

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2055 Disciplinary Docket No. 3
Petitioner :
 : No. 124 DB 2012
v. :
 : Attorney Registration No. 48217
DEAN I. ORLOFF, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 14th day of August, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 31, 2014, the Petition for Review and responses thereto, it is hereby

ORDERED that Dean I. Orloff is suspended from the Bar of this Commonwealth for a period of one year and one day 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 8/14/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 124 DB 2012
Petitioner	:	
v.	:	Attorney Registration No. 48217
DEAN I. ORLOFF	:	
Respondent	:	(Philadelphia)

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 Petition for Discipline filed on August 15, 2012, Office of Disciplinary Counsel charged Respondent, Dean I. Orloff, with violations of the Rules of Professional Conduct arising out of allegations that he misappropriated funds of a client. Respondent filed an Answer to Petition on October 16, 2012.

A disciplinary hearing was held on February 26, 2013 and May 23, 2013, before a District I Hearing Committee comprised of Chair Michael L. Turner, Esquire, and

Members Dion G. Rassias, Esquire, and A. Elizabeth Balakhani, Esquire. Respondent was represented by Noah Gorson, Esquire. Joint Stipulations of Fact and Law and Exhibits were introduced by the parties. Petitioner presented two witnesses, one live and one by deposition. Respondent presented six witnesses and testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 21, 2013, and recommended that Respondent be suspended for a period of one year.

Petitioner filed a Brief on Exceptions on November 6, 2013. Respondent filed a Brief Opposing Exceptions on December 2, 2013.

This matter was adjudicated by the Disciplinary Board at the meeting on January 15, 2013.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 Rules.

2. Respondent is Dean I. Orloff. He was born in 1961 and was admitted to practice law in the Commonwealth in 1986. He has a registered office address of 123 S. Broad St., Suite 1310, Philadelphia, Pennsylvania 19019. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. In 2003, Mr. Glenford Creary retained Respondent to represent him in connection with a personal injury matter. At the time, Respondent was an attorney with the law firm of Gordon & Weinberg. (Joint Stip at ¶¶ 7-8)

4. In or around 2005, Mr. Creary's personal injury matter settled for \$28,920. The settlement funds were deposited into Gordon & Weinberg's trust account. (Id. at ¶ 9)

5. Respondent did not advise Mr. Creary as to the exact settlement amount. Nor did Respondent provide Mr. Creary with the final Statement of Settlement reflecting the distribution amounts. (N.T. 2/26/13 p. 50-51, 55, 73) The copy of the Statement of Settlement that was offered into evidence at the hearing was unsigned. (ODC-1)

6. Mr. Creary first saw the Statement of Settlement in his case nearly six years later, in 2011, when his new attorney obtained it and showed it to him. (N.T. 2/26/13 p. 73; Dep. Tr. 4/9/13 p. 19-20)

7. At the time of distribution, Mr. Creary signed a document that resembled a check stub, and received \$12,253 from the settlement funds. (N.T. 2/26/13 p. 72)

8. Mr. Creary understood and consented that \$6,500 of the settlement funds would be withheld from distribution pending the resolution of a medical bill from Dr. Azad Khan, whose outstanding bill totaled \$13,020. (Joint Stip at ¶ 9.b)

9. At the time of the distribution, Respondent told Mr. Creary that he was not finished with his matter, and he would get him some more money. (N.T. 2/26/13 p. 22)

10. At the end of 2005, Respondent left Gordon & Weinberg but did not take the Creary file with him. Mr. Creary's \$6,500 remained in the Gordon & Weinberg trust account. (Joint Stip at ¶11)

11. Mr. Creary contacted Respondent twice a year for an update on his case. (N.T. 2/26/13 p. 25)

12. Respondent eventually informed Mr. Creary that he had left Gordon & Weinberg and had no information about the case. Thereafter, Mr. Creary stopped reaching out to Respondent for updates. (N.T. 2/26/13 p. 25-26)

13. Mr. Creary's last contact with Respondent was in 2009 or 2010. (N.T. 2/26/13 p. 25-26)

14. In or around February 2010, Respondent asked Gordon & Weinberg to transfer to Respondent the \$6,500 belonging to Mr. Creary. (Joint Stip at ¶ 12)

15. By letter dated February 15, 2010, Gordon & Weinberg forwarded to Respondent a check dated February 15, 2010, in the amount of \$6,500, and made payable to "Glenford Creary and Dean Orloff" (the "Creary check"). (Id. at ¶ 13; ODC-2)

16. By letter dated February 17, 2010, Respondent asked Gordon & Weinberg for an accounting of Mr. Creary's funds, and stated that upon receipt of the

accounting, he would inform Gordon & Weinberg if the accounting was acceptable to Mr. Creary. Thereafter, Respondent received the Creary check. (Id. at ¶¶ 15, 17; ODC-3)

17. Respondent did not advise Mr. Creary that he had received a check for funds belonging to Mr. Creary from Gordon & Weinberg. (Id. at ¶ 18)

18. Over the years, Mr. Creary had always contacted Respondent by cell phone; therefore, his phone number was known to Respondent. (N.T. 2/26/13 N.T. 24,25)

19. Respondent did not contact Mr. Creary by phone because he claimed he no longer had Mr. Creary's phone number. Respondent did not make any meaningful attempts to obtain Mr. Creary's phone number. (N.T. 5/23/13, p. 41-41, 72-75)

20. Mr. Creary had previously provided Respondent with his contact information, including the address for his aunt, where he always received mail. Mr. Creary had informed Respondent that he could always reach him at his aunt's house, the address of which was on his driver's license. Nevertheless, Respondent made no attempts to contact Mr. Creary by mail. (N.T. 2/26/13 p. 33-34, 74)

21. Respondent no longer had Mr. Creary's address, but he did not ask Gordon & Weinberg to locate Mr. Creary's address in their files. Nor did he hire an investigator to locate Mr. Creary. (N.T. 5/23/13 p. 120-122)

22. On or about February 28, 2010, Respondent endorsed both his name and Mr. Creary's name to the Creary check, and deposited the \$6,500 check into Respondent's IOLTA account. (Joint Stip. At ¶ 19)

23. Prior to endorsing and depositing the Creary check, Respondent failed to obtain Mr. Creary's permission to endorse his name. (N.T. 2/26/13 p. 30)

24. After he deposited the Creary check, the balance in Respondent's IOLTA account was \$6,511.99. (Joint Stip at ¶ 20; ODC-4)

25. On December 7, 2010, Respondent cashed IOLTA account check number 1028, made payable to "Cash" in the amount of \$2,500. Respondent used this money to pay his child support obligations. As of that date, the balance in Respondent's IOLTA account dropped to \$4,011.99. (Id at ¶ 21; ODC-5)

26. On January 7, 2011, Respondent cashed IOLTA account check number 1027, made payable to "Cash" in the amount of \$500, which Respondent used to pay his child support obligations. As of that date, the balance in Respondent's IOLTA account was reduced to \$3,511.99. (Id. at ¶ 22; ODC-6)

27. At all relevant times, Respondent knew and understood that the funds in his IOLTA account belonged to Mr. Creary. Respondent knowingly and intentionally misappropriated Mr. Creary's funds to his own personal use. (Id. at ¶ 25)

28. In March 2011, Mr. Creary met with Neal Cohen, Esquire, in connection with a motor vehicle accident. During that meeting, Mr. Creary informed Mr. Cohen about his 2003 personal injury case and the unfinished nature of the settlement. (N.T. 2/26/13 p. 28; Cohen Dep. 4/9/13 p. 11-13)

29. At Mr. Cohen's suggestion, Mr. Creary called Respondent on his cell phone. When Respondent answered, Mr. Cohen got on the phone and inquired about the status of Mr. Creary's matter. (N.T. 5/23/13 p. 81-82; Cohen Dep. 4/9/13 p. 13-15)

30. Respondent informed Mr. Cohen that he was holding funds in escrow on behalf of Mr. Creary. Respondent also told Mr. Cohen that he had a copy of the final

Statement of Settlement in his possession, which he had received from Gordon & Weinberg. (N.T. 5/23/13 p. 81-82; Cohen Dep. 4/9/13 p. 15-16)

31. Respondent subsequently provided a copy of the unsigned Statement of Settlement and the Creary check to Mr. Cohen. (Cohen Dep. 4/9.13 p. 16-17)

32. On March 24, 2011, Respondent deposited \$3,000 into his IOLTA account to restore the balance to \$6,511.99. Respondent borrowed \$3,000 from a friend. (Joint Stip. At ¶¶ 29; ODC-7; N.T. 5/23/13 p. 83)

33. The same day, Respondent hand-delivered to Mr. Cohen a check dated March 23, 2011, in the amount of \$6,500 and made payable to Mr. Creary. (Joint Stip at ¶¶ 31; N.T. 5/23/13 p. 83)

34. Mr. Creary subsequently deposited the check. On March 28, 2011, the check was posted to Respondent's IOLTA account, which dropped the balance to \$14.85. (Joint Stip at ¶¶ 31.a; ODC-8)

35. When questioned by Mr. Cohen about his intentions, Respondent falsely told Mr. Cohen that he had always maintained the \$6,500 in his escrow account on behalf of Mr. Creary. Respondent also denied having acted improperly in regard to Mr. Creary's funds. (Cohen Dep. 4/9/13 p. 25, 30, 39-40, 139-140)

36. In July 2011, Mr. Creary filed a civil action, captioned Creary v. Orloff, July Term 2011, No. 00965 (Phila. C.C.P.) alleging fraud against Respondent. The matter was shortly thereafter discontinued without prejudice. (Joint Stip. at ¶¶ 33-34; ODC-9)

37. In February 2013, Mr. Creary filed a second civil action against Respondent, alleging fraud, captioned Creary v. Orloff, February Term 2013, No. 02084 (Phila. C.C.P.) (ODC-12)

38. After being served with Mr. Creary's first civil action, on or about July 28, 2011, Respondent self-reported his misconduct to the Office of Disciplinary Counsel. Respondent cooperated with the Petitioner's investigation. (N.T. 5/23/13 p. 52-54)

39. At the hearing, Respondent offered Dr. William Russell, a licensed forensic psychologist, as an expert. Respondent also offered two reports from Dr. Russell, R-3 and R-4.

a. Dr. Russell examined Respondent in November and December 2012, and performed psychological tests to evaluate Respondent's mental state;

b. Based on his assessment, he diagnosed Respondent with Adjustment Disorder, stemming from the murder of Respondent's father when Respondent was only 20;

c. In his view, Respondent has a pattern of not thinking logically and rationally, and has difficulty coping and planning ahead, including avoidance in his personal and professional life;

d. In his opinion, Respondent's psychological disorder was a causal factor in Respondent's misconduct;

e. He has prescribed a course of treatment, which he believes could help Respondent manage his Adjustment Disorder and Respondent has been compliant as to the treatment regimen; and

f. In his opinion, the risk of Respondent again engaging in the type of behavior giving rise to this disciplinary proceeding is extremely low.

(N.T. 2/26/13 p. 163-165, 170-176)

40. In Dr. Russell's December 12, 2012 report, he stated that "Mr. Orloff's behavior in the situation that is before the Board appears to be closely tied to his severe mental health problems." (R-3).

41. On cross-examination, Dr. Russell, in explaining what he meant in his report by "appear to be clearly tied," stated that he could not "make anything that is 100 percent certain" and that there "is no way for me to make a clear statement of this for sure..." (N.T. 2/26/13 p. 199-200). Dr. Russell also stated that Respondent's disorder "appears to be clearly relevant to his behavior." (N.T. 2/26/13 P. 200)

42. Respondent currently engages in weekly therapy sessions. (N.T. 5/23/13 p. 56)

43. Respondent testified at the disciplinary hearing. He described his actions as a "stupid mistake." He does not plan to ever engage in the conduct again, due to "the expense, the angst, the embarrassment, the humiliation, the shame..." (N.T. 5/23/13 p. 49, 57, 80)

44. Respondent presented five character witnesses. These witnesses did not know significant details of Respondent's misconduct or have knowledge of Respondent's reputation in the Philadelphia legal community. (N.T. 2/26/13 p. 94, 97, 108, 123-24, 132-34, 159-62).

III. CONCLUSIONS OF LAW

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

2. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer’s own property. Such property shall be identified and appropriately safeguarded.

3. RPC 1.15(d) – Upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law.

4. RPC 1.15(e) – 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.

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

IV. DISCUSSION

This matter is before the Board for consideration of the charges against Respondent that he committed professional misconduct by misappropriating the funds of a client and attempting to conceal that conduct thereafter. Respondent admits that he misappropriated funds belonging to Mr. Creary, thus violating RPC 1.15(b), 1.15(d) and 1.15(e). Respondent endorsed both his name and Mr. Creary’s on a check for \$6,500 without Mr. Creary’s authorization, and deposited the check into his IOLTA account. Thereafter, on two occasions, Respondent cashed the IOLTA account checks, which were made payable to “Cash” in the amounts of \$2,500 and \$500, respectively, and used the funds to pay child support obligations.

Respondent disputes that he violated RPC 1.4(a)(3) and 8.4(c). We start our discussion with these charges, bearing in mind that Petitioner has the burden of proof by clear and satisfactory evidence. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981).

RPC 1.4(a)(3) provides that a lawyer shall keep the client reasonably informed about the status of the matter. Mr. Creary offered credible testimony that over the years, he had contacted Respondent from his cell phone and his phone number was known to Respondent. In addition, Mr. Creary had provided Respondent with his mailing contact information. Nevertheless, Respondent made no attempts to contact Mr. Creary by phone or by mail upon his receipt of funds belonging to Mr. Creary. While Respondent states that he no longer had Mr. Creary's address because the file was still at Gordon & Weinberg, he did not bother to contact Gordon & Weinberg for this information. He failed to take any reasonable steps to locate Mr. Creary. He chose instead to deposit the check into his IOLTA account without informing Mr. Creary. We find that these actions violated RPC 1.4(a)(3).

Pursuant to RPC 8.4(c) it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent violated this Rule by endorsing the Creary check without authorization and by attempting to conceal his misconduct. Mr. Creary testified that he never authorized Respondent to endorse his name to that check, and indeed, Mr. Creary was not even aware that Respondent had received a check belonging to him. Nevertheless, Respondent forged Mr. Creary's name to the check without his knowledge or consent. When specifically questioned by Mr. Cohen, who was Mr. Creary's new attorney, Respondent denied any misconduct with respect to

the funds. Respondent outright lied when he stated that he had always maintained Mr. Creary's \$6,500 in escrow and had done nothing wrong.

The purpose of the disciplinary system is to protect the public and maintain the integrity of the legal profession and judicial process by assessing the fitness of lawyers. Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (Pa. 1994). In determining the appropriate level of discipline, our Supreme Court will consider applicable precedents, "being mindful of the need for consistency in the result reached in disciplinary cases so that similar misconduct is not punished in radically different ways." Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983). Precedent provides a benchmark to determine the severity of the misconduct in relation to the discipline, which must then be tailored in consideration of any aggravating and mitigating circumstances.

Discipline may be mitigated if a respondent proves by clear and convincing evidence that there is a causal connection between the psychiatric disorder and the misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

Respondent's expert, Dr. William Russell, did not unequivocally link Respondent's mental health disorder and his misconduct. Following psychiatric evaluation sought primarily in connection with this disciplinary proceeding, Dr. Russell diagnosed Respondent with Adjustment Disorder and Dysthymia, stemming from the trauma suffered by Respondent as a result of his father's murder decades ago. While there is no reason to doubt Dr. Russell's diagnosis, nothing in Dr. Russell's testimony demonstrated a plausible, convincing link between Respondent's psychiatric disorder and the misconduct. Although Dr. Russell testified that Respondent's disorder was a causal factor in the misconduct, his Report from December 12, 2012 used the phrase "appears to be clearly tied." He explained

that he used the word “appears” as nothing is “100%.” Notably, Dr. Russell described Respondent's conduct as “borrowed the money and then returned it.” (N.T. 2/26/13 at 180) Respondent did not borrow Mr. Creary's funds. He took them without authorization and then replenished the funds when Mr. Cohen questioned his actions. Dr. Russell's attempt to link the Respondent's disorder to his conversion of funds and his dishonesty is not persuasive. The Board concludes that Respondent did not meet his burden pursuant to the Braun standard and is not entitled to mitigation.

We note that although the Hearing Committee came to the same conclusion that Respondent did not meet Braun, it was persuaded by the opinion of Dr. Russell that the risk of Respondent engaging in the same type of misconduct in the future is extremely low, as he is engaging in weekly mental health treatment, which Dr. Russell testified will be beneficial to his overall functioning. The Committee afforded mitigation of Respondent's discipline based on this piece of evidence. The Board does not find Dr. Russell's opinion to be sufficiently weighty for mitigation. Respondent was unable to prove that his disorder caused his misconduct; therefore, we cannot rely on an opinion that he will not engage in future occurrences of the misconduct when that opinion is based on the fact that the disorder is now being treated. This is not to take away from Respondent's efforts at engaging in treatment; however, mitigation is not warranted.

Respondent did not demonstrate sincere remorse or acceptance of responsibility for his misconduct. Respondent described his misconduct as a “stupid mistake,” and related his experiences as to “the expense, the angst, the embarrassment, the humiliation, the shame...” as reasons why he will never engage in the conduct in the future. Never once did Respondent offer an apology to Mr. Creary. If he considered at all

the impact of his actions on Mr. Creary, this consideration seems to have been secondary to his own self-interest.

Respondent's actions belie his statements that he accepted responsibility for his actions. He made restitution to Mr. Creary soon after he was contacted by Mr. Cohen, but when confronted by Mr. Cohen in regard to the matter, Respondent chose to prevaricate instead of offering the truth, maintaining that he had always kept the funds in escrow and had done nothing wrong. Further, Respondent emphasizes that he self-reported his misconduct to Petitioner, yet the record is clear that he waited to do so until after a civil lawsuit was filed against him alleging fraud. Respondent clearly realized at that point that it would be prudent to report his misconduct, as the matter was not going away.

Respondent's character evidence is not entitled to any appreciable weight and does not mitigate the discipline because the witnesses did not know significant details of Respondent's conduct or have knowledge of his reputation in the Philadelphia legal community.

The one clear mitigating factor in this matter is Respondent's lack of prior discipline. He has been admitted to the Pennsylvania bar since 1986 and has practiced in accordance with the rules of the profession for many years.

Being mindful of the above factors, we next address the appropriate discipline for this type of misconduct. The Hearing Committee has recommended a suspension of one year. Petitioner urges this Board to consider a suspension of one year and one day, which would place on Respondent the extra burden to petition for reinstatement from suspension.

Although there is no *per se* rule for discipline in conversion cases, a suspension of not less than one year and one day is within the range of discipline imposed on attorneys who have engaged in such misconduct. Office of Disciplinary Counsel v. John Richard Banke, II, 58 DB 2012 (Pa. 8/16/ 2012) (respondent, who had no prior history of discipline, was suspended for one year and one day for misappropriating \$5,000 in one client matter); Office of Disciplinary Counsel v. James Lawrence Paz, 97 DB 2010 (Pa. 8/20/2010) (respondent, who had no history of discipline, was suspended for one year and one day for misappropriating \$3,953.06 from his client, which he repaid; respondent accepted responsibility and was remorseful); In re Anonymous No. 123 DB 90 (Antoinette M. Lowery) 17 Pa. D. & C. 4th 464 (1992) (respondent, with no history of discipline, was suspended for one year and one day for mishandling and misappropriating estate funds of \$2,368 by “borrowing” those funds to keep her other businesses afloat).

These cases support the proposition that a single instance of knowing or intentional misappropriation of funds, in an amount not considered extensive, and where respondent has no record of discipline, has resulted in suspension of one year and one day. Respondent’s misconduct standing alone, is deserving of suspension. Coupled with his failure to show remorse and failure to accept responsibility for his actions, the appropriate result is suspension of one year and one day.

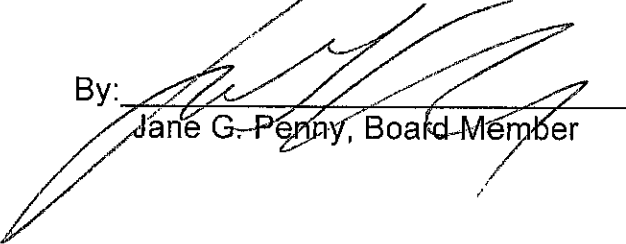
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Dean I. Orloff, be Suspended from the practice of law for a period of one year and one day.

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: 
Jane G. Penny, Board Member

Date: March 31, 2014

Board Members Rosenberg, Kelly, McLemore and Schwager dissented and would recommend a one year suspension.