owns and operates a cemetery in Dallas, Pennsylvania. (ODC 4; N.T. 10, 12)

5. From 1994 to September 30, 2011, Respondent maintained an attorney-client relationship with Fern Knoll. (ODC 22; N.T. 23-24, 66, 68-69) During the representation, Respondent had sole access to the bank accounts of Fern Knoll.

6. In 2002, Respondent began taking loans from Fern Knoll and this activity continued until 2011. (N.T. 69, 73, 107, 109; ODC 27) The business accounts of Fern Knoll confirm that Respondent took regular, substantial loans. (ODC 23-27; 32-34; 45; N.T. 26, 30)

7. Fern Knoll did not give written consent to the loans. (N.T. 19)

8. Respondent did not give Fern Knoll the advice or opportunity to seek outside counsel to consult regarding the propriety of the loans. (N.T. 70)

9. No written documentation or loan agreements were created for the loans; no collateral was offered or identified; no agreed-upon interest was paid; no repayment plan or any other loan terms were ever agreed upon. (N.T. 18-19; 69-70; 79-80)

10. Respondent began taking loans as early as 2002 and continued his loan-related activity through September 16, 2011. (ODC 27)

11. Respondent resigned from Fern Knoll on September 30, 2011. (ODC 22)

12. Respondent did not demonstrate remorse for his violations of the Rules of Professional Conduct. (N.T. 112)

13. Respondent minimized the gravity of his misconduct and claimed it was the result of "unintentional mistakes." (N.T. 108)

14. Respondent claims that his borrowings from Fern Knoll occurred when the client was "cash rich." (N.T. 108, 109)

15. Respondent portrayed his misconduct as a "fee dispute." (N.T. 21, 23; ODC 6-8, 16-20, 22)

16. Respondent failed to produce any documents he claimed exonerated him and that he claimed were in his sole possession. (N.T. 111 - 113)

17. Respondent explained that he began taking loans from Fern Knoll in 2001 out of "desperation" in connection with financial, personal and insurance problems arising in connection with his wife's multiple sclerosis and stroke, the complications of which led to her death in 2001. (N.T. 105, 106)

III. CONCLUSIONS OF LAW

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

a. RPC 1.8(a) – A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent in a writing signed by the client to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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

IV. DISCUSSION

Respondent has been charged with violations of the Rules of Professional Conduct arising from his activities during his representation of Fern Knoll Cemetery Association for a period of years. Evidence included live testimony, videotaped deposition testimony, and numerous exhibits. We conclude that Respondent violated Rules of Professional Conduct 1.8(a) and 8.4(c), based on the clear and satisfactory evidence presented by Petitioner. Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (Pa. 1994)

Respondent violated RPC 1.8(a) by taking undocumented loans from his client, Fern Knoll, without obtaining written informed consent from the client or advising the client to seek the advice of independent legal counsel. Respondent admits that he took the loans, and the business records of Fern Knoll confirm his regular, substantial loans. No documents were presented to indicate that the terms of the loans were fair and reasonable, that there was any interest rate to be paid, that there was any collateral pledged by Respondent for the loans, or that there was any due date for any of the loans. In essence, Respondent used the bank accounts of Fern Knoll as his personal bank, helping himself to cash whenever he felt the need and doing so in whatever amounts he deemed appropriate to his needs.

Respondent's unauthorized loans constituted misappropriation, which has been described as "any unauthorized use of a client's funds...including...unauthorized temporary use of client funds for the lawyer's own purposes, whether or not he derives any personal gain or benefit therefrom." Office of Disciplinary Counsel v. Patricia Renfro, 122 DB 2004 (Pa. 2005). Respondent's misappropriation forms the basis of his violation of RPC 8.4(c), as it involved dishonesty, fraud, deceit and misrepresentation, by the writing of numerous loan checks that were not properly documented or authorized, from the Fern Knoll bank account.

The Board has previously addressed the issue of misappropriation of funds in the form of purported loans from client to lawyer. In Office of Disciplinary Counsel v. Mary Ellen Tomasco, 111 DB 2004 (Pa. 2006), Ms. Tomasco had taken control of her 82-year-old client's finances through a power of attorney. She controlled the client's checkbooks. As the Power of Attorney, Ms. Tomasco had a check in the amount of \$275,000 drawn from the client's personal account and made out to herself. Ms. Tomasco then used those

funds to purchase real property in her own name and for her own benefit. Ms. Tomasco did not obtain the services of independent counsel, did not record any documents in favor of her client, and the client did not receive any benefit as a result of the "loan." The Board found Ms. Tomasco in violation of RPC 1.8(a), among others. In both the instant case and the cited case, the attorney had direct access to the client's funds and no one to look over the attorney's shoulder at any of the transactions. Ms. Tomasco was suspended for a period of one year and one day.

The Board has condemned this type of misconduct in several other matters. See Office of Disciplinary Counsel v. Keith S. Houser, 158 DB 2004 (Pa. 2006); Office of Disciplinary Counsel v. Glenn D. McGogney, 194 DB 2009 (Pa. 2012). All of the cited cases emphasize that the entry into a business transaction with a client, especially involving the borrowing of funds from the client, without following the specific requirements of Rule 1.8(a), is serious misconduct.

Respondent's underlying misconduct is exacerbated by his failure to exhibit remorse for his actions. He claimed, at various points in his testimony, that he acted in "good faith," (N.T. 109-110), his misconduct was the result of "unintentional mistakes," (N.T. 108), and that he borrowed from his client when the client was "cash rich." (N.T. 108-110) The evidence shows that Respondent improperly tried to characterize his misconduct as a "fee dispute." (N.T. 21, 23; ODC 6 -8, 16 - 20, 22) Respondent has not acknowledged any wrongdoing and has never apologized for his professional transgressions.

The Board is cognizant that Respondent has practiced law for more than 50 years with no history of professional discipline. Despite this mitigating factor, Respondent's misconduct is a serious matter which damages the reputation and standing of the bar. It is also troubling that Respondent has not exhibited remorse for his actions and has tried to

offer explanations that are not supported by the facts. We conclude, as did the Hearing Committee, that the public will be best served and protected by a sanction that requires Respondent to petition for readmission and prove his fitness.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Hopkin T. Rowlands, Jr., be Suspended from the practice of law for a period of one year and one day.

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: 
Andrew J. Trevelise, Board Member

Date: October 21, 2014