

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1066 Disciplinary Docket No. 3
Petitioner	:	Supreme Court
	:	
v.	:	No. 122 DB 2004 - Disciplinary
PATRICIA M. RENFROE	:	Board
A/K/A/ PATTY M. RENFROE AND	:	
PATTY MICHELLE RENFROE	:	Attorney Registration No. 34032
	:	
Respondent	:	(Montgomery 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

On August 8, 2004, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, Patricia M. Renfroe A/K/A Patty M. Renfroe & Patty Michelle Renfroe. The Petition charged Respondent with misappropriation of client funds.

Respondent filed an Answer to Petition for Discipline on September 10, 2004, and denied any misconduct.

A disciplinary hearing was held on January 26, 2005, before a District II Hearing Committee comprised of Chair Lindley M. Cowperthwait, Esquire, and Members Andrew J. Reilly, Esquire, and Christine Fizzano Cannon, Esquire. Respondent was represented by Robert A. Wilson, Esquire.

The Hearing Committee filed a Report on May 27, 2005, finding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline, and recommending that Respondent be disbarred.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of July 16, 2005.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, 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 was born in 1955 and was admitted to practice law in the Commonwealth in 1981. By Order of the Supreme Court of Pennsylvania dated March 25, 2003, effective April 24, 2003, Respondent was transferred to inactive status pursuant to Rule 111(b), Pa.R.C.L.E. Respondent is currently on inactive status. Her last registered address is 4 Melissa Way, Plymouth Meeting PA 19462.

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

4. Respondent has no prior history of discipline.

5. Respondent maintained an IOLTA account at PNC Bank, account #861256076 titled: Patricia M. Renfroe Attorney-at-Law IOLTA Client Trust Fund 4 Melissa Way Plymouth Meeting PA 19462-1110 (hereinafter IOLTA).

6. Respondent maintained a premium personal savings account at First Union National Bank titled: Patty M. Renfroe, 4 Melissa Way Plymouth Meeting PA 19642 (hereinafter personal savings account).

7. On April 19, 1999, a contingent fee agreement was executed between Respondent and Elizabeth and Edward Witherspoon on behalf of their son, John Edward Witherspoon, a minor.

8. The agreement provided that Respondent was appointed as attorney to prosecute a claim in a civil action on behalf of John Witherspoon, a minor, arising from a March 12, 1999 automobile accident in Ellicott City, Maryland, and Respondent was to receive 33 1/3% of any amount received in settlement or verdict.

9. Respondent dealt exclusively with GEICO third party and underinsured carrier from Spring 1999 through Spring 2001.

10. Respondent settled the Witherspoon case for \$300,000.

11. On March 28, 2001, Elizabeth and Edward Witherspoon executed a Power of Attorney authorizing Respondent to endorse settlement drafts in the amount of \$50,000 and \$250,000.

12. The drafts were issued by Geico Insurance Company payable to Respondent on behalf of John Witherspoon, a minor, and represented settlement of Mr. Witherspoon's claims arising out of the March 12, 1999 accident in Ellicott City, Maryland.

13. On or about March 28, 2001, Respondent endorsed the two drafts and deposited \$300,000 into her IOLTA account.

14. After deducting her fees, retaining fees for medical expenses and paying costs, Respondent held in her IOLTA account at the very minimum \$155,702 on behalf of and belonging to John Witherspoon.

15. On June 15, 2001, Respondent opened or caused to be opened an account at PNC in the name of John E. Witherspoon UPUTMA Patricia Renfroe, Esq. CUST NTBW until Eighteen (hereinafter custodial account).

16. On June 18, 2001, Respondent issued or caused to be issued a check drawn on Respondent's IOLTA account in the amount of \$155,702, payable to John Witherspoon, a minor.

17. On June 20, 2001, Respondent deposited the June 18, 2001 check for \$155,702 into the custodial account. Respondent was named custodian of the custodial account.

18. Respondent was obligated to hold John Witherspoon's funds in trust and inviolate for him until he turned eighteen. She was obligated to deliver the funds to Mr. Witherspoon when he turned eighteen.

19. John Witherspoon turned eighteen on April 3, 2002.

20. By check dated April 9, 2002, Respondent issued a check in the amount of \$42,000 drawn on Respondent's IOLTA account and payable to Patuxent Medical Group on behalf of John Witherspoon.

21. The \$42,000 was the only check from Respondent's IOLTA account that referenced Mr. Witherspoon or the Witherspoon matter other than the check for \$155,702.

22. On July 24, 2002, Respondent withdrew \$155,000 from the custodial account, leaving a balance in the amount of \$4,600.97.

23. On July 29, 2002, Respondent deposited the \$155,000 into her IOLTA.

24. On August 23, 2002, Respondent caused a PNC Cashier's Check drawn on Respondent's IOLTA to be issued, payable to Respondent in the amount of \$160,000, leaving a balance of \$2,379.91 in Respondent's IOLTA.

25. On August 23, 2002, Respondent deposited the \$160,000 cashier's check into her personal savings account.

26. Respondent failed to timely deliver to John Witherspoon any portion of the \$155,702 that Respondent was required, at minimum, to hold inviolate on his behalf.

27. In September 2002, Mr. Witherspoon, and attorney Jeffrey Pierson on his behalf, put PNC on notice that the money in the custodial account had been withdrawn without Mr. Witherspoon's authorization and knowledge.

28. On May 20, 2003, PNC officials caused Mr. Witherspoon's \$155,000 to be transferred from Respondent's personal savings account back to the custodial account.

29. By letter dated May 14, 2003, James B. Griffin, Esquire, counsel for PNC Bank, informed Respondent of the following:

a. John Witherspoon had advised PNC that he turned 18 years of age on April 3, 2002 and that he had never received his funds from the custodial account;

b. The \$155,000 that Mr. Witherspoon was claiming to be his had been transferred back to the custodial account;

c. Mr. Witherspoon had demanded that PNC allow him to withdraw the full balance of the funds in the custodial account;

d. Mr. Witherspoon had documented to PNC that he was now at least 18 years of age;

e. PNC could see no reason why the request should not be granted; and,

f. PNC intended to release the funds to Mr. Witherspoon if it did not hear from Respondent before May 23, 2003.

30. On May 19, 2003, Respondent called James Griffin, Esquire, and:

a. instructed PNC not to release the funds in the custodial account to John Witherspoon; and,

b. claimed she was entitled to the funds in the custodial account and due reimbursement for certain expenses.

31. On May 23, 2003, Susan Verbonitz, Esquire, counsel for PNC, filed with the Court of Common Pleas of Montgomery County, Orphans' Court Division, a Petition to Interplead Funds and/or For Distribution and Transfer of Funds in Custodial Account.

32. PNC filed the interpleader action because:

a. Mr. Witherspoon had turned 18 as of April 2002 and had made a claim on the custodial account;

b. PNC had notified Respondent that it intended to disburse the funds to Mr. Witherspoon;

c. Respondent had advised PNC that she was not authorizing the disbursement of the funds.

33. Respondent received the Petition to Interplead and was aware of the allegations contained therein.

34. On June 5, 2003, Respondent and Ms. Verbonitz spoke by telephone at which time:

a. Ms. Verbonitz advised Respondent that a Petition to Interplead had been filed regarding the custodial account because of Respondent's claim;

b. Ms. Verbonitz urged Respondent to try and resolve the issue with Mr. Witherspoon;

c. Respondent advised Ms. Verbonitz that Respondent had no records of the medial expenses regarding the Witherspoon matter;

d. Respondent requested her PNC Bank records relating to the Witherspoon matter;

e. Respondent instructed PNC not to release the funds.

35. On June 23, 2003, a citation was awarded by Judge Stanley R. Ott of the Court of Common Pleas of Montgomery County, returnable August 1, 2003, directing Respondent to show cause why she should not file an account of all custodial property held by her under the custodial account.

36. By cover letter to Respondent dated July 3, 2003, Ms. Verbonitz enclosed a copy of the Petition to Interplead and Citation in the Estate of John Witherspoon matter and advised that the Citation was returnable on August 1, 2003 at 10:00 a.m.

37. Ms. Verbonitz's July 3, 2003 correspondence was sent by certified mail, return receipt requested, to Respondent's registered address. This letter was returned as unclaimed.

38. By cover letter dated July 3, 2003, Ms. Verbonitz provided Respondent with the PNC bank statements relating to the Witherspoon case and a copy of the check drawn on the custodial account that referenced John Witherspoon.

39. Shortly before 10:00 a.m. on August 1, 2003, Ms. Verbonitz telephoned Respondent, who advised her that she had forgotten about the hearing; she had not received notice of a time certain; and Respondent's position was that the money should not be distributed because Respondent was owed funds.

40. Respondent failed to appear for the August 1, 2003 hearing.

41. On August 1, 2003, after the hearing, Ms. Verbonitz called Respondent and advised her that Judge Ott had directed Respondent to file an accounting of the funds held in the custodial account.

42. On August 1, 2003, Judge Ott ordered and directed Respondent to file an accounting of all custodial property held by her under the Uniform Transfer to Minors Act for John E. Witherspoon with the Clerk of Orphans' Court on or before September 3, 2003.

43. Respondent received notice of Judge Ott's Order.

44. Respondent did not file an accounting.

45. Respondent claimed she did not know she was required to file an accounting with Judge Ott.

46. On October 1, 2003, a Rule returnable October 31, 2003 was entered on Respondent to show cause why she should not be held in contempt of the court's August 1, 2003 Order.

47. Notice of the Rule was sent to Respondent's registered address of 4 Melissa Way, Plymouth Meeting PA.

48. On October 31, 2003:

- a. Respondent failed to appear before Judge Ott;
- b. the October 1, 2003 Rule was made absolute;
- c. A hearing on the allegation of contempt was scheduled for December 5, 2003; and
- d. Respondent was ordered and directed to appear for the hearing on December 5, 2003.

49. On December 5, 2003, Respondent appeared before Judge Ott and acknowledged that she had no claim to the funds in the custodial account.

50. By order dated January 23, 2004, Judge Ott directed PNC to distribute the proceeds of the custodial account to John E. Witherspoon.

51. On January 26, 2004, the proceeds of the custodial account were distributed to John Witherspoon.

52. At the first scheduled disciplinary hearing on December 21, 2004, which was subsequently continued, Respondent appeared confused and claimed she did not understand the charges against her and indicated she didn't know what was going on.

53. Respondent denied her name was Patricia Renfroe.

54. Respondent refused to supply her attorney identification number and correct address.

55. At the pre-hearing conference scheduled for January 12, 2005, in response to Chair Cowperthwait's inquiry as to her attorney identification number, Respondent replied "It is very difficult for me to answer in all truth and honesty" (N.T. 1/12/05 at 13).

56. Respondent's testimony at the hearing on January 26, 2005 was rambling, non-responsive and illogical.

57. Respondent failed to maintain any records relating to her handling of Mr. Witherspoon's settlement.

58. Respondent represented to the Hearing Committee that her duties and responsibilities ended and the case was finalized once she deposited Mr. Witherspoon's monies in the custodial account with PNC.

III. CONCLUSIONS OF LAW

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

1. RPC 1.4(a) – A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

2. RPC 1.4(b) – A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

3. RPC 1.15(a) – A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Complete records of such account funds and other property shall be preserved for a period of five years after the termination of the representation.

4. RPC 1.15(b) – Upon receiving funds or other property in which a client or third person has an interest, the lawyer shall promptly notify the client or third person. A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such property.

5. RPC 1.15(c) – When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

6. RPC 8.4(b) – 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.

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

8. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct which is prejudicial to the administration of justice.

IV. DISCUSSION

Petitioner has the burden of proving by clear and satisfactory evidence that Respondent violated the rules as charged in the Petition for Discipline. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000). There is no doubt in this matter that Petitioner met its burden of proof. Respondent did misappropriate her client's funds. Misappropriation has been defined as "any unauthorized use of client's funds entrusted to a lawyer, including not only stealing but also unauthorized temporary use for the lawyer's own purposes, whether or not he derives any personal gain or benefit there from". In re Anonymous No. 131 DB 90, 17 Pa. D. & C. 4th 170 (1992). Misappropriation occurs whether the attorney's conduct was intentional or unintentional.

In the instant matter, Respondent was entrusted with a \$300,000 settlement on behalf of her minor client, John Witherspoon. At the very minimum, Respondent was obligated to hold \$155,702 on behalf of Mr. Witherspoon until he reached the age of eighteen. Instead of delivering the funds to Mr. Witherspoon, Respondent misappropriated the monies by transferring them to her personal savings account. Respondent thereafter affirmatively hindered and impeded Mr. Witherspoon's attempts to retrieve what was

rightfully his. Because of her failure to honor her fiduciary duty, her client was forced to retain another attorney in an attempt to recover his funds. Respondent's actions caused the need for the initiation of an interpleader action which added further delay and additional expense to Mr. Witherspoon's retrieval of his money. Respondent failed to maintain any records relating to her handling of the entrusted funds.

Respondent vehemently denied any and all responsibility on her part for any of the actions relating to Mr. Witherspoon's monies. Respondent is entitled to vigorously defend herself against the charges contained in the Petition for Discipline, and she need show no remorse for misconduct she does not believe she committed. However, after thorough analysis of the record in this matter, the Board can extract no good reason for Respondent's position that she was in any way entitled to the monies. The overwhelming evidence clearly demonstrates that Respondent engaged in misappropriation.

Disbarment is necessary to protect the public and maintain the integrity of the judicial system. In the case of In re Marx S. Leopold, 366 A.2d 227 (Pa. 1976), Mr. Leopold was retained by a client to settle potential claims against him by a corporation in which the client had been an officer and major stockholder. The client provided Mr. Leopold with a check for \$5,500 to be held in escrow by Mr. Leopold and to be used if necessary to settle any claims against the client. After Mr. Leopold deposited the check into an escrow account, the balance of the account fell below the entrusted amount. Approximately seven years later, after realizing no claim was being asserted against him, the client made several demands upon Mr. Leopold for the return of his monies. The client filed a civil action and

obtained a default judgment when Mr. Leopold failed to respond. Mr. Leopold never remitted any funds to the client. In ordering Mr. Leopold disbarred from the practice of law, the Supreme Court noted that [Leopold's] failure to make any recognizable effort to restore the misappropriated funds to his former client smacks of an irremissible indifference to his ethical obligations. We conclude that the flagrant nature of [Leopold's] violation of trust and confidence placed in him by his client merits disbarment" Id. At 234. Respondent has exhibited similar indifference to her professional responsibilities.

In Office of Disciplinary Counsel v. Lewis, 426 A.2d 1138 (Pa. 1981), Mr. Lewis represented Ms. London in a personal injury action. The case was to be handled on a contingent fee basis whereby Mr. Lewis was to receive 50 percent of the net recovery. There was no agreement as to the fee for processing the client's no-fault claim. Mr. Lewis collected \$3,954.66 from the client's insurance carrier in payment of no-fault benefits. \$150 of that amount was for payment of a medical bill. Mr. Lewis deposited the insurance proceeds in his personal account and spent the money for his personal benefit.

When the client made several requests for the return of her money, Mr. Lewis repeatedly promised payment and claimed that his failure had been an oversight. Six months after deposit, Mr. Lewis finally paid Ms. London half of the proceeds and improperly withheld the rest as a legal fee. Mr. Lewis did not make complete restitution to Ms. London until more than two years after his deposit of her proceeds. The Supreme Court disbarred Mr. Lewis, noting "Although respondent made belated restitution, he has also committed grave infractions of the Disciplinary Code and has acted with seeming indifference to the

efforts of the Disciplinary Board to restore to Ms. London funds which were due and owing”.
Id. At 1143.

The Hearing Committee made much of Respondent’s actions during the disciplinary proceedings, characterizing these actions as “bizarre, strange and inconsistent”, and labeling her conduct an “obfuscation”. It is unclear how much weight the Committee gave to this behavior in making its recommendation of disbarment. The Board emphasizes that its recommendation to disbar Respondent is not based on these conclusions by the Committee, but rather on the undeniably unethical conduct exhibited by Respondent in her misappropriation of her client’s monies. This act alone is sufficient to warrant disbarment, notwithstanding Respondent’s admittedly unusual behavior and responses to Hearing Committee questions.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Patricia M. Renfroe a/k/a/ Patty M. Renfroe & Patty Michelle Renfroe, be disbarred.

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: _____
William A. Pietragallo, Board Member

Date: August 30, 2005

Board Member Nordenberg did not participate in the July 16, 2005 adjudication.

PER CURIAM:

AND NOW, this 1st day of November, 2005, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 30, 2005, it is hereby

ORDERED that Patricia M. Renfroe, a/k/a Patty M. Renfroe and Patty Michelle Renfroe, be and she is DISBARRED from the Bar of this Commonwealth, and she 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.