

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1261 Disciplinary Docket No. 3
Petitioner	:	
	:	Nos. 9 DB 2007 and 92 DB 2008
v.	:	
	:	Attorney Registration No. 32154
ROBERT L. FEDERLINE,	:	
Respondent	:	(Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 2nd day of June, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 5, 2010, it is hereby

ORDERED that Robert L. Federline is suspended from the Bar of this Commonwealth for a period of three years retroactive to August 11, 2007, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

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

A True Copy Patricia Nicola

As of: June 2, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1261 Disciplinary Docket No. 3
Petitioner	:	
	:	Nos. 9 DB 2007 & 92 DB 2008
v.	:	
	:	Attorney Registration No. 32154
ROBERT L. FEDERLINE	:	
Respondent	:	(Allegheny 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 ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Order of the Supreme Court of Pennsylvania dated July 12, 2007, Robert L. Federline was placed on temporary suspension pursuant to Pa.R.D.E. 208(f). The basis for the temporary suspension was Respondent's failure to comply with a subpoena. Office of Disciplinary Counsel filed a Petition for Discipline against Respondent on June 11, 2008.

The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that he misappropriated funds in three separate matters. Respondent filed an Answer to Petition and New Matter on July 30, 2008.

A Joint Petition for Discipline on Consent was filed by Petitioner on October 14, 2008. By Order of March 25, 2009, the Supreme Court denied the Petition.

A disciplinary hearing was held on July 30, 2009, before a District IV Hearing Committee comprised of Chair Russell L. Schetroma, Esquire, and Members Richard A. Vendetti, Esquire, and Mark Gordon, Esquire. Respondent was represented by Robert L. Downey, Jr., Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on November 25, 2009. The Committee found that Respondent violated the Rules as charged in the Petition and recommended that he be suspended for a period of 18 months. The Committee further suggested to the Board that it recommend to the Supreme Court that the temporary suspension be dissolved.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 20, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 is Robert L. Federline. He was born in 1955 and was admitted to practice law in Pennsylvania in 1980. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

Client Misconduct

4. Disciplinary proceedings were commenced by Petitioner against Respondent because Respondent overdrew his IOLTA Account and caused it to be out of trust for three distinct matters.

5. A stipulation was entered into between the Office of Disciplinary Counsel and Respondent, which was entered into the record before the Hearing Committee on July 30, 2009.

6. In 2000, Respondent was retained by Kemp & Associates to represent the interests of Nancy Pace and Elizabeth Reynolds with regard to the estate of James Perritte.

7. Initially, Respondent, who had received funds on behalf of Ms. Pace and Ms. Reynolds from the Perritte estate, properly notified the beneficiaries and properly distributed funds.

8. On October 4, 2006, additional fees for the estate were received by Respondent, who deposited the proceeds into his IOLTA Account. After deduction of his fee, Respondent was entrusted with \$14,250 on behalf of his clients.

9. Respondent did not notify his clients that he was in receipt of additional proceeds from the Perritte estate nor did he timely distribute to the beneficiaries their respective portions of the supplemental proceeds with which he was entrusted for the estate.

10. On December 11, 2006, Respondent issued a check payable to himself and drawn on his IOLTA Account, causing him to be out of trust with regard to his entrustments on behalf of his clients.

11. Respondent initially ignored attempts to reach him by Ms. Pace, who wished to know the status of the matters involving the estate and other advances which she and Ms. Reynolds were to receive from the Perritte Estate.

12. By February 2, 2007, it was stipulated that Respondent had effectively misappropriated \$14,250 of the funds that he was entrusted with.

13. On or about May 1, 2008, the Pennsylvania Lawyers Fund for Client Security paid \$5,000 to Ms. Pace and \$5,000 to Ms. Reynolds as compensation for Respondent's misappropriation of their entrusted funds.

14. On November 24, 2006, Respondent agreed to represent the interests of Christopher and Lynn Bartkus regarding a will contest.

15. Respondent received a check from Christopher and Lynn Bartkus in the amount of \$7,000, which was paid to him as his fee.

16. On November 28, 2006, the \$7,000 check was deposited into Respondent's IOLTA Account.

17. Although Respondent had not previously represented Mr. and Mrs. Bartkus, he had not communicated to them, in writing, the basis or rate of his fee before, or within a reasonable time after commencing the representation of his clients in the will contest.

18. On January 23, 2007, Respondent refunded the retainer that was issued by his clients; issuing a check in the amount of \$7,000 made payable to Christopher J. Bartkus drawn on his IOLTA Account.

19. On March 31, 2006, Respondent entered his appearance with the Register of Wills of Mercer County as co-counsel with Angelo A. Papa, Esquire, to represent Charles B. Lorenzo, Jr., who was appointed the executor of his father's estate upon his father's death on March 25, 2005.

20. On April 3, 2006, a Pennsylvania Inheritance Tax Return was filed for the decedent's estate.

21. The Inheritance Tax Statement of Account for the decedent's estate, dated October 2, 2006, reflected that a refund was issued on September 11, 2006, to the estate in the amount of \$4,059.43.

22. The refund of \$4,059.43 was deposited into Respondent's IOLTA Account.

23. Respondent was not able to make a disbursement on behalf of Mr. Lorenzo or his father's estate on January 20, 2007, as the balance in Respondent's IOLTA Account was \$1,553.42 below his entrustment on behalf of the estate.

24. On February 5, 2007, Respondent caused to be deposited a check in the amount of \$5,000, drawn on his own personal account, into his IOLTA Account. The \$5,000 deposit to the IOLTA Account was not related to any entrustment or client.

25. Respondent reimbursed the Client Security Fund and corrected errors by repaying money to those whom it was owed.

Temporary Suspension

26. On December 18, 2006, the Deputy Prothonotary for the Supreme Court of Pennsylvania issued a subpoena, directing Respondent to submit to Petitioner an array of records and documents which were described within the subpoena secondary to Petitioner's investigation of the conduct of Respondent.

27. Respondent did not timely and completely respond to the subpoena. Accordingly, on May 16, 2007, the Disciplinary Board recommended to the Supreme Court

of Pennsylvania that Respondent be placed on temporary suspension pursuant to Pa.R.D.E. 208(f).

28. Based on the recommendation of the Disciplinary Board, the Supreme Court issued its Order on July 12, 2007, temporarily suspending Respondent's right to practice law in Pennsylvania.

29. Despite the passage of more than two years from the issuance of the Supreme Court Order, Respondent has made no attempt to dissolve the temporary suspension.

Braun Defense

30. Respondent presented evidence in support of his claim that the misappropriation was caused by depression.

31. Four witnesses testified: Thomas J. Dempsey, Esquire, Alan Cech, Esquire, Robert L. Garber, Esquire, and John R. Orie, Esquire.

32. The testimony offered by these four attorneys established that each knew Respondent personally for a substantial period of time.

33. Attorney Alan Cech testified that, prior to the events subject to the disciplinary proceedings, he had observed in Respondent signs of depression, noting that Respondent was becoming non-responsive and difficult to reach.

34. Attorneys Garber and Orie testified that they, themselves, had suffered from mental disorders and purportedly recognized the signs of depression that were being exhibited by Respondent.

35. Respondent described himself as a person with high standards, and this put a burden on the way he handled his law practice.

36. By 2001, Respondent found that the demands of his law practice were debilitating.

37. Respondent did not seek any psychiatric care until 2007, after the events in question.

38. Respondent enrolled in a voluntary psychiatric program sponsored by UPMC, which required him to meet regularly with a therapist.

39. Respondent identified Dr. Edward Friedman as the psychiatrist with oversight to the program.

40. According to Respondent, his request to have Dr. Friedman testify was not made with sufficient time to allow Dr. Friedman to secure clearance through UPMC's corporate and legal departments to facilitate his testimony. A forensic psychiatrist, Dr. Robert Wettstein, to whom Respondent was referred, was not able to meet and evaluate Respondent until after the hearing.

41. Respondent did not seek a continuance of the proceedings before the Hearing Committee in order to allow for expert testimony.

42. Respondent was remorseful and contrite and was clearly disturbed by his own conduct.

43. Respondent has incurred financial difficulties for many years. Of record are two federal tax liens: the first lien in the amount of \$358,712.20 filed July 30,

2006, for the tax period ending in 2002, and a second lien in the amount of \$24,600, filed January 29, 2007 for tax periods ending 2004 and 2005.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

2. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

3. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

4. RPC 1.15(a) (conduct occurring before September 20, 2008) – a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution of the property, whichever is later.

5. RPC 1.15(b) (conduct occurring before September 20, 2008) – Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. Except as stated in this Rule 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 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 such property.

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

7. Respondent has failed to prove by clear and convincing evidence that he suffered from depression at the time of the misconduct, nor did he establish by clear and convincing evidence that depression caused his misconduct that is the subject of the Petition for Discipline.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent that he misappropriated client funds in three separate matters. Respondent, through stipulation and testimony, has admitted to the misappropriation of approximately \$19,000 in entrusted funds.

Misappropriation of client or third party funds is a serious offense. Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997). In determining an appropriate sanction to address Respondent's misconduct, attention must be given to the unique circumstances of the matter, as well as aggravating and mitigating circumstances. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983).

Respondent put forth evidence in an attempt to establish mitigation in accordance with the Supreme Court's decision in Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). Therein, the Supreme Court established that a psychiatric disorder is an appropriate consideration as a mitigating factor in a disciplinary proceeding. A causal connection between the disorder and the misconduct must be established by evidence that is clear and convincing.

Respondent testified at length that he felt depressed due to his own high standards that placed burdens upon him. He felt unable to maintain the pace of his law practice and had difficulty handling his personal affairs. He did not seek treatment for any psychiatric condition until December 2007, which was after his misappropriation of funds and subsequent to his temporary suspension by the Supreme Court. Respondent enrolled in a clinical study at UPMC and regularly met with a therapist for cognitive behavioral therapy. However, Respondent offered no medical testimony, as he suggested that he was unable to secure such testimony due to time constraints. Respondent did not request a continuance of the disciplinary hearing to arrange for expert testimony.

Respondent presented the testimony of four witnesses, all attorneys who have known Respondent for many years. These witnesses observed what they believed to be signs of depression in Respondent. While the Board is impressed with the willingness of these witnesses to come forward on Respondent's behalf, none have the expertise to address a psychiatric diagnosis of depression for Respondent.

The evidence presented by Respondent as to Braun is insufficient to meet the standard set forth by the Supreme Court. Respondent did not clearly and convincingly establish that he suffered from depression at the time of the misconduct, nor that such depression was a factor that caused his misconduct. For these reasons, the Board concludes that Respondent is not entitled to mitigation.

Respondent is currently on temporary suspension by Order of the Supreme Court dated July 12, 2007. This was due to Respondent's failure to comply with a subpoena which had been issued to him regarding his mishandling of entrusted funds. Respondent has had the ability at all times since being placed on temporary suspension to be reinstated to the active practice of law. Rule 208(f)(4), Pa.R.D.E., states that a respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension. Respondent has chosen not to do so. Although the Hearing Committee has suggested to the Board that it recommend the dissolution of the temporary suspension, we do not have authority to do so. We do not consider the issues relating to the temporary suspension as before this Board for disposal.

The Hearing Committee has recommended a suspension for a period of 18 months. The Board's review of this matter leads us to recommend a suspension of two years. Respondent engaged in misappropriation of client funds, a serious breach of trust between an attorney and a client, and a breach of the public trust in the legal profession in general. Clients rely on attorneys to carry out financial transactions in a scrupulously honest way. This fiduciary relationship involves the highest standards of professional conduct. Office of Disciplinary Counsel v. Lewis, 426 A.2d 1138 (Pa. 1981). Respondent's failure to observe this fiduciary responsibility warrants a two year suspension. Office of Disciplinary Counsel v. Richard B. Moore, 158 DB 2003, 1071 Disciplinary Docket No. 3 (Pa. Nov. 10, 2005); Office of Disciplinary Counsel v. Craig A. Barr, 46 DB 2000, 687 Disciplinary Docket No. 3 (Pa. Aug. 15, 2001).

The Board's recommendation for suspension has no bearing on the temporary suspension, which is not before the Board.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert L. Federline, be Suspended from the practice of law for a period of two years from the date of the Supreme Court's Order.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____

Carl D. Buchholz, III, Vice-Chair

Date: March 5, 2010

Board Members Lawrence and Bevilacqua recused.

Board Member Momjian did not participate in the adjudication.