

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1719 Disciplinary Docket No. 3  
Petitioner :  
v. : No. 211 DB 2010  
: Attorney Registration No. 87299  
ROBERT LOUIS FREY, JR., :  
Respondent : (Westmoreland County)

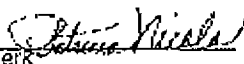
ORDER

PER CURIAM:

AND NOW, this 23<sup>rd</sup> day of May, 2011, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated March 10, 2011, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Robert Louis Frey, Jr., is suspended on consent from the Bar of this Commonwealth for a period of three years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 5/23/2011

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

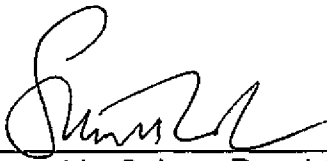
OFFICE OF DISCIPLINARY COUNSEL : No. 211 DB 2010  
Petitioner :  
v. : Attorney Registration No. 87299  
ROBERT LOUIS FREY, JR. :  
Respondent : (Westmoreland County)

RECOMMENDATION OF THREE-MEMBER PANEL  
OF THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Stewart L. Cohen, Carl D. Buchholz, III, and David A. Nasatir, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on February 7, 2011.

The Panel approves the Joint Petition consenting to a three year suspension and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.

  
\_\_\_\_\_  
Stewart L. Cohen, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: March 10, 2011

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
: Petitioner :  
: :  
: No. 211 DB 2010 :  
v. :  
: :  
ROBERT LOUIS FREY, JR., : Attorney Registration No. 87299 :  
: :  
Respondent : (Westmoreland County)

JOINT PETITION IN SUPPORT OF DISCIPLINE  
ON CONSENT UNDER RULE 215(d), Pa.R.D.E

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

David M. Lame  
Disciplinary Counsel  
Suite 1300, Frick Building  
437 Grant Street  
Pittsburgh, PA 15219  
(412) 565-3173

and

Robert Louis Frey, Jr., Esquire  
Respondent  
19 Adrian Drive  
Greensburg, PA 15601  
(412) 786-7718

**FILED**

FEB 07 2011

Office of the Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
: Petitioner :  
: :  
: No. 211 DB 2010 :  
v. :  
: :  
ROBERT LOUIS FREY, JR., : Attorney Registration No. 87299 :  
: :  
Respondent : (Westmoreland County)

JOINT PETITION IN SUPPORT OF DISCIPLINE  
ON CONSENT UNDER RULE 215(d), Pa.R.D.E

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and David M. Lame, Disciplinary Counsel, and Respondent, Robert Louis Frey, Jr., file this Joint Petition in Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E. and respectfully represent as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "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, Robert Louis Frey, Jr., was born in 1968. He was admitted to practice law in the Commonwealth of Pennsylvania on October 22, 2001. Respondent's attorney registration mailing address is 19 Adrian Drive, Greensburg, PA 15601. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ADMISSIONS AND  
RULES OF PROFESSIONAL CONDUCT VIOLATED

3. In April of 1997, Gregory Hershberger (hereinafter, Mr. Hershberger) filed a claim for workers' compensation benefits with the Pennsylvania Department of Labor and Industry Bureau of Workers' Compensation as a result of injuries he sustained while working for Johnstown American Corporation.

4. By decision rendered letter and Order dated September 7, 2000, Workers' Compensation Judge Getty concluded that Mr. Hershberger was not disabled as a result of a work related injury and thus Mr. Hershberger's claim for workers' compensation benefits was denied.

5. Judge Getty's decision to deny benefits was appealed to the Workers' Compensation Appeal Board which affirmed Judge Getty's ruling in October of 2001.

6. Thereafter, Attorney Terrence O'Brien informed Mr. Hershberger neither he nor his firm of Goldberg, Persky, Jennings & White would continue with their representation of him in the workers' compensation matter.

7. Attorney Cindy Stine of the same firm continued to represent Mr. Hershberger in a social security disability appeal to the United States District Court of the Western District of Pennsylvania at case 01-CV-00057. The appeal was successful as Mr. Hershberger was awarded SSD benefits in July of 2002.

8. By *pro se* letter dated November 19, 2001, Mr. Hershberger appealed the decision of the Workers' Compensation Appeal Board to the Commonwealth Court of Pennsylvania.

9. In late December 2001, Mr. Hershberger met with Respondent in Respondent's Johnstown office to discuss re-litigating or further appeal of his workers' compensation case.

10. Respondent had not previously represented Mr. Hershberger.

11. Respondent did not either at the time of his meeting with Mr. Hershberger, or within a reasonable time after commencing the representation, communicate to Mr. Hershberger in writing, the basis or rate of his fee for the representation.

12. Respondent did not enter his appearance for Mr. Hershberger before the Commonwealth Court in the workers' compensation matter.

13. Respondent began working on Mr. Hershberger's case by sending a letter to the Department of Public Welfare (DPW) dated March 22, 2002, in which he informed DPW that:

(a) He represented Mr. Hershberger;

(b) Mr. Hershberger's Workers' Compensation claim was still being pursued; and,

(c) He, as Mr. Hershberger's attorney, could forward any documents DPW required from Mr. Hershberger.

14. In a Memorandum Opinion dated April 22, 2002, the Commonwealth Court affirmed the decision denying Workers' Compensation benefits to Mr. Hershberger.

15. After receiving notice from the Commonwealth Court in late April 2002 or early May 2002 that his appeal was denied, Mr. Hershberger took the notice to Respondent who advised him that he should not worry about the decision of the Commonwealth Court as it did not mean that the case was over, or words to that effect.

16. By letter sent to Mr. Hershberger and dated April 30, 2002,  
Respondent:

(a) Advised Mr. Hershberger that he should "divest" himself of the services of Ms. Stine as Mr. Hershberger could consider filing a legal malpractice action against her in the future;

(b) Requested that Mr. Hershberger pay him for work performed to date on his case in the amount of \$930;

(c) Told Mr. Hershberger that he would continue to research a way to get Mr. Hershberger the justice he deserved;

(d) Told Mr. Hershberger that he would end his hourly billing once a decision to file the lawsuit had been made and Mr. Hershberger would no longer be billed for hourly work as he would not charge unless Mr. Hershberger prevailed; and,

(e) Noted that Mr. Hershberger was responsible for expenses of filing the suit.

17. By Treasurer's Check dated May 2, 2002, Mr. Hershberger paid Respondent the invoiced amount of \$930.



18. During June of 2002, Respondent and Mr. Hershberger had telephone conversation and a meeting about the potential cost of Mr. Hershberger's case.

19. Also in June of 2002 during a meeting in Respondent's office, Respondent requested, and Mr. Hershberger agreed to pay, a retainer of \$15,000 for Respondent to bill against while continuing with the representation.

20. Respondent did not provide Mr. Hershberger with any writing which set forth the basis or rate of his fee.

21. On July 1, 2002, by Check #962, dated June 28, 2002, made payable to Respondent, Respondent received from Mr. Hershberger's parents the amount of \$15,000.

22. As of July 1, 2002, Respondent was entrusted with a total of \$15,000 on behalf of Mr. Hershberger.

23. On July 1, 2002, Respondent deposited or caused to be deposited \$10,000 of the \$15,000 into his newly opened S&T Bank Account No. 3000911325, captioned Lawyer Trust Account Board, Robert Louis Frey Jr. Attorney at Law IOLTA Account (hereinafter, S&T IOLTA Account).

24. With that deposit, the balance in the S&T IOLTA Account was \$10,000.

25. Also on July 1, 2002, Respondent deposited or caused to be deposited the remaining \$5,000 of the \$15,000 he received into his S&T Bank Attorney At Law Account No. 3000911333 (hereinafter, Attorney at Law Account). This account is not a segregated account for the deposit of entrusted funds.

26. Of the \$15,000 Respondent received on behalf of Mr. Hershberger in July 2002, and with which he was then entrusted, Respondent began a pattern of dissipating those funds by using the money for payment of items unrelated to and not on behalf of Mr. Hershberger until he misappropriated or otherwise converted \$14,598.15.

#### A. ATTORNEY AT LAW ACCOUNT

27. The deposit of the \$5,000 into Respondent's Attorney at Law Account was not payment of an earned fee as Respondent had done no additional work for Mr. Hershberger since receiving the Treasurer's check in the amount of \$930 in May of 2002.

28. Shortly after making the July 1, 2002 deposit of \$5,000 into his Attorney at Law Account, Respondent made disbursements from the account for payment of personal items unrelated to Mr. Hershberger. Respondent had checks made payable to the following:

- (a) Greensburg Country Club in the amount of \$1,000;
- (b) MAWC (Municipal Authority of Westmoreland County) in the amount of \$70;
- (c) Himself (annotated as "vacation money") in the amount of \$2,000;
- (d) His employee, Amy Snoby, in the amount of \$251.56; and,
- (e) AR Builders (for rent) in the amount of \$843.

29. On July 31, 2002, Respondent's Attorney at Law Account balance was \$835.44, which was \$4,164.56 below the \$5,000 amount Respondent was entrusted with on behalf of Mr. Hershberger.

30. On August 6, 2002, following other account activity for matters unrelated to Mr. Hershberger, Respondent deposited a Commercial Loan Advance in the amount of \$3,000 into his Attorney At Law Account, unrelated to the Hershberger matter, thereby increasing the balance in Respondent's Attorney at Law Account to \$3,583.88.

31. Thereafter, in August 2002, the disbursements made from Respondent's Attorney At Law Account were not made to or on behalf of Mr. Hershberger and were personal in nature.

32. By August 28, 2002, the balance in Respondent's Attorney At Law Account was reduced to \$174.59.

33. As of August 28, 2002, Respondent had misappropriated \$4,825.41 of the \$5,000 he was entrusted with, and had deposited into his Attorney at Law Account, on behalf of Mr. Hershberger.

34. From August 28, 2002, until March 26, 2003, the balance in Respondent's Attorney at Law Account fluctuated due to deposits and disbursements that were made into and out of the account unrelated to and not on behalf of Mr. Hershberger, including deposits from Respondent's S&T Bank IOLTA Account, in which the remaining \$10,000 from Mr. Hershberger had been deposited.

35. On March 26, 2003, the balance in Respondent's Attorney at Law Account was (-) \$2.78, and Respondent had misappropriated the \$5,000 with which he had been entrusted on behalf of Mr. Hershberger.

#### B. IOLTA ACCOUNT

36. For the month of July 2002, after Respondent received and deposited into his S&T IOLTA Account \$10,000 on behalf of Mr. Hershberger, and was entrusted with the same, Respondent made no disbursements from this account.

37. On August 21, 2002, Check #1001, dated August 15, 2002 and made payable to Staples, annotated "Printing for Hershberger," in the amount of \$275.35 cleared Respondent's S&T IOLTA Account, leaving him entrusted with \$9,724.65, in the S&T IOLTA Account on behalf of Mr. Hershberger.

38. On August 31, 2002, the balance in Respondent's S&T IOLTA Account was \$9,724.65.

39. On September 20, 2002, check #1002, made payable to Respondent in the amount of \$2,000, without annotation, and not made to or on behalf of Mr. Hershberger, cleared Respondent's S&T IOLTA Account, leaving a balance in that account of \$7,724.65.

40. On September 30, 2002, the balance in Respondent's S&T IOLTA Account was \$7,724.65, which was \$2,000 below the \$9,724.65 amount Respondent was entrusted with in that account on behalf of Mr. Hershberger.

41. The proceeds of Respondent's S&T Bank IOLTA Account check #1002 were deposited into his Attorney at Law Account.

42. On October 29, 2002, in a matter unrelated to the Workers' Compensation matter, but on behalf of Mr. Hershberger, check #1003, dated October 22, 2002 and made payable to District Court 47-3-01, in the amount of \$126.50 and annotated Greg Hershberger civil complaint, cleared Respondent's

S&T IOLTA Account, thereby reducing Respondent's entrustment on behalf of Mr. Hershberger to \$9,598.15.

43. From November through December 2002 Respondent's S&T IOLTA Account balance fluctuated as a result of deposits and disbursements that were made into and out of the account unrelated to and not on behalf of Mr. Hershberger. As of December 31, 2002, the balance in Respondent's S&T IOLTA Account had decreased to \$6,308.75, which was \$3,289.40 below the amount Respondent was entrusted with on behalf of Mr. Hershberger.

44. On January 2, 2003, check #1014, in the amount of \$3,500, made payable to Respondent without annotation and not made to or on behalf of Mr. Hershberger, cleared Respondent's S&T IOLTA Account, thereby decreasing the balance in this account to \$2,808.75.

45. On January 2, 2003, check #1010, in the amount of \$500, made payable to Respondent and annotated "Hershberger reimbursement," cleared Respondent's S&T IOLTA Account, further decreasing the balance in this account to \$2,308.75, which was \$7,289.40 below the \$9,598.15 amount Respondent was entrusted with on behalf of Mr. Hershberger.

46. The \$500 disbursement to Respondent was not made to or behalf of Mr. Hershberger.

47. On January 2, 2003, Respondent deposited the proceeds of check #1010 and check #1014, written on his S&T IOLTA Account and made payable to Respondent in the total amount of \$4,000, into his Attorney at Law Account. Respondent then made disbursements from his Attorney at Law Account to pay Respondent's personal expenses, including but not limited to A&R Building for January rent, Verizon, FNB, S&T Bank, MBNA and Chrysler Financial.

48. Those disbursements were not made to or on behalf of Mr. Hershberger.

49. Between January 31, 2003, and April 16, 2003, the amount in the S&T IOLTA Account continued to decrease due to disbursements made on behalf of other clients, and not on behalf of Mr. Hershberger.

50. As of April 16, 2003, due to disbursements made on behalf of other clients, and not on behalf of Mr. Hershberger, the balance in the S&T IOLTA Account was \$8.50, and Respondent had misappropriated and misused \$9,589.65 of the \$9,598.15 with which Respondent was still entrusted on behalf of Mr. Hershberger.

51. Respondent continued to utilize the S&T IOLTA Account until January of 2004 when the account balance was zero and the account was closed. At that time, Respondent had misappropriated the entire \$9,598.15 with which he was entrusted on behalf of Mr. Hershberger.

52. After receiving the \$15,000 retainer in July of 2002, Respondent changed his law office address at least three (3) times between 2002 and 2008 without keeping Mr. Hershberger informed of his whereabouts, or maintaining regular communication with Mr. Hershberger.

53. On those occasions during the period 2002-2008 when Mr. Hershberger was able to locate Respondent at a new law office address, Mr. Hershberger would telephone Respondent and leave messages for Respondent requesting both a return telephone call and an update about his case.

54. In those instances when Respondent did take Mr. Hershberger's telephone call, he would tell Mr. Hershberger that he was busy finishing the brief and/or the complaint and that it took time to fully address the issues necessary to file a quality pleading, or words to that effect.

55. In 2006, Mr. Hershberger located and spoke with Respondent by telephone and told him that he wanted his entire file returned to him and a full refund because he was dissatisfied with Respondent's legal representation.

56. Near the end of the year in 2006, Mr. Hershberger received some paperwork and documents from Respondent. Respondent did not refund the \$15,000 or any portion thereof.



57. Prior to and after receiving the paperwork and documents from Respondent, Mr. Hershberger spoke with Attorney Mark Conboy on several occasions during late 2006 and early 2007, concerning whether he could still proceed with his Workers' Compensation case and whether Mr. Conboy would represent him in that matter.

58. By letter dated February 18, 2008, Mr. Conboy declined to represent Mr. Hershberger and informed Mr. Hershberger that his case was not viable as the case had long since been closed.

59. As a courtesy to Mr. Hershberger, Mr. Conboy then attempted to speak with Respondent at his last known address, that being the offices of Attorney Daniel Lynch in Cranberry Pennsylvania. Mr. Conboy was informed that Respondent was no longer employed at that firm, but the firm would communicate with Respondent to return Mr. Conboy's telephone call.

60. Thereafter, in late February or early March 2008, Mr. Conboy spoke with Respondent about refunding to Mr. Hershberger the \$15,000 retainer.

61. Respondent told Mr. Conboy that because Mr. Hershberger was unhappy he would be willing to return \$5,000 to \$7,500.

62. Despite his statements to Mr. Conboy, Respondent did not return any portion of the \$15,000 to Mr. Hershberger.

63. Thereafter, Mr. Hershberger filed a claim for \$15,000 with the Pennsylvania Lawyers Fund for Client Security (hereinafter, the Fund).

64. In his response dated December 7, 2009, to the Fund, the Respondent misrepresented where he deposited the \$15,000 retainer he received on behalf of Mr. Hershberger by telling the Fund he deposited the entire amount into his IOLTA Account.

65. Respondent also told the Fund he wanted to resolve the matter with Mr. Hershberger directly.

66. Despite his statements to the Fund, Respondent did not communicate with Mr. Hershberger nor did he return the \$15,000 or any portion thereof.

67. In March of 2010 the Fund awarded Mr. Hershberger the full amount of his claim, \$15,000.

68. Respondent has not reimbursed the Fund.

69. By his conduct as alleged in paragraphs 3 through 68 above, Respondent acknowledges that he has violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.3 – "A lawyer shall act with reasonable diligence and promptness in representing a client."

(b) Rule of Professional Conduct 1.4(a)(3) – "A lawyer shall keep the client reasonably informed about the status of the matter."

(c) Rule of Professional Conduct 1.4(a)(4) - "A lawyer shall promptly comply with reasonable requests for information."

(d) Rule of Professional Conduct 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."

(e) Rule of Professional Conduct 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."

(f) Rule of Professional Conduct 1.15(a)(for conduct occurring before September 20, 2008) – "A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later."

(g) Rule of Professional Conduct 1.15(b) (for conduct occurring before September 20, 2008) – "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."

(h) Rule of Professional Conduct 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."

(i) Rule of Professional Conduct 8.4(c) – "It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

SPECIFIC JOINT RECOMMENDATION  
FOR DISCIPLINE AND SUPPORTING CASES

70. The preceding agreed to facts, and the clearly supported and agreed to violations of the above Rules of Professional Conduct, evidence misconduct involving the mishandling, misuse, and misappropriation of client funds along with a failure to exercise due diligence, failure to communicate with a client, failure to account, failure to return any unused and unearned portion of those funds, and conduct involving dishonesty and misrepresentation. The parties hereto agree and jointly recommend that the misconduct warrants a three year suspension.

71. 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 215(d), Pa.R.D.E., 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. In support of Petitioner and Respondent's joint recommendation it is respectfully submitted that:

(a) There are several mitigating circumstances:

(i) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;

(ii) Respondent has cooperated with Petitioner, as is evident by Respondent's admissions herein and his consent to receiving a three year suspension;

(iii) Respondent is remorseful for and embarrassed by his misconduct and understands that he should be disciplined, as is evident by his consent to receiving a three year suspension;

(iv) Respondent has no prior disciplinary history; and,

(v) Respondent at the time of the misconduct was a recently admitted lawyer and has since the time of the misconduct engaged in the practice of law without any further disciplinary sanction of record being imposed upon him.

(b) An aggravating factor in this case is Respondent's failure to make restitution or reimbursement to Mr. Hershberger or to the Pennsylvania Lawyers Fund for Client Security.

(c) Respondent has no evidence to offer which would meet the **Braun** standard and serve as mitigation. **Office of Disciplinary Counsel v. Braun**, 553 A.2d 894 (PA. 1989)

(d) A review of other case law requires that before determining the appropriate measure of discipline, precedent must be

examined to measure the Respondent's misconduct against other matters. *In Re Anonymous*, No. 56 DB 1994, 28 Pa. D. & C.4th 398 (1995). Further, any aggravating and mitigating factors are also to be considered. *In Re Anonymous*, No. 35 DB 1988, 8 Pa. D. & C.4th 344 (1990).

(e) In this case, Respondent accepted a fee from a client, failed to do the work for which he was retained, commingled funds entrusted to him with personal funds, indiscriminately used those funds, and failed to return the money when requested to do so. Thus, he engaged in dishonest conduct. While there is no "per se" rule for discipline in Pennsylvania. *See Office of Disciplinary Counsel v. Lucariani*, 504 Pa. 271, 472 A.2d 186 (1983), the Disciplinary Board and the Supreme Court consider the misappropriation of client funds as a serious act of misconduct requiring a strict disciplinary sanction. Our Supreme Court explicitly stated that the mishandling of client monies is a serious breach of public trust which will not be tolerated in this Commonwealth. *Office of Disciplinary Counsel v. Lewis*, 493 Pa. 519, 426 A.2d 1138 (1981). Over the years, precedent has established that unauthorized dealings in client money will result in some form of public discipline to be imposed due to the breach of trust involved. *Office of Disciplinary Counsel v. Durney*, 71 Pa. D. & C.4<sup>th</sup> 395 No. 55 DB 2003 (2004).

(f) The following are disciplinary cases which lend support to the recommendation for a three year suspension. In the recent case of *Office of Disciplinary Counsel v. Gniewek*, 171 DB 2008, the Disciplinary Board, following consideration of a joint petition in support of discipline on consent, recommended that Mr. Gniewek be suspended for a period of three years for conduct involving violations of Rules of Professional Conduct 1.3, 1.4(a), 1.4(a)(3), 1.15(a), 1.15(b), and 8.4(c), Mr. Gniewek was charged with the mishandling and misuse of \$60,000 in trust funds along with his failure to properly communicate, account for and the proper and timely distribution of those trust funds. The Supreme Court agreed with the Disciplinary Board's recommendation and imposed a three year suspension. Likewise, in the case of *Office of Disciplinary Counsel v. Zeigler*, 83 Pa. D & C.4<sup>th</sup> 401 No. 49 DB 2005 (2006) Mr. Zeigler was suspended for three (3) years for misconduct involving commingling of entrusted funds, and the converting of a little more than \$15,000 of estate funds for personal means and payment of personal bills. Mr. Zeigler, like the instant Respondent, did not have authority to use the client (estate) funds for his own purposes. Like the instant Respondent, Mr. Zeigler had no prior disciplinary history. The Disciplinary Board in its Report and Recommendation to the Supreme Court cited to the following cases as support for imposing a three year suspension. In the case of *Office of Disciplinary Counsel v. Harmon*, 72 Pa. D. & C.4<sup>th</sup> 115 No. 15 DB 2003



(2004), the attorney commingled trust funds with her own funds, and used client funds to pay personal bills. The Rule violations in *Harmon* included, as here, dishonest conduct involving converting escrowed funds to personal uses in violation of Rules of Professional Conduct 8.4(c), and 1.15(a) for the failure to segregate funds. The Hearing Committee in *Harmon* recommended a suspension of two years. On review the Disciplinary Board recommended a suspension of three years which the Supreme Court ultimately agreed with and imposed upon Ms. Harmon. In recommending that Ms. Harmon be suspended for three years, the Disciplinary Board noted the cases of *Office of Disciplinary Counsel v. Foti*, 69 Pa. D. & C.4<sup>th</sup> 278 No. 89 DB 2001 (2003) in which the attorney with no prior record of discipline and who presented mitigation was suspended for three years for having converted \$33,000 in fiduciary funds and for failing to timely pay over settlement proceeds to a client; *Office of Disciplinary Counsel v. Olshock* in which the attorney was suspended for three years after having converted \$18,000 from an estate; and *Office of Disciplinary Counsel v. Hart*, No. 115 DB 1997 in which the attorney, as Mr. Gniewek previously, had no prior disciplinary history but who commingled and converted client funds over a period of time, was also suspended for three years. Finally, in another case where the respondent attorney met the *Braun* standard, a suspension of more than two years was imposed. See *In Re Anonymous No. 66 DB 1984 [John C. Albert]*,

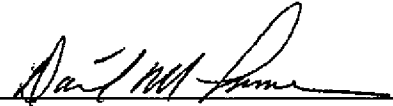
17 Pa. D. & C.4th 414 (1992), where Mr. Albert, who suffered from a bipolar disorder, was suspended for 2½ years by the Supreme Court for his misconduct in depositing estate monies into a personal account, then withdrawing the monies to satisfy personal obligations.

WHEREFORE, the Petitioner and Respondent respectfully request that pursuant to Rule 215(e) and 215(g), Pa.R.D.E. a three member panel of the Disciplinary Board review and approve the above Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania in which it recommends to the Supreme Court that an Order be entered suspending Respondent from the practice of law for a period of three years and direct Respondent to comply with all provisions of Rule 217, Pa.R.D.E.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

By   
David M. Lane  
Disciplinary Counsel

and

By   
Robert Louis Frey, Jr., Esquire  
Respondent

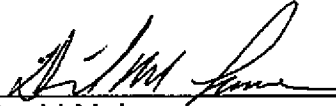
BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
: Petitioner :  
: No. 211 DB 2010 :  
v. :  
: Attorney Registration No. 87299 :  
ROBERT LOUIS FREY, JR., :  
: Respondent : (Westmoreland County)

VERIFICATION

The statements contained in the foregoing Joint Petition in Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E. are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

FEB 3 2011  
Date

  
\_\_\_\_\_  
David M. Lane  
Disciplinary Counsel

2.3.11  
Date

  
\_\_\_\_\_  
Robert Louis Frey, Jr., Esquire  
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
: Petitioner :  
: No. 211 DB 2010 :  
v. :  
: ROBERT LOUIS FREY, JR., : Attorney Registration No. 87299 :  
: Respondent : (Westmoreland County)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

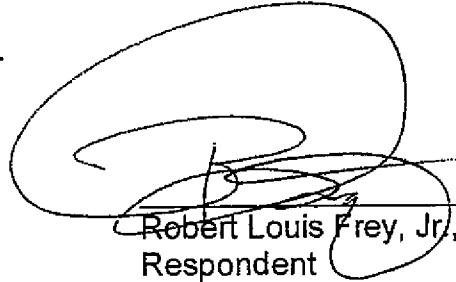
Respondent, Robert Louis Frey, Jr., hereby states that he consents to the sanction of a three year suspension as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; and he is fully aware of the implications of submitting the consent and he has not consulted with counsel in connection with the decision to consent to discipline;


2. He is aware that there are pending proceedings involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

3. He acknowledges that the material facts set forth in the Joint Petition are true; and,

4. He consents to the recommended discipline because he knows that if the charges pending at No. 211 DB 2010 continued to be prosecuted, he could not successfully defend against them.

  
Robert Louis Frey, Jr., Esquire  
Respondent

Sworn to and subscribed  
before me this 3rd  
day of February, 2011.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Dawn L. Goob, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires Sept. 23, 2011  
Member, Pennsylvania Association of Notaries