BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 780, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 6 DB 2001
v	:	
	:	Attorney Registration No. [ ]
[ANONYMOUS]	:	
Respondent	:	([ ] 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 herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On January 22, 2001, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent, [ ], alleging that Respondent engaged in certain professional misconduct, thereby violating Pennsylvania Rules of Professional

Conduct 1.15(a) and 8.4(c). Respondent filed an Answer to the Petition for Discipline on March 12, 2001, admitting to all of the allegations contained in the Petition.

A disciplinary hearing was held on September 13, 2001 before Hearing Committee [ ] comprised of Chair [ ], Esquire and Members [ ], Esquire and [ ], Esquire. Petitioner was represented by [ ], Esquire. Respondent was represented by [ ], Esquire. Petitioner submitted a Joint Stipulation of Facts as well as 19 other exhibits and presented no witnesses. Respondent submitted 12 exhibits and presented the testimony of 3 character witnesses as well as his own testimony.

The Hearing Committee filed a Report on January 18, 2002 recommending a Public Censure. No Briefs on Exceptions were filed by either party.

This matter was adjudicated by the Disciplinary Board at its meeting on May 14, 2002.

II. FINDINGS OF FACT

The Board makes the following findings of facts:

1. Respondent was admitted to practice law in the Commonwealth of Pennsylvania in 1972.

2. On December 17, 1994, [A] died. Her will designated her nephew, Dr. [B], as executor of her estate.

3. At the time of her death, [A] had a one-third interest in real estate located at [ ]. The other two-thirds interest was owned by the children of [A's] two sisters, [C] and [D], both of whom had predeceased [A].

4. Prior to [A's] death, this property had been on the market for sale.

5. After [A's] death, Respondent was retained by his uncle, Dr. [B], to complete the sale of this property and to handle the administration of the Estate of [A].

6. In the course of completing the sale of this property, Respondent learned that in addition to inheritance taxes being due on the transfer relative to [A's] interest, past inheritance taxes were due on prior transfers of this property pursuant to two trusts previously established by [E], [A's] father. So as to effectuate the prompt sale of the property, Respondent provided the title company with his personal assurance for liability of all inheritance taxes.

7. On December 30, 1994, Respondent deposited $4,300.00 into his account for entrusted funds at [F] Bank, number [ ], denominated "[Respondent], Attorney at Law, Client Escrow Account" (hereafter, Escrow Account), representing a portion of the net proceeds from the sale of the property, which sale occurred that same day.

8. On January 13, 1995, Respondent deposited $50,200.28 into his Escrow Account, representing the balance of the net proceeds for the sale of the property.

9. From the net sale proceeds, the Estate of [A] was entitled to receive a one-third share, in the amount of $18,166.76; [G] was entitled to receive a one-third share, in the amount of $18,166.76; Dr. [B] was entitled to receive a one-sixth share, in the amount of $9,083.38; and [H] was entitled to receive a one-sixth share, in the amount of $9,083.38. [G] was the surviving child of [D], and Dr. [B] and [H] were the surviving children of [C].

10. From their shares, [G], Dr. [B] and [H] agreed that Respondent would retain in his Escrow Account $3,000.00, $1,500.00 and $1,500.00 respectively, in order for Respondent to resolve past unpaid inheritance tax obligations regarding the property unrelated to the [A] Estate's inheritance tax obligation.

11. Respondent's undertaking on behalf of [G], Dr. [B], and [H], as well as the [A] Estate, amounted to a joint representation of their interests toward a common objective of resolving the old inheritance tax obligations.

12. The $6,000.00 (reference in #10 above) was entrusted to Respondent to satisfy the past unpaid inheritance tax obligations and to pay his legal fees for doing so.

13. Respondent agreed he would not remove funds from the $6,000.00 in his Escrow Account to pay his legal fees until after the past unpaid inheritance tax obligations were resolved and his bills for legal fees were approved by [G], Dr. [B], and [H].

14. By January 25, 1995, Respondent had distributed by checks drawn on his Escrow Account the net sale proceeds due the Estate of [A] of $18,166.76 and the net sale proceeds due [G], Dr. [B], and [H] of $15,166.79, $7,583.38, and $7,583.38 respectively, after deducting the respective amounts totaling $6,000.00.

15. Respondent did not hold inviolate the $6,000.00 in his Escrow Account.

16. Instead, by October 25, 1995, Respondent used almost the entire $6,000.00 without authorization.

17. Respondent issued the following checks from his Escrow Account, totaling $3,978.52, for his own personal purposes without authorization from [G], Dr. [B] and [H]:

(a) A check for $3,603.52, payable to the "Internal Revenue Service", dated March 27, 1995, for his tax liability for 1990 relating to an audit adjustment of his income taxes from 1990, which cleared his Escrow Account on March 31, 1995;

(b) A check for $60.00, payable to "Clerk, U.S. Tax Court", dated August 5, 1995, which cleared his Escrow Account on August 6, 1995;

(c) A check for $15.00, payable to the "Prothonotary of [ ] Co.," dated September 27, 1995, which cleared his Escrow Account on September 29, 1995; and

(d) A check for $300.00 payable to "[Respondent]", dated October 25, 1995, which cleared his Escrow Account on October 25, 1995.

These disbursements constituted unauthorized "borrowing" by the Respondent from his Escrow Account pending resolution of the old inheritance tax obligations, and did not involve action on the part of Respondent to permanently deprive said clients of said funds or the proper application thereof.

18. Respondent also issued the following checks from his Escrow Account for payment of [A] Estate obligations, totaling $477.00, without authorization from [G], Dr. [B] and [H]:

(a) A check for $400.00, payable to the "Estate of [A]", dated January 4, 1995, used to open an account for the [A] Estate, which cleared his Escrow Account on January 4, 1995; and,

(b) A check for $77.00, payable to the "[ ] Legal Journal", dated January 6, 1995, for legal advertising for the [A] Estate, which cleared his Escrow Account on January 18, 1995.

19. Respondent also issued to himself the following checks from his Escrow Account as legal fees for representing the interests of [G], Dr. [B], and [H], totaling $1,500.00, without authorization from them:

(a) A check for $500.00, payable to "[Respondent]" and annotated "Fee", dated February 22, 1995, which check cleared his Escrow Account on February 25, 1995; and

(b) A check for $1,000.00, payable to "[Respondent]" and annotated "Fee", dated June 1, 1995, which check cleared his Escrow Account on June 1, 1995.

Respondent believed that he had performed sufficient services to earn said legal fees when he disbursed same, but he did not seek approval from the clients to make the disbursements as he had previously agreed. (N.T. 95, 124-125; PE 19 & PE 20)

20. In 1996, Dr. [B] passed away, so [I] became the successor representative for the Estate of [A].

21. In December 1997, because of the delays in resolving the inheritance tax problem which in turn delayed the distributions under the Estate, Respondent advanced $12,500.00 of his own money and made distributions to the beneficiaries. He saw this as a way to reimburse the $6,000.00 he had previously taken. (N.T. pp. 93, 94).

22. Of this advance, $7,500.00 was eventually returned to Respondent upon the resolution of the inheritance tax problem and completion of the Estate. Thus, Respondent ultimately took little to no fee for his representation regarding the inheritance tax problem.

23. Because of the close family relationship with Dr. [B], Respondent took a more informal approach to their attorney-client relationship than was typical and handled matters in a more casual manner.

24. Respondent has never been the subject of discipline since he was admitted to the Bar of the Supreme Court of Pennsylvania in 1972. The instant misconduct is an aberration in an otherwise unblemished legal career spanning 29 years.

25. Apart from his misconduct in this matter, Respondent is well-respected for his good character and for actions that cast a positive reflection on the Bar.

26. Respondent is sincerely remorseful over his misconduct in this matter.

III. CONCLUSIONS OF LAW

By his conduct as set forth above and so stipulated to, Respondent violated the following Pennsylvania Rules of Professional Conduct:

1. RPC 1.15(a) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

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

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with the misappropriation and conversion of client funds. Respondent filed an Answer to the Petition for Discipline, admitting to this professional misconduct and to violating RPC 1.15(a) and 8.4(c). Thus, the only issue before this Board is to determine the appropriate disciplinary sanction to be imposed upon Respondent.

The appropriateness of a disciplinary sanction is based on the nature and gravity of the misconduct and the aggravating and mitigating factors present. In re Anonymous No. 85 DB 97, 44 Pa. D. & C.4th 299 (1999). This Board has recognized, after review of many Pennsylvania Supreme Court opinions, that when there is a conversion of a client's funds, some form of public discipline will be imposed, which will vary depending on the mitigating or aggravating circumstances of the particular case. In re Anonymous No. 132 DB 88, 7 Pa. D. & C.4th 331 (1990) and In re Anonymous No. 61 DB 92, 19 Pa. D. & C. 4th 494 (1993).

In the instant case, the question is whether public censure or suspension should be imposed. The Board finds that the appropriate sanction for Respondent would be a public censure. Like the attorney in In re Anonymous No. 140 DB 96, No. 427, Disciplinary Docket No. 3 (Pa. June 18, 1998), Respondent reimbursed the funds and in this case, by doing so, the result was that he never received a fee for his legal

services on the inheritance tax matter. Respondent had performed various legal services relating to the sale of the real estate even before [A] passed away. Respondent maintained a close, informal relationship with Dr. [B] during all relevant times, resulting in Respondent providing many pro bono or discounted services during his representation. This benefited the Estate and the three co-owners of the real estate. Respondent personally guaranteed the title company involved in the sale of the real estate that he would be responsible for the inheritance tax obligations. Additionally, Respondent advanced $12,500 of his own money to make distributions to the beneficiaries since the completion of the Estate was being delayed because of the inheritance tax problem. No complaint was made by any of the beneficiaries and no interested party suffered any prejudice as a result of Respondent's misconduct.

Respondent fully admitted the facts of the matter and acknowledged his wrongdoing. He cooperated with Office of Disciplinary Counsel. Respondent has had no prior history of discipline in his thirty years of practice, during which time he has enjoyed a very good reputation.

The totality of these factors persuades the Board that a public censure is an appropriate discipline to address Respondent's misconduct. While certainly Respondent's actions reflected a lapse in ethical judgment, they do not warrant a suspension from the practice of law, as Respondent does not pose a threat to the general public.

For the above reasons, the Board recommends a Public Censure.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Respondent, [ ], receive a Public Censure.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter be paid by Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By:_____
Lisa A. Watkins, Member

Date: September 11, 2002

Board Member Sheerer recused himself in this adjudication.

Board Member Stewart dissented and would recommend a six-month suspension.

Board Members Cunningham, Halpern and Peck dissented and would recommend a three-month suspension.

Board Member Donohue dissented and would recommend a private reprimand.

PER CURIAM:

AND NOW, this 14th day of November, 2002, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 11, 2002, it is hereby

ORDERED that [Respondent] be subjected to public censure by the Supreme Court.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

Mr. Justice Saylor dissents and would order a six-month suspension.