

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2185 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 80 DB 2015
v.	:	
	:	Attorney Registration No. 30286
MICHAEL HOWARD MARKS,	:	
Respondent	:	(Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 15th day of July, 2015, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated June 19, 2015, the Joint Petition in Support of Discipline on Consent is hereby GRANTED pursuant to Pa.R.D.E. 215(g), and it is

ORDERED that Michael Howard Marks is suspended on consent from the practice of law for a period of eighteen months, the suspension is stayed in its entirety and he is placed on probation for a period of eighteen months, subject to the following conditions:

1. Respondent shall continue treatment with Susan Atkinson, PhD, or another similarly qualified mental healthcare professional, who is to direct and supervise his activities;
2. Respondent shall cooperate with directions of the mental healthcare professional supervising his treatment, take medications as prescribed and engage in therapy and counseling as directed;

3. Respondent shall file quarterly written reports with the Secretary of the Board and shall attach reports verifying the above counseling and treatment; and

4. Respondent shall file quarterly reports with the Office of Disciplinary Counsel attesting to his continued compliance with Rule of Professional Conduct 1.15 (relating to safekeeping property).

A True Copy Patricia Nicola
As Of 7/15/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL : No. 80 DB 2015
Petitioner :
v. : Attorney Registration No. 30286
MICHAEL HOWARD MARKS :
Respondent : (Allegheny 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 Tracey McCants Lewis, Douglas W. Leonard and John F. Cordisco, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on May 13, 2015.

The Panel approves the Petition consenting to a 18 month suspension to be stayed in its entirety and an 18 month period probation subject to the conditions set forth in the Joint Petition and recommends to the Supreme Court of Pennsylvania that the attached Joint 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.


Tracey McCants Lewis, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 6/19/2015

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
: No. *80* DB 2015
Petitioner :
: File Reference #C4-13-177
v. :
: :
MICHAEL HOWARD MARKS, : Attorney Registration No. 30286
: :
Respondent : (Allegheny 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

Michael Howard Marks, Esquire
4231 Murray Avenue
Pittsburgh, PA 15217
(412) 421-8944

and

Richard H. Lindner, Esquire
Lindner Law Office
P.O. Box 684
Bethel Park, PA 15102
(412) 942-0701

FILED

MAY 13 2015

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, :
: No. DB
Petitioner : (File Reference #C4-13-177)
: :
v. : :
: :
MICHAEL HOWARD MARKS, : Attorney Registration No. 30286
: :
Respondent : (Allegheny 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, Michael Howard Marks, Esquire, and his counsel, Richard H. Lindner, Esquire, 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, Michael Howard Marks, was born in 1951. He was admitted to practice law in the Commonwealth of Pennsylvania on October 15, 1979.

3. Respondent's attorney registration mailing address is 4231 Murray Avenue, Pittsburgh, Allegheny County, PA 15217-2903.

4. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

5. On January 22, 2013, pursuant to Rule 221, Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E.) the Pennsylvania Lawyers Fund for Client Security (the Fund) received notification from PNC Bank that Check No. 3037 drawn in the amount of \$555.12 on Respondent's PNC Bank IOLTA Account No. 1000032146, captioned "Michael H. Marks Atty DBA Marks Elder Law IOLTA Account," had been presented for payment.

6. At that time, the balance in the account was \$422.26.

7. The check was returned as unpaid due to insufficient funds in the account.

8. If the check had been negotiated, the negotiation of the check would have resulted in a negative balance in the IOLTA Account in the amount of \$132.86.

9. By letter to Respondent dated January 23, 2013, the Fund requested a written, documented explanation within seven (7) days of the receipt of the letter as to why the NSF had occurred, and copies of the monthly statements for that account for the last three months.

10. On January 29, 2013, pursuant to Rule 221, Pa.R.D.E., the Fund received another notification from PNC Bank that Checks No. 3039 and 3040, drawn in the amounts of \$523.01 and \$450.00, respectively, on Respondent's PNC Bank IOLTA Account No. 1000032146, had been presented for payment.

11. At that time, the balance in the account was \$422.26.

12. These checks were also returned as unpaid due to insufficient funds in the IOLTA Account.

13. If the checks had been negotiated, it would have caused a negative balance in the IOLTA Account in the amount of \$550.75.

14. By letter to the Fund dated February 11, 2013, Respondent informed the Fund that he had been working diligently on the audit of his IOLTA

Account, but he would need more time to confirm, completely, accurate and definitive information.

15. By letter dated February 13, 2013, the Fund referred the matter to the Office of Disciplinary Counsel for further investigation.

16. On March 26, 2013, the Office of Disciplinary Counsel sent Respondent a DB-7 letter of inquiry alleging that his conduct may have violated Rules of Professional Conduct 1.15(b) and 8.4(c).

17. On March 27, 2013, the Office of Disciplinary Counsel requested and was issued by the Prothonotary of the Supreme Court of Pennsylvania, two Subpoenas Duces Tecum in order to obtain various financial records and documents from both PNC Bank and the Respondent. Both of the Subpoenas Duces Tecum and their attachments were returnable to Office of Disciplinary Counsel on or before April 10, 2013.

18. In compliance with the Subpoenas Duces Tecum, Respondent, under cover of a letter to the Office of Disciplinary Counsel dated April 10, 2013, provided documents and information, while also admitting to replenishing his IOLTA Account with personal funds to correct deficiencies in that account.

19. In his verified statement of position dated May 6, 2013, Respondent further admitted that the allegations made by the Office of Disciplinary Counsel in the March 26, 2013 DB-7 letter of inquiry were true.

20. Respondent self-reported and admitted to further instances of personal funds being deposited into his IOLTA Account to correct deficiencies in that account, some as recent as May 2013, after Office of Disciplinary Counsel had begun its investigation and after the DB-7 letter of inquiry had been sent.

21. In his statement of position, Respondent admitted that on two occasions, once in March and once in November of 2012, he misappropriated funds from his IOLTA Account which he used to meet his office payroll obligations.

22. In total, the Respondent's misappropriations amounted to nearly \$11,000.

23. On March 22, 2013, Respondent deposited \$11,000 of personal funds into his IOLTA Account to repay the amount previously misappropriated.

24. The Office of Disciplinary Counsel reviewed bank records and financial information supplied by both the Respondent and PNC Bank and confirmed that the misappropriations set forth by the Respondent in his correspondence to Office of Disciplinary Counsel, along with those instances of

personal funds being deposited into the IOLTA Account, are the only such instances.

25. Further, personal funds deposited by Respondent accounted for all funds misappropriated by Respondent.

26. At the time he submitted his statement of position dated May 6, 2013 Respondent had corrected all deficiencies to his IOLTA Account.

27. Respondent is represented by counsel who has provided documented evidence of mitigation which meets the *Braun* standard.

28. In addition to the *Braun* mitigation, Respondent has cooperated fully with the Office of Disciplinary Counsel, by acknowledging and admitting his misconduct, and he has expressed sincere regret and remorse for what has occurred.

29. In conformance with the *Braun* standard, Respondent, through his counsel, provided a psychiatric report prepared by Dr. Alexandre Dombrovski who performed an examination and evaluation for purposes of this disciplinary proceeding.

30. It should also be noted that Respondent has been treating with a therapist, Susan Atkinson, Ph.D., since 2008.

31. In his report, Dr. Dombrovski stated that he had interviewed several people in addition to the Respondent. Those individuals included Respondent's wife, his office assistant, his associate attorney, his prior therapist, and his current therapist, Dr. Atkinson.

32. Dr. Dombrovski's report details that Respondent is a 63 year old father of two whose spouse works as an Audiologist at UPMC.

33. Dr. Dombrovski concluded that in his professional opinion, Respondent suffers from recurrent major depression, anxiety, low self-esteem, as well as having had a prior addiction to alcohol and marijuana which he last used in 1984.

34. Dr. Dombrovski opined that Respondent's addiction is in full sustained remission and that temporally, mood symptoms both preceded his addiction and persisted following recovery from it. The last few years of Respondent's life were marked by severe stressors of his son's illness and mounting financial difficulties.

35. Further, Dr. Dombrovski wrote that Respondent's stress level and major depression were exacerbated by Respondent's own mounting financial difficulties due to his lackluster billing practices and inefficient administrative procedures.

36. Dr. Dombrovski concluded that these were all strong causal factors in Respondent's failure to properly maintain his IOLTA Account and his misuse of client funds. The major depression, low self-esteem and impulsive traits impaired Respondent's ability to maintain appropriate records and oversee his law practice. Respondent suffers from these impulsive traits and a negative urgency in particular appears as a contributing factor, which prevented the Respondent from finding alternative solutions and appreciating the potentially grave consequences of his actions.

37. Respondent's recent episode of depression worsened in 2012 when his son suffered a severe concussion. As a result of his wife's hectic schedule at UPMC, he took on primary responsibility for caring for his son. This included trying to get his son to school each morning; transporting his son and participating in appointments and treatments with numerous physicians, psychologists, neurologists, psychiatrists and emergency room visits for treatment at Children's Hospital of Pittsburgh, Western Psychiatric Institute and Clinic, and elsewhere; as well as dealing with his son's schools, administrators, teachers and home-study tutors. All of the appointments and family obligations caused Respondent to be absent from work. Respondent's failure to seek his wife's support only worsened his stress factor and increased his financial difficulties because he was away from his work.

38. Respondent was very remorseful during his meeting with Dr. Dombrovski.

39. Dr. Dombrovski concludes by giving Respondent a good prognosis, stating that because he has had good progress in psychotherapy along with a good response to pharmacotherapy, his condition is treatable, while noting that the likelihood of reoccurrence is low.

40. Respondent is a practitioner with over 33 years experience, having been admitted to practice in this Commonwealth in October of 1979.

41. Respondent has no prior disciplinary history. His law practice is concentrated in the representation of individuals in the areas of estate planning, wills, powers of attorney, trusts, Medicaid, Medicare, and VA benefits, estate litigation, and matters involving the Area Agency on Aging, the County Assistance Office and the Orphans' Court. All of these cases are time consuming and labor intensive. Respondent relies heavily upon his office staff to assist him with handling these cases and dealing with the clients and agencies involved. An active suspension would not only disrupt all of the clients' cases but also would impact the continued employment of knowledgeable individuals in the Respondent's office.

42. As a result of Respondent's complete cooperation with the Office of Disciplinary Counsel, his open and forthright acknowledgment and admission of

his misconduct, his lack of disciplinary history, his verifiable *Braun* mitigation, and his willingness to proceed with this joint petition, it is the joint recommendation that Respondent be suspended for a period of 18 months, the suspension be stayed in its entirety, and he be placed on probation for 18 months, subject to conditions that he continue with his mental health treatments, and that he file quarterly reports to the Office of the Secretary with attached and redacted treatment notes verifying his continued counseling and treatment. It is also recommended that Respondent submit quarterly reports to the Office of Disciplinary Counsel with attached documentation which outlines his compliance with Rule of Professional Conduct 1.15 as amended by Supreme Court Order of December 30, 2014.

43. In support of this joint recommendation the following cases are offered as support. In the case of *Office of Disciplinary Counsel v. Anonymous*, [Charles Morrow] 132 DB 1988, 7 Pa. D&C 4th, 331 (1990), the Disciplinary Board recommended to the Supreme Court that the respondent attorney, who failed to maintain client funds separate from his own and used those funds for personal benefit be suspended for two years. Mitigating evidence was Mr. Morrow's voluntary disclosure of the misconduct, thirty-three year practice as an attorney and persuasive character testimony. Morrow had a previous Informal Admonition. In the instant case, Mr. Marks has weightier mitigation comporting to *Braun* and no prior disciplinary history.

In the matter of *In Re Anonymous, No. 28 DB 1993*, the respondent attorney was suspended for one (1) year, the suspension stayed in its entirety, the respondent placed on probation for two (2) years, to be monitored by both a financial and practice monitor. The facts of that case are similar to the instant matter because the respondent-attorney misused client funds from the IOLTA Account for personal benefit, admitted the misconduct, used personal funds to replenish the IOLTA Account, and presented mitigation by expert testimony which established a causal connection of major depression and the misconduct. The respondent-attorney was, at the time, a long time practitioner having practiced for over 40 years with no prior disciplinary history. The Board's Report and Recommendation noted continuing treatment for psychological problems, remorse for the misconduct, and the fact that there were no further transgressions or deviations from the Rules. The Supreme Court, by Order dated September 9, 1996, agreed with the Board's recommendation Ordered the suspension for one year stayed in its entirety and the two year term of probation.

Finally, in the case of *Office of Disciplinary Counsel v. John Mizner*, No. 46 DB 2007, Mr. Mizner received a suspension of five years stayed in its entirety with probation subject to continuing mental health treatment. Mr. Mizner misappropriated funds from his law firm by faking travel vouchers. When he was caught by his firm, he admitted to the misconduct, repaid the firm and then resigned from the firm. Mr. Mizner's theft of law firm money was connected to his

undiagnosed and untreated severe form of obsessive compulsive disorder which caused him to be overly meticulous. Mr. Mizner's compulsive behavior involved keeping his home lawn "perfect." The Disciplinary Board concluded that Mizner was entitled to **Braun** mitigation. The Board also took into account as mitigation his lack of priors in the disciplinary system, prompt restitution/repayment was made along with Mr. Mizner's sincere remorse and when linked with strong character evidence enabled the Board to recommend to the Supreme Court a five year suspension stayed in its entirety. Upon review, the Supreme Court agreed with and accepted the Board's recommendation.

WHEREFORE, Petitioner and Respondent respectfully request that:

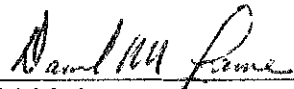
(a) Pursuant to Pa.R.D.E. 215(d) and 215(f), the three-member panel of the Disciplinary Board review and approve the above Joint Petition In Support of Discipline on Consent and enter an Order directing that the Respondent be suspended for a period of eighteen months and the suspension be stayed in its entirety. Further, the Respondent be placed on probation for eighteen months subject to the conditions that he continue treatments with his mental health professional, he file quarterly reports with the Office of the Secretary with attached and redacted treatment notes verifying his continued counseling and treatment, and he submit quarterly reports and documentation to the Office of Disciplinary Counsel attesting to his compliance with Rule 1.15; and,

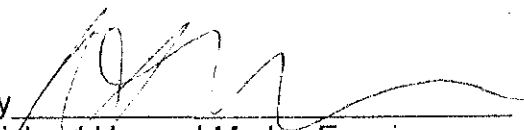
(b) Pursuant to Rule 215(i), the three-member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition and that all expenses be paid by Respondent before the imposition of discipline under Pa.R.D.E. 215(f).

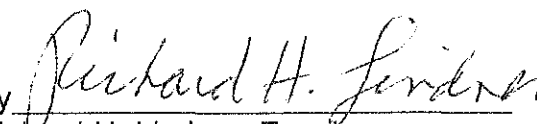
Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By 
David M. Lane
Disciplinary Counsel

By 
Michael Howard Marks, Esquire
Respondent

By 
Richard H. Lindner, Esquire
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
	:	No. DB 2015
Petitioner	:	
	:	File Reference #C4-13-177
v.	:	
	:	
MICHAEL HOWARD MARKS,	:	Attorney Registration No. 30286
	:	
Respondent	:	(Allegheny County)

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

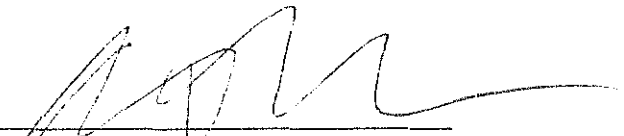
Respondent, Michael Howard Marks, hereby states that he consents to suspension of eighteen (18) months, stayed in its entirety, with the imposition of a term of probation for eighteen (18) months subject to the conditions as jointly recommended by Petitioner, Office of Disciplinary Counsel and Respondent 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 consulted with counsel in connection with the decision to consent to the imposition of discipline;

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

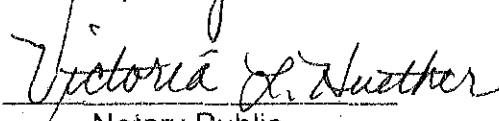
3. He acknowledges that the material facts set forth in the Joint Petition are true; and,

4. He consents because he knows that if the charges pending against him continue to be prosecuted in the pending proceeding, he could not successfully defend against them.

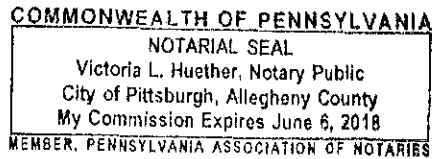


Michael Howard Marks, Esquire
Respondent

Sworn to and subscribed
before me this 5th
day of May, 2015.



Notary Public



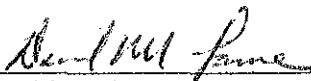
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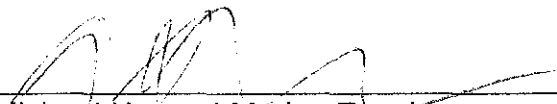
VERIFICATION

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.

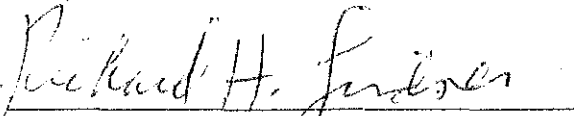
MAY 11 2015
Date


David M. Lane
Disciplinary Counsel

5/5/15
Date


Michael Howard Marks, Esquire
Respondent

5.5.15
Date


Richard H. Lindner, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
: No. DB
Petitioner : (File Reference #C4-13-177)
: :
v. :
: :
MICHAEL HOWARD MARKS, : Attorney Registration No. 30286
: :
Respondent : (Allegheny County)

PROPOSED CONSENT ORDER

AND NOW, this _____ day of _____, 2015, the Respondent, Michael Howard Marks, is suspended from the practice of law in this Commonwealth for a period of 18 months. His suspension is stayed in its entirety and he is placed on probation for eighteen (18) months subject to the following conditions:

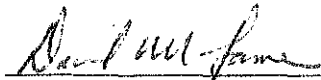
- a. Respondent continues treatment with a mental health professional;
- b. Quarterly reports are to be filed with the Office of Secretary with attached treatment notes verifying his continued counseling and treatment; and,

c. Respondent submits quarterly reports and documentation to the Office of Disciplinary Counsel in which he attests to his compliance with Rule of Professional Conduct 1.15.

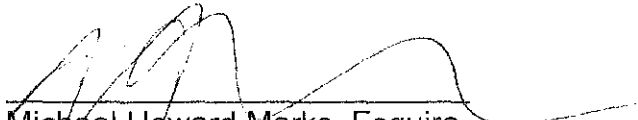
BY THE BOARD:

Board Chair

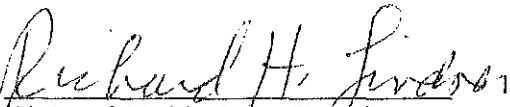
CONSENTED TO:



David M. Lame
Disciplinary Counsel



Michael Howard Marks, Esquire
Respondent



Richard H. Lindner, Esquire
Counsel for Respondent