

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1150, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 39 DB 2005
v.	:	
	:	Attorney Registration No. 34822
RONALD I. KAPLAN	:	
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 March 29, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against Ronald I. Kaplan, Respondent. The Petitioner charged Respondent with professional misconduct related to his IOLTA account. Respondent filed an Answer to Petition for Discipline on April 25, 2005.

A disciplinary hearing was held on July 12, 2005, before a District I Hearing Committee comprised of Chair Joseph N. Bongiovanni, III, Esquire, and Members Paul J. Gontarek, Esquire, and Edward F. Shay, Esquire. Respondent was represented by Samuel C. Stretton, Esquire,

Following the submission of briefs by the parties, the Hearing Committee filed a Report on November 2, 2005, finding that Respondent engaged in professional misconduct and recommending that he receive a one year stayed suspension and two years of probation.

Petitioner filed a Brief on Exceptions on November 21, 2005.

Respondent filed a Brief Opposing Exceptions and request for oral argument on December 7, 2005.

Oral argument was held on January 24, 2006, before a three member panel of the Disciplinary Board chaired by Min S. Suh, Esquire, with Members Laurence H. Brown, 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 PA, 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, Ronald I. Kaplan was born in 1957 and was admitted to practice law in the Commonwealth of Pennsylvania in 1981.

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

4. Respondent has no prior history of discipline.

5. From December 2001 to April 2003, Respondent maintained PNC Bank Account No. 85-4506-5370, captioned "Ronald I. Kaplan IOLTA Account".

6. From June 11, 2002 through July 22, 2002 (42 days), and July 24, 2002 through August 31, 2002 (38 days), Respondent's IOLTA account was out of trust in amounts ranging from \$149.45 to \$17,374.11

7. Between June 11, 2002 and July 9, 2002, Respondent owed funds to two clients.

8. Between July 10, 2002 and July 22, 2002, Respondent owed funds to four clients.

9. Between July 24, 2002 and August 30, 2002, Respondent owed funds to five clients.

10. All of the clients who were owed monies have been paid.

11. During the time the IOLTA account was out of trust, Respondent made 16 unidentified withdrawals totaling \$9,004.76, and Respondent also issued for his own use 15 checks totaling \$11,268.30.

12. On several occasions the end-of-the-day balances in the IOLTA account were negative, and on numerous occasions the end-of-the-day balances in the IOLTA account were minimal in comparison to the amount of fiduciary funds that Respondent was then required to hold in trust.

13. Respondent used fiduciary funds for his own use.

14. Respondent commingled in the IOLTA account his personal funds with those of his clients.

15. Pursuant to Pennsylvania Rules of Disciplinary Enforcement 219(a) and 502(b), Respondent was required to pay an annual assessment.

16. On or about July 1, 2003, Respondent endorsed and filed his 2003-2004 PA Attorney's Annual Fee Form.

17. Respondent certified on the Fee Form that he was familiar and in compliance with Pennsylvania Rule of Professional Conduct 1.15.

18. On July 1, 2003, Respondent was not in compliance with RPC 1.15.

19. Between February 13, 2003 and November 11, 2003, Respondent deposited client funds into his IOLTA account on ten occasions.

20. Between February 2003 and November 2003, Respondent issued checks to ten clients.

21. Between February 2003 and November 2003, Respondent commingled in the IOLTA account his personal funds with those of his clients on 11 occasions.

22. On or about July 22, 2004, Respondent prepared a Distribution Sheet for Darlene Wilson, which indicated that Ms. Wilson was to receive \$6,270.50, Nova Care to receive \$2,449.50, and Phila. Ortho. was to receive \$80.00.

23. On January 5, 2005, Respondent issued a check payable to Nova Care in the amount of \$2,500, with the notation "for 250024530 Darlene Wilson".

24. Between July 14, 2004 and January 13, 2005, Respondent's IOLTA account fell below \$2,500, the amount needed to meet his obligations to his clients, on eight occasions.

25. Respondent used some client funds for his own use.

26. On or about January 6, 2003, Respondent's client, Laverna Brock, signed a General Release in connection with her claim against Southeastern Pennsylvania Transportation Authority (SEPTA) for PIP benefits in the amount of \$3,814.80.

27. By letter dated January 7, 2003, Respondent forwarded the General Release to SEPTA.

28. On or about February 8, 2003, Respondent received from SEPTA a check made payable to "Laverna Brock & Ronald I. Kaplan, Esquire" in the amount of \$3,814.80, designated for "medical payment".

29. On February 13, 2003, Respondent deposited the check into his IOLTA account.

30. On February 27, 2003, Respondent issued check number 2188 to Laverna Brock in the amount of \$5,973.

31. Laverna Brock executed an Authorization and Settlement Sheet.

32. A review of Respondent's IOLTA account records reveals that in regard to the February 13, 2003 deposit of \$3,814.80, as of January 31, 2005, Respondent had not disbursed any funds from the IOLTA account to any medical provider on behalf of Laverna Brock.

33. A review of Respondent's IOLTA account records reveals that the funds deposited on February 13, 2003 were neither returned to SEPTA nor disbursed to Ms. Brock.

34. Respondent failed to promptly forward the funds to the medical providers, Ms. Brock or SEPTA.

35. Between February 13, 2003 and January 31, 2005, Respondent's IOLTA account fell below \$3,814.80 on 75 occasions.

36. Respondent used funds belonging to the medical providers, Ms. Brock or SEPTA.

37. Respondent was retained to represent Salvatore Triolo in a third party claim arising out of injuries suffered by Mr. Triolo on August 4, 2000, while employed with J & F Produce.

38. On August 5, 2004, Respondent filed a civil action on behalf of Mr. Triolo in the Court of Common Pleas of Philadelphia County.

39. By letter dated December 6, 2002, to Respondent, Greg Coolidge, Subrogation Specialist for One Beacon Insurance (Beacon):

a. informed Respondent that he was not handling the Subrogation portion of Mr. Triolo's Workers' Compensation claim;

b. informed Respondent that Beacon had issued in the Triolo matter indemnity payments in the amount of \$2,896.01 and medical payments in the amount of \$15,454.37, for a total Workers' Compensation lien in the amount of \$18,350.41; and

c. requested the current status of Beacon's lien recovery.

40. Respondent received this letter.

41. On November 18, 2003, during a telephone conversation, Respondent informed Mr. Coolidge that the Triolo matter settled for \$2,500.

42. By letter dated November 18, 2003, to Respondent, Mr. Coolidge:

a. confirmed Respondent's previous telephone conversation;

b. informed Respondent that he was willing to accept 1/3 of the settlement in satisfaction of Beacon's lien; and

c. requested that Respondent forward to him payment, along with documentation of the settlement.

43. Respondent received this letter.

44. Respondent did not promptly forward to Beacon the funds and the settlement documentation.

45. On or around January 27, 2004, Respondent deposited the settlement check into his IOLTA account.

46. By letter to Respondent dated January 2, 2004, Mr. Coolidge again requested that Respondent forward payment in satisfaction of the lien.

47. Respondent received this letter.

48. Respondent failed to respond to this letter.

49. By letter dated March 24, 2002, to Respondent, Mr. Coolidge:

a. referred to his previous letters;

b. advised Respondent that Beacon would accept 1/3 of the \$2,500 third party settlement in satisfaction of the Workers' Compensation lien;

c. stated that there were no agreements to waive the lien; and

d. stated that Beacon had not received a response or payment from Respondent.

50. Respondent received this letter.

51. Respondent did not respond to this letter.

52. By letter dated May 14, 2004, to Respondent, Mr. Coolidge:

- a. referred to his previous letters; and
- b. informed Respondent that if he did not receive payment of the Worker's Compensation lien, he was reporting Respondent to the Disciplinary Board.

53. Respondent received this letter.

54. Respondent did not respond to this letter.

55. By letter dated August 3, 2004, Mr. Coolidge filed a complaint with the Office of Disciplinary Counsel.

56. Respondent was sent a copy of the letter.

57. By letter dated August 5, 2004, to the Disciplinary Board, Respondent stated:

- a. at no time was Beacon's lien promised to be satisfied or agreed to be compromised;

- b. Respondent's client had instructed him not to release the funds;

- c. Beacon's letter was frivolous in that the matter is a private contractual matter and Respondent's conduct had in no way justified a complaint to the Board; and

- d. Respondent's client would be happy to satisfy Beacon's lien if it would be more reasonable.

58. On August 30, 2004, Mr. Triolo executed an Authorization and Settlement Sheet which indicated that the proceeds were \$2,500, less the one-third lien of \$832.50, for a total of \$1,665.50 to Mr. Triolo.

59. On September 1, 2003, Respondent issued a check payable to Mr. Triolo in the amount of \$1,665.50.

60. On September 1, 2004, Respondent issued a check payable to One Beacon Insurance in the amount of \$832.50.

61. Under the Pennsylvania Workers' Compensation Act, 77P.S. §671, Respondent had a duty to protect Beacon's lien.

62. Between January 27, 2004 and September 1, 2004, Respondent's IOLTA account fell below \$2,498 on 15 occasions.

63. Respondent used funds belonging to Mr. Triolo and One Beacon Insurance.

64. From 1981 through 1987, Respondent worked at in-house positions with insurance companies or for other lawyers in Philadelphia handling criminal and personal injury cases.

65. From 1987 through 2004, Respondent worked in his own solo practice handling worker's compensation, criminal, personal injury and social security matters.

66. Respondent has a long history of mental health disorders beginning with episodes of depression in 1986.

67. At some point in 1999 to early 2000, Respondent's depression changed and became severe.

68. During the 1999 - 2003 time frame, Respondent was going through family related stress, as his wife and son were both diagnosed with bipolar disorder. His son presented particular difficulties for Respondent due to the serious nature of the illness.

69. Respondent's mother became very ill in 1999 and passed away in 2003. Respondent had the primary responsibility for taking care of her during that time period.

70. Respondent presented the testimony of forensic psychologist Dr. Gerald Cooke. Dr. Cooke saw Respondent on one occasion.

71. Dr. Cooke performed psychological tests on Respondent. The tests indicated that Respondent had been suffering from anxiety and depression which he had been able to cope with until the cumulative sources of stress in his private life became overwhelming.

72. Dr. Cooke offered his expert opinion that at all pertinent times Respondent suffered from a major depressive disorder which was recurrent and which was very severe during the time frame 1999 through 2004.

73. Dr. Cooke further diagnosed Respondent as suffering from a general anxiety disorder and panic disorder with a specific phobia for highways and bridges.

74. Dr. Cooke opined that the type of depression suffered by Respondent caused him to lack energy and to become easily fatigued. Respondent had difficulty organizing and prioritizing matters.

75. Dr. Cooke testified with reasonable psychological certainty that the depression and psychological illnesses of Respondent would have absolutely contributed and been the cause of Respondent's behavior in not properly handling his escrow account, including commingling and not properly maintaining client funds.

76. Dr. Cooke emphasized that Respondent was not remaining focused for any significant time, and could not organize his practice and files.

77. Dr. Cooke testified that in his opinion, Respondent is presently able to practice law on the condition that he continues regular, weekly therapy to deal with the stresses he faces in life.

78. Dr. Richard Jontry testified on Respondent's behalf. He is Respondent's treating psychologist.

79. Dr. Jontry first met with Respondent on April 22, 2005. At the time of the hearing he had seen Respondent at least four more times for treatment purposes.

80. Dr. Jontry recommended that Respondent continue weekly therapy with him.

81. Dr. Jontry's prognosis for Respondent is positive if Respondent continues with his therapy for at least one more year.

82. Dr. Jontry indicated that the depression Respondent suffered would have affected his ability to do important things in his life.

83. Dr. Jontry indicated that Respondent's depression is moderate, compared to the severe depression he suffered in past years.

84. Jocelyn Brown was Respondent's paralegal from 2002 through 2004. She tried to improve the administration of Respondent's law practice, shifting it to Quick Books and organizing the filing system, but she found that Respondent was unable to focus on the improvements and seemed as if he were avoiding things.

85. In September 2004, Respondent closed his solo practice and accepted an associate position in the law firm of Aivazoglou & Mikropoulos in Delaware County.

86. John Aivazoglou, Esquire, testified on Respondent's behalf, and stated that Respondent was doing an excellent job at the firm. By written agreement with the firm, Respondent was not permitted to handle client funds.

87. Respondent borrowed \$25,000 from his father-in-law, secured by a mortgage on Respondent's home, in order to pay clients and third parties funds due to them.

88. Respondent used \$10,000 of his own money to make payment to third parties of funds due to them.

89. At the date of the disciplinary hearing, Respondent had not repaid \$3,814.80 in the Brock matter. He indicated that he planned to take steps to repay the monies.

90. Respondent acknowledged that his misconduct was unacceptable and he expressed sincere remorse.

91. Character witnesses testified on Respondent's behalf. Glen Morris, Esquire, has practiced law in Pennsylvania for 25 years. He has known Respondent since

1979. He offered his credible opinion that Respondent's reputation as a peaceful and law-abiding person in the legal community and in the public at large is excellent.

92. Eric Linder, Esquire, has practiced law in Pennsylvania since 1983 and has known Respondent since 1984. Respondent's reputation in the legal community as a peaceful and law-abiding person is very good, according to Mr. Linder.

### III. CONCLUSIONS OF LAW

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

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. 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.

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

4. Respondent proved, by clear and convincing evidence, that his depression was a causal factor in his misconduct. Office of Disciplinary Counsel v. Braun , 553 A.2d 894 (Pa. 1989).

5. Respondent is entitled to mitigation of discipline.

#### IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline filed against Respondent. Petitioner bears the burden of proving by a preponderance of the evidence that is clear and satisfactory that Respondent violated Rules of Professional Conduct 1.15(a), 1.15(b) and 8.4(c). Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Many of the facts of this matter have been stipulated to by the parties. Review of the record shows that Petitioner met its burden of proof.

From June 11, 2002 through July 22, 2002 and July 24, 2002 through August 30, 2002, Respondent's IOLTA account was out of trust in amounts ranging from \$149.45 to \$17,374.11. On several occasions the end-of-the day balances in the IOLTA account were negative and on numerous occasions the end-of-the day balances were minimal in

comparison to the amount that Respondent was required to hold in trust at that time. During the time that Respondent's IOLTA account was out of trust, he made 16 unidentified withdrawals totaling \$9,004.76 and also issued checks for his own use. Respondent used fiduciary funds for his own use. Respondent commingled personal funds with those of his clients. He failed to maintain complete records of fiduciary funds, as required by the Rules of Professional Conduct.

In the Darlene Wilson matter, on eight occasions between July 14, 2004 and January 2005, the balance in Respondent's IOLTA account fell below the \$2500 that belonged to a third party, Nova Care, and consequently Respondent misappropriated funds belonging to Nova Care for his own personal use. In the Laverna Brock matter, Respondent failed to promptly distribute \$3,814.80 to medical providers, Ms. Brock or SEPTA. In addition, Respondent's IOLTA account fell below \$3,814.80 on 75 occasions between February 13, 2003 and January 31, 2005. Respondent misappropriated funds belonging to medical providers, Ms. Brock or SEPTA for his own use. In the Salvatore Triolo matter, Mr. Triolo was owed \$1,665.50 and One Beacon Insurance Company was owed \$832.50, for a total of \$2,498. Respondent's IOLTA account fell below \$2,498 on 15 occasions between January 27, 2004 and September 1, 2004. Respondent misappropriated to his own use funds belonging to Mr. Triolo and One Beacon Insurance Company, and failed to promptly distribute funds that belonged to One Beacon.

Respondent's certification on his 2003-2004 PA Attorney's Annual Fee Form was false in that on July 1, 2003, he endorsed and certified on the Fee Form that he was in compliance with Rule 1.15, when in fact he was not in compliance.

Respondent contends that due to a psychiatric disorder he suffered at the time of the misconduct and which substantially caused the misconduct, he is entitled to mitigation. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). Review of the record demonstrates that Respondent met his burden of proof under Braun by clear and satisfactory evidence.

Respondent introduced the credible expert testimony of Dr. Gerald Cooke and Dr. Richard Jontry. Dr. Cooke, a forensic psychologist, testified that Respondent was in a serious depressive condition that either caused or significantly contributed to Respondent's misconduct. Dr. Jontry, Respondent's treating psychologist, testified that given the depth of Respondent's depression, Respondent would have had great difficulty in performing important tasks in his life, such as managing his office accounts and files. These clinical opinions, which were found credible and persuasive, were bolstered by the testimony of Respondent's former paralegal and Respondent's own testimony as to his depression and its impact on his life. Dr. Jontry opined that Respondent's prognosis is excellent if he continues to participate in therapy for at least one more year.

In addition to psychological therapy, Respondent has taken steps to change his methods of practicing law. He closed his solo practice and works as an associate for a law firm, where he has supervision and does not have access to client funds. He borrowed

money and contributed his own funds to pay obligations to his former clients and third parties, although as of the date of the hearing, Respondent had not made restitution of \$3,814.80 in the Brock matter. Respondent has accepted responsibility for his wrongdoing and appears genuinely remorseful.

The Hearing Committee recommended a one year stayed suspension and two years of probation based on its conclusion that although Respondent engaged in serious, long term acts of misappropriation worthy of actual suspension, Respondent's Braun mitigation and subsequent voluntary actions to address the underlying basis for his misconduct were persuasive that a stayed suspension and probation was appropriate discipline.

Precedent has established that unauthorized dealings in client money require some form of public discipline due to the breach of trust involved. Office of Disciplinary Counsel v. Durney, 71 Pa. D & C. 4th 295 (2004). Recent case law has established that even where a respondent has proven he or she is entitled to Braun mitigation, the discipline for misappropriation of fiduciary funds is a term of suspension that requires a reinstatement proceeding and future show of fitness. See, Office of Disciplinary Counsel v Paul R. Giba, 52 DB 2003, 1021 Disciplinary Docket No. 3 (Pa. June 16, 2005) (respondent with no prior discipline who converted fiduciary funds from his IOLTA account on numerous occasions in excess of \$100,000 from third parties and clients, made full restitution, had weighty character testimony, and suffered from a major depressive disorder, was suspended for two years); Office of Disciplinary Counsel v. Stephen S.

Smith, 130 DB 1997, 682 Disciplinary Docket No. 3 (Pa. June 28, 2001) (respondent with no prior history of discipline, who converted \$41,000 from an estate, made full restitution, had persuasive character testimony, and suffered from a major depressive disorder, was suspended for five years); Office of Disciplinary Counsel v. Lawrence T. Foti, 89 DB 1995, 69 Pa. D. & C. 4<sup>th</sup> 278 (2003) (respondent with no prior history of discipline who converted \$29,500 from his client, made full restitution, was remorseful and suffered from depression, was suspended for three years.)

While there is no dispute that Respondent is entitled to mitigation pursuant to Braun, and that he did suffer from a depressive disorder which substantially caused his misconduct, the Braun mitigation does not serve to wipe away the egregiousness of the misconduct. The case law demonstrates that an actual term of suspension is appropriate despite the Braun showing, in order to meet the primary goals of the disciplinary system to protect the public from unfit attorneys and to maintain the integrity of the legal system. Respondent engaged in misappropriation of client funds over a long period of time, and had not made full restitution at the time of the disciplinary hearing. Surely the integrity of the legal system would be subject to scrutiny if Respondent was not suspended for a length of time requiring him to seek reinstatement and prove his fitness.

For these reasons, the Board recommends that Respondent be suspended for one year and one day. Probation is not warranted in this matter, as Respondent's misconduct involved theft of funds, not mere neglect of his accounts.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Ronald I. Kaplan, 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: \_\_\_\_\_  
Min S. Suh, Board Member

Date: April 4, 2006

ORDER

PER CURIAM:

AND NOW, this 2<sup>nd</sup> day of August, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 4, 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 Ronald I. Kaplan 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.