

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2450 Disciplinary Docket No. 3
: :
Petitioner : No. 162 DB 2016
: :
v. : Attorney Registration No. 14245
: :
FRANCHOT A.S. GOLUB, : (Out of State)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 24th day of April, 2018, upon consideration of the Report and Recommendations of the Disciplinary Board, Franchot A.S. Golub 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 Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 4/24/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 162 DB 2016
Petitioner	:	
	:	
v.	:	Attorney Registration No. 14245
	:	
FRANCHOT A.S. GOLUB	:	
Respondent	:	(Out of State)

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 October 6, 2016, Office of Disciplinary Counsel charged Respondent, Franchot A.S. Golub, with violations of the Rules of Professional Conduct ("RPC"). On January 25, 2017, and March 23, 2017, Petitioner filed Affidavits of Inability to Serve Documents.

On May 2, 2017, a prehearing conference was held, and on June 14, 2017, a disciplinary hearing was held before a District I Hearing Committee. Petitioner presented the testimony of one witness and introduced into evidence Exhibits ODC-1

through ODC-6. Respondent did not appear at the prehearing conference or the disciplinary hearing.

Following the submission of Petitioner's brief, the Hearing Committee filed a Report on October 13, 2017, concluding that Respondent committed ethical misconduct and recommending that he be suspended for a period of one year and one day.

The parties did not take exception to the Hearing Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on January 11, 2018.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Franchot A.S. Golub, born in 1936 and admitted to practice law in the Commonwealth in 1961. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order of September 21, 2015, the Supreme Court placed Respondent on administrative suspension for failure to file the annual fee form and pay the annual attorney registration fee.

4. Respondent has no prior record of discipline.
5. Respondent's last known registered mailing address is 199 Tavistock Lane, Haddonfield, NJ 08033 ("Tavistock Lane address").
6. Respondent's last known office address is 123 S. Broad Street, Suite 2140, Philadelphia, PA 19109 ("Broad Street address").
7. Respondent's other known mailing address is 105 Knollwood Drive, Pine Knoll Shores, NC 28512 ("Knollwood Drive address").
8. On October 6, 2016, Petitioner filed a Petition for Discipline at No. 162 DB 2016, charging Respondent with violations of RPC 1.3, 1.15(e), 1.4(a)(3), 1.4(a)(4), 1.4(b), and 8.4(c), arising out of the allegations set forth below. ODC-6.
9. Under cover of a letter dated October 11, 2016, the Petition for Discipline was forwarded to Respondent via first class and certified mail, return receipt requested, addressed to Respondent at the Tavistock Lane address, the Broad Street address, and the Knollwood Drive address. ODC-2.
10. The regular and certified mailings addressed to the Tavistock Lane address were returned to Petitioner with the notation "MOVED LEFT NO ADDRESS UNABLE TO FORWARD RETURN TO SENDER." ODC-2.
11. The Knollwood Drive address mailings were returned to Petitioner with the notation "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." ODC-2.
12. The Board Street address mailings were returned to Petitioner with no notations on the envelopes. ODC-2.

13. In December 2015, Petitioner's District I Auditor-Investigator visited the Board Street address and discovered that Respondent was no longer at that address and did not leave a forwarding address or telephone contact information. ODC-1.

14. Personal service of the Petition for Discipline was attempted no less than five times at the Knollwood Drive address by the Carteret County Sheriff's Office, located in Beaufort, North Carolina. The Sheriff's office was unsuccessful in its attempts. ODC-3.

15. Petitioner repeatedly attempted to serve the Petition for Discipline personally and via regular and certified mail at every known address of Respondent. ODC-2, ODC-3.

16. Pursuant to Pa.R.D.E. 212, the Petition for Discipline is deemed to be properly served on Respondent via substituted service.

17. Respondent failed to respond to the Petition for Discipline.

18. Pursuant to Pa.R.D.E. 208(b)(3), all factual allegations in the Petition for Discipline are deemed admitted.

19. Respondent received notice of the prehearing conference and disciplinary hearing. ODC-4.

20. Respondent failed to appear at the May 2, 2017 prehearing conference.

21. Respondent failed to appear at the June 14, 2017 disciplinary hearing.

22. In or around October 2014, Evelyn Rivers retained Respondent to represent her for injuries she sustained in a September 2014 slip and fall accident. ODC-6.

23. Respondent failed to provide Ms. Rivers with a written fee agreement explaining the basis or rate of the fee before or within a reasonable time after commencing the representation. ODC-6.

24. In February 2015, Ms. Rivers' matter settled in the amount of \$12,500.00. ODC-6.

25. In or around that time, Respondent advised Ms. Rivers that her share of the settlement proceeds was \$6,000.00. ODC-6.

26. Thereafter, Ms. Rivers gave Respondent permission to endorse her name on the settlement check and requested that Respondent send her share of the settlement proceeds to her. ODC-6.

27. On February 23, 2015, Ms. Rivers executed a release agreement. ODC-6.

28. On or about February 24, 2015, Respondent received the settlement check made payable to "FRANCHOT GOLUB, ESQ, AND EVELYN RIVERS" and addressed to the Knollwood Drive address in the amount of \$12,500.00. ODC-5, ODC-6.

29. On or about March 4, 2015, Respondent endorsed the check on behalf of himself and Ms. Rivers. ODC-6.

30. Respondent cashed the check and received the proceeds. ODC-6.

31. Respondent failed to forward to Ms. Rivers her share of the settlement proceeds. ODC-6.

32. Respondent failed to return Ms. Rivers' subsequent attempts to contact him to inquire about the status of the funds. ODC-6.

33. In March 2015, Ms. Rivers went to Respondent's law office at the Board Street address, at which time she discovered that Respondent was no longer at that address. ODC-6.

34. Thereafter, Ms. Rivers spoke with Respondent, at which time Respondent told her that he was going to send her distribution check to the home of Ms. Rivers' mother. ODC-6.

35. Respondent failed to send a check. ODC-6.

36. Thereafter, Ms. Rivers spoke again with Respondent to inform him that she had to return to Florida, at which time Respondent requested her Florida address, which Ms. Rivers provided to Respondent. ODC-6.

37. Respondent failed to send the check to Ms. Rivers' Florida address.

38. Thereafter, Ms. Rivers' telephoned Respondent on numerous occasions to receive a status update in regard to her settlement proceeds. ODC-6.

39. Respondent failed to return Ms. Rivers' telephone calls. ODC-6.

40. By letter to Respondent dated May 5, 2015, Ms. Rivers, *inter alia*:

a. Stated that she had not received a check in regard to her settlement;

b. Stated that Respondent had not responded to her telephone calls;

c. Requested that Respondent schedule an appointment with her;

d. Requested the opportunity to review the distribution sheet; and

e. Stated that Respondent was no longer at his office. ODC-6.

41. Respondent received Ms. Rivers' letter, but failed to respond or distribute Ms. Rivers' settlement proceeds. ODC-6.

42. Thereafter, Respondent failed to return Ms. Rivers' repeated attempts to contact Respondent by telephone and letter. ODC-6.

43. To date, Respondent has not distributed the settlement proceeds to Ms. Rivers.

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

4. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. RPC 1.5(b) – When the 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.

6. RPC 1.15(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, 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 the property; Provided, however,

that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

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

IV. DISCUSSION

Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. ***Office of Disciplinary Counsel v. Robert Surrick***, 749 A.2d 441, 444 (Pa. 2000). Petitioner met its burden by virtue of the facts pled in the Petition for Discipline, which are deemed admitted pursuant to Pa.R.D.E. 208(b)(3), due to Respondent's failure to file an Answer to Petition. The related exhibits fully support the conclusion that Respondent committed ethical misconduct.

The Petition for Discipline was properly served upon Respondent via substituted service as permitted by Pa.R.D.E. 212. Petitioner's unsuccessful attempts to serve Respondent via regular and certified mail at the addresses provided on Respondent's last registration statement, as well as numerous attempts at personal service at Respondent's last known address in North Carolina demonstrate that Respondent "cannot be located and personally served" with notices required under the Enforcement Rules. Pa.R.D.E. 212. Accordingly, "such notices may be served upon the respondent-attorney by addressing them to the address furnished by the respondent-

attorney in the last registration statement filed by such person in accordance with Enforcement Rule 219(d) (relating to annual registration of attorneys)..." *Id.*

Throughout these proceedings, Respondent did not communicate in any manner with Office of Disciplinary Counsel. Despite proper notice, Respondent did not appear at the prehearing conference or the disciplinary hearing.

In connection with the disciplinary complaint filed against Respondent by Evelyn Rivers, the facts demonstrate that in February 2015, Respondent settled Ms. Rivers' slip and fall matter for \$12,500.00. He took initial steps to discharge his duty to his client by informing Ms. Rivers of her portion of the settlement and having Ms. Rivers execute a release agreement. Ms. Rivers gave permission to Respondent to endorse her name on the settlement check. Respondent received the settlement check in late February 2015, and in March 2015, Respondent endorsed the settlement check, cashed the check and received the proceeds. Thereafter, Respondent failed to distribute Ms. Rivers' portion of the proceeds to her, despite numerous attempts by Ms. Rivers to contact Respondent, including her personal appearance on March 16, 2015, at Respondent's Broad Street office location, at which time Ms. Rivers discovered Respondent was no longer at that address.

Ms. Rivers' further attempts to secure her settlement proceeds were equally fruitless. On two occasions, Respondent misrepresented to Ms. Rivers that he would forward her monies to her at her mother's residence, and thereafter to Ms. Rivers' Florida address. Respondent failed to forward the funds as promised. Respondent also failed to respond to Ms. Rivers' repeated telephone calls and her May 2015 letter, wherein she sought a status update of the settlement funds. At present, Ms. Rivers does not know Respondent's whereabouts and has not received her settlement monies.

After reviewing the recommendations of Petitioner and the Hearing Committee for a suspension of one year and one day, and after reviewing the case precedent and considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, we recommend that Respondent be suspended from the practice of law for a period of one year and one day.

It is well-settled that because attorney discipline is imposed on a case-by-case basis, the Board's recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating. *Office of Disciplinary Counsel v. Peter Quigley*, 161 A.3d 800, 807 (Pa. 2017). Nevertheless, 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). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the court and deter unethical conduct. *Office of Disciplinary Counsel v. Akim Czmus*, 889 A.2d 117 (Pa. 2005).

The record establishes that Respondent is 81 years of age and has practiced law in the Commonwealth without any incidents of professional discipline during a career that has spanned more than five decades. The Court has recognized these facts as appropriate to consider in mitigation. *Office of Disciplinary Counsel v. Philip Valentino*, 730 A.2d 479, 483 (Pa. 1999). In aggravation, Respondent abandoned his law practice and failed to appear at the prehearing conference and the disciplinary hearing.

Respondent's actions constitute significant misconduct and would likely pose a serious risk of harm to the public if he continues to practice law, leading the Board

to conclude that his disciplinary sanction should require him to undergo a reinstatement proceeding to prove his fitness. Conversion of client funds and abandoning clients are acts of misconduct that have resulted in disbarment or a lengthy suspension. See, **Office of Disciplinary Counsel v. Robert Monsour**, 701 A.2d 556 (Pa. 1997); **Office of Disciplinary Counsel v. Caleb Clinton Bissett**, 78 DB 2016 (D. Bd. Rpt. 7/21/2017) (S. Ct. Order 9/22/2017). However, we find these cases inapposite, as recommending a lengthy suspension or disbarment in the instant matter would fail to account for Respondent's age and lengthy, blemish-free legal career, facts not present in the above-cited matters.

We consider persuasive the fact that other attorneys, many who were long-term practitioners without prior discipline, have been suspended for one year and one day for committing similar misconduct. See **Office of Disciplinary Counsel v. Hopkin T. Rowlands Jr.**, No. 115 DB 2013 (D. Bd. Rpt. 10/21/2014) (S. Ct. Order 1/30/2015), (suspension of one year and one day; misappropriation of client funds through unauthorized, undocumented loans from a cemetery association; no prior history of discipline during a fifty-year legal career); **Office of Disciplinary Counsel v. Albert B. Mackarey**, No. 115 DB 2006 (S. Ct. Order 12/21/2006) (consent discipline; suspension for one year and one day; misappropriation of \$10,000 in one client matter; prior discipline; 79-year old respondent showed remorse and was in poor health); **Office of Disciplinary Counsel v. Marvin F. Galfand**, 25 DB 2004 (D. Bd. Rpt. 10/19/2005) (S. Ct. Order 2/7/2006) (suspension of one year and one day; misappropriation of \$48,000; no prior discipline during a forty-year legal career); **Office of Disciplinary Counsel v. Jill A. Devine**, 183 DB 2007 (D. Bd. Rpt. 3/30/2010) (S. Ct. Order 6/23/2010), (suspension for one year and one day; misappropriation of approximately \$2,000 in one client matter,

neglect of client in second matter; no prior history of discipline in nearly twenty-year legal career; reimbursement to the Pennsylvania Lawyers Fund for Client Security; **Office of Disciplinary Counsel v. John Richard Banke, II**, No. 58 DB 2012 (S. Ct. Order 8/16/2012) (consent discipline; suspension for one year and one day; misappropriation of \$5,000 in one client matter; no prior discipline); **Office of Disciplinary Counsel v. James Lawrence Paz**, No. 97 DB 2010 (S. Ct. Order 8/20/2010) (consent discipline; suspension for one year and one day; misappropriation of \$3,953.06 in one client matter, no prior discipline; respondent made restitution, accepted responsibility and was remorseful).

Upon the totality of the facts and circumstances of this record, and guided by the decisional law, the Board recommends that Respondent be suspended from the practice of law for one year and one day.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Franchot A.S. Golub, be Suspended for one year and one day from the practice of law in this Commonwealth.

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: _____

John F. Cordisco, Member

Date: _____

2/14/18

Board Member Hart dissents for more severe discipline.