

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No.1654 Disciplinary Docket No. 3
Petitioner :
: No. 67 DB 2010
v. :
: Attorney Registration No. 4160
AARON POGACH, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

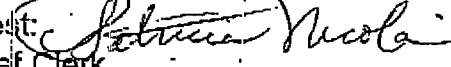
AND NOW, this 15th day of November, 2010, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated September 16, 2010, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Aaron Pogach be subjected to public censure by the Supreme Court.

Mr. Justice McCaffery dissents.

A True Copy Patricia Nicola

As of: November 15, 2010

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

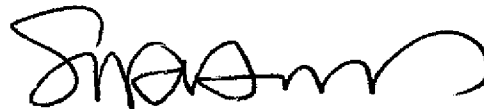
OFFICE OF DISCIPLINARY COUNSEL : No. 67 DB 2010
Petitioner :
v. : Attorney Registration No. 4160
AARON POGACH :
Respondent : (Philadelphia)

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 Stephan K. Todd, Sal Cognetti, Jr., and Mark S. Baer, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on August 9, 2010.

The Panel approves the Joint Petition consenting to a Public Censure 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.



Stephan K. Todd, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date:

9/16/10

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 67 DB 2010
v. :
: Atty. Reg. No. 4160
AARON POGACH, :
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, and by Respondent, Aaron Pogach, Esquire, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement (Pa.R.D.E.) 215(d), and respectfully represent that:

I. BACKGROUND

1. Petitioner, whose principal office is located at PA Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested pursuant to Pa.R.D.E. 207, 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 of Disciplinary Enforcement.

FILED

AUG 09 2010

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

2. Respondent, Aaron Pogach, was admitted to practice law in the Commonwealth on April 17, 1961.

3. Respondent's attorney registration address is 116 Filly Drive, North Wales, PA 19454. (ODC-1)

4. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

**II. FACTUAL ADMISSIONS AND
VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT**

5. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 45.

III. CHARGE

6. Rita Mary Mazer, also known as Rita M. Mazer, is not related to Respondent.

7. Mrs. Mazer and her husband, Louis M. Mazer, were Respondent's clients.

8. In or around 1975, Respondent represented Mr. and Mrs. Mazer in an automobile accident matter.

9. Mr. Mazer died on May 7, 1991.

a. Respondent handled the estate of Louis M. Mazer.

10. On or before October 1, 1991, Harry L. Kaufman, Esquire, drafted Mrs. Mazer's Last Will and Testament (1991 Will); the 1991 Will provided that:

- a. "[a]ll the rest, residue and remainder of my estate, whether real, personal or mixed" be given to Respondent; and
- b. Respondent be appointed the Executor under the Will.

11. The 1991 Will:

- a. was signed by Mrs. Mazer on October 1, 1991; and
- b. was signed by two attesting witnesses, thereby making the 1991 Will self-proving.

12. On October 1, 1991, Mrs. Mazer signed a type-written declaration stating that:

- a. Mrs. Mazer decided "to leave everything that I possess to my friend and attorney, Aaron Pogach, Esquire";
- b. Mrs. Mazer does not have any relationship with her only living relatives;
- c. Respondent had urged Mrs. Mazer to reconsider her decision to leave everything to him; and
- d. Respondent had advised Mrs. Mazer that, at any time, she could cancel, revoke, or change her Will.

13. On May 25, 2006:

- a. Mrs. Mazer signed a Last Will and Testament (2006 Will); and

b. Carolyn A. Dietz and Samuel D. Matteo: witnessed Mrs. Mazer's signing the 2006 Will; subscribed their names as attesting witnesses to the 2006 Will; and signed an Acknowledgment and Affidavit attesting that Mrs. Mazer knowingly and willingly signed the 2006 Will.

14. The 2006 Will:

- a. appointed Edward H. Wons and Mary Ellen Wons as Co-Executors of the 2006 Will; and
- b. gave, devised, and bequeathed Mrs. Mazer's entire estate, in equal one-half shares, to Mr. and Mrs. Wons.

15. On June 2, 2008, Mrs. Mazer requested that Respondent draft a new will, which would name him Executor of the Estate and make him sole beneficiary apart from home furnishing.

16. Respondent failed to obtain the services of another attorney to draft the new will for Mrs. Mazer.

17. On or before June 5, 2008, Respondent drafted a Last Will and Testament (2008 Will) for Mrs. Mazer.

18. The 2008 Will:

- a. appointed Respondent as Executor of the estate;
- b. devised to Respondent, Mrs. Mazer's "friend and attorney," Mrs. Mazer's real estate located at 6624 Revere Street, Philadelphia, PA;

- c. bequeathed all the personal furnishings and possessions located in Mrs. Mazer's home to Edward and Mary Ellen Wons;
- d. gave Respondent, Mrs. Mazer's "friend and attorney," a legacy of Mrs. Mazer's bank account at Citizens Bank; and
- e. devised and bequeathed to Respondent, Mrs. Mazer's "friend and attorney," the remainder of the estate, whether real, personal, or mixed.

19. Mrs. Mazer purportedly signed the 2008 Will.

20. Mrs. Mazer purportedly signed the 2008 Will on June 5, 2008.

21. The 2008 Will did not have the names and addresses of two subscribing witnesses, and therefore, the 2008 Will was not self-proving.

22. Respondent prepared a legal instrument on behalf of a client giving Respondent a substantial gift.

23. If Mrs. Mazer's intent was for Respondent to be a beneficiary of her property, then Respondent failed to arrange for Mrs. Mazer to consult with and/or be represented by independent legal counsel in the preparation and signing of the 2008 Will.

24. If Mrs. Mazer's intent was for Respondent to be a beneficiary of her property, Respondent, having failed initially

to withdraw from the representation, failed subsequently to obtain the signature of two subscribing witnesses to the 2008 Will, as preferred by the Probate Code, 20 Pa.C.S.A §3132(1).

25. On January 26, 2009, Mrs. Mazer died.

26. On February 6, 2009:

- a. Mrs. Wons submitted the 2006 Will for Probate;
- b. Mrs. Wons filed a Petition for Probate and Grant of Letters;
- c. Mrs. Wons completed the Oath of Personal Representative;
- d. the Register of Wills granted Letters Testamentary to Mrs. Wons; and
- e. the Register of Wills recorded the 2006 Will as Will No. 560 of 2009.

27. On February 18, 2009, Respondent filed with the Register of Wills a Petition to Reopen Record of Register of Wills to Allow for Probate of Decedent's Last Will Dated June 5, 2008 (Petition to Reopen); the Petition to Reopen:

- a. alleged that Respondent believes that the 2006 Will was not Mrs. Mazer's Will;
- b. contended that the 2008 Will was Mrs. Mazer's Will;

- c. alleged that Respondent was a party in interest in Mrs. Mazer's estate as Respondent is the Executor and a beneficiary of the 2008 Will;
- d. stated that Respondent filed an appeal from the Decree of the Register of Wills; and
- e. requested the issuance of a citation to Mary Ellen Wons to show cause why the appeal from the Decree of Register of Wills admitting the 2006 Will to probate should not be sustained and permit the Register of Wills to receive the 2008 Will.

28. On February 23, 2009, Ronald R. Donatucci, the Register of Wills, issued a Citation to Mrs. Wons to appear on March 31, 2009, and show cause why the 2008 Will should not be accepted for probate.

29. On March 23, 2009, Mrs. Wons filed with the Register of Wills an Answer and New Matter to the Petition to Reopen, which alleged, in pertinent part, that the Petition to Reopen should be dismissed because:

- a. the 2008 Will is not witnessed or notarized; and
- b. the 2008 Will was invalid as it was procured in violation of RPC 1.8(c).

30. Respondent filed a Reply to New Matter, in which Respondent:

- a. admitted that the 2008 Will was not notarized or witnessed, "except that [Respondent was] present and witnessed her execution of her Last Will dated 6/5/2008"; and
- b. denied that Respondent violated RPC 1.8(c) because Respondent "acted more as a friend of the decedent than as an attorney."

31. On June 3, 2009, a Formal Hearing was held before the Deputy Register of Wills, John Raimondi, Esquire, during which:

- a. Respondent failed to present the oaths or affirmation of two witnesses that Mrs. Mazer signed the 2008 Will, which was not witnessed or notarized, and thus was not self-proving;
- b. Mary Ellen Barrett, Esquire, counsel for Mr. and Mrs. Wons, made a motion to dismiss Respondent's Petition to Reopen because Respondent failed to meet his burden of proof that the 2008 Will, which lacked two witnesses, was valid under 20 Pa.C.S.A. §3132 of the Probate Code; and
- c. Mr. Raimondi granted the motion to dismiss for Respondent's failure to comply with 20 Pa.C.S.A. §3132.

32. On June 30, 2009, Mr. Donatucci issued a Decree:

- a. sustaining the Letters Testamentary issued to Mrs. Wons under Will No. 0560-2009; and
- b. granting the Motion to Dismiss.

33. On June 9, 2009, Respondent filed with the Court of Common Pleas of Philadelphia County, Orphans' Court Division, an appeal from the Register of Wills and an accompanying Petition requesting that the 2008 Will be admitted for probate.

- a. The appeal is captioned Rita M. Mazer, Appeal from Register of Wills, and docketed at OC No. 808 AP of 2009.

34. On July 15, 2009, the Orphans' Court entered a Citation directing Mary E. Wons and Edward H. Wons to answer Respondent's Petition on or before September 3, 2009.

- a. On July 28, 2009, Respondent hand-delivered the Citation and Appeal to Mr. and Mrs. Wons and their counsel, Ms. Barrett.

35. On August 28, 2009, Ms. Barrett filed with the Orphans' Court Preliminary Objections to Appeal from Probate and Petition to Open Probate Record, as well as a brief in support of the Preliminary Objections.

36. On September 14, 2009, Respondent filed an Answer opposing the Preliminary Objections.

37. By Order dated March 8, 2010, the Honorable John W. Herron:

- a. overruled the Wons's Preliminary Objections; and
- b. stated that Respondent, as "the proponent of the later document dated June 5, 2008, Aaron Pogach will have the burden of proving its proper execution before this court."

38. By Order dated May 25, 2010, Judge Herron:

- a. sustained the appeal from the decree of the Register of Wills;
- b. opened the decree of the Register of Wills to permit the Register to receive and act upon the writing dated June 5, 2008; and
- c. remanded the record to the Register of Wills for further consideration of any other challenges to the validity of the proffered will.

39. By his conduct as alleged in paragraphs 6 through 38 above, Respondent violated the following Rules:

- a. RPC 1.7(a)(2), which states that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by

the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; and

- c. RPC 1.8(c), which states that a lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close familial relationship.

III. JOINT RECOMMENDATION FOR DISCIPLINE

40. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a Public Censure.

41. Respondent hereby consents to the discipline being imposed by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that he consents to the recommended

discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

42. Petitioner and Respondent respectfully submit that there is the following aggravating factor:

- a. The following lawsuits were brought against Respondent in the Court of Common Pleas of Montgomery County: **Midland Funding v. Pogach**, No. 2006-30242 (complaint seeking unpaid credit card charges of \$3,336.91); and **MBNA Amer Bk v. Pogach**, No. 2005-29480 (default judgment for unpaid credit card charges of \$6,633.43, entered on April 3, 2007).

43. Respondent and ODC respectfully submit that there is the following mitigating factor:

- a. By virtue of Respondent signing this Discipline on Consent, Respondent has expressed recognition of his violations of the Rules of Professional Conduct.

44. A Public Censure is the appropriate quantum of discipline for Respondent's misconduct.

In **In re Anonymous No. 14 DB 2000** (D.Bd Order 08/14/2001), an attorney drafted a will naming himself beneficiary of any vehicle owned by his client at the time of client's death. At the attorney's disciplinary hearing, the attorney testified that

he was not aware of the prohibition against an attorney drafting a will for a non-relative, expressed remorse for his misconduct, and offered positive character witnesses. The hearing committee found that the attorney violated RPC 1.8 and recommended a Private Reprimand. The Disciplinary Board agreed with the recommendation and imposed a Private Reprimand.

Respondent's conduct in drafting the 2008 Will for Mrs. Mazer warrants more than private discipline. On June 2, 2008, the frail, elderly, and childless widow spoke to Respondent on the telephone and requested that Respondent draft a will making him executor and beneficiary of her estate. When Mrs. Mazer made a similar request in 1991, Respondent cautioned her to "reconsider her decision" to leave everything to him because he was an attorney. In addition, in 1991, Respondent secured the services of another lawyer to draft the will. Respondent undertook no such precautions in June 2008. Moreover, Respondent had ample time to do so. He did not go to Mrs. Mazer's house until three days after he received her telephone call. Thus, unlike the attorney in *In re Anonymous No. 14 DB 2000*, *supra*, Respondent knowingly violated the Rules of Professional Conduct in drafting the 2008 Will. Also unlike the attorney in *In re Anonymous No. 14 DB 2000*, *supra*, Respondent has not expressed any remorse for his misconduct and continues to litigate the validity of the 2008 Will in the Orphans' Court

of Philadelphia County. These distinguishing facts make Respondent's conduct more serious than the conduct of the attorney in *In re Anonymous No. 14 DB 2000*, and support the greater discipline of a Public Censure.

45. A Public Censure is necessary to preserve public confidence in the legal profession and protect the public from attorneys who knowingly violate the Rules of Professional Conduct with impunity.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent receive a Public Censure; and
- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition, and that all expenses be paid by

Respondent before the imposition of discipline
under Pa.R.D.E. 215(g).

Respectfully and jointly submitted,

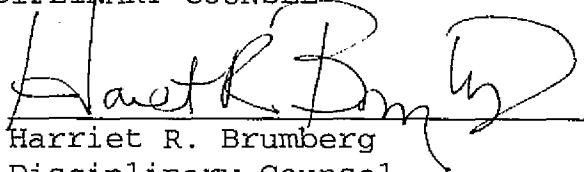
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

8/13/10


Date

By


Harriet R. Brumberg
Disciplinary Counsel

8/13/10

Date


Aaron Pogach
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
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AARON POGACH, :
Respondent : (Philadelphia)

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

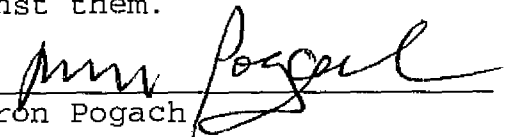
Respondent, Aaron Pogach, hereby states that he consents to the imposition of a Public Censure, and further states that:

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

2. He is aware that there is presently pending a proceeding 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 knows that if the charges pending against him continue to be prosecuted in the pending proceeding, he could not successfully defend against them.



Aaron Pogach

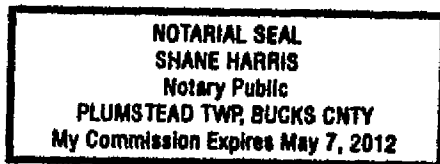
Sworn to and subscribed

before me this 4th

day of August, 2010.



Notary Public



BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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: Atty. Reg. No. 4160
AARON POGACH, :
Respondent : (Philadelphia)

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.

8/3/10
Date

Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel

8/4/10
Date

Aaron Pogach
Aaron Pogach
Respondent