

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2114 Disciplinary Docket No. 3
Petitioner :
 : No. 96 DB 2014
v. :
 : Attorney Registration No. 31698
WAYNE S. STANDER, :
Respondent : (Berks County)

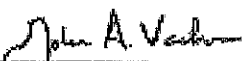
ORDER

PER CURIAM

AND NOW, this 30th day of December, 2014, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated October 28, 2014, 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 Wayne S. Stander is suspended on consent from the Bar of this Commonwealth for a period of one year, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy John A. Vaskov, Esquire
As Of 12/30/2014

Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL	:	No. 96 DB 2014
Petitioner	:	
v.	:	Attorney Registration No. 31698
WAYNE S. STANDER	:	
Respondent	:	(Berks 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 Andrew J. Trevelise, Howell K. Rosenberg, and Stephan K. Todd, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on September 22, 2014.

The Panel approves the Joint Petition consenting to a one year suspension 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.



Andrew J. Trevelise, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 10/20/2014

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 96 DB 2014
Petitioner :
 :
v. :
 : Attorney Reg. No. 31698
WAYNE S. STANDER, :
Respondent : (Berks County)

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

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Barbara Brigham Denys, Disciplinary Counsel, and Respondent, Wayne S. Stander (hereinafter "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

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

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, Wayne S. Stander, was born on November 15, 1955, and was admitted to practice law in the Commonwealth of Pennsylvania on May 19, 1980.

3. Respondent is currently on inactive status, and maintains an address of record at 50 Eagle Lane, Reading, Berks County, Pennsylvania 19607.

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

SPECIFIC FACTUAL AND LEGAL ADMISSIONS

5. On or about February 16, 2010, Kenneth M. Kitay & Associates, LLC (the "Kitay firm"), hired Respondent as an associate attorney.

6. By way of background, in February 2010, Respondent applied for a position with the Kitay firm and was interviewed for the position. At that time, Respondent was operating an independent law practice out of his residence in Philadelphia, Pennsylvania.

7. By letter dated February 9, 2010, Jeff Schonberg, the managing partner of an employment search firm, wrote to

Respondent to welcome him to the Kitay firm and confirm Respondent's start date of February 16, 2010. Mr. Schonberg noted in the February 9, 2010 letter that Respondent would receive an offer letter to address the terms and conditions of his employment with the Kitay firm.

8. On February 10, 2010, Respondent was sent a written offer of employment containing the terms of his prospective employment with the Kitay firm.

9. Among other terms of employment, the written offer included the following language:

It is understood that if and to the extent you originate new business, wholly independent of any Kitay source, client or contact, then you will receive a percentage of that business in an amount to be determined. Origination of new business incentive program information will be provided. The firm reserves the right to reject any case you may originate for whatever reason, including but not limited to an insufficient net fee.

10. On February 17, 2010, Respondent completed and signed an application for Employment.

11. At the end of the Respondent's Application for Employment, Respondent certified that it was true and complete to the best of his knowledge and agreed to "fully adhere to the policies, rules and regulations of employment of [the Kitay firm]."

12. On February 17, 2010, Respondent also signed an Employment Agreement.

13. Included within the Employment Agreement were the following commitments:

- a. In order to safeguard the activities and assets of Kenneth M. Kitay & Associates, employees of Kenneth M. Kitay & Associates should not have interests in outside businesses which conflict or appear to conflict with their ability to act and make independent decisions in the best interest of Kenneth M. Kitay & Associates.
- b. No employee should take any action on behalf of the Company that they know, or reasonably should know, violates any applicable law or regulation. This obviously includes such activities as bribery, kickbacks, falsehoods, and misrepresentation.

14. The Employment Agreement also included a question as to whether Respondent or any of his immediate family members held an interest in outside business.

15. In response to that question, Respondent checked "Yes" and wrote: "I have some personal files - (work comp, PI, Soc. Security) that I have worked on. I have advised Ken [Kitay] and we will work out future arrangements regarding bringing the cases to the firm." Respondent claims that he also discussed these files with Mr. Kitay during the interview process.

16. Respondent identified to Mr. Kitay existing, active clients from Respondent's most recent operation as a solo

practitioner and reached agreement to terms relating to the splitting of fees collected with respect to those clients. That agreement was not captured in writing.

17. Respondent did not provide to Mr. Kitay a complete list of his former clients from his solo practice or otherwise and no agreement was reached in advance as to any fees to be derived from Respondent's former clients. Respondent claims that Mr. Kitay did not request such a list.

18. Of those active matters and clients Respondent disclosed when he took his position with the Kitay firm, Respondent later collected for himself fees he had agreed to split with the Kitay firm as follows:

- a. William Humbert: Respondent had agreed to evenly split with the Kitay firm any fees derived from his representation of Humbert in a social security matter. Respondent, however, took the entire fee of \$2,741.00, which was deposited into Respondent's PNC bank account.
- b. Molineux: Respondent had agreed to evenly split with the Kitay firm any fees derived from his representation of Molineux in a social security matter. Thereafter, the matter was transferred to another attorney not associated with the Kitay

firm. Respondent ultimately derived a \$1,429.25 fee for work performed on the matter, which was deposited into Respondent's PNC bank account.

c. Pointon: Respondent had agreed to evenly split with the Kitay firm any fees derived from his representation of Pointon in a social security matter. Respondent represented to the firm that the case was lost and that no fee was derived. In fact, Respondent collected a fee of \$3,572.00, which he deposited into his PNC bank account.

d. Gene Williams: Gene Williams, who was an active client of Respondent when Respondent joined the Kitay firm, later retained the Kitay firm in connection with a social security matter. Respondent then took the entire fee of \$1,874.07 derived from that engagement, which was deposited into Respondent's PNC bank account.

19. Respondent also wrongfully retained a portion of the attorney's fees he collected in connection with the following client matters of the Kitay firm:

a. Dennis Mitchell: Respondent took \$3,505.00, which was deposited by the Social Security

Administration into Respondent's PNC bank account.

- b. Hilda Troche: Respondent took \$505.50, which was deposited by the Social Security Administration into Respondent's PNC bank account.
- e. Sharon Elliott: Respondent took \$3,461.67, which he deposited into his PNC bank account. Respondent claims that Sharon Elliott was a new client of the Kitay firm originated by Respondent.
- f. Henry Brown: Respondent took \$1,250.00, which he deposited into his PNC bank account. Respondent claims that Henry Brown was a new client of the Kitay firm originated by Respondent.

20. In addition, Respondent failed to disclose to the Kitay firm a \$500.00 retainer Respondent improperly took in September 2010 from John Carolan, whom Respondent considered to be an inactive, former client of Respondent's solo practice.

- a. In connection with a workers' compensation matter that Respondent was handling on behalf of Mr. Carolan, Respondent received a \$500.00 retainer from Mr. Carolan.

- b. Without addressing the engagement with the Kitay firm, Respondent deposited one-half of that retainer into Respondent's PNC bank account and distributed the other half to the Kitay firm.
- c. The retainer was improper as it had not been approved by the workers' compensation authorities.

21. After the Kitay firm discovered Respondent's wrongdoing and before the disciplinary complaint was filed, Respondent fully acknowledged that he had misappropriated from the Kitay firm fees to which the firm was entitled.

22. On May 7, 2012, Respondent signed a document acknowledging that "[Respondent] ha[d] been discharged for cause, specifically that [Respondent] misappropriated firm funds" and stating that "[Respondent] released Kenneth M. Kitay, Esquire and Kenneth M. Kitay & Associates, LLC from any liability associated with [Respondent's] discharge."

23. Respondent also signed several other documents that the Kitay firm presented to Respondent for the purpose of obtaining information from Respondent to investigate the breadth of Respondent's misconduct and obtain reimbursement.

24. Those documents included: (a) a May 7, 2012 agreement to tender documents to Mr. Kitay, including documents reflecting

settlement distributions for clients Respondent brought to the Kitay firm, bank statements and emails, and "not to ever contact any law firm clients and or referral sources," (b) a May 7, 2012 Access Authorization reflecting Respondent's permission for Mr. Kitay and his firm to review all of the cases and files in which Respondent had been involved, and (c) a May 7, 2012 agreement to tender funds for the purpose of reimbursing misappropriated funds to the Kitay firm.

25. On or about May 8, 2012, Respondent supplied a \$1,582.69 Cashier's Check to the Kitay firm. The amount of that check, when combined with Respondent's last paycheck withheld by the firm, totaled \$3,000.00.

26. On May 10, 2012, Respondent sent an email to Mr. Kitay and others at the Kitay firm stating, in part, the following:

What caused my separation from employment was my greed and my incredibly stupid judgment and choices. I take full and complete responsibility. I have learned a hard lesson, but for now I feel disgraced, scared, isolated and depressed. I don't know if I will ever work in the law again, but I have no one to blame but myself. What adds to the pain is the realization that my actions have and will continue to cause heartache, extra work, time, money and aggravation for you. I am deeply, deeply sorry.

Mr. Kitay responded: "Wayne, thank you for your kind words. I wish you good luck going forward."

27. On June 4, 2012, Respondent met with Mr. Kitay and informed him that Respondent had taken more fees from the firm than Respondent had originally admitted. Respondent also delivered a \$2,000.00 Cashier's Check to the firm and bank statements for the period of February 2010, through May 2012.

28. On June 10, 2012, Mr. Kitay demanded a calculation and full reimbursement of whatever amount was due from Respondent to the Kitay firm by July 31, 2012.

29. On June 22, 2012, Respondent supplied information to the Kitay firm which indicated Respondent's calculation of an amount due to the firm as of that date of \$3,418.03 (\$5,418.03 minus the \$2,000.00 reimbursed in June).

30. On June 25, 2012, Mr. Kitay sent Respondent an email noting that Mr. Kitay required additional information, including bank statements for Respondent's investment and savings accounts for the period of time Respondent was employed by the Kitay firm to the present, to investigate the breadth of the misappropriation.

31. Respondent supplied to Mr. Kitay all requested bank statements.

32. On July 23, 2012, Respondent delivered a check in the amount of \$3,418.00 to the Kitay firm.

33. Respondent admitted to the Kitay firm that he converted fees from the firm to which the firm was entitled which Respondent calculated to total \$8,418.00.

34. The Kitay firm did not uncover through its investigation that Respondent's misappropriation of fees from the firm was more widespread than Respondent had acknowledged.

35. Respondent reimbursed \$8,418.00 to the firm by the firm's retention of Respondent's final paycheck (in the amount of \$1,417.31) and Respondent's issuance of three checks to the firm totaling \$7,000.69 (\$1,582.69 + \$2,000.00 + \$3,418).

36. In addition, at the direction of the Kitay firm, Respondent refunded \$250.00 to Mr. Carolan on or about September 11, 2012, by sending Mr. Carolan a check made payable to him from Respondent's PNC bank account. The Kitay firm had made an earlier \$250.00 refund to Mr. Carolan to address the amount of the improper retainer Respondent had conveyed to the Kitay firm, and required that Respondent return the amount of the improper retainer which Respondent had deposited into his PNC bank account.

37. By his conduct as alleged in paragraphs 1 through 36 above, Respondent violated the following Rules of Professional Conduct:

- a. **RPC 1.15(e)**, requiring that, except as stated in Rule 1.15 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;
- b. **RPC 8.4(b)**, providing that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- c. **RPC 8.4(c)**, providing that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- d. **RPC 8.4(d)**, providing that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

38. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a one-year suspension from the practice of law.

39. 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.

40. In support of the Joint Petition, the parties respectfully submit that the following mitigating circumstances are present:

- a. Before the misconduct was reported to ODC, Respondent readily acknowledged his misconduct to the Kitay firm, expressed his sincere remorse, provided an accounting to the firm of the misappropriated fees, cooperated fully with the firm's investigation and verification of the misconduct, and made full reimbursement of the misappropriated fees;
- b. Respondent cooperated fully with ODC throughout its investigation and by entering into this Joint Petition to receive a one-year suspension; and

c. Respondent has no prior history of discipline.

41. In Pennsylvania, there is no *per se* discipline for a particular type of misconduct; instead, each case is reviewed individually. See *In re Anonymous*, No. 115 DB 2000, No. 718 Disciplinary Docket 3 (Pa. Jan. 31, 2002), in which the Disciplinary Board cited *Office of Disciplinary Counsel v. Lucarini*, 417 A.2d 186 (Pa. 1983), in support of its report and recommendation of a one-year suspension and stated that "there is no formulistic requirement in any case, including cases involving theft of funds" (pp. 11-12).

42. The imposition of a one-year suspension is consistent with the range of sanctions imposed in similar cases involving the misappropriation of fees accompanied by substantial mitigation:

a. For example, in *Office of Disciplinary Counsel v. Staropoli*, No. 97 DB 2002, 925 Disciplinary Docket No. 3 (Pa. July 8, 2004), a one-year suspension was imposed upon the respondent for failing to advise his firm of the settlement of a firm matter, depositing the settlement check into his personal account, retaining the \$3,000.00 attorney fee the respondent had received without distributing any portion to the firm and, upon

being detected, making a series of false representations to the firm. In mitigation, respondent cooperated with ODC and requested that he be transferred to inactive status, stipulated that his conduct violated Rules of Professional Conduct 1.15(a), 1.15(b), 8.4(b), and 8.4(c), made full restitution to his firm, presented four character witnesses at the disciplinary hearing who testified as to respondent's good character, including two partners of the respondent's former firm from which the respondent had converted funds, and had no prior history of discipline.

- b. In the matter of *In re Anonymous*, No. 115 DB 2000, *supra*, the Pennsylvania Supreme Court approved the Disciplinary Board's recommendation of a one-year suspension for the respondent's conversion of \$5,895.23 from his law firm. In that case, there were also significant factors mitigating the respondent's misconduct. The respondent, who was 55 years old and had practiced for twenty years, cooperated fully with ODC, admitted the charged Rule violations, made full restitution to his firm, and presented

strong character testimony, including testimony from partners of his former law firm, and had no history of prior discipline.

43. In light of the nature of the misconduct and the significant mitigating factors presented here, Petitioner and Respondent submit that a one-year suspension is appropriate discipline. Of particular significance, Respondent's admission of misconduct, expression of remorse, preparation of an itemized and forthright accounting of the funds converted, and full reimbursement to his former firm preceded any involvement by ODC and is not accompanied by any history of prior discipline in Respondent's 34 years as a member of the Pennsylvania bar.

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 one year, and that Respondent be ordered to pay all necessary expenses incurred in

the investigation and prosecution of this matter as a condition to this Joint Petition being granted.


Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION,
Chief Disciplinary Counsel

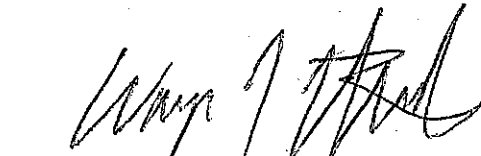
Date: 9/18/14

BY:


BARBARA BRIGHAM DENYS
Disciplinary Counsel
District II Office
Attorney ID No. 78562
Suite 170, 820 Adams Avenue
Trooper, PA 19403
(610) 650-8210

Date: 9/16/2014


BY:


WAYNE S. STANDER
Respondent

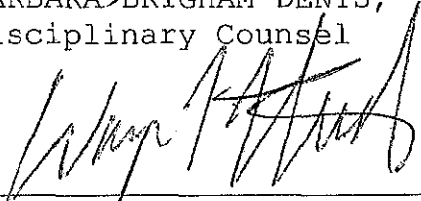
VERIFICATION

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.

Date: 9/18/14

BY: 
BARBARA BRIGHAM DENYS,
Disciplinary Counsel

Date: 9/16/2014

BY: 
WAYNE S. STANDER,
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 96 DB 2014
Petitioner :
 :
v. :
 : Attorney Reg. No. 31698
WAYNE S. STANDER, :
Respondent : (Berks County)

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

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF BERKS

WAYNE S. STANDER, being duly sworn according to law, deposes and hereby submits this affidavit in support of the Joint Petition in Support of Discipline on Consent Pursuant to Rule 215(d), Pa.R.D.E., and further states as follows:

1. He desires to submit a Joint Petition in Support of Discipline on Consent ("Joint Petition") pursuant to Rule 215(d), Pa.R.D.E.

2. 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.

3. He is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has not consulted or followed the advice of counsel in connection with his

decision to consent to execute the within Joint Petition.

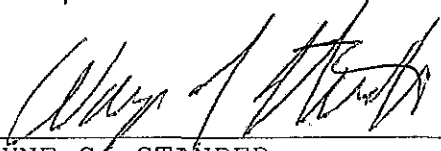
4. He is aware that there is presently pending an investigation into allegations that he has been guilty of misconduct as set forth in the Joint Petition.

5. He acknowledges that the material facts set forth in the Joint Petition are true.

6. He consents because he knows that if charges predicated upon the matter under investigation continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

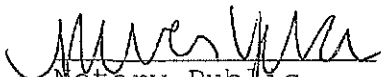
It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 16th day of September, 2014.



WAYNE S. STANDER

Sworn to and subscribed before me this 16th day of September, 2014



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MICHELE YOCHUM, Notary Public
Exeter Township, Berks County
My Commission Expires February 8, 2015

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 96 DB 2014
Petitioner :
 : Board File No. C2-12-1092
v. :
 : Attorney Reg. No. 31698
WAYNE S. STANDER, :
Respondent : (Berks County)


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:

Wayne S. Stander
50 Eagle Lane
Reading, PA 19607-3330

Date: 9/19/14

BY: 
BARBARA BRIGHAM DENYS
Disciplinary Counsel
District II Office
Attorney ID No. 78562
Suite 170, 820 Adams Avenue
Trooper, PA 19403
(610) 650-8210