

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1768 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 213 DB 2009
v.	:	
	:	Attorney Registration No. 90793
MICHAEL PAUL GORDON,	:	
Respondent	:	(Lackawanna County)

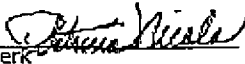
ORDER

PER CURIAM:

AND NOW, this 22nd day of December, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 16, 2011, it is hereby

ORDERED that Michael Paul Gordon 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 12/22/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 213 DB 2009
Petitioner	:	
	:	
v.	:	Attorney Registration No. 90793
	:	
MICHAEL PAUL GORDON	:	
Respondent	:	(Lackawanna 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 September 20, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Michael Paul Gordon containing two charges. Charge I involves two separate complaints that had been determined to be concluded with the imposition of a conditional private reprimand; however, Respondent failed to comply with the conditions or attend the private reprimand. Charge II involves Respondent's alleged failure to refund an unearned fee. Respondent failed to file an Answer.

A disciplinary hearing was held on January 11, 2011, before a District III Hearing Committee comprised of Chair Jeffrey B. Rettig, Esquire, and Members Charles J. Vogt, Esquire, and Vincent S. Cimini, Esquire. Respondent represented himself and participated by telephone. Petitioner introduced four exhibits and the testimony of three Complainants. Respondent testified on his own behalf but presented no other evidence.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on April 20, 2011, concluding that Respondent violated the Rules as contained in the Petition for Discipline, 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 July 23, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, 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 the aforesaid Rules.

2. Respondent is Michael Paul Gordon. He was born in 1959 and was admitted to practice law in Pennsylvania in 2003. His current attorney registration address

is 320 N. Apple Street, Dunmore PA 18512. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent was placed on administrative suspension by Supreme Court Order dated March 3, 2010.

4. Respondent has no history of prior discipline in Pennsylvania.

Private Reprimand Matter

5. In accordance with Rule 208(a)(5), Pa.R.D.E., by Order dated January 7, 2010, the Disciplinary Board determined that Respondent should receive a Private Reprimand with Conditions as a result of misconduct involving his representation of Joanne Griffiths in her divorce case and his representation of Daniel and Debra Checko in a water damage claim.

6. The January 7, 2010 Order provided that within 30 days from the date of the Order, Respondent was directed to submit to the Secretary of the Board and Disciplinary Counsel: 1) proof that he refunded \$3,000 to Joanne Griffiths, and 2) an accounting of \$610 paid by the Checkos, provide a refund of any unearned or unexpended costs and return the Checkos' photographs.

7. By letter from the Secretary of the Board dated January 7, 2010, Respondent was informed of the determination of the Board that he was to receive a Private Reprimand with Conditions, and was provided with a copy of the Board Order of January 7, 2010.

8. The letter dated January 7, 2010, further informed Respondent that pursuant to Rule 208(a)(6), Pa.R.D.E., he had 20 days to demand of right that a formal proceeding be instituted against him before a hearing committee in the appropriate

disciplinary district and that in the event of such demand, Respondent need not appear for the administration of the Private Reprimand.

9. By separate letter from the Secretary of the Board dated January 7, 2010, Respondent was advised that he was to pay an Administrative Fee of \$250.

10. Both of the Secretary's letters of January 7, 2010 were addressed to Respondent at his then registered address of 400 Elm Street, Dunmore PA 18512, and were sent in the same envelopes by regular and certified mail; the copies sent by certified mail were returned as "unclaimed," but the copies sent by regular first class mail were not returned.

11. Respondent did not notify Office of the Secretary that he demanded the institution of formal proceedings.

12. Respondent failed to provide the Office of the Secretary and Disciplinary Counsel with proof that he had complied with the conditions set forth in the Order of January 7, 2010, within the 30 days allotted, or at any time thereafter; further, Respondent failed to refund \$3,000 to Joanne Griffiths and failed to account to the Checkos for the \$610 they had paid to him or to refund any unearned fees.

13. By letter from the Secretary dated March 11, 2010, Respondent was: reminded that he had not paid the expenses which had been assessed against him; advised that he was scheduled to appear for his Private Reprimand on April 8, 2010 in the Board's Philadelphia District Office; advised that a failure to pay the expenses on or before that date would be deemed a request to be administratively suspended pursuant to Rule 219(i), Pa.R.D.E.; reminded that he had not submitted proof that he had complied with the Conditions attached to the Private Reprimand; and advised that failure to comply with the conditions would be grounds for reconsideration of the matter.

14. By Notice to Appear for Private Reprimand Following Informal Proceedings dated March 11, 2010, Respondent was notified that he had not submitted a demand for the institution of formal proceedings, that his Private Reprimand was scheduled for April 8, 2010, and that willful failure to appear for the Private Reprimand would constitute an independent ground for discipline pursuant to Rule 203(b)(2), Pa.R.D.E.

15. The Secretary's letter and the Notice to Appear dated March 11, 2010, were addressed to Respondent at his then registered address of 400 Elm Street, Dunmore PA 18512, and were sent in the same envelopes by regular and certified mail, neither of which were returned as undeliverable. The Domestic Return Receipt for the copies sent by certified mail was not returned.

16. Respondent did not appear for his Private Reprimand on April 8, 2010, nor did he give any notice to the Board that he would not attend.

17. By letter to Respondent dated April 13, 2010, sent by regular first class and by certified mail, the Chair of the Disciplinary Board advised that Respondent failed to appear for his Private Reprimand and failed to comply with the Conditions attached thereto.

18. The April 13, 2010 letter further advised that Respondent's failure to appear without good cause would constitute an independent act of professional misconduct and result in the institution of formal proceedings, and requested that the Respondent advise the Board by May 3, 2010, why his failure to appear and failure to comply with the Conditions should not result in formal proceedings brought against him.

19. On April 20, 2010, Respondent's brother signed the Domestic Return Receipt card for the letter of April 13, 2010.

20. By faxed letter dated May 4, 2010, addressed to the Disciplinary Board, Respondent stated that he was writing in response to the "recent letters" that had been sent to him but "were late arriving...because they were forwarded to [Respondent's] ex-wife who recently handed [Respondent] a lot of mail she had been gathering."

21. Respondent's faxed letter of May 4, 2010, briefly mentioned the Griffiths and Checko matters, Respondent's physical and marital difficulties, and stated that he wanted to "take the year off in 2010 and just come to grips with and settle with all the changes that have occurred in the last year."

22. Respondent's letter did not address why he failed to appear for his Private Reprimand on April 8, 2010, or why he did not comply with the Conditions attached thereto; it also failed to provide a return address.

23. On or about April 29, 2010, Respondent advised the Hearing Coordinator of the Disciplinary Board that his address was 240 North Apple Street, Dunmore PA 18512.

24. By letter to Respondent dated May 12, 2010, sent by regular first class and certified mail to the address provided by Respondent, the Disciplinary Board Chair acknowledged receipt of Respondent's letter of May 4, 2010, but noted that Respondent failed to specifically address the reasons why he failed to appear for the Private Reprimand and failed to comply with the Conditions.

25. Respondent was directed to provide proof that he complied with the Conditions within ten days and stated that if Respondent provided such proof the Private Reprimand would be rescheduled, but if he did not provide proof, formal charges would be brought against him.

26. Both copies of the Board Chair's letter of May 12, 2010 were returned by the postal authorities marked "no such number."

27. On May 18, 2010, the Board Chair's letter of May 12, 2010 was resent to Respondent at 706 Meade Street 2, Scranton PA 18512, an address that had been provided by the postal authorities.

28. On May 19, 2010, Respondent's brother signed for the copy of the Board Chair's letter of May 12, 2010.

29. Respondent did not respond to the Board Chair's letter, nor has he refunded \$3,000 to Ms. Griffiths or accounted to the Checkos for the \$610.

30. As a result of Respondent's failure to demand the institution of formal proceedings against him, Respondent is conclusively deemed to have violated the Rules of Professional Conduct set forth in the Board Secretary's letter of January 7, 2010. (Exhibit B)

Wilmarth-Ammenhauser Matter

31. In July 2007, Respondent met with Clarissa Sauschuck and her grandmother, Marie Wilmarth-Ammenhauser, relative to initiating divorce, support and custody actions on behalf of Ms. Sauschuck in Orange County, New York.

32. Respondent verbally advised Ms. Wilmarth-Ammenhauser that the retainer fee would be \$5,000, which sum was paid to Respondent by checks dated July 18, 2007, for \$2,000, and September 12, 2007, for \$3,000.

33. Respondent had not previously represented Ms. Sauschuck and did not communicate to her in writing the basis or rate of his legal fee.

34. Respondent deposited the checks into his IOLTA account, but promptly disbursed all of the funds to himself or others not related to his representation of Ms. Sauschuck and before they were earned by him.

35. Respondent did not have the informed consent, confirmed in writing, of either Ms. Sauschuck or Ms. Wilmarth-Ammenhauser to treat the payments as his own.

36. Other than meeting with Ms. Sauschuck on one occasion and having a few telephone conversations with her, Respondent spent no additional time on Ms. Sauschuck's legal matters.

37. Respondent did not file anything on Ms. Sauschuck's behalf in Orange County, NY.

38. In late summer or fall of 2007, Ms. Sauschuck and her husband reconciled and Respondent was so advised by Ms. Wilmarth-Ammenhauser.

39. Respondent advised Ms. Wilmarth-Ammenhauser that he would refund the entire \$5,000, but she told him to keep \$500 as his fee and requested a refund of \$4,500.

40. While Respondent agreed to refund the \$4,500, he failed to promptly do so, despite numerous calls from Ms. Wilmarth-Ammenhauser.

41. In a plain white envelope with only Respondent's home address on it, with no cover letter or note, Respondent sent Ms. Wilmarth-Ammenhauser two money orders dated January 11, 2008, each for \$1,000.

42. On numerous occasions thereafter, Ms. Wilmarth-Ammenhauser requested the balance of the \$4,500, but Respondent failed to refund any more money.

43. In May of 2009, Ms. Wilmarth-Ammenhauser sued Respondent for \$2,500 plus costs, before Magisterial District Judge Thomas J. Golden, who rendered

judgment against Respondent on July 13, 2009 for \$2,620.50, which judgment Respondent has failed to satisfy.

44. Respondent did not appear at the disciplinary hearing, but participated by telephone. He called Hearing Committee Chair Rettig on January 10, 2011, the day before the hearing, and explained that he could not obtain transportation to the hearing.

45. Respondent testified that in May 2009, a number of things occurred in his personal life. He and his wife became estranged, his home was foreclosed on, and Ms. Ammenhauser filed her suit against him.

46. On June 8, 2009, Respondent was diagnosed with a brain tumor and basically has dropped everything to concentrate on his health.

III. CONCLUSIONS OF LAW

As a result of Respondent's failure to demand the institution of formal proceedings in the Griffiths and Checko matters, Respondent is conclusively deemed to have violated the following Rules of Professional Conduct as set forth in the Board Secretary's letter of January 7, 2010:

1. RPC 1.1 - Respondent failed to provide competent representation to Joanne Griffiths in her divorce case by failing to draft a marital settlement agreement, obtain a QDRO, or prepare, execute and file the required forms to conclude the divorce. Respondent failed to provide competent representation to the Checkos in their water damage claim by failing to initiate suit within two years of when they sustained damage, by failing to have the Sheriff serve the Writ of Summons after Respondent belatedly initiated suit, and by failing to file a complaint or negotiate a settlement.

2. RPC 1.3 - Respondent failed to proceed with reasonable diligence and promptness in representing Ms. Griffiths by failing to draft and have executed a marital settlement agreement, by failing to obtain and file a QDRO, and by failing to draft, execute and file the necessary forms to obtain a decree in divorce. Respondent failed to proceed with reasonable diligence and promptness on behalf of the Checkos by failing to timely institute suit for the water damage, failing to have the Sheriff serve the defendant after the Writ of Summons had issued more than two years after the damage, and by failing to file a Complaint or negotiate a settlement.

3. RPCs 1.4(a)(3) and (4) - Respondent failed to keep Ms. Griffiths and the Checkos reasonably informed about the status of their matters and promptly comply with reasonable requests for information.

4. RPC 1.5(b) - Respondent failed to communicate the basis or rate of his fee to his clients in writing, before or within a reasonable time after commencing the representation.

5. RPCs 1.15 (a), (e), and (g) [now (b), (i) and (m)] - Respondent treated the advanced legal fees of \$3,000 that Ms. Griffiths paid to him on August 29, 2008 and the \$500 that the Checkos paid to him on March 22, 2007 as his own funds and did not deposit those funds into an IOLTA account and withdraw them only as earned by him. Respondent did not have informed consent, confirmed in writing, to treat the funds as his own.

6. RPCs 1.15(b),(i) and (m) [formerly (a), (e) and (g)] - Respondent treated the \$110 the Checkos paid him on November 15, 2008 as his own, did not keep it segregated from his own funds, and did not deposit it into an IOLTA account until he paid the filing fee for Issuance of a Writ of Summons on or about February 17, 2009.

Respondent did not have the Checkos informed consent, confirmed in writing, to treat those advanced costs as his own funds.

7. RPC 1.15(e) [formerly (b)] - Despite the Checkos letter to Respondent of July 2, 2009, wherein they asked him to account for the \$610 they had paid, to refund any unearned fees or unexpended costs, and to return certain photographs, Respondent failed to do so.

As a result of Respondent's conduct in the Wilmarth-Ammenhauser matter, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.5(a) - A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

2. RPC 1.5(b) - When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client in writing, before or within a reasonable time after commencing the representation.

3. Former RPC 1.15(a) [now (b)] - 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.

4. Former RPC 1.15(b) [now (e)] - 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. Former RPC 1.15(e)[now (i)] - The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying bank service charges on that account, and only in an amount necessary for that purpose. A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing to the handling of fees and expenses in a different manner. At all times while a lawyer holds funds of a client or third person in connection with a client-lawyer relationship, the lawyer shall also maintain another account that is not used to hold such funds.

6. 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.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent that he engaged in misconduct in two separate matters. Petitioner bears the burden of proving misconduct by a preponderance of evidence that is clear and

satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Respondent failed to submit a timely answer to the Petition for Discipline; therefore, the allegations are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E. These admissions, supplemented by Petitioner's exhibits and the in-person testimony of three Complainants as well as the telephone testimony of one Complainant, clearly establish that Respondent violated the Rules of Professional Conduct as contained in the Petition for Discipline. Respondent participated in the disciplinary hearing by telephone, after he communicated to the Hearing Committee Chair that he could not obtain transportation to the hearing. Respondent testified on his own behalf but provided no other evidence.

Respondent's misconduct is serious. With regard to Ms. Griffiths and the Checkos, he failed to provide competent representation, failed to proceed with reasonable diligence and promptness, failed to keep his clients advised of the status of their cases or respond to their requests, failed to communicate the basis or rate of his fee in writing, failed to properly handle client monies, and after being requested to refund monies and return property, Respondent failed to do so. Respondent then ignored communications from the Disciplinary Board informing him that he was to receive a private reprimand, and directing him as to the time and place of the private reprimand. Respondent never supplied a good reason for his failure to appear, and never complied with the conditions of the reprimand to refund monies and return property. Respondent's clients are still without their funds, and remain in the same or worse positions than they did when they first contacted Respondent for assistance.

Respondent's failure to appear for the private reprimand is particularly serious, as he squandered the opportunity to address his misconduct with private discipline and no cessation of his legal practice and ability to earn a living. Now, he faces a potential

suspension of his law license. Respondent claims he did not receive his mail for a time, but nevertheless it was Respondent's responsibility to inform the Disciplinary Board of any address changes. The record supports the finding that Respondent did receive at least some of the correspondence from the Board.

In the Wilmarth-Ammenhauser matter, Respondent failed to initiate actions to pursue his client's divorce and related matters. He met with his client only once and had a few telephone conversations with her before she reunited with her husband. Respondent agreed to refund \$4,500 to Ms. Ammenhauser, but sent her only \$2,000 some months later. Ms. Ammenhauser found it necessary to sue Respondent and was awarded \$2,500 plus costs, but he has not made any payment.

Respondent provided no legitimate or credible explanation for his misconduct. He testified as to personal and health difficulties he experienced starting in May 2009; however, the record is clear that the instant misconduct took place prior to the advent of these difficulties. Respondent provided no evidence to establish any causal relationship between problems he has experienced and the professional misconduct he committed. Further, Respondent has given no indication that he will satisfy any of the obligations to his clients at any time in the near future.

Prior cases support the imposition of a suspension of one year and one day. In the matter of Office of Disciplinary Counsel v. Mark Jurikson, No. 128 DB 2000, 876 Disciplinary Docket No. 3 (Pa. Dec. 9, 2003), Mr. Jurikson failed to appear for a private reprimand for his neglect, failure to communicate, fee issues, misrepresentation and conduct prejudicial to the administration of justice. The Court imposed a suspension of one year and one day.

In the matter of Office of Disciplinary Counsel v. Mary McNeil Zell, No. 154 DB 2000, 795 Disciplinary Docket No. 3 (Pa. June 4, 2003), Ms. Zell was suspended for one year and one day after having failed to appear for a private reprimand for acts of neglect similar to that of the instant Respondent. Finally, in another similar case, Office of Disciplinary Counsel v. William W. McVay, III, No. 112 DB 2002, 984 Disciplinary Docket No. 3 (Pa. Jan. 31, 2005), Mr. McVay neglected to appear for a private reprimand or comply with conditions relative to two complaints. The Court suspended Mr. McVay for a period of one year and one day.

Based on the totality of the facts and circumstances of this particular matter, and with deference given to the sanctions imposed in prior similar matters, the Board recommends that Respondent be suspended for a period of one year and one day.

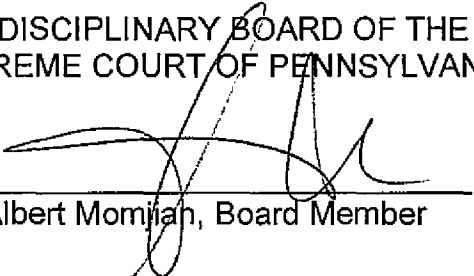
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Michael Paul Gordon, 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: 
Albert Momjian, Board Member

Date: September 16, 2011

Board Members Bevilacqua, Lawrence & Buchholz recused.