

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1600 Disciplinary Docket No. 3
Petitioner :
: No. 183 DB 2007
v. :
: Attorney Registration No. 54700
JILL A. DEVINE, :
Respondent : (Fayette County)

ORDER

PER CURIAM:

AND NOW, this 23rd day of June, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 30, 2010, it is hereby

ORDERED that Jill A. Devine is suspended from the Bar of this Commonwealth for a period of one year and one day 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.

A True Copy Patricia Nicola

As of June 23, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 183 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 54700
	:	
JILL A. DEVINE	:	
Respondent	:	(Fayette 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 15, 2008, Office of Disciplinary Counsel filed a Petition for Discipline against Jill A. Devine. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that she engaged in misconduct in two separate matters. Respondent filed an Answer to Petition for Discipline on February 13, 2009.

A disciplinary hearing was held on April 28, 2009 and June 30, 2009, before a District IV Hearing Committee comprised of Chair Albert A. Torrence, Esquire, and Members William P. Bresnahan, Esquire, and Eric G. Soller, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties to the Committee, Respondent filed a Petition to Reopen the Record on November 4, 2009, regarding her payment of restitution to the Pennsylvania Lawyers Fund for Client Security. Petitioner filed a Response on November 4, 2009. Respondent was permitted to supplement the record with the restitution information.

The Hearing Committee filed a Report on November 10, 2009, and found that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline. The Committee recommended that Respondent be suspended for a period of one year and one day.

This matter was adjudicated by the Disciplinary Board at the meeting on January 20, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rule of Disciplinary Enforcement, with the power and the 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 Jill A. Devine. She was born in 1962 and was admitted to practice law in the Commonwealth in 1989. Her attorney registration mailing address is 421 River Road, Perryopolis PA 15473. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no record of attorney discipline in Pennsylvania.

Lux Matter

4. On April 25, 2007, George Lux died and was survived by his wife, Mary M. Lux, who was residing in a nursing home at that time and was Mr. Lux's sole beneficiary.

5. Prior to Mr. Lux's death, Ronald E. Coughanour, Sr., acted as his agent and had Power of Attorney over his affairs.

6. At the time of Mr. Lux's death, Jeff and Jill Loucks, who were neighbors of Mr. Lux, had in their possession items of personal property as well as cash belonging to Mr. Lux.

7. On May 6, 2007, Mr. and Mrs. Loucks turned over Mr. Lux's personal property and \$2,081 in cash to Respondent to hold because Respondent was acting as their attorney at that time in an unrelated matter.

8. Respondent signed a handwritten property receipt evidencing receipt of personal items and cash.

9. On July 20, 2007, Mary M. Lux died testate.

10. On August 3, 2007, Mrs. Lux's will was probated and Letters were granted to Ronald E. Coughanour, Sr., with Attorney Robert D. Austin, Jr., listed as the attorney of record for the Estate.

11. Sometime between August 3 and August 9, 2007, Mrs. Loucks provided Attorney Austin with a photocopy of the receipt Respondent had signed regarding property and cash of the late George Lux that had been entrusted to Respondent.

12. On August 8, 2007, Mr. Austin made a personal visit to Respondent's law office in an effort to secure the personal property and cash belonging to Mr. Lux; however, Respondent was not in her office during that visit.

13. Subsequently, Mr. Austin left a phone message at Respondent's office, but she did not return the call.

14. On August 9, 2007, Mr. Austin went to Respondent's office, met with Respondent and requested that she deliver the cash and personal items entrusted to her.

15. During that meeting, Respondent told Mr. Austin that she would provide the items and money by August 17, 2007.

16. Immediately following the August 9, 2007 meeting, Respondent left Mr. Austin a voicemail message requesting that he provide her with an authorization letter setting forth his authority as attorney of record for the Estate of Mary Lux, and stating that he was authorized by the executor to accept delivery of the funds and the items of personal property which Respondent was holding.

17. On August 17, 2007, Mr. Austin met with Respondent and hand-delivered to her a letter which indicated that he was attorney of record for the Estate of

Mary Lux; Ronald Coughanour, Sr., Esquire was Executor of the Estate; and Mr. Austin was directed by Mr. Coughanour to contact Respondent with respect to the funds and other documents delivered to her by Jill Loucks, and accept delivery from Respondent of said funds and other documents which she was holding that belonged to Mr. Lux. Mr. Austin provided Respondent with photocopies of Mrs. Lux's Death Certificate, a Short Certificate and the property receipt given to him by Jill Loucks.

18. At the meeting on August 17, 2007, Respondent told Mr. Austin that she was a recovering alcohol and drug addict and had spent the money belonging to Mr. Lux. She told Mr. Austin to report her to the Disciplinary Board and the police, and she further informed Mr. Austin that she would repay the money as soon as she could.

19. After this meeting, Respondent contacted Mr. Austin on several occasions and left messages indicating that she wanted to reimburse the Estate and needed to know to whom to make the check payable.

20. At the end of September 2007, Mr. Austin advised Respondent to make the check payable to the Estate of Mary M. Lux and to provide all the financial documentation as soon as possible.

21. On October 2, 2007, Respondent met with Mr. Austin at his office and delivered a box of documents given to her by Mr. and Mrs. Loucks.

22. On that date, Respondent indicated that she wanted to write a check immediately to reimburse the Estate. She indicated that she would try to obtain a cashier's check by the end of the business day, but she never did.

23. A claim was made to and paid by the Pennsylvania Lawyers Fund for Client Security in the amount of \$2,081 to the Lux Estate.

24. Respondent paid \$250 to the Fund by check dated April 13, 2009, from the account of Jill A. Devine.

25. Respondent paid \$2,581 to the Fund by check dated October 28, 2009.

26. Respondent admitted wrongdoing in the Lux Matter and expressed remorse for her actions.

Luciani Matter

27. On March 15, 2007, a Complaint in Civil Action was filed against Karen and Daryl Luciani by WFS Financial in the Court of Common Pleas of Westmoreland County.

28. Mr. and Mrs. Luciani retained Respondent to represent them in the civil action.

29. On April 27, 2007, Mr. and Mrs. Luciani executed a fee agreement letter prepared by Respondent reflecting an initial retainer of \$750, which was nonrefundable and would be credited as payment on account of services rendered thereafter. Respondent's hourly rate was \$100 for pretrial work and \$200 for depositions and court appearances.

30. Mr. and Mrs. Luciani paid Respondent's retainer of \$750 on April 27, 2007, by personal check.

31. Respondent cashed the check on April 27, 2007.

32. Thereafter, Mr. and Mrs. Luciani received an Important Notice dated May 8, 2007 indicating that they were in default of the civil action because they failed to

enter a written appearance personally or by an attorney, and failed to file in writing with the Court any defense or objections to the claims set forth against them. The Notice indicated that the Lucianis had ten days to act from May 8, 2007.

33. Upon receipt of the Notice, Mr. and Mrs. Luciani attempted on a number of occasions over a period of several days to reach Respondent on her cell phone. Respondent did not return the calls.

34. Mr. and Mrs. Luciani tried to meet with Respondent at her law office but Respondent was not present.

35. In July 2007, Respondent called her clients and was informed of the Notice they had received in May 2007.

36. Respondent advised her clients that she would handle the matter.

37. Respondent did not enter her appearance on behalf of her clients in the civil case nor did she file anything of record on their behalf.

38. After July 2007, Mr. and Mrs. Luciani attempted to reach Respondent at her office and discovered that the office was no longer open and her telephone number had been disconnected.

39. Respondent failed to return any messages left on her cell phone by her clients, after speaking with them in July 2007.

40. A default judgment was entered against the Lucianis on July 9, 2007.

41. The Pennsylvania Lawyers Fund for Client Security paid a claim submitted by the Lucianis against Respondent in the amount of \$750.

42. Respondent does not admit to any misconduct in the Luciani matter and did not express remorse.

43. Respondent takes the position that despite the signed engagement letter, she and the Lucianis agreed to a retainer of \$1,500, not \$750.

44. Respondent's position that the terms of the engagement were other than as set forth in the fee agreement letter is not credible.

45. Respondent testified on her own behalf.

46. In January 2009, Respondent contacted Lawyers Concerned for Lawyers seeking assistance for alcohol and drug issues.

47. Respondent entered drug and alcohol rehabilitation at Cove Forge Behavioral Health System on February 26, 2009, and remained there as an in-patient until March 12, 2009.

48. From May 7, 2009, through June 29, 2009, Respondent attended approximately 58 support group meetings for Alcoholics Anonymous and Narcotics Anonymous.

49. Respondent offered the testimony of three witnesses as to her substance abuse.

50. Mark Flaherty, Esquire, is a Pennsylvania attorney who serves as a member of the Board of Directors of Lawyers Concerned for Lawyers. He is also vice-chair of sobriety monitoring for the PBA Lawyer's Assistance Committee.

51. Respondent first came to Mr. Flaherty's attention in January 2009 through Lawyers Concerned for Lawyers. Mr. Flaherty assisted in arranging an evaluation for Respondent and helped her to arrange financial assistance for a rehabilitation stay at Cove Forge.

52. Following Respondent's stay at rehabilitation, Mr. Flaherty helped set up a sobriety monitor for Respondent and encouraged her to attend recovery meetings.

53. Darlene Crawford has been a friend of Respondent for approximately ten years. She has observed Respondent's use of alcohol and drugs in the past and how it impacted her in a negative way.

54. Debra Purcell is Respondent's sponsor for Alcoholics Anonymous. She has known Respondent for approximately two years and has been her sponsor since the end of 2008. She testified that she was unaware of the charges pending against Respondent.

55. Respondent offered no testimony at the time of hearing from an expert witness relating to her alcoholism and drug issues.

56. Respondent offered no testimony at the time of the hearing that she was under the influence of alcohol or drugs on the dates when her misconduct occurred.

57. Respondent remains responsible for interest on the amounts paid by the Pennsylvania Lawyers Fund for Client Security.

III. CONCLUSIONS OF LAW

By her 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)(4) – A lawyer shall promptly comply with reasonable requests for information.

3. RPC 1.5(a) – A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.

4. 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 client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

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

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

8. Respondent failed to prove by clear and convincing evidence that she suffered from drug and alcohol addiction at the time of the misconduct, and that such addiction was a cause of the misconduct that is the subject of the Petition for Discipline.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of charges against Respondent that she engaged in unprofessional conduct in two matters. Petitioner bears the burden of proof by a preponderance of the evidence that is clear and satisfactory that Respondent committed ethical misconduct. Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (Pa. 1994).

Respondent admitted in her Answer to Petition for Discipline and at the time of the disciplinary hearing that she violated the Rules of Professional Conduct by her misappropriation of entrusted funds in the Lux matter. These Rule violations were substantiated by the testimony of Attorney Robert Austin and the documentary evidence presented by Petitioner. The record clearly supports the conclusion that Respondent violated Rules of Professional Conduct 1.15(a), 1.15(b) and 8.4(c) in the Lux matter.

Respondent made no admission of wrongdoing in the Luciani matter. The record demonstrates that she was retained by Daryl and Karen Luciani to represent their interests in a pending civil action. Although Respondent provided a written fee agreement to the Lucianis for \$750, and was paid same by them, she did not take any action of record on their behalf or protect their interests. Respondent failed to act with diligence and did not adequately communicate with her clients regarding their case. Ultimately, a default judgment was entered against the Lucianis. The record supports the conclusion that Respondent violated Rules of Professional Conduct 1.3, 1.4(a)(4), 1.5(a) and 8.4(d).

In an attempt to establish mitigation in accordance with Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), Respondent offered evidence of drug and

alcohol addiction. In addition to her own testimony, Respondent called Mark Flaherty, Esquire, Darlene Crawford, and Debra Purcell.

In Braun, the Supreme Court established that a psychiatric disorder is an appropriate consideration as a mitigating factor in a disciplinary proceeding. The standard has been refined through a line of subsequent cases to require that a causal connection between the psychiatric disorder and the attorney misconduct be established by clear and convincing evidence. Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997).

Respondent's evidence of her substance abuse consisted of her direct testimony and the testimony of three witnesses. She offered no expert testimony or expert report. Respondent testified as to her history with alcohol and drugs. Respondent's witnesses showed that Respondent used drugs and alcohol in the past and had experienced problems relating to her substance use. While the sincerity of Respondent's own testimony and that of her witnesses is not questioned, none of this testimony offered specific evidence to prove clearly and convincingly that she had an addiction at the time of the misconduct and the addiction caused her to engage in misconduct. It is the Board's conclusion that Respondent has failed to meet her burden pursuant to Braun.

Other factors were presented for the Board's consideration. The record demonstrates that Respondent has paid the principal that she owed to the Fund for Client Security; however, the interest remains unpaid at this time. Respondent expressed remorse for her actions in the Lux matter, but did not offer any apology or explanation for her behavior in the Luciani matter.

The Hearing Committee has recommended that Respondent be suspended for a period of one year and one day. This recommendation accounts for Respondent's

misconduct in two matters, particularly her misappropriation of funds of a third party, and her lack of remorse for her misconduct in one of the matters. The Board concurs with the Committee's analysis of the facts and its recommendation. We note that this is Respondent's first encounter with the disciplinary system in Pennsylvania. Although this weighs in her favor as to discipline, her misconduct is serious and must be addressed with a suspension. Office of Disciplinary Counsel v. Werner, 77 Pa. D & C. 4th 430 (2005). This length of time is sufficient to address the underlying misconduct and permit Respondent to address personal issues.

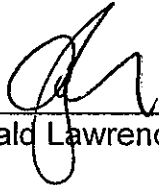
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Jill A. Devine, be Suspended from the practice of law for a period of one year and one day.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By:  _____
Gerald Lawrence, Board Member

Date: March 30, 2010

Board Member Momjian did not participate in this adjudication.