IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2615 Disciplinary Docket No. 3

Petitioner : No. 89 DB 2019

v. : Attorney Registration No. 29985

DOUGLAS B. BREIDENBACH, JR., : (Montgomery County)

Respondent

ORDER

PER CURIAM

AND NOW, this 27th day of June, 2019, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Douglas B. Breidenbach, Jr., is suspended on consent from the Bar of this Commonwealth for a period of six months. He shall comply with all the provisions of Pa.R.D.E. 217.

Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola As Of 06/27/2019

Chief Clerk Supreme Court of Pennsylvania

OFFICE OF DISCIPLINARY COUNSEL,

No. 89 DB 2019

Petitioner

Board File No. C2-17-453

٧.

Attorney Reg. No. 29985

DOUGLAS B. BREIDENBACH, JR.

Respondent

(Montgomery County)

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

Petitioner, the Office of Disciplinary Counsel ("ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Krista K. Beatty, Disciplinary Counsel, and Respondent, Douglas B. Breidenbach, Jr. ("Respondent"), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

- 1. ODC, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, 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 the aforesaid Enforcement Rules.
- 2. Respondent, Douglas B. Breidenbach, Jr., was born on June 24, 1952, and was admitted to practice law in the Commonwealth of Pennsylvania on October 17, 1979. Respondent's license is currently active.

FILED
05/07/2019
The Disciplinary Board of the
Supreme Court of Pennsylvania

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

SPECIFIC FACTUAL AND LEGAL ADMISSIONS

- 4. Elizabeth Allan died intestate on January 18, 2001.
- 5. On or about November 13, 2009, the Honorable C. Theodore Fritsch, Jr. of the Court of Common Pleas of Bucks County, Orphans' Court Division, granted a Petition filed by several heirs to the Estate of Elizabeth Allan ("Estate") to remove the Administrator of the Estate, Bruce Crawford.
- 6. By that same November 13, 2009 Court Order, Lynne L. DiGuglielmo was appointed to serve as Administrator of the Estate, and Respondent was appointed to serve as attorney for the Estate.
 - 7. Ms. DiGuglielmo died in January 2015.
- 8. On January 15, 2015, Respondent requested the potential heirs approve Craig Lamont, as the new Estate Administrator.
 - 9. Not all of the potential heirs approved this request.
 - 10. Respondent did not otherwise take action toward finalizing the Estate.
- 11. In August 2016, Lenore Zissermann, one of Elizabeth Allen's descendants, telephoned Respondent seeking information on the progress of the Estate's administration.
- 12. Respondent replied that the case had not moved forward because all of the heirs had not signed renunciations, and did not agree to appointment of Mr. Lamont as the replacement Administrator.

- 13. On November 17, 2016, twenty-two (22) months after Ms. DiGuglielmo died, Respondent filed a Petition to Replace Deceased Personal Representative and to Appoint Court Appointed Administrator.
- 14. On November 17, 2016, based on Respondent's petition, the Register of Wills issued to all interested parties a citation to show cause why they should not apply for and take out Letters of Administration on the Estate, or why the court should not appoint an Administrator to take out Letters of Administration.
- 15. Between November 17, 2016 and Ms. Zissermann's filing of a disciplinary complaint in June 2017, Respondent took no action to ensure appointment of a new Administrator and prompt resolution of the Estate.
 - 16. Respondent concedes that he should have filed a motion to make the rule absolute.
- 17. On June 14, 2017, Respondent told Disciplinary Counsel that he would prepare a motion to make the rule absolute and file it in the next few days; however, Respondent did not do so until August 25, 2017.
- 18. Respondent was unaware of Bucks County local rules requiring additional action to bring the matter before the Court.
 - 19. Respondent has expressed remorse for his misconduct.
- 20. By his conduct as alleged in paragraphs 4 through 17, Respondent violated the following Rules of Professional Conduct:
 - a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;

- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4 (a)(2), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- d. RPC 1.4(a)(3) which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- e. RPC 1.4(a)(4) which states that a lawyer shall promptly comply with reasonable requests for information; and
- f. RPC 8.4(d), prohibiting a lawyer from engaging in conduct prejudicial to the administration of justice.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

- 21. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a six (6) month suspension from the practice of law.
- 22. Respondent consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Respondent's affidavit required by Rule 215, Pa.R.D.E., stating, *inter alia*, his consent to the recommended discipline, is attached hereto as Exhibit "A."
- 23. In support of the Joint Petition, the parties respectfully submit that the following mitigating circumstances are present:
 - Respondent has demonstrated remorse by acknowledging he engaged in misconduct, admitting to violating the charged Rules of Professional Conduct, and by consenting to a six-month suspension;

- b. Respondent has cooperated with Petitioner. After receiving notice of the disciplinary complaint filed July 2017, Respondent took action to enforce a July 7, 2014 Adjudication and Decree granting a request for disgorgement and reduction of attorneys' fees paid to previous attorneys for the Estate. In November 2018, Respondent was finally successfully in securing the Court's appointment of a replacement Administrator, and has cooperated with the newly appointed Administrator in an effort to finally resolve the Estate.
- 24. The parties agree Respondent's current misconduct is aggravated by a history of previous discipline.
 - a. In 2013, Respondent consented to filing a Joint Petition for Public Reprimand, with condition that he refund \$5,000.00 to his clients, for violations of RPC 1.1, RPC 1.2(a), RPC 1.3. RPC 1.4(a)(1), RPC 1.4(a)(3), RPC 1.4(b), RPC 1.5(a), RPC 1.7(a)(2), RPC 1.16(d), RPC 3.2 and RPC 8.4(d). Respondent failed to properly preserve his clients' appeal, and failed to properly communicate regarding the status of matter to his clients, including by failing to inform the clients that he filed a Notice to Discontinue the appeal. Respondent also did not promptly return the client file after his clients sought new counsel. Notably, Respondent's public reprimand was administered on March 10, 2014, shortly before the events giving rise to Respondent's lack of diligence and neglect which form the basis for the current disciplinary matter. A true and correct copy of the Public Reprimand is attached hereto as Exhibit "B".)

- b. Respondent also received a private reprimand in 2006, for misconduct including neglect, failure to communicate, failure to perform the service for which he had been paid, failure to return the client's file and a failure to refund the unearned fee.
- 25. In Pennsylvania, there is no *per se* discipline for a particular type of misconduct; instead, each case is reviewed individually. *Office of Disciplinary Counsel v. Lucarini*, 417 A.2d 186 (Pa. 1983).
- 26. Petitioner and Respondent submit that after weighing relevant factors in this particular case, a six (6) month suspension is appropriate discipline.
- 27. Viewed in isolation, Respondent's conduct may have been adequately addressed by private discipline; however Respondent's history of discipline involving prior client neglect and poor communication warrants increased consequences. Well-established precedent exists to impose increasingly more significant discipline for recidivists who engage in neglect. A six-month suspension is consistent with the range of sanctions imposed in similar cases involving failure to diligently represent, consult and communicate with clients by attorneys with previous discipline.

In Office of Disciplinary Counsel v. Norman Orville Scott, No. 99 DB 2015 (D.Bd.Rpt. June 22, 2016) (S.Ct.Order August 17, 2016) the Supreme Court approved the Disciplinary Board's recommendation for a six-month suspension, to protect the public and preserve confidence in the legal system. Mr. Scott's prior discipline consisting of an informal admonition on October 31, 2014 and a public reprimand with two years' probation on March 27, 2015, constituted aggravating circumstances in the later matter involving similar instances of Respondent's lack of diligence and failure to communicate with two criminal defendant clients in conjunction with his role as court-appointed counsel.

Similarly, in *Office of Disciplinary Counsel v. Ronald James Gross*, 174 DB 2014, (S.Ct.Order 4/10/15), Mr. Gross's misconduct was aggravated by a prior informal admonition for a misrepresentation in violation of RPC 8.4(c). Mr. Gross's cooperation with ODC, as evidenced by his agreement to submit to a joint consent petition for a six-month suspension, mitigated more serious consequences and the recommended suspension was approved by the Court. In *Office of Disciplinary Counsel v. Neil Anthony Grover*, 128 DB 2014 (2014), Respondent failed to communicate with his client and failed to take action in an employment matter, warranting a public reprimand because Respondent previously received an informal admonition, in 2013, for similar misconduct.

In *ODC v. Vedder*, 161 DB 2007 (S.Ct. Order 3/26/2008), the Disciplinary Board recommended and the Court approved a consent petition for public censure in the case of Respondent's neglect of one criminal matter. Respondent's history of discipline for similar misconduct warranted increased discipline. *See also ODC v. Meehan*, 26 DB 2006 (S.Ct. Order 9/18/06)(Court granted a joint petition recommending public censure on consent; Respondent had previously received an informal admonition and private reprimand for similar misconduct involving neglect and failure to communicate with clients).

28. In light of the nature of the misconduct, and the aggravating and mitigating factors, Petitioner and Respondent submit that a six (6) month suspension is appropriate discipline.

WHEREFORE, Petitioner and Respondent respectfully request, pursuant to Rules 215(e) and 215(g)(2), that a three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent be suspended for a period of six (6) months, that Respondent be ordered to pay all necessary expenses incurred in the investigation and prosecution of this matter

as a condition to 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 submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION, Chief Disciplinary Counsel

Date: <u>5-4-19</u>

BY:

Krista K. Beatty, Esquire

Disciplinary Counsel District II Office

Attorney ID No. 75211

Suite 170, 820 Adams Avenue

Trooper, PA 19403 (610) 650-8210

Date: 5 - 3 - 19

BY

Douglas B. Breidenbach, Jr., Esquire

Respondent

VERIFICATION

The statements contained in the foregoing Joint Petition In Support of Discipline on Consent are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

K. Beatly Disciplinary Counsel

Date: 5 - 3 - 19

OFFICE OF DISCIPLINARY COUNSEL, : No.

Petitioner

Board File No. C2-17-453

DB 2019

: Attorney Reg. No. 29985

DOUGLAS B. BREIDENBACH, JR.

v.

Respondent : (Montgomery Co.)

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class Mail, as follows: Douglas B. Breidenbach, Jr., Esquire 1200 E. High St., Suite 301 Pottstown, PA 19464

Date: <u>5-7-19</u>

BY:

Krista K. Beatty Disciplinary Counsel District II Office Attorney ID No. 75211

Suite 170, 820 Adams Avenue

Trooper, PA 19403 (610) 650-8210

OFFICE OF DISCIPLINARY COUNSEL.

No.

DB 2019

Petitioner

Board File No. C2-17-453

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Attorney Reg. No. 29985

DOUGLAS B. BREIDENBACH, JR.

V.

Respondent

(Montgomery County)

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

COMMONWEALTH OF PENNSYLVANIA: COUNTY OF MONTGOMERY:

DOUGLAS B. BREIDENBACH. JR., being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of discipline in the form of a two year suspension in conformity with Pa.R.D.E. 215(d) and further states as follows:

- 1. He is an admitted attorney in the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 17, 1979.
- 2. He desires to submit a Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d).
- 3. 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 this affidavit.
- 4. He is aware that there is presently pending a proceeding into allegations that he has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent of which this affidavit is attached hereto.
 - 5. He acknowledges that the material facts set forth in the Joint Petition are true.
- 6. He submits the within affidavit because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, he could not successfully defend against them.



7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has not retained, consulted and acted upon the advice of counsel in connection with his decision to execute the within Joint Petition.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 4 day of may , 2019.

DOUGLAS B. BREIDENBACH, JR.

Respondent

Sworn to and subscribed before me this **a** day of May, 2019.

Notary Public

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
Moriah Hopkins, Notary Public
Lower Pottsgrove Twp. Montgomery County
My Commission Expires Oct. 7, 2020
MEMBER, PENNSYLVANIAASSOCIATION OF NOTARIES

-2-

OFFICE OF DISCIPLINARY COUNSEL :

No. 80 DB 2013

Petitioner

٧.

Attorney Registration No. 29985

DOUGLAS B. BREIDENBACH, JR.

Respondent

(Montgomery County)

ORDER

AND NOW, this 17th day of September, 2013, in accordance with Rule 215(f), Pa.R.D.E., the three-member Panel of the Disciplinary Board having reviewed and approved the Joint Petition in Support of Discipline on Consent filed in the above captioned matter; it is

ORDERED that the said DOUGLAS B. BREIDENBACH, JR., be subjected to a PUBLIC REPRIMAND WITH CONDITION by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a) and Rule 205(c)(9) of the Pennsylvania Rules of Disciplinary Enforcement.

Within thirty (30) days from the date of this Order, Respondent shall submit to the Secretary of the Board and Disciplinary Counsel proof that he has:

1. Refunded \$5,000.00 to Miriam and Michael Reitz.

BY THE BOARD

Galeral Ir Bevilacque
Board Chair

TRUE COPY FROM RECORD

Attest:

Elaine M. Bixler, Secretary
The Disciplinary Board of the

Supreme Court of Pennsylvania

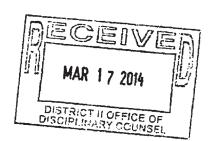
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EXHIBIT B



Pennsylvania Judicial Center 601 Commonwealth Avenue, Suite 5600 PO Box 62625 Harrisburg, PA 17106-2625

Phone: (717) 231-3380 Fax: (717) 231-3381



March 13, 2014

Paul J. Killion
Chief Disciplinary Counsel
Office of Disciplinary Counsel
601 Commonwealth Avenue, Suite 2700
PO Box 62485
Harrisburg, PA 17106

RE:

Office of Disciplinary Counsel

v. DOUGLAS B. BREIDENBACH, JR.

No. 80 DB 2013

Attorney Registration No. 29985

(Montgomery County)

Dear Mr. Killion:

This will advise that the above Respondent has appeared as scheduled before a three member panel of The Disciplinary Board on March 10, 2014, and the attached Public Reprimand was delivered by the Designated Board Member.

Please take appropriate action to conclude this matter.

Very truly yours,

Elaine M. Bixler

Secretary of the Board

EMB/eb Attachments

cc: Ramona Mariani, Disciplinary Counsel (w/encl.)

OFFICE OF DISCIPLINARY COUNSEL

: No. 80 DB 2013

Petitioner

Attorney Registration No. 29985

DOUGLAS B. BREIDENBACH, JR.

Respondent : (Montgomery County)

PUBLIC REPRIMAND

Douglas B. Breidenbach, Jr., you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline. We note that you agreed to a Public Reprimand by a joint petition in support of discipline on consent.

Mr. Breidenbach, you represented Michael and Miriam Reitz in connection with property the Reitzes owned located in South Coventry Township, which was used for a catering business. In or around 2005, the Reitzes authorized you to file suit against Realen Homes, L.P., and South Coventry Township concerning a sewer plant built near the Reitzes' property. The case went to non-jury trial in 2008. In January 2010, the trial court issued a verdict that granted in part and denied in part the injunctive relief requested, and granted in part and denied in part the relief from trespass.

The Reitzes met with you in January 2010 to discuss filing an appeal. It is undisputed that you received a check from the Reitzes in the amount of \$5,000 for the purpose of filing an appeal. You filed the appeal to the Commonwealth Court on

February 16, 2010. On February 25, 2010, the Township filed an application to quash the appeal, based on your failure to file post-trial motions. You did not forward the Township's motion to the Reitzes. You filed an Answer to the application to quash, but again did not forward a copy to your clients.

On the same day that you filed the Notice of Appeal, on February 16, 2010 the trial court entered an Order requiring the Reitzes to file a Concise Statement of Matters Complained of on Appeal, no later than March 9, 2010. The trial court received your Concise Statement on March 11, 2010. The trial court directed you to file the appropriate United States Postal Service Form demonstrating timely mailing of the Concise Statement. You received the trial court's order but failed to comply, as you believed you had already provided proof of mailing in your original filing. You did not send the Reitzes copies of the Concise Statement or the Court's Order.

On May 7, 2010, the trial court issued its opinion in connection with the appeal, concluding that the Reitzes' failure to comply with its order to file proof of mailing waived all appealable issues and the appeal had to be dismissed. You received the trial court's opinion but failed to forward a copy to your clients.

On June 7, 2011, the Commonwealth Court ordered the parties to file a status report on the appeal. On or around June 24, 2011, you discontinued the Reitzes' appeal, and failed to send your clients a copy of the notice or specifically inform them of what you had done.

One of the issues the Reitzes believed you were pursuing through the appeal was the issue of their potential entitlement to fees and costs in the underlying litigation. You filed a Petition for Counsel Fees on the same date that you filed the Notice of Appeal. You took no steps to prosecute the Petition for Attorney Fees.

The Reitzes eventually sought the assistance of another lawyer, who requested that the Reitz file be transferred to him by August 24, 2011. You failed to produce the file to the Reitzes or their successor counsel. You produced the file to Office of Disciplinary Counsel on August 12, 2012.

Your actions have violated the following Rules of Professional Conduct:

- RPC 1.1 A lawyer shall provide competent representation to a client;
- 2. RPC 1.2(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decision concerning the objectives of the representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carryout the representation;
- RPC 1.3 A lawyer shall act with reasonable diligence and promptness in representing a client;
- RPC 1.4(a)(1) A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined by rule 1.0(e), is required by these Rules;
- RPC 1.4(a)(3) A lawyer shall keep the client reasonably informed about the status of the matter;
- RPC 1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

- RPC 1.5(a) A lawyer shall not enter into an agreement for,
 charge, or collect an illegal or clearly excessive fee;
- 8. RPC 1.7(a)(2) 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 third person or by a personal interest of the lawyer;
- 9. RPC 1.16(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest 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;
- RPC 3.2 A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client;
- RPC 8.4(d) It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

We note that you have been practicing law since 1979 and have a history of discipline consisting of a Private Reprimand in 2006. You have acknowledged your misconduct and agreed to enter into discipline on consent.

Mr. Breidenbach, the conduct that has brought you to this moment is in the record of this proceeding and is now fully public. This Public Reprimand is now a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to adhere to the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction may subject you to disciplinary action.

This Public Reprimand shall be posted on the Disciplinary Board's website

at www.padisciplinaryboard.org.

Designated Member
The Disciplinary Board of the

Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on March 10, 2014.

<u>ACKNOWLEDGMENT</u>

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at the Board Offices located at 16th Floor, Seven Penn Center, 1635 Market Street, Philadelphia, Pennsylvania, on March 10, 2014.

ouglas B. Breidenbach, Jr.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by:

Signature:

lame: MS

Attorney No. (if applicable): 75211