

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1166, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 181 DB 2004
v.	:	
	:	Attorney Registration No. 17953
ROBERT F. CREEM	:	
Respondent	:	(Lehigh 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 December 13, 2004, Office of Disciplinary Counsel filed a Petition for Discipline against Robert F. Creem, Respondent. The Petition alleged that Respondent engaged in misappropriation of entrusted funds and charged him with violations of Rules of Professional Conduct 1.15(a), 1.15(b), 8.4(b) and 8.4(c). Respondent filed an Answer to Petition for Discipline on February 2, 2005.

A disciplinary hearing was held on April 18, 2005, before a District II Hearing Committee comprised of Chair Robert J. Donatoni, Esquire, with Members Cheryl L. Young, Esquire, and Denis A. Gray, Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 26, 2005, finding that Respondent engaged in professional misconduct and recommending that he be suspended for three months followed by three years of probation with a practice monitor.

Petitioner filed a Brief on Exceptions on October 13, 2005, and requested oral argument before the Disciplinary Board.

On October 27, 2005, Respondent filed a combined Brief on Exceptions and Brief Opposing Exceptions, as well as a request for oral argument before the Board.

Oral argument was held on January 20, 2006, before a three member panel of the Disciplinary Board chaired by Louis N. Teti, Esquire, with Members Marc S. Raspanti, Esquire, and Robert L. Storey.

This matter was adjudicated by the Disciplinary Board at the meeting on February 1, 2006.

## 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 is Robert F. Creem. He was born in 1947 and was admitted to practice law in the Commonwealth in 1973. His office is located at 1503 North Cedar Crest Boulevard, #304, Allentown, PA 18104-2310. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

#### Charge I - Cullen Matter

4. Respondent represented Doreen Cullen in a contingent fee, personal injury case.

5. In February 2003, Respondent settled Ms. Cullen's case and deposited a settlement check in the amount of \$37,500 into his IOLTA account.

6. On February 22, 2003, Respondent presented Ms. Cullen with a Disbursement and Distribution Sheet for her case, Cullen v. Skateaway.

7. The Disbursement and Distribution Sheet provided for the following terms:

- a. A gross settlement from AIG Insurance in the amount of \$37,500.00;
- b. Attorney's fees and costs in the amount of \$16,278.69;

- c. \$2,000 to be held for "Welfare -income [from client] (balance, if any, to be returned to client)";
- d. \$6,000 to be held for "Medicaid [from med. bills] (balance, if any, to be returned to client)"; and
- e. A balance due to client in the amount of \$13,221.31.

8. Ms. Cullen signed the Disbursement and Distribution Sheet on February 22, 2003.

9. By check No. 1051, dated February 10, 2003, Respondent distributed \$16,278.69 to himself in payment of his attorney's fees and reimbursement for his costs in representing Ms. Cullen.

10. By check No. 1044, dated February 21, 2003, Respondent distributed \$13,221.31 to Ms. Cullen.

11. As of March 6, 2003, Respondent was entrusted with \$8,000 in fiduciary funds in connection with his representation of Ms. Cullen.

12. As of May 26, 2003, Respondent continued to be entrusted with \$8,000 in fiduciary funds in connection with his representation of Ms. Cullen.

13. Respondent indicated that after the settlement he held approximately \$8,000 because there were questions as to a medical lien and welfare lien. Respondent was aware of litigation concerning payment of such liens.

14. By letter dated February 20, 2003, Respondent requested that the Department of Public Welfare forward to him a "listing of the medical and cash payments made on behalf of Doreen Cullen as soon as possible".

15. By letter dated February 28, 2003, Barbara A. Fellows, Claims Investigation Agent for DPW, advised Respondent, inter alia, that:

a. She had been assigned the completion of the DPW claim for Ms. Cullen;

b. As the attorney for a recipient of medical assistance, Respondent had certain statutory obligations;

c. Respondent was required to send DPW a one month advance notice of any settlement of a claim or lawsuit;

d. Respondent was required to ensure satisfaction of DPW's claim before making any payment or distribution to himself or Ms Cullen; and

e. There were serious penalties if Respondent failed to comply with his responsibilities.

16. By letter dated April 16, 2003, Respondent replied to Ms. Fellows' letter and provided certain information regarding Ms. Cullen's case, but he made no mention of the fact that the case had already been settled.

17. Respondent admitted that he supervised the sending of the April 16, 2003 letter to Ms. Fellows.

18. Respondent has no memorandum of any conversation he had with Ms. Fellows which stated that he advised her that he had settled Ms. Cullen's case.

19. Respondent's legal assistant, Jill Manos, had no recollection of ever notifying anyone at DPW that the Cullen case had been settled.

20. By letter dated July 25, 2003, Ms. Fellows again advised Respondent that DPW had a lien against Ms. Cullen's personal injury award, again requested that her office be contacted "well in advance of settlement," and again requested a copy of any final distribution sheet.

21. The aforesaid letter of July 25, 2003 was again sent to Respondent in October 2003 by Ms. Fellows' supervisor.

22. Respondent indicated that the Third Circuit reversed the Eastern District decision regarding the payment of welfare and Medicaid liens on October 10, 2003 and thereafter on December 30, 2003, he made distribution to Ms. Cullen of the monies he had been holding minus the amount to satisfy the liens.

23. Ms. Fellows confirmed that Respondent told her there had been some delay because of litigation on the issue of liens.

24. Although Respondent claimed he was waiting for the outcome of the litigation before making distribution to Ms. Cullen, he admits he was unaware of the decision for two months after it was rendered, and, as stipulated, his account was out of trust during that period of time.

25. Respondent satisfied the lien in December of 2003, once he discovered that litigation had been resolved adversely to his position.

26. In his representation of Ms. Cullen, Respondent:

- a. did not inform DPW that he had settled Ms. Cullen's claims;

b. did not make any payments to DPW in satisfaction of its lien until December 30, 2003, at which time Respondent forwarded a check to DPW in the amount of \$808.46, representing an agreed 25 percent compromise-reduction of the lien; and

c. did not, prior to December 30, 2003, distribute to Ms. Cullen any funds representing the difference between the \$2,000 that Respondent withheld from Ms. Cullen's settlement to satisfy DPW's claim and the actual amount of the claim in the sum of \$1,077.95, and the \$6,000 that he withheld from Ms. Cullen's settlement to satisfy any potential Medicaid lien.

27. It was not until December 30, 2003, after Respondent had received notification of an investigation by Office of Disciplinary Counsel, that Respondent forwarded a check to Ms. Cullen in the amount of \$7,191.54 and the aforesaid check to DPW.

28. It was later discovered that Ms. Cullen did not owe any funds to Medicaid in connection with her accident.

29. During the period from March 6, 2003, through May 26, 2003, Respondent made personal use of Ms. Cullen's funds without her knowledge, consent or permission.

Charge II - Other Misappropriation

30. At various times from at least September 4, 2002 through at least April 9, 2004, Respondent was required to maintain funds inviolate on behalf of the following clients and /or third persons:

- a. Idelfonso Ramirez
- b. David Pohlman;
- c. Kathleen Duarte;
- d. Doreen Cullen;
- e. Juanilda Sabastro; and
- f. William Reese

31. During the following periods from at least September 24, 2002 to January 20, 2004, at various times and in various amounts, the end of the day balance in Respondent's Firstrust Bank IOLTA account was below the aggregate amount Respondent was required to maintain inviolate on behalf of Respondent's clients and/or third persons:

- a. During the period from September 24, 2002 through February 6, 2003, Respondent's end of the day balance was out of trust in amounts ranging from \$377.34 on October 29, 2002, to \$3,299.99 on September 27, 2002 (on which date Respondent's actual balance was a negative \$299.99);
- b. During the period from February 12, 2003 through May 26, 2003, Respondent's end of the day balance was out of trust in

amounts ranging from \$2,605.82 on March 31, 2003, to \$10,002.67 on May 16, 2003.

c. During the period from May 29, 2003, through October 15, 2003, Respondent's end of the day balance was out of trust in amounts ranging from \$ 84.29 on May 31, 2003 to \$16,007.17 on October 3, 2003.

d. During the period from October 22, 2003 through November 27, 2003, Respondent's end of the day balance was out of trust in amounts ranging from \$1,591.82 on October 22, 2003, to \$11,718.05 on November 19, 2003;

e. During the period from December 12, 2003 through January 20, 2004, Respondent's end of the day balance was out of trust in amounts ranging from \$715.36 on December 12, 2003, to \$7,030.17 on January 20, 2004 (at which time Respondent's actual end of the day balance was negative \$767.06).

32. Respondent made personal use of the aforesaid funds without the knowledge, consent or permission of the clients and/or third parties involved.

33. Jill Manos is Respondent's legal assistant and has worked for him since 2001.

34. Ms. Manos handled Respondent's financial accounts and escrow accounts during the years 2002 and 2003, but Respondent never explained to her how to maintain the escrow account.

35. Ms. Manos had no understanding that the client's funds had to be kept separate from Respondent's personal monies during the time period of 2002 and 2003.

36. During the pertinent time periods, Ms. Manos would pay bills from whatever account had sufficient funds.

37. Ms. Manos never told Respondent that his trust account was out of balance.

38. Respondent put Ms. Manos on notice of his problems with his IOLTA account as far back as October 2002, but he still gave her no direction about the safeguarding of fiduciary funds.

39. On at least two occasions in 2003, Respondent had personally written to his bank, requesting that funds be transferred from one account to the other.

40. All office correspondence was reviewed by Respondent and any transfer of funds from one account to another could only be undertaken at Respondent's direction.

41. Vincent DeSanctis, a certified public accountant, was retained by Respondent after the complaint by Petitioner.

42. Mr. DeSanctis confirmed what Petitioner alleged, and advised Respondent to reform and change his accounts. He advised Respondent to use different banks for each account and different check colors.

43. Although by letter of December 3, 2003, Respondent's accountant assured Respondent's counsel that Respondent had a full understanding of what procedures needed to be implemented in order to prevent a shortfall in the IOLTA account from happening

in the future, those shortfalls and misappropriations continued for almost another two months until January 20, 2004.

44. Mr. DeSanctis stated he talked to Ms. Manos and confirmed she had no understanding of the concept of a trust account versus an operating account and she was unilaterally moving money from accounts to where the money was needed.

45. Mr. DeSanctis instructed Ms. Manos on how to handle the various accounts.

46. Ms. Manos understands how to properly maintain the accounts through the instruction from Respondent and the accountant.

47. Ms. Manos is presently reconciling the escrow account on a monthly basis.

48. Dr. Daniel Goldfarb is board certified in psychiatry and neurology.

49. Dr. Goldfarb began treating Respondent in 1992 and currently sees him every three months since Respondent's disorder has stabilized.

50. Respondent suffers from bipolar disorder, which is hallmarked by periods of high energy and euphoria and followed by depressive cycles of low energy, poor concentration and depressed moods.

51. Respondent stopped taking his medication in 2002 and was off medication for a number of months until he resumed in September 2002.

52. There were substantial changes in Respondent when he did not take his medication.

53. Dr. Goldfarb concluded that within two or three months after resuming his medication, and certainly by February 2003, Respondent would have regained his full cognition and would have resolved any problems he had encountered by his failure to take medication.

54. Dr. Goldfarb diagnosed Respondent, in March 2004, with Attention Deficit Disorder, which is a disorder that prevents a person from focusing attention and causes the person to become easily distracted and to procrastinate.

55. Respondent takes Ritalin to control the ADD.

56. Dr. Goldfarb was unable to reach a conclusion as to whether the ADD affected Respondent's handling of client funds, or whether Respondent misused funds simply as a result of a willful decision that he needed money.

57. Dr. Goldfarb opined that Respondent was never delusional, and understood right from wrong.

58. Joseph C. Bernstein, Esquire, is a Pennsylvania lawyer who has known Respondent since 1978. He has contact with Respondent through the Jewish community in the Lehigh Valley, as well as Bar Association activities. Mr. Bernstein gave credible testimony that Respondent has a good reputation in the community as a truthful, honest person and as a practicing lawyer.

59. Joanne Conjour, a friend and former client, has known Respondent since 2000. She gave credible testimony as to Respondent's excellent reputation in the community as a truthful and honest person, and as a practicing lawyer.

60. Respondent has been active in the Lehigh County Bar Association during his years of practice.

61. Respondent is an active member of his synagogue and the Jewish Federation of the Lehigh Valley, a charitable organization.

62. Respondent recognizes the problems his misconduct has caused, and assured the Hearing Committee that he has learned from the experience and will not repeat the misconduct in the future.

63. Respondent understands that there is more to practicing law than just handling cases for clients. He knows he must protect clients through the fiduciary responsibility of a trust account.

64. Respondent stated there is no excuse for his misconduct.

### III. CONCLUSIONS OF LAW

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

1. RPC 1.15(a), which requires a lawyer to hold property of clients or third parties that is in a lawyer's possession in connection with the representation separate from the lawyer's own property.

2. RPC 1.15(b), which requires a lawyer, upon receiving funds or other property in which a client or third person has an interest, to promptly notify the client or third person. The 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.

3. RPC 8.4(b), which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as lawyer in other respects.

4. RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

#### IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline filed against Respondent charging him with violations of the Rules of Professional Conduct arising from his alleged failure to properly maintain fiduciary funds separate and apart, failure to timely distribute fiduciary funds, and engaging in dishonest conduct.

Respondent was charged in two separate counts with the conversion of fiduciary funds for his own personal use. Respondent fully admitted that his fiduciary funds were not properly handled nor sufficiently maintained during the time period from September 4, 2002 to April 9, 2004. Furthermore, Respondent inappropriately authorized his legal assistant to handle and maintain the fiduciary account without proper supervision or instruction.

Respondent does not contest the acts of misconduct and admits by stipulation and Answer to the Petition for Discipline that he violated Rules of Professional

Conduct 1.15(a) and 1.15(b), dealing with the proper use and maintenance of funds. Respondent denies violations of Rules of Professional Conduct 8.4(b) and 8.4(c). Respondent argues that his conduct was due to his bipolar disorder and Attention Deficit Disorder (ADD), thus entitling him to mitigation of the discipline to be imposed, pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

Respondent stands charged with violation of RPC 8.4(b), which states a lawyer shall not commit a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Respondent admitted to the misuse of funds held in his escrow account. He also stipulated to the misuse of funds belonging to six different clients and/or third parties. These misappropriations resulted in Respondent's IOLTA account being out of trust in an amount exceeding \$16,000 and on two occasions the IOLTA account had a negative balance. Respondent was aware of the misuse of the fiduciary funds, having been put on notice by Petitioner and the Lawyers Fund regarding such improprieties. Respondent engaged in criminal conduct by his personal use of fiduciary funds without knowledge, consent or permission of his clients and which deprived his clients of their funds.

Respondent stands charged with a violation of RPC 8.4(c), which precludes a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent's use of his clients' funds was dishonest, as he was aware of his actions. His letter to Barbara Fellows in the Cullen matter was misleading in that he never advised her that the case was settled, even though he was aware of his obligation to provide that

information to Ms. Fellows. The record is clear that Respondent violated RPC 8.4(b) and RPC 8.4(c).

Respondent, relying on Office of Disciplinary Counsel v. Braun, supra, argues that his conduct was substantially the consequence of his bipolar disorder and ADD. In the Braun matter, the Pennsylvania Supreme Court recognized that a psychiatric disorder may be the basis for the mitigation of discipline if the attorney is able to prove by clear and convincing evidence that such disorder was a causal factor in the misconduct. 553 A.2d at 895.

Respondent presented the expert testimony of Daniel Goldfarb, M.D., who has been treating Respondent since 1992. Dr. Goldfarb confirmed that Respondent suffers from bipolar disorder and ADD. Dr. Goldfarb testified that in the year 2002, Respondent stopped taking his medication for a number of months, but resumed the medication in September 2002. Dr. Goldfarb concluded that within two or three months after the resumption of the medication, and certainly by February 2003, the time of the misconduct, Respondent would have regained stability. Even with the additional element of ADD, Dr. Goldfarb indicated that Respondent was well aware of his problems with the escrow account, but he simply could not deal with it. Dr. Goldfarb was not sure if Respondent simply misused the money because he needed it.

Based on this testimony, the Hearing Committee correctly concluded that Respondent did not meet the Braun standard, as the testimony was insufficient to present and establish a causal connection between Respondent's mental health disorders and his

misconduct. The Board concludes that Respondent is not entitled to mitigation pursuant to Braun.

There are other mitigating factors present in this matter. Respondent has been practicing since 1973 and has no prior history of discipline. He took remedial steps by consulting an accountant, who reviewed Respondent's financial practices and instructed Respondent's legal assistant on the proper ways to maintain accounts. Respondent refunded all monies. Respondent cooperated with Petitioner. He conveyed to the Hearing Committee a clear understanding of his misconduct and how to avoid it in the future.

The Supreme Court has declared that the misappropriation of client funds is a serious offense that may warrant disbarment. Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997). Having said that, the Court has also declined to adopt a per se rule requiring disbarment for specific acts of misconduct. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983).

Review of disciplinary case law in Pennsylvania suggests a wide range of sanctions may be imposed and such sanctions are fact specific to the cases. Office of Disciplinary Counsel v. Raymond LeBon, 115 DB 2000, 718 Disciplinary Docket No. 3 (Pa. Jan. 31, 2002). The amount of money converted, length of time involved, and the attorney's attempt at restitution are pertinent factors. Further, there are cases where probation has been imposed on an attorney involved in misappropriation of funds. In re Anonymous No. 61 DB 92, 19 D. & C. 4<sup>th</sup> 494 (1993) (two years of probation for an attorney who did not tell a client he was in receipt of a settlement check, forged the client's signature and converted the funds); Office of Disciplinary Counsel v. Joseph J. Durney, 55

DB 2003, 961 Disciplinary Docket No. 3 (Pa. Oct. 15, 2004) (attorney suspended for one year with one year of probation after he misused estate funds on six separate occasions during a six months time frame; attorney offered evidence of psychiatric disorder, but the Board found no causal relationship).

The Hearing Committee recommended a suspension of three months followed by a three year period of probation with a practice monitor. The Committee relied on the case of Office of Disciplinary Counsel v. Kochel, 529 A.2d 1075 (Pa. 1987), wherein Mr. Kochel misused funds on 23 occasions over a sixteen month period of time. The Supreme Court imposed a three month suspension. However, at that time, a three month period of suspension required that the attorney file a Petition for Reinstatement to prove his or her fitness before resuming the practice of law. The Committee's recommendation of three months in the instant matter is not equivalent to what the Court imposed on Mr. Kochel. The Board is persuaded that a one year suspension with two years of probation is sufficient to address Respondent's misconduct. Like the Committee, we do not believe that a reinstatement proceeding is required; however, more than three months is necessary to address the seriousness of the misconduct, which involves mishandling of client funds. Respondent's mental health issues are under control, he has taken positive steps toward resolving the maintenance of his financial accounts and has a clear understanding of his misconduct and the methods necessary to avoid misconduct in the future. He has expressed sincere remorse. For these reasons, a one year suspension followed by two years of probation with appropriate monitors will serve to provide redress for Respondent's wrongs and ensure he is properly handling his accounts in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Robert F. Creem, be Suspended from the practice of law for a period of one year to be followed by two years Probation, subject to Conditions.

During the period of Suspension, Respondent shall do the following:

1. Take the Bridge the Gap Course through an Accredited PA CLE Bridge the Gap Provider;
2. Take twelve (12.00) additional hours of CLE Ethics courses;
3. Take the Multistate Professional Responsibility Examination (MPRE) and achieve a minimum scaled score of 75; and
4. Prior to the expiration of the period of suspension, Respondent shall provide his MPRE score report and Certificates of Attendance for the Bridge the Gap Course and ethics courses to the Board.

Vincent DeSanctis, CPA, shall serve as Respondent's Financial Monitor.

During the period of Probation, he shall:

1. Meet with the Respondent at least monthly to examine Respondent's office and escrow accounts, client ledgers and other financial records to ensure that all such records are being properly maintained and that fiduciary and non-fiduciary funds are being properly segregated, handled and disbursed in accordance with Rule of Professional Conduct 1.15
2. File quarterly written reports on a Board approved form with the Secretary of the Board; and
3. Immediately report to the Secretary any violations of the Respondent of the terms and conditions of probation.

Respondent shall continue treatment for mental health purposes with Daniel Goldfarb, M.D., or another physician qualified as a psychiatrist, who is to direct and supervise Respondent's activities therein, as outlined below:

1. Respondent shall cooperate with directions of the psychiatrist supervising his treatment, take medications as prescribed and engage in therapy and counseling sessions as directed.
2. Respondent shall cause the psychiatrist supervising his treatment to make quarterly written reports directed to the Office of the Secretary, as to the identity and dosage of medications being currently prescribed, the nature and frequency of therapy sessions engaged in since any prior report and the identity of the health services agency or agent providing the same, and an assessment of Respondent's current mental condition at that time, in regard to his mental fitness to engage in the practice of law.
3. Respondent shall immediately authorize and redirect Dr. Goldfarb and any substitute or successor supervising psychiatrist, to immediately furnish a written report of facts and circumstances to the Office of the Secretary at any time when, in the estimation of the supervising psychiatrist, Respondent's behavior or material failure to conduct himself in cooperation with any aspect of his prescribed treatment regimen indicates that he is, or may be in jeopardy of shortly becoming mentally unfit to engage in the practice of law.
4. If, for any reason Respondent severs his present relationship with Dr. Goldfarb, he shall immediately make written report to the Office of the Secretary of that fact and the circumstances causing the same, together with the identification and location of another physician qualified as a psychiatrist who has been fully informed of the terms of this probation and has agreed to serve as a successor supervising psychiatrist in accordance with the same.
5. Respondent shall furnish, at any time it may reasonably be requested, his written authorization for any health care agency or agent to furnish to the Office of the Secretary complete records of and information as to any mental health or underlying medical care services which may have been provided Respondent.

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: \_\_\_\_\_  
Jonathan H. Newman, Vice-Chair

Date: May 15, 2006

Board Members Teti and Saidis dissent and would recommend a one year and one day Suspension.

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1166, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 181 DB 2004
v.	:	
	:	Attorney Registration No. 17953
ROBERT F. CREEM	:	
Respondent	:	(Lehigh County)

DISSENTING OPINION

DISCUSSION

The Recommendation of the Disciplinary Board is that the Respondent be suspended for one year, to be followed by a two year probationary period subject to several conditions. Those conditions include a Financial Monitor and ongoing treatment with a psychiatrist, for mental health purposes, plus additional conditions regarding educational courses, and taking the Multistate Professional Responsibility Examination with a required minimum scaled score of 75. I respectfully dissent from this Recommendation.

The conditions and stipulations contained in the recommended discipline, and the length of the probation, establish that the Board (and the Hearing Committee) has little confidence in the Respondent's ability to properly exercise his fiduciary responsibilities to clients and third parties. The majority's determination that the Respondent's conduct

warrants a one year suspension would excuse him from filing a Petition for Reinstatement with the Supreme Court, and to establish his fitness to practice law.

Respondent's commingling and misappropriation of client funds constitutes misconduct that is serious enough to raise questions as to his fitness and character. The Hearing Committee found a violation of four Rules of Professional Conduct, including RPC 8.4(b), Criminal Conduct That Reflects on the Lawyer's Honesty and Fitness, and RPC 8.4(c), Being a Lawyer Engaging in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation. Questions as to Respondent's fitness are only answered to the satisfaction of the Board and the Supreme Court by requiring Respondent to engage in the reinstatement process. Only then may the Court be assured that Respondent does not pose a danger to the public. Mishandling of client funds is a serious breach of public trust, and the client rightfully expects that any financial transactions carried out on the client's behalf will be done in a scrupulously honest way. Office of Disciplinary Counsel v. Lewis, 426 A.2d 1138 (Pa. 1981).

The Hearing Committee found that the Respondent's behavior was reckless and misleading, and that the expert testimony of the Respondent's physician was not sufficient to present and establish a causal connection between the Respondent's misconduct and any mental health disorder, thus failing the Braun test. The Respondent's physician indicated that the Respondent was well aware of his problems with the escrow account, but that he simply could not deal with it, as outlined in the Discussion contained in the Hearing Committee's Report. The Hearing Committee found that the Respondent ignored letters from the Office of Disciplinary Counsel and the Lawyer's Fund for Client

Security, and that he continued to use the fiduciary funds for his own personal use. It further found that the Respondent made personal use of the fiduciary funds without the knowledge, consent or permission of his clients or third parties, and therefore engaged in professional misconduct by committing a criminal act of depriving the clients of their funds.

Notwithstanding the mitigating factors in this case, it is my belief that the reinstatement process would be more effective than the extensive and unwieldy conditions outlined in the majority's Recommendation.

Therefore, I support a suspension of one year and one day, which discipline is more appropriate for the Respondent's actions in this particular case.

Respectfully submitted,

By: \_\_\_\_\_  
Louis N. Teti, Board Member

Date: May 15, 2006

Board Member Saidis joins in this Dissent.

O R D E R

PER CURIAM:

AND NOW, this 28<sup>th</sup> day of September, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated May 15, 2006, the Petition for Review 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 Robert F. Creem be and he 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.