

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1925 Disciplinary Docket No. 3
Petitioner :
 : No. 42 DB 2012
v. :
 : Attorney Registration No. 156
LEONARD E. SWEENEY, :
Respondent : (Allegheny County)

ORDER


PER CURIAM:

AND NOW, this 30th day of May, 2013, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 26, 2013, it is hereby

ORDERED that Leonard E. Sweeney is disbarred from the Bar of this Commonwealth 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 5/30/2013

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 42 DB 2012
Petitioner	:	
	:	
v.	:	Attorney Registration No. 156
	:	
LEONARD E. SWEENEY	:	
Respondent	:	(Allegheny 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 March 13, 2012, Office of Disciplinary Counsel filed a Petition for Discipline against Leonard E. Sweeney. The Petition charged Respondent with violations of the Rules of Professional Conduct arising from alleged misconduct in two client matters. Respondent filed an Answer to Petition on April 26, 2012.

A disciplinary hearing was held on July 31, 2012, before a District IV Hearing Committee comprised of Chair Henry M. Casale, Esquire, and Members Richard P. Kidwell, Esquire, and Patricia L. Dodge, Esquire. Respondent did not appear.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on December 5, 2012, concluding that Respondent violated the Rules of Professional Conduct as contained in the Petition, and recommending that Respondent be disbarred.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 23, 2013.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 is Leonard E. Sweeney. He was born in 1943 and was admitted to practice law in the Commonwealth in 1969. His current attorney registration

mailing address is 3605 Shadeland Avenue, Pittsburgh, PA 15212. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of professional discipline in Pennsylvania. In 1977, he was suspended for a period of four years for his federal conviction of three counts of mail fraud. Respondent was reinstated by Order of the Supreme Court dated May 28, 1986.

4. In 2003, Respondent received a Private Reprimand for violations of the rules in six separate matters, all of which involved neglect of cases.

5. Respondent received an Informal Admonition in 2008 for his misconduct in two client matters. Although he was ordered to pay the costs of that prosecution, as of June 15, 2012, he still owed an outstanding balance of \$751.29

Elcock Matter

6. On June 9, 2006, Respondent commenced a civil action on behalf of John Kopczak in the United States District Court for the Western District of Pennsylvania against various defendants, including Police Officer Dennis Elcock.

7. On March 30, 2007, Daniel R. White, bankruptcy counsel for Dennis Elcock, filed a Chapter 13 bankruptcy petition on behalf of Mr. Elcock.

8. On June 6, 2007, Respondent filed on behalf of Mr. Kopczak an unsecured and contingent proof of claim in the amount of \$100,000 and a Motion for Relief from Stay in the Elcock bankruptcy.

9. In an Order dated July 3, 2007, Judge Judith Fitzgerald granted the Motion for Relief from Stay and ordered that any judgment or verdict obtained by Mr. Kopczak against Mr. Elcock was to be satisfied from insurance policy proceeds only.

10. No insurance policy proceeds were ever paid to Mr. Elcock or the Chapter 13 Bankruptcy Trustee.

11. In an Order dated January 31, 2008 in the federal court lawsuit, Judge Terrence F. McVerry granted summary judgment in favor of the defendants with respect to all federal claims asserted against them by Mr. Kopczak and dismissed without prejudice all of his state law claims.

12. On April 10, 2008, Respondent filed a civil action in the Court of Common Pleas of Westmoreland County on behalf of Mr. Kopczak and against Mr. Elcock and others.

13. By Order of Court dated May 21, 2009, defendants' Motion for Summary Judgment was granted and judgment entered in their favor against Mr. Kopczak as to all claims. No appeal was taken from the Order.

14. Thereafter, Respondent neither withdrew nor sought to amend Mr. Kopczak's Proof of Claim in the Elcock bankruptcy.

15. On April 6, 2010, the Chapter 13 Bankruptcy Trustee, Ronda J. Winnecour, filed a Notice of Claims Filed and Intention to Pay Claims in the Elcock bankruptcy.

16. Copies of the Notice of Claims Filed and Intention to Pay Claims were distributed to Respondent, as counsel for Mr. Kopczak, and Mr. White, as counsel for Mr. Elcock.

17. Mr. White did not immediately object on behalf of his client to any of the claims filed in the bankruptcy matter.

18. Respondent did not inform either the Chapter 13 Trustee or Mr. White that Mr. Kopczak no longer had a valid claim against Mr. Elcock.

19. On or about June 25, 2010, Ms. Winnecour distributed to Respondent, on behalf of Mr. Kopczak, funds from Mr. Elcock's bankruptcy estate in the amount of \$11,495.21 made payable to "John Kopczak [sic] c/o Leonard D. Sweeney, Esq."

20. On or about July 1, 2010, Respondent deposited the \$11,495.21 check into an account that he held at PNC Bank.

21. Respondent thereby became entrusted with \$11,495.21 on behalf of Mr. Elcock's bankruptcy estate.

22. Respondent knew that neither he nor Mr. Kopczak was entitled to receive any portion of the \$11,495.21 distribution made by the Chapter 13 Trustee.

23. Respondent did not notify the Chapter 13 Trustee that Mr. Kopczak was not entitled to receive this distribution.

24. In or about July 2010, Respondent disbursed to Mr. Kopczak approximately \$7,656 from the \$11,495.21 distribution from the Chapter 13 Trustee.

25. At or about that same time, Respondent disbursed to himself approximately \$3,839.21 from the \$11,495.21 distribution from the Chapter 13 Trustee.

26. Respondent failed to hold the \$3,839.21 separate from his own property.

27. Respondent converted to his own use the \$3,839.21 portion of the \$11,495.21 distribution that he took as a fee for representing Mr. Kopczak.

28. Respondent failed to safeguard the portion of the bankruptcy estate property that he had distributed to Mr. Kopczak.

29. On October 1, 2010, Mr. White contacted Respondent about the \$11,495.21 distribution that Respondent had received from the Trustee.

30. During this conversation, Mr. White told Respondent that he believed the \$11,495.21 was incorrectly distributed to Respondent and that he intended to file an objection to the claim and ask that the money be returned to the Trustee.

31. Mr. White also told Respondent that if he voluntarily paid the money back to the Trustee, he would take appropriate action to withdraw his objection or otherwise resolve the issue in Bankruptcy Court.

32. During this conversation, Respondent admitted that he had received the money from the Trustee and said he would return the money within thirty days.

33. Respondent failed to return the \$11,495.21 to the Trustee.

34. On October 5, 2010, Mr. White filed an objection to Mr. Kopczak's claim in the Elcock bankruptcy.

35. Respondent did not file a response.

36. On November 15, 2010, a hearing was held in regard to Mr. Elcock's objection to the allowance of Mr. Kopczak's claim. Respondent failed to attend the hearing.

37. By Order of Court dated November 16, 2010, Judge Fitzgerald disallowed the claim filed by Mr. Kopczak and ordered that payment on the disallowed claim must be repaid by Mr. Kopczak to the Trustee forthwith.

38. On November 11, 2010, Mr. White, on behalf of Mr. Elcock, filed a Complaint to Compel Turnover of Property against Respondent and Mr. Kopczak in the Bankruptcy Court.

39. The Complaint requested that the Court compel Mr. Kopczak and Respondent to turn over \$11,495.21 to the Chapter 13 Trustee for distribution in accordance with Mr. Elcock's confirmed Chapter 13 Plan.

40. Respondent received a copy of the summons and Complaint to Compel.

41. On January 6, 2011, a hearing was held on the Complaint.

42. Respondent did not file a response to the Complaint nor did he appear on January 6, 2011.

43. In an Order of Court dated January 6, 2011, Judge Fitzgerald ordered Respondent and Mr. Kopczak to turn over \$11,495.21 to the Chapter 13 Trustee within 10 days of the date of the order; stated that Respondent, as an attorney, had an obligation to return the funds; directed that the Chapter 13 Trustee make appropriate referral of the matter to the Disciplinary Board of Pennsylvania and the U.S. Trustee; and ordered Respondent to appear before the Bankruptcy Court on February 16, 2011 to show cause why he should not be further sanctioned and prohibited from representing any party before the Court, pending return of the funds.

44. By Order of Court dated January 13, 2011, Judge Fitzgerald entered judgment against Respondent and Mr. Kopczak jointly and severally, and in favor of Mr. Elcock in the amount of \$11,495.21, together with interest commencing on November 11, 2010 and continuing until paid in full.

45. After a hearing on February 16, 2011, at which Respondent appeared, Judge Fitzgerald ordered Respondent to pay \$11,495.21, payable monthly on the 15th day of each month, beginning in March 2011, at the rate of \$1,000 per month to the Chapter 13 Trustee. The previously issued Rule to Show Cause was discharged and the judicial referral to the Disciplinary Board was withdrawn.

46. Respondent began making payments to the Trustee as ordered but is in arrears with an outstanding balance of \$6,995.21.

Bouchard Matter

47. On June 10, 2006, Cynthia Bouchard, a former employee of U.S. Airways Express ("USAE") and PSA Airlines, Inc., filed charges of harassment, discrimination and retaliation against USAE and PSA with the U.S. Equal Employment Opportunity Commission ("EEOC").

48. Ms. Bouchard filed a second charge with the EEOC on January 2, 2007.

49. By Letter of Dismissal and Notice of Rights dated September 30, 2009, the EEOC informed Ms. Bouchard, among other things, that it was unable to conclude that the information obtained established violations of the statutes; that she could file a lawsuit based on this charge in federal or state court, and that her lawsuit must be filed within 90 days of her receipt of the notice, or her right to sue based on the charges would be lost.

50. On November 5, 2009, Ms. Bouchard consulted with Respondent about representation in her claims against USAE and PSA.

51. During Respondent's initial consultation with Ms. Bouchard, he told her that he would file on her behalf a civil action against USAE and PSA in federal court by December 23, 2009.

52. Respondent informed her that he required payment of \$3,500 in advance to represent her and that the remainder of his fee would be 40 percent of any award or settlement that he obtained for her.

53. Ms. Bouchard advanced to Respondent the sum of \$3,500. Respondent did not provide his client with a copy of an engagement letter.

54. On December 13, 2009, Ms. Bouchard met with Respondent at his office regarding her civil action, at which time Respondent told her that he had prepared a civil complaint which was going to be filed on her behalf in federal court and assured her that it would be completed and filed by December 23, 2009.

55. At Respondent's request, Ms. Bouchard reviewed the draft and made corrections.

56. Respondent asked Ms. Bouchard to sign the verification page so that he could file her complaint when the revisions had been completed, and advised Ms. Bouchard that she would get a copy of the complaint.

57. On December 31, 2009, Respondent's secretary attempted to electronically file the complaint on behalf of Ms. Bouchard in the United States District Court for the Western District of Pennsylvania.

58. The complaint was not docketed in the U.S. District Court and Respondent failed to perfect the filing on behalf of his client.

59. Respondent failed to serve the complaint with a valid summons.

60. On January 8, 2010, Ms. Bouchard contacted Respondent by telephone and asked him to send her a copy of the complaint that he was supposed to have filed, or give her a docket number.

61. Respondent informed his client that her case had been filed on December 24, 2009, but because of the holidays it had not been assigned a docket number.

62. Respondent told Ms. Bouchard that within a few weeks he would send her a copy of the filed complaint because there was a backlog at the Clerk of Courts Office due to the holidays.

63. On January 12, 2010, Respondent's secretary again attempted to electronically file the complaint, but was not successful.

64. Respondent failed to serve the complaint on USAE.

65. On January 29, 2010, Ms. Bouchard called Respondent and again asked him for a copy of the complaint.

66. Although Respondent told his client that he would email her a copy of the filed complaint, he did not do so.

67. On several occasions between March 2010 and the end of May 2010, Ms. Bouchard called Respondent and left messages with his answering service and with his secretary requesting a status update of her civil action.

68. Respondent failed to reply to those requests for information or otherwise communicate with Ms. Bouchard about her legal matter between March 2010 and May 2010.

69. At the end of May 2010, Ms. Bouchard called the Clerk of Courts of the U.S. District Court to ascertain the status of her action.

70. Ms. Bouchard was informed that the Court had no record of a civil action having been filed in her name against any defendant.

71. During May and June of 2010, Ms. Bouchard called Respondent at his cell phone number and at his office number on several occasions and left messages for Respondent to call her about her civil action. Respondent failed to respond or otherwise communicate with his client.

72. By letter to Respondent dated August 9, 2010, Ms. Bouchard informed him of her unsuccessful attempts to secure information about her legal matter and requested that he either reply to her letter within ten days or return her advance payment of \$3,500.

73. On October 20, 2010, Respondent filed on behalf of Ms. Bouchard a complaint in civil action against U.S. Airways, rather than USAE, Ms. Bouchard's former employer, in the U.S. District Court for the Western District.

74. Respondent did not, at that time or thereafter, inform his client that he had filed a complaint, nor did he otherwise communicate with her about her legal matter, except regarding the first motion to dismiss filed by U.S. Airways.

75. Respondent filed the civil complaint after the limitations period had run on Ms. Bouchard's civil action.

76. Respondent failed to have the summons or the complaint properly served upon a representative of U.S. Airways.

77. On May 10, 2011, U.S. Airways filed a Motion to Dismiss the Complaint or, in the alternative, for Summary Judgment which attacked the manner in which service was attempted on U.S. Airways, averred that service was not accomplished in a timely manner, and alleged that Ms. Bouchard failed to timely commence an action after receipt of a right-to-sue notice from the EEOC.

78. Respondent filed a Response and Brief in Opposition to this Motion.

79. By Order of Court dated June 20, 2011, Ms. Bouchard's civil complaint was dismissed for lack of personal jurisdiction based upon the deficiency of the summons, without prejudice to file a praecipe to reissue writ of summons no later than July 1, 2011.

80. On August 1, 2011, a Praecipe to Reissue Summons was filed by Respondent on behalf of Ms. Bouchard and a summons was reissued as to U.S. Airways.

81. On August 22, 2011, U.S. Airways again filed a Motion to Dismiss or in the alternative, for Summary Judgment to which Respondent filed a Response and Brief in Opposition.

82. By Opinion and Order dated January 5, 2012, the Motion to Dismiss was granted and Ms. Bouchard's claims were dismissed.

83. Respondent attended a pre-hearing conference on June 20, 2011 in the instant disciplinary matter. He informed the Committee of his intention to represent himself, whereupon the Committee urged Respondent to obtain counsel and informed him that no delays would be permitted as a result of Respondent's decision not to retain counsel.

84. By letter of July 25, 2012, Respondent informed Petitioner that his health could not sustain the rigors of a hearing and he requested a six-week continuance of the hearing that was scheduled for July 31, 2012.

85. The Committee Chair referred Respondent's request to the Disciplinary Board, and by Order of July 30, 2012, the Board denied Respondent's request for a continuance.

86. Respondent failed to appear on July 31, 2012 for the disciplinary hearing.

87. Respondent did not file a post-hearing Brief nor did he respond to any correspondence that was sent to him by the Committee Chair.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct:

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

2. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

4. RPC 1.15(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.

5. RPC 1.15(d) – Upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment.

6. RPC 1.15(e) – 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, including but not limited to Rule 1.15 Funds, 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 the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

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.

IV. DISCUSSION

Respondent stands charged with multiple violations of the Rules of Professional Conduct in connection with his actions in two client matters. Disciplinary law in Pennsylvania provides that evidence is sufficient to prove ethical misconduct if a preponderance of that evidence establishes the charged violation and the proof is clear and satisfactory. Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (PA. 1994). The clear and unrefuted evidence presented by Petitioner establishes that Respondent has violated the Rules as charged in the Petition for Discipline.

The essential facts are not in dispute. In the Elcock matter, Respondent knowingly accepted, disbursed and retained funds that were distributed to him by the Chapter 13 Trustee despite his knowledge that the contingent claim upon which his client's proof of claim was based previously had been dismissed. Ultimately, as of June 2009, after summary judgment on all of Mr. Kopczak's claims was entered in favor of defendants and the time for appeal had expired, the judgment against Mr. Kopczak was final and the claim became unenforceable.

Respondent and his client were not entitled to receive the funds, but despite this knowledge, Respondent chose not to alert the Trustee or to make further inquiries. Respondent could have resolved this issue without incident by returning the check as mistakenly issued by the Trustee. It is Respondent's conduct upon his receipt of the Trustee's check that is at the heart of the charges against him. Respondent deposited the check into his IOLTA account and then made distribution to his client and to himself in accordance with the terms of their fee agreement. He deliberately chose to improperly benefit from the unwitting mistake that had been made. He compounded his misconduct

by failing to respond to court filings, failing to comply with orders issued by the Bankruptcy Court, and failing on a continuing basis to fully comply with the Court's Order that he refund the entire disbursement to the debtor's estate.

Concerning the Bouchard matter, Respondent failed to perfect the filing of Ms. Bouchard's civil complaint and failed to effect proper service of the summons, which, in turn, resulted in the dismissal of Ms. Bouchard's claims. He failed to communicate effectively with Ms. Bouchard and provided her with misleading information as to the filing status of her lawsuit.

The appropriate level of discipline to be imposed in consideration of Respondent's serious misconduct must account for the aggravating and mitigating factors present in this case. Respondent's disciplinary history and his failure to appear at the instant disciplinary hearing decidedly aggravate this matter, as does his failure to fully refund the disbursement to which neither he nor his client were entitled.

Respondent has prior public discipline in the nature of a lengthy suspension, a more recent Private Reprimand involving six separate clients, and most recently, an Informal Admonition after disciplinary hearing involving two separate clients. The majority of Respondent's private discipline bear a marked similarity to the misconduct in which he engaged in the Bouchard matter of the instant Petition.

By Respondent's failure to appear at his disciplinary hearing without good cause, he failed to put forth evidence in support of the claims made in his Answer to Petition for Discipline. As well, he put forth no evidence in mitigation of the sanction, including any demonstration of remorse. The ultimate sanction should reflect the fact that Respondent chose not to participate in these proceedings.

Prior cases of a similar nature suggest that disbarment is the appropriate sanction for this matter. In the case of Office of Disciplinary Counsel v. Bentivegna, No. 88 DB 2005 (2007), Ms. Bentivegna was prohibited by the United States Bankruptcy Court from filing future petitions without prior court approval. She circumvented this order by filing petitions using her maiden name and a false social security number. When placed under oath by the Bankruptcy Court Judge, she offered false testimony. The Board recommended disbaring Ms. Bentivegna, concluding that attorneys who engage in acts of dishonesty which perpetrate a fraud on the court system deserve disbarment. The Supreme Court accepted this recommendation and imposed disbarment.

In the recent matter of Office of Disciplinary Counsel v. Luongo, Nos. 202 DB 2008 and 75 DB 2009 (2010), Mr. Luongo was disbarred after he willfully distributed funds collected by him even though he had been ordered by the Superior Court to return the disputed funds in the amount of \$119,507. Mr. Luongo failed to return the funds or maintain them in his IOLTA account pending a resolution of the underlying litigation. The Board found that Mr. Luongo misappropriated and converted the funds. Mr. Luongo failed to appear at his disciplinary hearing.

Disbarment was warranted in a matter where an attorney failed to diligently pursue his client's case, failed to communicate with his client, entered into an impermissible loan transaction during the course of representation, failed to hold property belonging to a decedent's estate separate from his own funds, and failed to deliver to the estate funds it was owed. Office of Disciplinary Counsel v. Houser, No. 158 DB 2004 (2006). The Board considered Mr. Houser's disciplinary history of two private reprimands and his failure to appear at the disciplinary hearing as a basis to recommend disbarment.

Disbarment is the most severe sanction that may be imposed in a disciplinary matter. Pa.R.D.E. 204(a)(1). It is not imposed lightly, but rather with careful consideration of the unique circumstances of a particular matter. The Board is persuaded that the circumstances of this matter warrant disbarment. Respondent's actions render him unfit to practice law in the Commonwealth Pennsylvania. Disbarment will protect the public and the courts from Respondent's ongoing pattern of misconduct. Office of Disciplinary Counsel v. Campbell, 345 A.2d 616 (Pa. 1975).


V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Leonard E. Sweeney, 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: 
Gabriel L. Bevilacqua, Vice-Chair

Date: February 26, 2013

Board Members Momjian and Hastie did not participate in the adjudication.