

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1446 Disciplinary Docket No. 3
Petitioner :
 : No. 145 DB 2007
v. :
 : Attorney Registration No. 35596
ANTHONY DENNIS JACKSON, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 3rd day of April, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board dated November 21, 2008, it is hereby

ORDERED that Anthony Dennis Jackson is disbarred from the Bar of this Commonwealth 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: April 3, 2009

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 145 DB 2007 |
| Petitioner | : | |
| | : | |
| v. | : | Attorney Registration No. 35596 |
| | : | |
| ANTHONY DENNIS JACKSON | : | |
| 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

On October 9, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against Anthony Dennis Jackson, Respondent. The Petition contained charges of misconduct in six separate matters. Respondent failed to file an Answer to Petition.

A pre-hearing conference was held on December 13, 2007. Petitioner provided Respondent with exhibits, to which Respondent had no objection. Respondent

also agreed that all of the factual allegations contained in the Petition for Discipline were correct and deemed admitted. A disciplinary hearing was held on January 14, 2008, before a District I Hearing Committee comprised of Chair Howell K. Rosenberg, Esquire, and Members Mark G. Lionetti, Esquire, and David S. Senoff, Esquire. Respondent appeared pro se and testified on his own behalf. He called no other witnesses.

The Hearing Committee filed a Report on June 23, 2008, finding that Respondent committed professional misconduct in three matters and recommending that he be suspended for a period of three years to be served consecutively to a five year suspension that began April 23, 2008.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on September 15, 2008.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Suite 1400, 200 North Third Street, 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 said Rules of Disciplinary Enforcement.

2. Respondent is Anthony Dennis Jackson. He was admitted to practice law in the Commonwealth in 1981. His attorney registration address is 21 South 12th Street, Suite 1050, Philadelphia PA 19107. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of prior discipline. He received an Informal Admonition on September 12, 2006 for failing to communicate with a client, failing to take necessary action on the client's matter, and making misrepresentations to the client and Office of Disciplinary Counsel.

4. Respondent was suspended for a period of five years by Order of the Supreme Court dated April 23, 2008. Respondent converted funds owed to a beneficiary of an estate and made misrepresentations to conceal the conversion.

Matter of Justus Chestnut

5. On August 30, 2005, Respondent met with Justus Chestnut regarding a civil rights claim.

6. Respondent provided Mr. Chestnut with a written fee agreement, which provided for a fixed fee of \$2,500. Respondent's handwritten description of services stated

"Right to Sue Expires 9/27/05" and "file suit U.S. Dist.Court". Respondent further noted that the discrimination complaint "must be filed by 9/24/05."

7. Respondent received from Mr. Chestnut a Right to Sue Notice dated June 27, 2005 and a \$1,000 check. Respondent received a \$1,500 check from Mr. Chestnut on August 31, 2005.

8. Respondent did not obtain information regarding his client's case prior to the expiration of the deadline for filing suit in the United States District Court.

9. Respondent did not timely file a civil rights complaint in the District Court.

10. On September 26, 2005, Respondent called his client about the case, during which time Respondent accused Mr. Chestnut of erroneously advising Respondent that his Right to Sue expired on September 29, 2005.

11. By letter dated October 5, 2005, from Respondent to his client, Respondent stated that he had completed an exhaustive review of Mr. Chestnut's file and advised him that more information was needed if Respondent was going to file a lawsuit in federal court.

12. By letter dated October 17, 2005, from Mr. Chestnut to Respondent, Mr. Chestnut described the factual basis for his case and provided Respondent with a list of potential witnesses.

13. Respondent received the October 17, 2005 letter from his client.

14. By letter dated October 25, 2005, from Mr. Chestnut to Respondent, Mr. Chestnut requested that Respondent contact him about the status of his case.

15. Respondent received Mr. Chestnut's letter, but did not telephone his client until December 1, 2005, when he advised his client that he would be filing a complaint with the Pennsylvania Human Relations Commission.

16. By letter dated December 14, 2005, from Mr. Chestnut to Respondent, Mr. Chestnut stated that he had left two messages in the past week at Respondent's office and received no response; he no longer had an EEOC case because Respondent failed to file a timely appeal; complained that he had not heard whether Respondent filed the PHRC complaint; stated that Respondent made the situation worse by doing nothing; and requested that Respondent refund the retainer fee.

17. Respondent received Mr. Chestnut's letter but failed to take any action.

18. Several weeks before May 8, 2006, Respondent telephoned Mr. Chestnut and agreed to refund a portion of the retainer and stated that Mr. Chestnut would receive the refund check in about a week.

19. Respondent failed to refund the unearned fee.

Matter of Kimberly Webb/Kevin B. Richardson

20. Respondent was retained to represent Kevin B. Richardson on criminal charges pending in the Court of Common Pleas of Centre County. Respondent received \$7,500 from Kimberly Webb, Mr. Richardson's mother, for the representation.

21. On November 24, 2003, the jury convicted Mr. Richardson of sexual assault charges and found him not guilty of rape and indecent assault.

22. On June 10, 2004, Respondent filed a Post Sentence Motion with an affidavit of service; on November 9, 2004, the Post Sentence Motion was denied by operation of law pursuant to Pa.R. Crim. P. 720(B)(3)(b).

23. Respondent received \$7,350 from Ms. Webb to represent Mr. Richardson on appeal to the Superior Court. On December 2, 2004, Respondent filed a Notice of Appeal with the Superior Court.

24. From time to time, Mr. Richardson would write to Respondent requesting information regarding the status of his appeal.

25. Respondent failed to respond to the letters.

26. On January 6, 2005, the trial court entered an order pursuant to Pa.R.A.P. 1925(b) ordering Respondent to file with the Court a concise statement of the matters complained of on appeal no later than 14 days after the date of the order.

27. Respondent received a copy of the order but failed to file a concise statement of matters complained of on appeal.

28. On May 9, 2005, the Court of Common Pleas of Centre County, having received no response from Respondent, entered an order suggesting that the Superior Court consider the failure "as a waiver of all objections to the order, ruling, and other matter complained of."

29. Respondent received a copy of the Court's order.

30. On October 25, 2005, the Superior Court entered a per curiam Order remanding the appeal and retaining jurisdiction for 30 days to determine if counsel had

abandoned Mr. Richardson. The Court requested the trial court take action to protect Mr. Richardson's right to appeal and ordered the trial court to notify the Superior Court in writing of all findings within 30 days.

31. Respondent received a copy of the Superior Court's Order but failed to take any action to pursue his client's appellate matter.

32. On January 13, 2006, the Superior Court entered a per curiam Order once again remanding the appeal for 30 days and instructing the trial court to make findings as to whether counsel abandoned Mr. Richardson and if so to appoint new counsel.

33. Respondent received a copy of the Superior Court's Order.

34. On March 10, 2006, Respondent filed a concise statement of matters complained of on appeal with the trial court.

35. On March 16, 2006, the trial court entered an order and suggested to the Superior Court that Respondent's failure to file a timely 1925(b) statement be considered a waiver of all objections to the order, ruling, or other matter complained of.

36. By per curiam Order dated May 5, 2006, the Superior Court dismissed Respondent's appeal for failure to file a brief.

37. Respondent received the Order but failed to inform Mr. Richardson that his appeal had been dismissed.

38. On June 14, 2006, the trial court issued a Notice to Appear for Sentence of Imprisonment.

39. Respondent received the Notice but failed to inform Mr. Richardson that he had to appear to begin serving his sentence.

40. On July 6, 2006, the Court of Common Pleas of Centre County issued a bench warrant for Mr. Richardson.

Matter of Dr. Steven M. Willis

41. Respondent represented Pilar Batts in a personal injury matter.

42. On March 30, 2005, Respondent executed a Doctor's Lien with Steven M. Willis, D.C.; the lien provided that Respondent would pay Dr. Willis the full amount of his bill from the proceeds of Ms. Batts' settlement prior to distributing the proceeds to Ms. Batts.

43. On or before April 18, 2006, Ms. Batts' case was settled.

44. Respondent failed to pay Dr. Willis's lien prior to distributing the proceeds from Ms. Batts' settlement.

45. On April 20, 2006, Darlene McRae, the office manager for Dr. Willis, called Respondent's office, during which conversation Ms. McRae inquired about Respondent's failure to pay for Ms. Batts' outstanding medical bill.

46. Respondent indicated to Ms. McRae that he would mail a check for the balance due, but he failed to do so.

47. On June 28, 2006, Ms. McRae called Respondent's office about his failure to send a check and Respondent assured Ms. McRae that he would mail it.

48. Again, Respondent failed to mail Dr. Willis a check for the balance due.

49. Ms. McRae sent Respondent a letter dated September 19, 2006, reminding Respondent about the outstanding medical lien and requesting that he send the balance due as soon as possible.

50. Respondent failed to pay Dr. Willis the balance that was due.

51. Respondent testified at the disciplinary hearing.

52. From 1991 to the present, Respondent was a defendant in lawsuits resulting from his failure to pay city, state and federal taxes; automobile accidents; unpaid rent, utilities, court reporting service, and computer services; contempt of court; failure to comply with IRS summonses; and Chapter 13 bankruptcy. These lawsuits resulted in default judgments, unsatisfied judgments and open liens.

53. Respondent owes \$2,500 to the Pennsylvania Lawyer's Fund for Client Security for his failure to refund his unearned fee in the Justus Chestnut matter.

54. Respondent failed to express any remorse for his wrongdoing.

55. With the exception of the Kimberly Webb/Kevin Richardson matter, Respondent failed to express any recognition of his misconduct.

56. Respondent's testimony was not credible as to his purported "agreement" to pay the Pennsylvania Lawyer's Fund for Client Security in the Chestnut matter and his payment of Dr. Willis's outstanding medical bill. His testimony that he did not recall Ms. Webb asking for an accounting with regard to the appeal was not credible.

57. Respondent failed to refund any monies owed to his clients.

58. Respondent's conduct harmed Mr. Chestnut, who lost his right to file a federal lawsuit, and it harmed Mr. Richardson, who lost his right to file a direct appeal to the Superior Court.

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
2. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.
3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.
4. 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.
5. RPC 1.15(b) – 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 1.16(d) – Upon termination of representation a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, 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. The lawyer may retain papers relating to the client to the extent permitted by other law.

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 that is prejudicial to the administration of justice.

9. Respondent was charged in the Petition for Discipline with violations of the Rules of Professional Conduct in three additional matters: Yusef Kennard; William H. Pierce; and Tony-Randolph McCloud. Petitioner did not meet its burden of proof as to the Rules violations and the charges against Respondent in these three matters are dismissed.

IV. DISCUSSION

This matter is before the Board for consideration of the Petition for Discipline

filed against Respondent charging him with numerous violations of the Rules of Professional Conduct in six separate matters. Petitioner has the burden of proving ethical misconduct by a preponderance of the evidence that is clear and convincing. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 732 (Pa. 1981). Respondent admitted that he violated the Rules of Professional Conduct in the Webb/Richardson matter by his failure to file an appellate brief. Respondent denied that he violated any of the Rules of Professional Conduct in the remaining five matters.

The facts contained in the unanswered Petition for Discipline, Petitioner's exhibits, and Respondent's testimony establish by clear and convincing evidence that Respondent violated the Rules of Professional Conduct in the Webb/Richardson matter, the Justus Chestnut matter, and the Dr. Steven Willis matter. Petitioner did not meet its burden of proof as to the violations charged in the Yusef Kennard matter, the William H. Pierce matter, and the Tony-Randolph McCloud matter.

Justus Chestnut retained Respondent to represent him in a civil rights claim. Almost from the commencement of representation, Respondent failed to pursue the matter. He did not acquire the information necessary to file a claim and did not file a timely lawsuit in the U.S. District Court. Respondent did not answer telephone calls or written correspondence from his client, and did not refund the unearned portion of his fee to Mr. Chestnut.

Respondent was retained by Kimberly Webb to represent her son, Kevin Richardson, in a criminal trial and subsequent appeal. Respondent failed to pursue his

client's appeal rights by neglecting to file a timely statement of matters complained of on appeal with the trial court which in turn triggered a chain of orders from the trial court and Superior Court. Respondent received these court orders but took no action, letting 14 months pass by before he filed his statement with the trial court. Shortly thereafter the Superior Court dismissed the appeal because Respondent never filed a brief. While this chain of circumstances was unfolding, Respondent ignored his client's correspondence asking for information about his case. Respondent never even informed his client that he had to report for the service of his sentence, resulting in a bench warrant issued by the trial court and Mr. Richardson's apprehension.

Dr. Steven Willis provided medical treatment to Pilar Batts, a client of Respondent's whom he represented in a personal injury action. In conjunction with that representation a doctor's lien was executed and under the terms Respondent was required to pay Dr. Willis the full amount of his bill from the proceeds of Ms. Batts' settlement. Respondent failed to do so, even after numerous calls and letters by Dr. Willis's office to Respondent concerning the funds.

The purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys, maintain the integrity of the bar, and uphold respect for the legal system. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). The Board is charged with the task of assessing proper discipline for lawyers who violate the Rules of Professional Conduct. In determining the appropriate discipline, the Board examines precedent for the purpose of measuring a respondent's conduct against other similar

transgressions. In re Anonymous No. 56 DB 1994, 28 Pa. D. & C. 4th 398 (1995). Aggravating and mitigating factors are considered in assessing the totality of the circumstances.

Respondent engaged in neglect in two client matters, made misrepresentations to conceal his neglect, failed to communicate with clients and failed to refund his unearned fee. There is no doubt that Respondent's clients suffered harm directly caused by his misconduct. Respondent failed to promptly turn over funds to which a third party was entitled and still has not done so. Discipline in similar matters has ranged from a one year and one day suspension to disbarment. In Office of Disciplinary Counsel v. Howard Goldman, No. 157 DB 2003, 1040 Disciplinary Docket No. 3 (Pa. Aug. 30, 2005), Mr. Goldman neglected four client matters, made misrepresentations to conceal the neglect in two matters, failed to communicate with clients and failed to promptly surrender his unearned fee. Mitigating circumstances included Mr. Goldman's cooperation with Office of Disciplinary Counsel, his lack of prior disciplinary record, and his credible evidence of good reputation, as testified to by six character witnesses. The Court imposed a suspension of one year and one day. The case of Office of Disciplinary Counsel v. F. Lee Lewis, No. 117 DB 2005, 1232 Disciplinary Docket No. 3 (Pa. April 13, 2007), involved an attorney who mishandled six client matters during a two year span. Ms. Lewis took on cases and failed to follow through on the representation by failing to comply with court orders and attend meetings, failing to communicate, failing to provide written fee agreements, and failing to refund fees that were unearned and return client files. The

Court suspended Ms. Lewis for two years. Several other cases resulted in two year periods of suspension, as in Office of Disciplinary Counsel v. Michael Mayro, No. 144 DB 2001, 884 Disciplinary Docket No. 3 (Pa. Oct. 27, 2003), and Office of Disciplinary Counsel v. Susan Bell Bolno, No. 162 DB 2000, 812 Disciplinary Docket No. 3 (Pa. March 7, 2003).

A case of serial neglect resulted in the extreme sanction of disbarment. In re Anonymous No. 8 DB 90, 15 Pa. D. & C. 4th 283 (1992). While the Disciplinary Board recommended a three year suspension in the matter, the Court imposed disbarment on the attorney, who engaged in a pattern of neglect, misrepresentation, miscommunication, and deceit in five client matters. The aggravating factors in the matter included a disciplinary record for prior neglect of clients.

Respondent has weighty aggravating factors. He is currently serving a five year period of suspension which was imposed by the Supreme Court on April 23, 2008. This suspension was based on his misconduct in handling an estate, conversion of funds and misrepresentation. Respondent's demeanor at the disciplinary hearing did not aid his case. He lacked recognition of his wrongdoing and showed little remorse. His testimony was evasive and incredible on many points. The record is clear that Respondent has not refunded monies owed to complainants, yet he attempted to disingenuously persuade the Hearing Committee that he had. Respondent has been a defendant in a multitude of lawsuits through the years that have resulted in default judgments, unsatisfied judgments and open liens. While the Board does not give as much weight to this particular factor as

to the aggravating factors described above, these circumstances portray Respondent as unable to effectively manage his personal and professional matters.

Application of the foregoing precedent and the aggravating factors to Respondent's matter persuaded Petitioner and the Hearing Committee to recommend a three year period of suspension to be served consecutively to the current five year suspension imposed by the Court that he began serving on April 23, 2008.

The Board is persuaded that this matter should be resolved by disbarment. A respondent who is already suspended for five years and is facing another long period of suspension for very serious misconduct is an attorney that must be dealt with by the most severe sanction. It makes little sense to pile on another lengthy suspension. Disbarment will send a stronger message to the public that attorneys who commit serial acts of misconduct will not be tolerated. In order to practice law in the future, Respondent will be required to petition for reinstatement under the heavier burden of disbarment, demonstrating that his acts are not so egregious as to prohibit him from practice and that he has spent a lengthy time engaged in qualitative rehabilitation so as to dissipate the breach of trust he committed.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Anthony Dennis Jackson, 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: 

Laurence H. Brown, Board Member

Date: November 21, 2008

Board Members Baer and Buchholz did not participate in the adjudication.