

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1122, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 165 DB 2004
v.	:	
	:	Attorney Registration No. 64371
JOHN KELVIN CONNER	:	
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 November 2, 2004, Office of Disciplinary Counsel filed a Petition for Discipline against John Kelvin Conner, Respondent. The Petition charged Respondent with professional misconduct in his representation of two clients in unrelated matters. Respondent filed an Answer to Petition for Discipline on November 24, 2004.

A disciplinary hearing was held on April 4, 2005, before a District II Hearing Committee comprised of Chair Lester G. Weinraub, Esquire, and Members James J. Byrne, Jr., Esquire, and Raymond Peppelman, Jr., Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on July 28, 2005, finding that Respondent committed professional misconduct and recommending that he be suspended for a period of nine months followed by probation of 12 months.

Petitioner filed a Brief on Exceptions on August 15, 2005.

Respondent filed a Brief on Exceptions on August 29, 2005, and requested oral argument before the Disciplinary Board.

Oral argument was held on October 11, 2005, before a three-member panel of the Board chaired by Robert E. J. Curran, Esquire, with C. Eugene McLaughlin and Laurence H. Brown, Esquire.

This matter was adjudicated by the Disciplinary Board at the meeting on November 9, 2005.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg PA 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 any 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.

2. Respondent, John Kelvin Conner, was born in 1956 and was admitted to practice law in the Commonwealth in 1992. He maintains an office at 711 West Avenue, Jenkintown PA 19046. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior record of discipline consisting of an informal admonition in 2002 for violations of Rules of Professional Conduct 1.1, 1.4, 1.5(a) and 8.4(c) . Respondent was paid \$5,000 to file a brief, never filed the brief or entered his appearance, and misrepresented the status of the appeal by failing to tell the client that no brief had been filed.

Charge I - Wood Funeral Home Matter

4. In August 2001, Cynthia Wood, on behalf of the Wood Funeral Home, retained Respondent to assist her in collecting funds owed to the Funeral Home from the account of Henry Thomas, Sr.

5. A judgment was obtained by Respondent against the Estate of Henry

Thomas, Sr., in the amount of \$5,356.56.

6. In June 2002, American Abstract and Search, Inc., sent Respondent a check in the amount of \$4,112.57, representing a portion of the outstanding judgment.

7. Respondent deposited the funds into his business account at the First Union National Bank on June 11, 2002.

8. Respondent failed to deposit the funds into any trust, attorney escrow or IOLTA account.

9. After allowance for Respondent's fees, the amount of \$2,983.31 was due and owing the Wood Funeral Home.

10. Respondent indicated that after his office collected the portion of the judgment for Ms. Wood, she asked him to hold the monies pending the attempted collection of the remaining balance of the judgment.

11. Ms. Wood confirmed that after Respondent collected the funds in June 2002, she reached an agreement with him that the funds would be held while his office attempted to collect the balance due on the judgment.

12. In the fall of 2002, Ms. Wood made numerous calls to Respondent in an effort to determine the status of Respondent's attempts to recover the balance due to the Wood Funeral Home and have Respondent pay the funds that were due her business which he had already recovered.

13. Respondent failed to return Ms. Wood's telephone calls.

14. By certified letter dated November 29, 2002, Ms. Wood wrote

Respondent and advised him that:

a) She had “tried an inordinate number of times to discuss these matters with you by telephone but to no avail”;

b) “A paralegal from your office stated that you were planning to personally deliver the expected check to our office but we have yet to see you”;

c) “We should have received our payment well before this time”;

d) “We also spoke to your cousin Daniel Conner who stated he spoke to you about this matter, who believed the situation had been resolved[sic]”, and

e) Ms. Wood would be filing a complaint with the Pennsylvania Bar Association against Respondent if payment was not made by December 18, 2002.

15. Ms. Wood indicated that although she began making her calls in the fall of 2002, the bulk of the calls were in November of 2002, leading up to her letter of November 29, 2002.

16. By check dated January 19, 2003, drawn on a non-escrow account Respondent maintained at Commerce Bank, and not from Respondent's non-escrow account at First Union Bank in which the Wood Funeral Home's funds were deposited, Respondent paid the Wood Funeral Home the amount of \$2,983.31 that was owed.

17. Although Respondent was admitted to the Pennsylvania Bar in 1992 and the New Jersey Bar in 1991, he claimed that he did not know that he should not deposit client funds into a non-escrow account.

18. Respondent did not fully understand the need for an escrow account prior to 2002. He previously worked for the law firm of Cozen and O'Connor and never handled any bank accounts. When he left Cozen and O'Connor, the majority of his practice was criminal cases. Respondent rarely received monies to be held in trust from clients, but was simply paid legal fees..

19. Respondent certified in his annual registration statements that he was in compliance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct.

20. By letter dated July 15, 2003, Respondent advised Disciplinary Counsel that after the Wood Funeral Home proceeds were "initially deposited into my First Union account," Ms. Wood's "portion of the funds were subsequently transferred to my Commerce Account which is used for my New Jersey Law Office".

21. By letter dated April 29, 2004, Respondent again advised Disciplinary Counsel that:

a) his First Union account was "used for [his] overall business operations";

b) he "Personally maintained sufficient funds to cover Ms. Wood's portions of the settlement until the funds were deposited into [his] Commerce account in January 2003"; and

c) Respondent had “deposited into [his] Commerce account that portion of the funds owed to Wood Funeral Home after Cynthia Wood requested her portion of the funds.”

Charge II - Cumberland Insurance Group Matter

22. Respondent represented the subrogation interest of the Cumberland Insurance Groups, a/k/a Chester County Mutual Insurance, with reference to the claims of Christine and Derrice Pankey arising out of a loss which occurred on January 30, 1999.

23. In representing the Cumberland Insurance Group, Respondent received funds in which the Cumberland Insurance Group had an interest and Respondent made deposits into his First Union business account on the following occasions:

- a. August 12, 2002 in the amount of \$5,545.00
- b. October 7, 2002, in the amount of \$500.00
- c. October 7, 2002, in the amount of \$500.00
- d. November 4, 2002, in the amount of \$1,000.00

24. Respondent’s agreement with the Cumberland Insurance Group entitled him to retain a one-third contingent fee and the remaining two-thirds were to be held by Respondent as fiduciary funds on behalf of the Cumberland Insurance Group.

25. Respondent’s normal practice would be that the subrogation check would come in and be signed by him and then given to the Cumberland Insurance Company, and then Cumberland would pay him his fee.

26. As to the checks in question, Respondent noted that contrary to his normal practice, the adjuster for Cumberland had signed the checks and the checks had then been sent to his office. Respondent's office then deposited the checks in his operating account mistakenly assuming they were legal fees.

27. Respondent indicated that after the checks were deposited, he never heard from the insurance company or anyone else until Petitioner reviewed his financial records.

28. As soon as Respondent found out that the checks deposited contained monies due to Cumberland Insurance, he immediately reimbursed the insurance company.

29. Respondent still does work for Cumberland Insurance.

30. Respondent now has an IOLTA account and an operating account.

31. Respondent practices in Pennsylvania and New Jersey and has separate operating and escrow accounts in both states.

32. Respondent has served as the President of the NAACP branch in Willow Grove for two years.

33. Respondent is active through his service fraternity in various activities in the community, including food drives, talent shows for youth and fund raisers.

34. Respondent is involved with the George E. Thorn Development Center, which is a non-profit corporation that was started by Respondent and his wife. This corporation targets young people and teaches them how to handle money and do basic

accounting. It also takes young people on college campus visits to get them interested in higher education.

35. Respondent does criminal justice seminars for young people in his community.

36. Respondent has been active in the community as a scout leader and in coaching youth sports.

37. Respondent is a member of the Salem Baptist Church in Jenkintown and is forming a prison ministry through that church.

38. Three character witnesses testified on Respondent's behalf.

39. Michael O'Connor, a barber by trade and the Ward leader and Commissioner in Abington Township, credibly testified as to Respondent's involvement in providing legal representation for residents of the community.

40. George Luskus, Esquire, a practicing attorney for 30 years in Jenkintown, has known Respondent for seven years. Mr. Luskus credibly testified that Respondent's reputation in the community as a peaceful and law-abiding person, and a truthful and honest person as well as a practicing attorney, is good.

41. George Harrison, an in-home specialist for Tweeter Home Entertainment, has known Respondent since high school. Mr. Harrison credibly testified as to Respondent's excellent reputation in the community as a truthful and honest person and as a practicing attorney.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct in Charge I – Wood Funeral Home Matter and Charge II – Cumberland Insurance Matter:

1. 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. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

2. RPC 1.15(b) – Upon receiving funds or other property in which a client or third person has an interest, 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, 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 or third person, shall promptly render a full accounting regarding such property.

The Board further concludes that Respondent did not violate RPC 8.1(a) or RPC 8.4(c) as he did not make a false statement to Disciplinary Counsel and he did not intend to make misrepresentations or deceive Disciplinary Counsel in his letters relating to the handling of funds due and owing to the Wood Funeral Home.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with failing to maintain entrusted funds in two separate matters. Respondent was further charged with misrepresenting facts to Office of Disciplinary Counsel in response to its request for information.

In connection with the Wood Funeral Home matter, Respondent violated Rules 1.15(a) and 1.15(b). He failed to hold funds due and owing to the Wood Funeral Home in a separate trust account and commingled the funds in his business account. Respondent's bank account became out of trust just days after his deposit of the Wood proceeds in June of 2002. Despite receiving Ms. Wood's letter on November 29, 2002, Respondent delayed returning the funds for seven weeks. Respondent acknowledges his violation of these Rules.

Respondent was charged with violating RPC 8.1(a) and 8.4(c) by allegedly making misrepresentations to Disciplinary Counsel. At issue are letters to Disciplinary Counsel from Respondent regarding the handling of the Wood Funeral Home funds. By letter of July 15, 2003, Respondent advised Disciplinary Counsel that Ms. Wood's "portion of the funds were subsequently transferred to my Commerce account which is used for my New Jersey law office". By letter dated April 29, 2004, Respondent advised Disciplinary Counsel that he had "deposited into [his] Commerce account that portion of the funds owed to Wood Funeral Home after Cynthia Wood requested her portion of the funds." While neither of these statements is technically accurate, the Board concludes there is not clear

and convincing evidence to support a finding that Respondent made a materially false statement to Disciplinary Counsel, nor that he intended to deceive Disciplinary Counsel. Respondent believed he always had the availability of sufficient funds to cover the Wood funds and monies were transferred to the Commerce Bank account. The letter did not state that the transfer to the account came from the First Union account. Still, Respondent engaged in an inexcusable failure to maintain records of his client's funds and the fact that the Board finds there is not sufficient evidence to conclude he deceived Disciplinary Counsel does not mitigate the actual wrong he committed in mishandling the funds.

Respondent admits violating Rules 1.15(a) and 1.15(b) in the Cumberland Insurance Matter, which involved a commingling of funds owed to the Cumberland Insurance Group in Respondent's business account. This was due to inadvertence as Respondent did not realize that he was holding funds that were due and owing to Cumberland. He believed they were fees for work. The Hearing Committee found, and the Board concurs, that the violations were unintentional and due solely to poor recordkeeping in his law practice.

Respondent introduced mitigating evidence of his heavy involvement in civic and community activities. Respondent is active in the local NAACP Chapter and has served as its President. He works with the youth in his community, through his service fraternity, church, and a non-profit organization started by Respondent and his wife. Respondent presented three character witnesses, all of whom know Respondent from the

community and all of whom confirm that Respondent has a good reputation in the community.

Respondent was subject to discipline in December 2002 when he received an informal admonition for failing to file an appeal and failing to refund the fee paid to handle the appeal.

Respondent's misconduct requires discipline. The Supreme Court has imposed a wide range of suspensions on attorneys who mishandle client or third party funds. Office of Disciplinary Counsel v. Raymond LeBon, 718 Disciplinary Docket No. 3 (Pa. Jan. 31, 2002); Office of Disciplinary Counsel v. Gary Scott Silver, 998 Disciplinary Docket No. 3 (Pa. April 6, 2005). Respondent commingled and otherwise mishandled the funds due and owing to the Wood Funeral Home. He did not place the funds in an escrow account; and moreover, claimed he was unaware that he was required to do so. His records were so poorly maintained that he was not able to clearly answer questions regarding those funds. Sloppy bookkeeping was also the culprit in the Cumberland matter, resulting in commingling of funds. Though he did not intentionally commingle with intent to misuse the funds in the Cumberland matter, Respondent still violated the rules of the profession requiring careful attention to client and third party monies.

The Board has considered the recommendation of the Hearing Committee, who recommended a nine month suspension with probation for 12 months. The Board is persuaded that a suspension of nine months is appropriate. This will emphasize to Respondent the importance of following the professional rules pertaining to safeguarding

client monies and instituting office procedures designed to facilitate the correct handling of funds. The Board does not believe that probation is necessary, but instead recommends that Respondent take courses to educate himself on how to properly set up and maintain office and trust accounts and to keep records pertaining thereto.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, John Kelvin Conner, be suspended from the practice of law for a period of nine months. Furthermore, as a condition of reinstatement, Respondent is directed to take the Bridge the Gap course and Malpractice Avoidance course.

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: _____
Robert E. J. Curran, Board Member

Date: January 19, 2006

Board Members Sheerer, Raspanti and Pietragallo dissented and would recommend a six month suspension and education requirements.

PER CURIAM:

AND NOW, this 11th day of April, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated January 19, 2006, the Petition for Review and Exceptions and Objections and response thereto, the request for oral argument is denied pursuant to Rule 208(e)(4), Pa.R.D.E., and it is hereby

ORDERED that John Kelvin Conner be and he is suspended from the Bar of this Commonwealth for a period of nine months, and he shall comply with all the provisions of Rule 217, Pa.R.D.E. As a condition of reinstatement, Respondent shall take the Bridge the Gap course and a Malpractice Avoidance course.

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