

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1347 Disciplinary Docket No. 3
Petitioner :
 : No. 18 DB 2008
v. :
 : Attorney Registration No. 27687
MICHAEL J. HOHENADEL, :
Respondent : (Lancaster County)

ORDER

PER CURIAM:

AND NOW, this 12th day of August, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 15, 2009, it is hereby

ORDERED that Michael J. Hohenadel 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.

A True Copy Patricia Nicola

As of: August 13, 2009

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1347 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	No 18 DB 2008
	:	
MICHAEL J. HOHENADEL	:	Attorney Registration No. 27687
Respondent	:	(Lancaster 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

On August 11, 2008, Office of Disciplinary Counsel filed a Petition for Discipline against Michael J. Hohenadel charging him with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of multiple acts of

misconduct, and for his conviction of the crimes of driving under the influence - high rate of alcohol, and driving under the influence - general impairment. Respondent failed to file an Answer to Petition for Discipline.

A disciplinary hearing was held on November 18, 2008, before a District II Hearing Committee comprised of Chair Daniel B. Huyett, Esquire, and Members Albert P. Massey, Esquire, and Nelson J. Sack, Esquire. Respondent did not appear at the hearing.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on March 3, 2009, finding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of one year and one day.

This matter was adjudicated by the Disciplinary Board at the meeting on March 31, 2009.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, 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 any 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.

2. Respondent is Michael J. Hohenadel. He was born in 1948 and was admitted to practice law in the Commonwealth in 1978. His attorney registration address is listed as 109 S. Market St., Elizabethtown, PA 17022. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior discipline.

Costik Matter

4. On or around May 31, 2005, Candace Costik engaged Respondent to handle all necessary legal work in connection with the death of her mother, Sandra M. Anderson.

5. Ms. Costik paid Respondent's full legal fee in advance, consisting of \$450 in expenses and \$3,500 as a flat legal fee.

6. By letter dated June 6, 2005, Respondent wrote to the Dauphin County Reporter and enclosed an Estate Notice for advertising and paid the advertising fee of \$75.

7. Thereafter, Respondent did little or no work on the estate despite having received his full fee to do so.

8. Respondent failed to file the required Pennsylvania Inheritance Tax return within nine months of the date of decedent's death, or request an extension of time and make an estimated payment of the inheritance tax due.

9. By letter dated April 14, 2006, the Pennsylvania Department of Revenue sent Respondent an "Inheritance Tax Non-Filer Delinquency Notification," notifying

Respondent that the estate was in delinquent status due to his failure to file the inheritance tax return or seek an extension of time to do so.

10. As a result of Respondent's failure to file the Pennsylvania inheritance tax return the estate faced substantial penalties and interest payments.

11. In the April 14, 2006 Notification, the Department of Revenue directed Respondent to file a return within 15 days of the date of the letter.

12. After receiving the Notification Respondent spoke with his client on the telephone and:

- a. advised her that he had neglected to file the tax return;
- b. asked her to provide him with some figures so that he could file the return; and
- c. advised her that he would file the return and contact her again.

13. Respondent failed to file the inheritance tax return.

14. Respondent failed to file the required notices pursuant to Orphans' Court Rule 5.6 within three months after the grant of letters on behalf of his client.

15. By letter dated April 18, 2006, Respondent sent Ms. Costik a notice required by Orphans' Court Rules and stated that he would be in further contact with her.

16. Respondent neither filed the required notice himself nor explained to his client that she should complete and file the notice.

17. By Order dated May 22, 2006, the Honorable Todd A. Hoover set a hearing for July 31, 2006, to determine whether sanctions should be imposed upon Ms. Costik for failure to file the notice required by Orphans' Court Rule 5.6

18. Upon receipt of the Order, Ms. Costik contacted the Court and made the required filing on her own.

19. Or around June 15, 2006, while attempting to close on the sale of her late mother's real estate, Ms. Costik contacted Respondent's office and was informed by his secretary that he was ill and not expected to practice law for a long time.

20. Respondent failed to notify his client, or have someone else notify her, that he would have to withdraw from the representation.

21. On or around June 15, 2006, Ms. Costik retrieved her file from Respondent's office and was given a letter indicating that he would not return to his office for the foreseeable future and that it was necessary for her to obtain new counsel.

22. Thereafter, Ms. Costik made several attempts to contact Respondent to receive a refund of the unused portion of the fees and expenses paid to Respondent.

23. On or around July 3, 2006, Ms. Costik filed a complaint with Office of Disciplinary Counsel (ODC).

24. By letter dated August 8, 2006, ODC wrote to Respondent about the complaint.

25. By letter received by ODC on August 21, 2006, Respondent admitted that the allegations in ODC's letter were correct, stated that he had refunded Ms. Costik's

fee of \$3,500 and explained that he suffered from an illness, but did not provide details.

26. ODC confirmed with Ms. Costik that she had received a refund of the fee paid.

Kieffer/Vegeto Matter

27. On or around December 23, 2005, Respondent prepared real estate closing documents and acted as the attorney and settlement agent in connection with the sale of real property.

28. Respondent represented the property sellers, Geoffrey S. Kieffer and Carolyn Ramsay Kieffer, husband and wife.

29. Despite representing the sellers, Respondent nonetheless unilaterally charged the buyers, Mathew and David Vegeto, an attorney fee of \$500.00.

30. In connection with the real estate closing, Respondent received a wire transfer of funds from Accredited Home Lender, Inc., on behalf of the Vegetos.

31. Six hundred and forty-three dollars (\$643.00) was provided specifically for the purpose of paying off David Vegeto's Capital One credit card, as reflected on the US Department of Housing and Urban Development (HUD) Settlement Statement prepared by Respondent.

32. Respondent failed to remit payment to Capital One as provided on the HUD Settlement Statement.

33. Respondent failed to give the Vegetos the \$643.00 so that they could make payment to Capital One.

34. A complaint was filed with ODC in late November of 2006.

35. By letter dated August 22, 2007, ODC wrote to Respondent at his address of record concerning the Vegetos' complaint.

36. The letter was returned as undeliverable.

37. ODC eventually determined that Respondent's address was Apartment 102, 42 West High St., Elizabethtown PA., and personally served him with a DB-7 letter.

38. Respondent has never responded to the allegations contained in the DB-7 letter.

Criminal Conviction Matter

39. On April 19, 2007, Respondent entered a plea of guilty to two charges related to Driving Under the Influence in the Lancaster County Court of Common Pleas.

40. Pursuant to his guilty pleas, Respondent's driver's license was suspended for 18 months and he was subject to six months of house arrest.

41. The crimes to which Respondent pled guilty are punishable by imprisonment of five years for 75 Pa.C.S.A. § 3802(b) (DUI High Rate of Alcohol) and two years for 75 Pa.C.S.A. § 3802(a)(1) (DUI General Impairment).

42. These are "serious crimes" as defined by Rule 214(i), Pa.R.D.E.

43. Respondent failed to report his criminal conviction to the Secretary of the Disciplinary Board as required Pa.R.D.E. 214(a).

44. Respondent failed to file an Answer to Petition for Discipline.

45. Respondent failed to appear at the pre-hearing conference on October 17, 2008, and failed to appear at the disciplinary hearing held on November 18, 2008.

46. Respondent was personally served with the Petition for Discipline. He received notice of the pre-hearing conference and disciplinary hearing by regular mail and certified mail return receipt requested to Respondent's registered attorney address. The certified letter was returned as unclaimed. The regular mail was not returned as undeliverable.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 - A lawyer shall provide competent representation to a client.
2. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.
4. RPC 1.15(b) - Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. 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 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 such property.

5. RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

6. RPC 8.4(b) - 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.

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

8. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

9. Pa.R.D.E. 203(b)(1) - Conviction of a crime which under Enforcement Rule 214 (relating to attorneys convicted of crimes) may result in suspension is grounds for discipline.

10. Pa.R.D.E. 214(a) - An attorney convicted of a serious crime shall report the fact of such conviction to the Secretary of the Board within 20 days after the date of sentencing.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with multiple acts of professional misconduct as well as a criminal conviction. Respondent did not file an Answer to Petition for Discipline, therefore all factual allegations are deemed admitted, pursuant to Rule 208(b)(3), Pa.R.D.E. A disciplinary hearing was held on November 18, 2008. Respondent failed to appear after receiving notice of the date, time and place of the hearing. The relevant evidence in this case consists of the allegations contained in the Petition for Discipline, and two exhibits offered at the hearing consisting of an affidavit from the Hearing Coordinator as to notice to Respondent and a copy of the Order of the Chair of the Hearing Committee entered at the pre-hearing conference. Petitioner has met its burden of establishing by clear and convincing evidence that Respondent's actions constitute professional misconduct. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000)

Respondent violated the Rules in two client matters. In the Costik matter he was engaged to handle all necessary legal work in connection with the recent death of Ms. Costik's mother. Ms. Costik paid Respondent his full legal fee in advance at his request.

Respondent failed to perform the work for which he had been paid. To the extent that Respondent found himself unable to complete the representation, he failed to communicate that fact to Ms. Costik or withdraw from the case and refund her fee. The fee was not refunded until August 2006, after Petitioner wrote to Respondent regarding a complaint filed by Ms. Costik.

In the Vegeto matter, Respondent was retained to prepare real estate closing documents and acted as the attorney and settlement agent in connection with the sale of real property occurring in December of 2005. Even though he represented the sellers, Respondent unilaterally charged the buyers a legal fee for his services. In connection with the home sale, Respondent received a wire transfer of funds on behalf of the Vegetos, who were the buyers. A sum in the amount of \$643 was provided specifically for the purpose of paying off David Vegeto's Capital One credit card. Respondent failed to remit payment to Capital One or give Mr. Vegeto the funds so that he could make the payment.

Respondent violated the Rules by his conviction of the crime of DUI in the Lancaster County Court of Common Pleas. DUI constitutes a "serious crime" pursuant to the Rules of Disciplinary Enforcement, and as such Respondent was required to report his conviction to the Disciplinary Board. This conviction occurred in April of 2007, and Respondent did not report it to the Board.

The primary purpose of attorney discipline is to "protect the public from unfit attorneys and to maintain the integrity of the legal system." Office of Disciplinary Counsel v. Costigan, 584 A.2d 296 (Pa. 1990). The evidence in the instant matter leads to the

conclusion that Respondent is not fit to practice law. He abandoned his client and her case in the Costik matter, although he eventually reimbursed her for the full legal fee he had charged. He converted funds in the Vegeto matter and has not made reimbursement. Respondent compounded these serious acts of misconduct by failing to participate in the disciplinary proceedings, thus reinforcing the evidence demonstrating unfitness to practice law. It is well-established that failure to appear for a disciplinary hearing is an aggravating factor. Office of Disciplinary Counsel v. Kenton R. O'Neil, 212 DB 2003 & 46 DB 2004, 980 Disciplinary Docket No. 3 (Pa. Dec. 22, 2004)

Considering the totality of the evidence, the Board is persuaded that the appropriate sanction to address Respondent's misconduct is a suspension of one year and one day. This length of suspension ensures that the public is protected until such time as Respondent affirmatively demonstrates he is fit to practice law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Michael J. Hohenadel, 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: 
David A. Nasatir, Board Member

Date: May 15, 2009

Board Member Jefferies was absent and did not participate in the adjudication.

Board Member Gentile did not participate in the adjudication.