

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2223 Disciplinary Docket No. 3
Petitioner :
v. : No. 205 DB 2014
: Attorney Registration No. 31136
WILLIAM J. KERINS :
Respondent : (Bucks County)

ORDER

PER CURIAM:

AND NOW, this 29th day of December, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board, William J. Kerins is disbarred from the Bar of this Commonwealth, and he is directed to 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).

Mr. Justice Eakin did not participate in the decision of this matter.

A True Copy Patricia Nicola
As Of 12/29/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 205 DB 2014
Petitioner	:	
	:	
v.	:	Attorney Registration No. 31136
	:	
WILLIAM J. KERINS	:	
Respondent	:	(Bucks 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 December 22, 2014, Office of Disciplinary Counsel charged William J. Kerins with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of allegations that Mr. Kerins mishandled an estate. Respondent did not file an Answer to Petition for Discipline.

A prehearing conference was held on March 12, 2015 before Chair Melissa M. Weber, Esquire. Respondent did not appear.

A disciplinary hearing was held on April 8, 2015, before a District II Hearing Committee comprised of Chair Weber and Members Timothy P. Brennan, Esquire and Margaret J. Amoroso, Esquire. Respondent did not appear.

Following the submission of a Brief by Petitioner, the Hearing Committee filed a Report on September 4, 2015, concluding that Respondent violated the Rules as charged in the Petition and recommending that he be disbarred from the practice of law.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on October 22, 2015.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, 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.

2. Respondent is William J. Kerins. He was born in 1953 and was admitted to practice law in the Commonwealth in 1979. His attorney registration address

is 1465 Estate Lane, Southampton, Pennsylvania 18966. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order dated September 19, 2014, Respondent was administratively suspended pursuant to Rule 219, Pa.R.D.E.

4. A Petition for Discipline was filed against Respondent on December 22, 2014. Respondent failed to file an answer to the Petition; therefore, all factual allegations are deemed admitted pursuant to Pa.R.D.E. 208(b)(3).

5. On April 18, 2010, William J. Helfrich, Jr. died in Luzerne County, Pennsylvania. P for D ¶¶5.¹

6. Mr. Helfrich was Respondent's uncle, and the uncle of Respondent's brother, Paul J. Kerins. P for D ¶¶6

7. On April 21, 2010, Letters Testamentary were granted to "William J. Kerins, Esquire" as the executor named in the Last Will and Testament of Mr. Helfrich in *In the Matter of: William J. Helfrich, Deceased*, Court of Common Pleas of Luzerne County, Orphans' Division, No. 4010-0720 ("Helfrich Estate".) P for D ¶¶7; ODC-1.

8. Respondent served as both Attorney and Executor for the Helfrich Estate. P for D ¶¶8; ODC-1; ODC-2; 4/8/15 N.T. 13.

9. Respondent represented to the heirs of the Helfrich Estate, including his brother Paul, that he would charge the estate between \$20,000 - \$25,000 for his Executor and Legal fees. ODC-14; ODC-15 p. 5-6.

10. On or about October 21, 2011, Respondent filed an Inheritance Tax Return in the Helfrich Estate. P for D ¶¶9; ODC-2.

¹ "P for D ¶____" references citations to the Petition for Discipline filed by Petitioner.

11. The tax return reported a Personal Representative Commission of \$15,000.00 and an Attorney Fee of \$27,500.00. P for D ¶10.

12. A review of certain financial documents demonstrated that from May 12, 2010, through October 27, 2011, Respondent took from the Helfrich Estate accounts fees for himself totaling \$30,000.00. P for D ¶11; ODC-23.

13. Initially, by checks notated "partial legal fee" and dated 5/12/10, 7/14/10, 9/10/10 and 1/12/11, Respondent drew checks on the Estate Account payable to himself in the amount of \$5,000.00. ODC-3.

14. Thereafter, on October 27, 2011, Respondent made an \$18,750.00 withdrawal from the Estate Account and paid himself \$10,000.00 from that withdrawal. ODC-3 p.2; ODC-14; ODC-15 p. 3-4; ODC-16; ODC-23.

15. The remaining \$8,750.00 of that October 27, 2011 withdrawal was allegedly to be a distribution to beneficiary Daniel Kerins. However, Respondent improperly retained these funds and never distributed the \$8,750.00 to Daniel. ODC-3, p.2; ODC-14; ODC-15 at 3-4; ODC-16.

16. On September 24, 2013, Paul Kerins filed a Petition for Removal of Executor in the Estate of Helfrich matter. P for D ¶12; ODC-4.

17. The Petition for Removal of Executor alleged, *inter alia*, that Respondent had:

a. Been unable to complete final distribution of the Helfrich Estate assets;

b. Failed to file an Inventory and Status Report with the Court;
and

c. Refused to respond to any and all inquiries by a number of the heirs of the Helfrich Estate.

P for D ¶13.

18. On October 30, 2013, one day before the hearing on the Petition to remove Respondent as Executor, Respondent again withdrew from the Helfrich Estate accounts additional fees for himself totaling \$18,873.19. P for D ¶14; ODC-4 p. 4-5; ODC-11 at 4; ODC 13 [4/29/14 N.T. 12].

19. On October 31, 2013, a hearing on the Petition for Removal of Executor was conducted before Judge Richard M. Hughes, III. P for D ¶15; ODC-5.

20. At the October 31, 2013 hearing, Respondent appeared and after being sworn, represented to the Court, *inter alia*:

a. Since 2009, Respondent had not taken any new clients because Respondent was having “cognitive difficulties”;

b. Respondent needed “to get out” of the Helfrich Estate matter because Respondent was experiencing “diminished capacity”, could not function the way he used to, and did not want to be a lawyer anymore;

c. The Helfrich Estate matter had “started off bad and went downhill from there...due to (Respondent’s] cognitive issues”;

d. Respondent had made distribution of about 98% of the Helfrich Estate money;

e. There was \$24,000.00 left in the Helfrich Estate accounts and Respondent had checks for that amount that he wished to sign over to Paul Kerins; and

f. Respondent would transfer the Helfrich Estate file to Paul Kerins.

P for D ¶16; ODC-5 p. 9-13

21. Paul Kerins testified at the disciplinary hearing and believes that Respondent's claim to the Court that he suffered cognitive difficulties was "truly an act."

22. Shortly after the conclusion of the October 31, 2013 hearing, Respondent provided Paul Kerins with checks drawn on the Helfrich Estate bank account totaling \$24,000.00; however, at the time Respondent provided these checks to Paul, Respondent knew the bank wouldn't be able to honor the checks because Respondent had, just one day prior, closed out the accounts and received \$18,873.19 in cash. P for D ¶17; ODC-11 at 4, 7-8; ODC-13 [4/29/14 N.T. 11-12]; ODC-23.

23. At the time Respondent represented to Judge Hughes that there was \$24,000.00 left in the Helfrich Estate, Respondent knew that he made a material misrepresentation to the Court because Respondent had failed to advise Judge Hughes that Respondent had closed out the Helfrich Estate accounts the previous day, by withdrawing a combined \$18,873.19 in cash. P for D ¶18; ODC-23.

24. Around the time that Respondent withdrew the \$18,873.19, Respondent's estranged wife informed Paul Kerins that Respondent had paid their daughter's tuition of approximately \$18,000.00 at the University of Pittsburgh. ODC-11 at 4; 4/8/15 N.T. 32.

25. By Order dated October 31, 2013, Judge Hughes:

- a. Removed Respondent as Executor of the Helfrich Estate;
- b. Appointed Paul Kerins as successor Executor; and

c. Ordered Respondent to turn over to Paul Kerins within thirty days Respondent's complete file in connection with the Helfrich Estate.

P for D ¶19; ODC-6.

26. Respondent did not provide the Helfrich Estate file to Paul Kerins as directed by the October 31, 2013 Order. P for D ¶20.

27. On or about December 20, 2013, Richard S. Bishop, Esquire filed a Motion for Contempt ("First Motion for Contempt") on behalf of Paul Kerins. P for D ¶21; ODC-7.

28. By Amended Order dated January 8, 2014, Judge Hughes granted the First Motion for Contempt and directed Respondent to immediately turn over the entire Helfrich Estate file to Paul Kerins. P for D ¶22; ODC-8.

29. On February 11, 2014, Mr. Bishop filed a Second Motion for Contempt, which alleged, *inter alia*, that Respondent:

a. Had failed to turn over the Helfrich Estate file to Paul Kerins; and

b. Had ignored all attempts by Paul Kerins to reach Respondent since the October 31, 2013 hearing, whether by mail, email or phone.

P for D ¶24; ODC-9.

30. The Second Motion for Contempt requested the Court hold Respondent in civil contempt and order Respondent to be imprisoned until Respondent:

a. Turned over the entire Helfrich Estate file;

b. Returned the \$42,500.00 that Respondent took as "fee for services provided"; and

c. Paid Paul Kerins reasonable attorney's fees and costs.

P for D ¶25; ODC-9.

31. On February 11, 2014, Judge Hughes issued a Rule upon Respondent, returnable March 18, 2014, to Show Cause Why the Court Should Not Hold Him in Civil Contempt and grant the sanctions requested in the Second Motion for Contempt. P for D ¶26; ODC-10.

32. The Second Motion for Contempt and the February 11, 2014 Rule were served on Respondent and received by him. P for D ¶27; ODC-10; ODC-11 at 2-6.

33. On March 18, 2014, a hearing on the Second Motion for Contempt was conducted before Judge Hughes. P for D ¶28; ODC-11.

34. Despite having notice, Respondent failed to appear at the March 18, 2014 hearing. P for D ¶29; ODC-11.

35. By Order dated March 19, 2014, Judge Hughes:

a. Found Respondent in contempt of the October 31, 2013 and January 8, 2014 Orders;

b. Provided Respondent thirty days to purge Respondent's contempt of court;

c. Advised that Respondent's failure to comply with the Court's previous Orders would result in the imposition of fines, the awarding of reasonable attorney's fees and costs and/or imprisonment; and

d. Scheduled a hearing for April 29, 2014, to determine whether Respondent had complied with all Court Orders.

P for D ¶30; ODC-12.

36. By DB-7 Request for Statement of Respondent's Position dated March 26, 2014, Respondent was advised that Office of Disciplinary Counsel was considering a complaint against him from Paul Kerins relating to the Helfrich Estate. P for D ¶31.

37. The DB-7 was sent to Respondent's registered address and was received by Respondent. P for D ¶32.

38. Respondent did not submit a letter of reply to the DB-7. P for D ¶33.

39. A hearing for Respondent to purge his contempt was scheduled for 9:00 a.m. on April 29, 2014, before Judge Hughes. P for D ¶34; ODC-12.

40. At the April 29, 2014 hearing:

a. Respondent did not appear at the scheduled time of 9:00 a.m.;

b. Judge Hughes waited until approximately 9:40 a.m. to call the case, at which time Paul Kerins again testified as to his efforts to communicate with Respondent about the estate administration and to obtain the necessary records;

c. Judge Hughes noted on the record that "there has been neglect of this estate by [Respondent], total disrespect for the legal system and for the Court, failing to appear and failing to abide by the Court orders...[which] has cost this estate a significant amount of money...";

d. Judge Hughes adjourned the hearing at approximately 9:55 a.m.;

e. Respondent approached Mr. Bishop after the hearing was adjourned;

f. The parties were informed by Judge Hughes's staff that the Judge was involved in another matter;

g. Respondent conferred with Mr. Bishop and Paul Kerins in the jury room; and

h. Respondent provided Mr. Bishop with a file folder filled with papers that were in disarray that Respondent said contained all of the estate administration records for the Helfrich Estate.

P for D ¶¶35; ODC-13.

41. By decree dated June 5, 2014, Judge Hughes, *inter alia*;

a. Ordered Respondent to return to the Helfrich Estate \$18,873.15 that Respondent had removed from the estate on October 30, 2013, and to reimburse Paul Kerins \$12,780.24 for reasonable attorney fees;

b. Directed Respondent to submit to the Court appropriate documentation concerning his services on behalf of the Estate for which he claims compensation;

c. Encouraged the Helfrich Estate to submit a claim for \$18,873.15 to the Client Security Fund because Respondent appeared to have unlawfully paid himself from the Estate Account on October 30, 2013.

P for D ¶¶36; ODC-13.

42. On July 25, 2014, Mr. Bishop filed a Petition for Adjudication and Account of Paul J. Kerins, Executor of the Helfrich Estate for the period of April 19, 2010 to July 15, 2010. P for D ¶¶37; ODC-14.

43. The Petition and Account identified the following issues related to Respondent for the Court to address:

a. The October 27, 2011 withdrawal by Respondent of \$8,750.00 from the estate account for distribution to Daniel Kerins;

b. The discrepancy between the \$48,873.15 Respondent took from the estate for legal fees and executor's fees and the records indicating Respondent planned to take a maximum of \$25,000.00 in fees;

c. The records indicating that Respondent failed to deposit \$4,398.00 (sic) of cash that had been discovered in the home of William Helfrich; and

d. The failure to account for the Chevy Lumina and miscellaneous personal property.

ODC-14.

44. The Petition and Account were sent to Respondent's last registered address and were received by Respondent. P for D ¶38; ODC-14.

45. Respondent had notice that a formal audit in the Helfrich Estate would be held on September 2, 2014. P for D ¶39.

46. On September 2, 2014, a formal audit was held before Judge Hughes and the First and Final Accounting of William J. Kerins was confirmed. Respondent failed to appear. P for D ¶40; ODC-15; ODC-16.

47. According to the Audit, Respondent paid himself the sum of \$48,873.15 in his capacity as Executor and Attorney for the Helfrich Estate. P for D ¶41; ODC-16.

48. By Order dated September 8, 2014, Judge Hughes:

a. Ordered Respondent to return to the Helfrich Estate an additional \$12,753.98 (representing \$8,750.00 that was improperly withdrawn by Respondent from the Estate on October 27, 2011, and \$4,003.98 of cash found at the Decedent's home which was not deposited into the Estate account;

b. Ordered Respondent to pay Paul Kerins \$4,219.76 for additional legal fees and costs;

c. Ordered Respondent to turn over to Paul Kerins the Decedent's 1998 Chevrolet Lumina; and

d. Reduced the total fee for services of William J. Kerins, Esquire as executor and attorney to a total of \$25,000.

P for D ¶¶42; ODC-16.

49. The September 8, 2014 Order was sent to Respondent's registered address and was received by him. P for D ¶¶43; ODC-16.

50. To date, Respondent has not complied with Judge Hughes's Order and has not purged himself of contempt. P for D ¶¶44.

51. To date, Respondent has not reimbursed the Helfrich Estate any of the fees Judge Hughes ordered him to return. P for D ¶¶45.

52. Respondent misappropriated, converted, or misapplied a minimum of \$36,626.19 belonging to the Helfrich Estate. Respondent paid himself in his capacity as executor and attorney the sum of \$48,873.19. After formal audit, the Court reduced Respondent's total fee to \$25,000.00. (ODC-16) In addition to taking an excessive fee of \$23,873.19, Respondent also misappropriated \$8,750.00 of his brother Daniel's

share of the inheritance and \$4003.00 of cash found in the house and not properly deposited. P for D ¶46; ODC-23.

53. After Respondent appeared on October 31, 2013 before Judge Hughes at the hearing on the Petition for Removal, Paul Kerins and his counsel experienced great difficulty in communicating with and serving Respondent with appropriate notices in connection with the Helfrich Estate. ODC-11 at 2-6; ODC-13 [4/29/14 N.T. 2-7]; ODC-15 at 2.

54. Office of Disciplinary Counsel and the Assistant Secretary of the Disciplinary Board made more than sufficient efforts to serve Respondent with the Petition for Discipline and the notices of the disciplinary hearings. 4/8/15 N.T. 35-46; ODC-18 to ODC-22a.

55. In addition to Office of Disciplinary Counsel's numerous attempts at personal service both at the only address Respondent maintained with the Disciplinary Board and an alternative address in Florida, Petitioner and the Assistant Secretary effectuated service upon Respondent of the Petition for Discipline and the Notices of the disciplinary hearings as required by Rule 212, Pa.R.D.E. by mailing them to the address furnished by Respondent in his last registration statement filed with the Disciplinary Board. 4/8/15 N.T. 35-46; ODC-18 to ODC-22a.

56. Respondent failed to appear at the prehearing conference on March 12, 2015 and the disciplinary hearing on April 8, 2015.

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. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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

3. RPC 1.5(b) – 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.

4. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

5. 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.

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

7. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice; and

8. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request under Disciplinary Board Rule §87.7(b) for a statement of Respondent's position shall be grounds for discipline.

IV. DISCUSSION

Disciplinary proceedings against Respondent were instituted by Office of Disciplinary Counsel by way of a Petition for Discipline filed on December 22, 2014. Substituted service pursuant to Rule 212, Pa.R.D.E. was effectuated on Respondent, as Petitioner was unable to accomplish personal service. Respondent failed to submit an answer; therefore, all factual allegations are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E.

Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441, 444 (Pa. 2000). In addition to the admissions resulting from Respondent's failure to answer the Petition, Petitioner submitted Exhibits ODC-1 through ODC-23 and submitted the testimony of Paul Kerins and ODC Investigator Robert McKenney. Respondent failed to appear for the disciplinary hearing.

The totality of the record supports the conclusion that Petitioner met its burden of proof. For the following reasons, we recommend that Respondent be disbarred.

Respondent incompetently represented the Helfrich Estate and demonstrated an absolute lack of diligence and professionalism, compelling his brother Paul Kerins, the complainant herein, to file a Petition for Removal. At the hearing on the Removal Petition, Respondent made misrepresentations to the court regarding the status of the estate accounts. After being removed as Executor, Respondent exacerbated his misconduct by failing to cooperate in the transfer of the Estate file to

Paul Kerins. After appearing at the October 31, 2013 hearing, Respondent thereafter ignored numerous attempts to communicate with him. Respondent's actions necessitated Judge Hughes to hold him in contempt.

Respondent misappropriated, converted or misapplied a minimum of \$36,626.15 belonging to the Helfrich Estate. Respondent paid himself in his capacity as executor and attorney the sum of \$48,873.15, notwithstanding the fact that his neglect and lack of diligence caused his removal as Executor.

A formal audit was held, which Respondent chose not to participate in, and the court thereafter reduced Respondent's total fee to \$25,000.00. Respondent also misappropriated \$8,750.00 of his brother's share of the inheritance and cash in the amount of \$4,003 that was found in the decedent's house and not properly deposited.

Respondent has shown the same contempt for the disciplinary system that he showed to the court system by failing to participate at any level in the proceedings. He failed to submit a response to the DB-7 letter of inquiry, failed to answer the Petition for Discipline, failed to appear at the prehearing conference and failed to appear at the disciplinary hearing. The record is clear that proper notification was given to Respondent concerning these proceedings.

The purpose of the disciplinary system 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, 300 (Pa. 1990). Although each disciplinary matter is decided on the totality of the facts present, precedent is considered due to "the need for consistency in the results reached in disciplinary cases." *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186, 190 (Pa. 1983).

Precedent supports disbarment in cases involving misappropriation of estate funds and failure to participate in disciplinary proceedings. In *Office of Disciplinary Counsel v. Arlin Ray Thrush*, 160 DB 2011 (2013), Mr. Thrush was disbarred for his neglect of two estates and his misappropriation of funds from those estates in the amount of \$27,322.50. In *Office of Disciplinary Counsel v. Daniel J. Evans*, No. 152 DB 2000 (2003), Mr. Evans was disbarred for misappropriating \$90,000.00 of entrusted funds in his capacity as executor of an estate, failing to diligently represent the estate, and making misrepresentations on his attorney annual fee forms. Similarly, in *Office of Disciplinary Counsel v. Thomas Louie*, No. 108 DB 2002 (2003), Mr. Louie represented the executors of an estate. He engaged in a three-year pattern of neglect, deception and theft, and was ultimately disbarred. The Board noted that his failure to appear at the disciplinary hearing aggravated an already serious situation.

Respondent's complete failure to participate in the disciplinary process is an aggravating factor supporting the Board's recommendation of disbarment. The Board and the Supreme Court have considered such failure to participate a demonstration of a respondent-attorney's lack of interest in a law license and a strong indication of unfitness to practice law. See, *Office of Disciplinary Counsel v. Brett J. Lennert*, Nos. 87 and 163 DB 2009 (2011); *Office of Disciplinary Counsel v. Michael Zachary Mandale*, No. 37 DB 2012 (2013); *Office of Disciplinary Counsel v. John Michael Biondi*, No. 196 DB 2012 (2014).

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, William J. Kerins 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 are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
David E. Schwager, Board Member

Date: November 4, 2015

Board Members Porges and Cordisco did not participate in the adjudication.