

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 2311 Disciplinary Docket No. 3
:
Petitioner : 169 DB 2016
:
v. : Attorney Registration No. 69176
:
JEFFREY DALE MOHLER : (Delaware County)
:
Respondent :


ORDER

PER CURIAM

AND NOW, this 2nd day of October, 2017, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Jeffrey Dale Mohler is suspended on consent from the Bar of this Commonwealth for a period of five years, retroactive to October 28, 2016. He shall comply with all provisions of Pa.R.D.E. 217.

Respondent shall pay the costs incurred by the Disciplinary Board in the investigation and prosecution of this matter.

A True Copy Patricia Nicola
As Of 10/2/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 169 DB 2016
Petitioner :
:
v. :
: Attorney Reg. No. 69176
JEFFREY DALE MOHLER :
Respondent : (Lancaster County)

JOINT PETITION IN SUPPORT
OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215 (d)

Petitioner, the Office of Disciplinary Counsel (hereinafter, "Petitioner" or "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Harold E. Ciampoli, Jr., Disciplinary Counsel and Respondent, Jeffrey Dale Mohler (hereinafter, "Respondent"), by and through his counsel, Samuel Stretton, Esquire, respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Pa.R.D.E. 207, 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 Enforcement Rules.

2. Respondent, Jeffrey Dale Mohler, was born on January 9, 1968, and was admitted to practice law in the Commonwealth on November 29, 1993. By Order dated October 28, 2016, the Supreme Court of Pennsylvania granted the parties' Joint Petition to Temporarily Suspend an Attorney and placed Respondent on temporary suspension. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

BACKGROUND

3. On January 4, 2016, the Pennsylvania Lawyers Fund for Client Security ("Client Security") received a report from PNC Bank that there had been a shortfall in Respondent's IOLTA account.

4. After receiving Respondent's reply to its inquiry, Client Security referred the matter to ODC on January 12, 2016 for review and further investigation. In her referral letter, Kathryn J. Peifer, Esquire, the Executive Director of Client Security, raised concerns that Respondent, *inter alia*, violated RPC 1.8(a), wrote checks on an IOLTA to purchase property,

knowing the funds to cover the checks were not in the account when the checks were issued and improperly commingled personal funds with client funds.

5. By letters to ODC dated January 19, 2016, and January 25, 2016, Mr. Stretton advised he represented Respondent and expressed a desire to cooperate and enter into consent discipline.

6. Prior to ODC commencing its investigation, Respondent immediately and forthrightly admitted and described in detail the extent and scope of his misconduct. Thereafter, Respondent has cooperated fully with ODC and its Auditor in ODC's efforts to confirm Respondent's statements and to review and audit the voluminous records provided by Respondent and Respondent's bank.

7. Some of Respondent's admissions could not be corroborated by records and would not have been discovered by ODC without Respondent's assistance and cooperation.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

8. Respondent operated an IOLTA at PNC Bank, account No. xxxx6011 titled Law Office of Jeffrey D. Mohler IOLTA Account (hereafter IOLTA I) from at least 2009 through 2011.

9. Respondent operated another IOLTA at PNC Bank, account No. xxxx3702 titled Law Office of Jeffrey D. Mohler IOLTA Client

Trust Fund Account (hereafter IOLTA II) from November 1, 2011 until at least January 31, 2016.

10. Respondent operated the Law Office of Jeffrey D. Mohler, as well as a title company, from May 1, 2008 until March 31, 2016, when he ceased the practice of law due to the present disciplinary investigation.

11. The majority of Respondent's practice was related to real estate and Respondent maintained his IOLTA accounts to hold client funds in escrow for real estate transactions.

12. Beginning in 2012 and continuing until 2016, Respondent attended sheriff's sales with his clients and assisted them in making purchases of real estate by lending them money from his IOLTA account for down payments.

13. At the sheriff's sales, Respondent's clients were ordinarily required by the sheriff to put down 20% of the purchase price and complete the transaction within thirty days. The sheriff would only accept certified checks for these down payments. At some point, Respondent learned that the sheriff would also accept checks drawn on an IOLTA. In order to expedite the sheriff sale process and please his clients, Respondent began lending money to his clients from his IOLTA in order for those clients to make the down payment. In most cases, Respondent drew IOLTA checks payable directly to the

sheriff on behalf of his client, who at the time had provided no funds to Respondent, thereby impermissibly using the funds of other clients without their knowledge, permission or consent. Within a few days, in most cases, the client would reimburse Respondent by drawing a check payable to Respondent or his law firm. Respondent would deposit these reimbursement checks into his IOLTA.

14. Respondent acknowledges that the previously described procedure, which he routinely engaged in over a number of years, amounted to improperly lending client money from his IOLTA to fund the purchase of real estate for another client and violated RPC 1.15.

15. Respondent acknowledges that he engaged in frequent conflicts of interest because he entered into these loan transactions with clients without complying with the requirements of RPC 1.8.

16. Respondent also acknowledges that this procedure was inappropriate and risky in the event that a client did not reimburse the money Respondent had lent to them from Respondent's IOLTA. Respondent had no permission or authority to assist his clients at sheriff's sales by lending them funds belonging to other clients that he was holding in a fiduciary capacity.

17. Examples of the potential risk that were realized are illustrated by Respondent's transaction with clients J.L. and W.M.

18. J.L. was one of Respondent's clients, who regularly purchased properties at sheriff's sales, using funds lent to him from Respondent's IOLTA.

19. J.L. generally reimbursed Respondent promptly. However, on three occasions, J.L. provided checks to Respondent which were returned for insufficient funds, as follows:

- \$11,720.00 check returned on March 31, 2015;
- \$41,500.00 check returned November 20, 2015; and
- \$48,000.00 check returned January 4, 2016.

The check for \$48,000.00 precipitated the report from PNC Bank to Client Security of an overdraft in IOLTA II.

20. W.M. was one of Respondent's clients.

21. On November 18, 2015, Respondent lent W.M. \$21,057.74 via check # 1667 drawn from IOLTA II for the purchase of a property in Lancaster County, PA.

22. On November 27, 2015, W.M. reimbursed Respondent's IOLTA II \$5,000.00, but failed to reimburse the remaining \$16,057.74.

23. In order to compensate for this shortfall, Respondent deposited \$16,057.74 of his own funds into IOLTA II on January 7, 2016, drawn from his line of credit at National Penn Bank.

24. Respondent acknowledges that, on occasion, he deposited his own funds into IOLTA II, improperly co-mingling his funds with client funds in violation of RPC 1.15(h).

25. An audit of Respondent's IOLTA II revealed that sheriff's sale transactions dominated the account. During the period July 27, 2012, through December 24, 2015, Respondent drew 260 checks payable to the sheriff of various counties totaling \$10,408,687.61. Since the check amounts and deposit amounts were identical, Respondent lent the same IOLTA funds over and over again.

26. Respondent acknowledges that he lent IOLTA funds to the following clients to purchase real estate at sheriff's sales:

- **Tri-County REO, LLC;**
- **CJD Group, LLC**
(From 2/3/14 to 12/24/15, Respondent made at least 66 "loans" from IOLTA II totaling more than \$5,200,000);
- **BP Group, LP**
(From 3/31/15 to 11/30/15, Respondent made at least 18 "loans" from IOLTA II totaling more than \$396,000);
- **J. Gordon Gainer, LLC**
(From 7/27/12 to 9/11/15, Respondent made at least 32 "loans" from IOLTA II totaling more than \$858,000);

- **Jonathan Leventry**
(From 4/2/13 to 12/23/15, Respondent made at least 39 "loans" from IOLTA II totaling more than \$809,000);
- **Gerald Seibel**
(On 2/4/15, Respondent made at least 1 "loan" from IOLTA II of more than \$29,000);
- **Jesse Landis**
(From 9/28/12 to 8/5/13, Respondent made at least 3 "loans" from IOLTA II totaling more than \$52,000);
- **Corporate Venture Group**
(From 6/1/15 to 11/23/15, Respondent made at least 7 "loans" from IOLTA II totaling more than \$121,000);
and
- **Eli S. King dba We Buy Houses Lancaster, LLC**
(From 2/4/15 to 8/3/15, Respondent made at least 8 "loans" from IOLTA II totaling more than \$133,000.00).

27. In some cases, Respondent improperly gave signed, blank IOLTA checks to his clients to make the down payments themselves. In those cases, the client would reimburse Respondent's IOLTA by subsequently depositing the funds directly into Respondent's IOLTA. Respondent did not always carefully monitor these repayments. In fact, on July 20, 2015, Respondent lent BP Group, LP \$14,000.00 via check # 1540 drawn from IOLTA II for the purchase of a property in Adams County, PA. BP Group reimbursed only \$10,000.00, leaving a shortfall of \$4,000.00 in IOLTA II for approximately three months. Respondent did not

notice the shortfall until he was advised by BP Group, which reimbursed Respondent's IOLTA II on October 13, 2015.

28. Respondent also acknowledges that, following real estate closings handled by his title company, he sometimes improperly converted settlement reimbursements which belonged to third parties.

29. Respondent admits that, when handling real estate closings for his clients, he sometimes failed to forward the following tax refunds belonging to a bank, instead drawing an IOLTA I check to himself or simply leaving those funds on deposit in his IOLTA I:

- \$2,306.83 from HSBC on 9/6/09;
- \$1,249.76 from Wells Fargo on 10/23/09;
- \$1,302.85 from PHH Mortgage on 5/20/10;
- \$1,504.92 from Fannie Mae on 5/20/10;
- \$ 559.99 from Ocwen on 5/20/10;
- \$1,890.08 from PNC Mortgage on 5/20/10;
- \$1,639.13 from Wells Fargo Mortgage on 5/20/10;
- \$2,510.87 from US Bank Home Mortgage (retained in Respondent's IOLTA);
- \$ 506.89 from Bank of America (retained in Respondent's IOLTA);

- \$ 299.07 from US Bank (retained in Respondent's IOLTA); and
 - \$ 624.53 from Central Mortgage Co (retained in Respondent's IOLTA);
- \$ 14,394.92 Total

30. Respondent has repaid the tax refunds to the proper parties.

31. Respondent acknowledges that in or about 2009, Nationstar Mortgage Company inadvertently failed to negotiate an IOLTA I check from Respondent's client in the amount of \$30,582.18 in connection with a settlement handled by Respondent's title company. Respondent knowingly retained those funds in IOLTA I and twice lent those funds to other clients. He did not repay Nationstar until February 4, 2016.

32. Respondent acknowledges that he improperly borrowed \$43,997.30 from IOLTA I in January 2010 to make a personal purchase of personal real estate. Respondent repaid these funds in October 2010.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

Respondent violated the following RPCs:

- A. **RPC 1.8(a)**, which states that 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 1.15(b)**, which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.
- C. **RPC 1.15(h)**, which states that a lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges

on that account, and only in an amount necessary for that purpose.

- C. **RPC 8.4(b)**, which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
- D. **RPC 8.4(c)**, which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

33. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a five-year suspension retroactive to the interim suspension that was entered by the Supreme Court of Pennsylvania by Order dated October 28, 2016.

34. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule Pa.R.D.E. 215(d) (marked as Exhibit "A"), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

35. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b) Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a five-year suspension;
- c) Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a five-year suspension;
- d) Respondent has practiced law for over 22 years and has no record of discipline;
- e) The Respondent also cooperated and agreed to be put on interim suspension which was ordered by the Supreme Court of Pennsylvania by Order dated October 28, 2016. The discipline imposed, by agreement, would be retroactive to that date;
- f) Respondent has made full and complete restitution to everyone and has made all restitution of all sums at issue; and

g) Respondent has begun a course of therapy with Jonathan Gransee. Dr. Gransee has been treating Respondent from February of 2016 through December of 2016 and has seen Respondent in at least 26 individual therapy sessions. Attached and marked as Exhibit "B" is Dr. Gransee's initial report of January 22, 2016 listing his initial observations. Attached and marked as Exhibit "C" is Dr. Gransee's report dated May 18, 2017. This report notes Respondent has worked very hard to identify the issues that caused his misconduct. The doctor notes that Respondent is an exceptional client who has made excellent progress in developing insight and more advanced coping skills. Dr. Gransee noted that Respondent has gained insight into these matters and it would be highly unlikely he would repeat the misconduct. At the current time, Dr. Gransee has recommended no further treatment. The psychological issues clearly contributed to Respondent's misconduct and should be considered by way of mitigation.

36. The parties agree the Respondent's misconduct was very serious, warranting a suspension of five years. Respondent's transgressions in this matter were continuous, pervasive and extensive over the course of several years. On countless occasions, from at least 2012 through 2016, Respondent engaged in reckless disregard for the safeguard of entrusted client funds by improperly loaning these funds to other clients to fund the purchases of real estate. Respondent's actions also constituted a conflict of interest because on a routine and systematic basis Respondent would engage in these business transactions without full disclosure and compliance with the requirements of RPC 1.8, and without the knowledge, permission or consent of his clients whose entrusted money he was putting at risk.

The Board has defined misappropriation as "any unauthorized use of client's funds entrusted to a lawyer, including not only stealing but also unauthorized temporary use for the lawyer's own purposes, whether or not he derives any personal gain or benefit there from." *Office of Disciplinary Counsel v. Patricia Renfro*, 122 DB 2004 (2005); *Office of Disciplinary Counsel v. Hopkin T. Rowlands, Jr.*, 115 DB 2013 (2015). Thus, Respondent's unauthorized loans constituted misappropriation and occurred time and time again over the course of several years.

Additionally, Respondent improperly converted to his personal use over \$14,000 of settlement reimbursements belonging to third parties.

Both the Board and the Court have regarded misappropriation of entrusted funds as an extremely serious act of misconduct, warranting lengthy suspension or disbarment depending on the individual facts of the case. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186 (Pa. 1983) (conduct, *inter alia*, of repeatedly commingling funds belonging to clients with personal funds, converting funds belonging to clients for personal use without clients' knowledge or permission, and failing to maintain funds in escrow adequate to meet obligations to clients warranted disbarment); *ODC v. James Barnett Gefsky*, 162 DB 2009 (2011) (five year suspension for attorney who, *inter alia*, converted to own use \$71,527.85 of a client's money for over a year prior to repaying, notwithstanding claim that misappropriation was unintentional and due to disorganized state of law practice). The Board has emphasized that "[t]he proper handling of client money goes to the heart of a lawyer's obligations to a client; it follows that the mishandling of such funds abuses the trust between the lawyer and the client." *ODC v. Anthony Dennis Jackson*, 99 DB 2006 (2008). Moreover, entering into business transactions with a client, especially involving

the borrowing of funds from the client, without following the specific requirements of Rule 1.8(a) has been treated by the Board and the Court as serious misconduct. *Office of Disciplinary Counsel v. Glenn D. McGogney*, 194 DB 2009 (2012); (disbarment for attorney who, *inter alia*, solicited loan from client without disclosing material facts and knowing it would not be repaid) *Office of Disciplinary Counsel v. Hopkin T. Rowlands, Jr.*, 115 DB 2013 (2015) (one year and one day suspension for attorney who misappropriated funds by writing numerous loan checks from client account that were not properly documented or authorized).

37. In sum, the jointly proposed discipline of a five-year suspension is appropriate when considering the above referenced precedent and the specific facts of Respondent's misconduct. As stated, Respondent fully acknowledges that his misconduct was serious and warrants a lengthy suspension. However, militating against disbarment is prior to ODC commencing its investigation, Respondent exhibited remorse and full cooperation with ODC from the start of his disciplinary matter. Respondent immediately and candidly admitted and described in detail the extent and scope of his misconduct. In fact, a number of Respondent's admissions could not be corroborated by records and would not have been discovered by

ODC without Respondent's assistance and cooperation. Respondent's remorse and cooperation is further evidenced by his willingness to enter into consent discipline for a lengthy suspension of five years and his admission that he engaged in misconduct and violated the charged Rules of Professional Conduct.

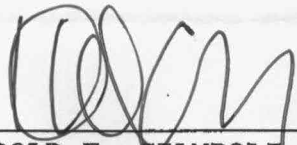
WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), a three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent receive a five-year suspension retroactive to the date of the interim

suspension which was ordered on October 28, 2016 by the Supreme Court.

Respectfully submitted,

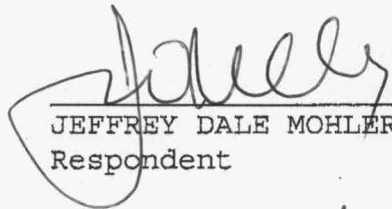
OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION
Attorney Reg. No. 20955,
Chief Disciplinary Counsel

Date: 8/25/17



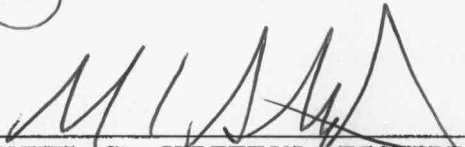
HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Attorney Reg. No. 51159
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

Date: 8/16/17



JEFFREY DALE MOHLER
Respondent

Date: 8/18/17



SAMUEL C. STRETTON, ESQUIRE
Attorney for Respondent

VERIFICATION

The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

8/25/17

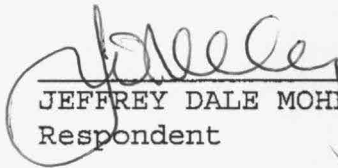
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HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel

8/16/17

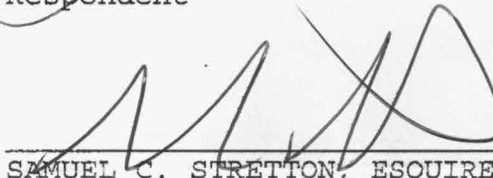
Date



JEFFREY DALE MOHLER
Respondent

8/18/17

Date



SAMUEL C. STRETTON, ESQUIRE
Attorney for Respondent

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. DB 2016
Petitioner :
: v. :
: Attorney Reg. No. 69176
JEFFREY DALE MOHLER, :
Respondent : (Lancaster County)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

Overnight Mail, as follows:

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381
Respondent's Counsel

Dated: _____

8/25/17



HAROLD E. CIAMPOLI, JR.
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