

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1394 Disciplinary Docket No. 3
Petitioner :
 : No. 42 DB 2007
v. :
 : Attorney Registration No. 47701
WILLIAM J. WEISS, :
Respondent : (Philadelphia)

ORDER

PER CURIAM

AND NOW, this 6th day of October, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 23, 2008, the Petition for Review and response thereto, the request for oral argument is denied and it is hereby

ORDERED that William J. Weiss is suspended from the Bar of this Commonwealth for a period of two years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

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

A True Copy Patricia Nicola

As of: October 6, 2008

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 42 DB 2007
Petitioner	:	
v.	:	Attorney Registration No. 47701
WILLIAM J. WEISS	:	
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 22, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against William J. Weiss, Respondent. The Petition charged Respondent with professional misconduct arising out of allegations that he commingled and converted funds of clients, engaged in the unauthorized practice of law, and failed to respond to lawful demands for information made by Petitioner. Respondent did not file an Answer to

Petition for Discipline; the allegations contained therein are deemed admitted pursuant to Pa.R.D.E. 208(b)(3).

A pre-hearing conference was scheduled for May 11, 2007, before Hearing Committee Chair Brad S. Rush, Esquire. Respondent failed to appear for the conference and sent a facsimile to Petitioner's office on the morning of the conference stating he was not prepared to proceed. The conference proceeded as scheduled, during which time Respondent was contacted by telephone. The Hearing Committee Chair granted Respondent's request for a continuance to obtain counsel.

The second pre-hearing conference was held on June 7, 2007, before Mr. Rush. Respondent's counsel, Samuel C. Stretton, Esquire, was unable to attend and sent a facsimile requesting a continuance of the June 27, 2007 disciplinary hearing. Mr. Rush continued the disciplinary hearing until August 14, 2007. Respondent was directed to provide an expert report in anticipation of the testimony of Respondent's doctors. Respondent never provided such report. The week prior to the disciplinary hearing, Respondent's counsel withdrew from representation and Respondent did not obtain new counsel for the hearing, nor did he request a continuance.

The disciplinary hearing was held on August 14, 2007, before a District I Hearing Committee comprised of Chair Brad S. Rush, Esquire, and Members Jonathan W. Hugg, Esquire, and Michael B. Pullano, Esquire. Respondent appeared pro se. He offered his own testimony but did not introduce any witnesses or exhibits on his behalf.

Petitioner filed a Brief to the Hearing Committee. Respondent did not file a Brief. The Hearing Committee filed a Report on January 7, 2008, finding that Respondent engaged in violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement as contained in the Petition for Discipline. The Committee recommended that Respondent be suspended for a period of one year and one day.

On January 28, 2008, Petitioner filed a Brief on Exceptions and requested that the Disciplinary Board reject the recommendation of the Hearing Committee and suspend Respondent for a period of five years.

I. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, 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 Rules of Disciplinary Enforcement.

2. Respondent is William J. Weiss. He was admitted to the practice of law in Pennsylvania in 1986. Attorney registration records indicate an address of 306 Monmouth

Dr., Cherry Hill NJ 08002. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

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

4. Respondent failed to file his 2005-2006 Pennsylvania Attorney's Annual Registration Statement due July 1, 2005, and failed to pay his annual fee.

5. Respondent failed to fulfill his annual continuing legal education requirements for the 2005 Compliance Year ending August 31, 2005.

6. By Supreme Court Order dated October 27, 2005, effective November 26, 2005, Respondent was transferred to inactive status pursuant to Pa.R.D.E. 219.

7. Respondent failed to file a verified statement of compliance within ten days of the effective date of his transfer to inactive status.

8. From September 2004 to February 2006, Respondent was employed at Spector, Gadon & Rosen, P.C.

9. From November 2005 through January 2006, Respondent held himself out as an attorney authorized to practice law at the Spector law firm.

10. From November 2005 through January 2006, Respondent engaged in the unauthorized practice of law in 18 separate matters for 12 different clients of the Spector law firm.

11. On July 12, 2006, Respondent filed an Entry of Appearance and Answer in the Court of Common Pleas of Philadelphia County in a case captioned Astor Weiss Kaplan & Mandell, LLP v. Schwartz, No. 1360, May Term, 2006.

12. During the time frame that Respondent was on inactive status:

a. he was listed as an active bar member on Harvey Pennington Ltd.'s website;

b. he was listed as an active bar member on Astor, Weiss, Kaplan & Mandell, LLP's website;

c. he was listed in the Philadelphia Bar Association's 2006 Legal Directory as an attorney employed at Spector, Gadon & Rosen, P.C.;
and

d. he was listed in the 2006 Internet Yellow Pages as practicing law at "The Law Office of William J. Weiss."

13. Respondent failed to file his 2006-2007 Pennsylvania Attorney's Annual Registration Statement and pay his annual fee.

14. Respondent maintained an Interest on Lawyer's Trust Account (IOLTA) with PNC Bank.

15. On February 8, 2005, Respondent deposited into his PNC IOLTA account:

a. check number 1036, in the amount of \$65,000, dated February 7, 2005, made payable to "William J. Weiss, Esq. IOLTA," from Yedid Brothers and Sons, with a handwritten notation of "deposit - 413 South Broad St. Phil. PA."; and

b. check number 094, in the amount of \$30,000, dated February 7, 2005, made payable to "William J. Weiss – IOLTA," from Gabriel Yedid, with a handwritten notation "deposit - 413 South Broad St. Phil. PA."

16. From February 9, 2005, until January 26, 2006, Respondent converted the funds of the Yedids to Respondent's personal benefit, including writing checks payable to Respondent and making payments for credit card bills, car leases, charitable donations, and investments in Cyber Zone, Inc.

17. Respondent was aware that he was using funds to which he was not entitled.

18. On January 17, 2006, Respondent wrote check number 237, from Respondent's PNC IOLTA account in the amount of \$95,000, payable to Albert Yedid.

19. At the time Respondent wrote check number 237, his IOLTA account had a balance of \$78.94.

20. On January 24, 2006, Respondent:

a. wrote check number 1824, in the amount of \$99,000, from his personal account at PNC, made payable to "Wm J. Weiss IOLTA"; and

b. deposited into his PNC IOLTA account, personal check number 1824.

21. Respondent commingled funds from his personal account with funds in his IOLTA account.

22. IOLTA check number 237 was presented for payment on January 26, 2006.

23. On January 30, 2006, Respondent's IOLTA account had a balance of \$4,048.94.

24. On January 30, 2006, check number 238, in the amount of \$14,000, written on Respondent's IOLTA account was presented to PNC for payment.

25. At the time Respondent wrote check number 238, his IOLTA account did not contain sufficient funds to pay that check and a \$9,921.06 overdraft occurred.

26. Respondent's IOLTA account had a negative balance from November 22, 2005 to December 2, 2005, and January 27, 2006 to February 6, 2006.

27. By letter to Respondent dated February 8, 2006, Kathy J. Peifer, Executive Director of the Pennsylvania Lawyers Fund for Client Security, requested ledger sheets and copies of any transactions for the IOLTA account.

28. Respondent did not respond to Ms. Peifer's letter.

29. By letter dated February 24, 2006, sent by certified mail return receipt requested, Ms. Peifer:

a. informed Respondent that she had not received any reply to her letter of February 8, 2006;

b. reiterated her request for a written and documented explanation of the circumstances surrounding the overdraft; and

c. advised Respondent that his failure to comply with her request within five business days would result in immediate referral of the matter to Office of Disciplinary Counsel.

30. Respondent did not respond to Ms. Peifer's letter of February 24, 2006.

31. By certified letter dated March 16, 2006, Ms. Peifer informed Respondent that she referred the overdraft matter to Office of Disciplinary Counsel for further inquiry.

32. On October 18, 2006, Respondent was personally served with a subpoena duces tecum mandating Respondent's appearance at the Office of Disciplinary Counsel in Philadelphia on October 30, 2006, and directing him to bring his PNC records from his IOLTA account for the time period September 2005 through May 2006.

33. Respondent failed to appear on October 30, 2006, or to produce the subpoenaed bank records. He did not provide good cause for his failure to appear.

34. During a telephone conversation on October 30, 2006, placed by Disciplinary Counsel to Respondent after Respondent failed to appear, Respondent agreed to deliver the subpoenaed documents to Office of Disciplinary Counsel on Monday, November 6, 2006.

35. Respondent failed to deliver the requested records to Disciplinary Counsel on Monday, November 6, 2006.

36. At 10:15 a.m., on November 7, 2006, Respondent appeared at Office of Disciplinary Counsel without the bank records and explained that Respondent had

requested the records from PNC and should receive them shortly but provided Disciplinary Counsel with an incomplete ledger from his IOLTA account.

37. Respondent did not maintain and preserve the books and records for his IOLTA account.

38. On November 27, 2006, Respondent was personally served with a subpoena duces tecum mandating his appearance at the Office of Disciplinary Counsel on December 15, 2006, and directing him to bring PNC records from his IOLTA account for the time period January 2005 through August 2005, and PNC records for Respondent's personal account for the time period January 2005 through May 2006.

39. Respondent failed to appear on December 15, 2006 or to produce the subpoenaed records. He did not provide good cause for his failure to appear.

40. Respondent testified on his own behalf at the disciplinary hearing.

41. Respondent was a partner at Astor Weiss Kaplan & Mandell, LLP, until 2004, at which time he became employed at Spector Gadon & Rosen. He worked for the Spector firm until 2006, when he voluntarily left due to unhappiness with the firm atmosphere. He then worked for Harvey Pennington Ltd. for approximately four months, at which time the firm requested that Respondent leave. Subsequent to that Respondent operated for a time as a sole practitioner. He currently is a partner in a video game store.

42. Respondent's clients were unaware of his inactive status. There is no evidence as to whether the Spector or Harvey Pennington firms were aware of Respondent's inactive status.

43. Respondent acknowledged his wrongdoing.

44. Respondent testified that he was addicted to prescription pain medication during the time frame of his misconduct.

45. Respondent started using prescription pain medication in the summer of 2003 after he experienced surgery for diverticulitis. Respondent believes he became addicted to the pain medication.

46. Respondent got the drugs by taking Percoset from his wife's medicine cabinet, getting prescriptions from his doctors by telling them he suffered from severe headaches, asking for pills from a secretary who had had knee surgery, and getting drugs over the internet.

47. Respondent sought treatment for his addiction to pain medication with Dr. Michael J. McCarthy at the University of Pennsylvania. Respondent saw him weekly for about eight or nine months and stopped in September 2006. Respondent was prescribed a synthetic narcotic known as Suboxone, and was weaned off of that in January 2007.

48. Respondent has not taken any prescription pain medication in over a year.

49. Respondent did not present any reports from his psychiatrist or any other physician.

50. Respondent is not currently under the care of a psychiatrist or any other specialist for addiction.

II. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent engaged in the following violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement:

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. 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.

2. 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.

3. RPC 5.5(a) - A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

4. RPC 7.1 - A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's service. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

5. RPC 8.1(b) - An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

6. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

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

8. Pa.R.D.E. 203(b)(3) - It is grounds for discipline for a lawyer to willfully violate any other provision of the Enforcement Rules, via Pa.R.D.E. 217(d), which states...that the formerly admitted attorney, after entry of...the transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature.

9. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(e) - Within ten days after the effective date of the ...transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing: (1) that the provisions of the order and these rules have been fully complied with; and (2) all other state and federal and administrative jurisdictions to which such person is admitted to practice. Such statement

shall also set forth the residence and other address of the formerly admitted attorney where communications to such person may thereafter be directed.

10. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(j)(1) - A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: All law-related activities of the formerly admitted attorney shall be conducted under the direct supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j). If the formerly admitted attorney is employed by a law firm, an attorney of the firm shall be designated by the firm as the supervising attorney for purposes of this subdivision.

11. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(j)(2) - for purposes of this subdivision (j), the only law-related activities that may be conducted by a formerly admitted attorney are the following: legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents; (ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and (iii) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client.

12. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(j)(3), which states that a formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: A formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

13. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(j)(4) - Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (iv) representing himself or herself as a lawyer or person of similar status; (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3); (vi) rendering legal consultation or advice to a client; and (vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing office or any other adjudicative person or body.

14. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(j)(5) - The supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of employment, identifying the supervising attorney, certifying that the formerly admitted attorney has been employed and that the formerly admitted attorney's activities will be

monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the employment of the formerly admitted attorney.

15. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 203(b)(4) - The following shall also be grounds for discipline: Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, a hearing committee or special master.

16. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 221(g) - The following books and records shall be maintained for each Trust Account: (1) bank statements and check registers (which shall include the payee, date, amount and the client matter involved); (2) all transaction records returned by the financial institution, including canceled checks in whatever form and records of electronic transactions; (3) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of charges of misconduct against Respondent arising out of allegations that he practiced law while on inactive status, commingled and converted client funds, and failed to respond to lawful

demands for information made by Petitioner. Respondent did not file an Answer to Petition for Discipline, and as a result, the factual allegations are deemed admitted, pursuant to Rule 208(b)(3), Pa.R.D.E.

The factual allegations in the Petition for Discipline, as well as evidence adduced at the hearing, establish that Respondent was transferred to inactive status by Order of the Supreme Court effective November 26, 2005. Notwithstanding that status and his knowledge of his obligations pursuant to inactive status, Respondent continued to operate his law practice and to engage in the practice of law. The evidence further establishes that Respondent failed to maintain funds inviolate on behalf of clients and/or third persons in his trust account and IOLTA account. Funds collected by Respondent on behalf of his clients, the Yedid Brothers, were commingled with Respondent's funds in his PNC Account and IOLTA Account. Respondent failed to safeguard his clients' funds and converted them for his personal use, including writing checks to pay for car leases, credit card charges, charitable donations, and personal investments. Respondent failed to distribute the funds to his clients for more than eleven months. Respondent exacerbated his professional lapses by twice failing to appear or produce subpoenaed bank records in response to a lawful subpoena issued by Petitioner.

Respondent testified in mitigation of the charges against him. Respondent maintained that he had been addicted to prescription pain medication during the time of his misconduct and has now achieved sobriety. Respondent offered a chronology of events commencing with his treatment and surgery for diverticulitis in 2003, his subsequent use of

prescription medications, and his eventual treatment with a psychiatrist at the University of Pennsylvania. Respondent maintained he has not used prescription medications in more than one year. Respondent introduced no witnesses or exhibits to corroborate his testimony. The evidence put forth by Respondent is not sufficiently weighty to meet his burden of proof pursuant to Office of Disciplinary Counsel v. Braun, 553 A. 2d 894 (Pa. 1989). The Board concludes that Respondent has not met his burden of proving by clear and satisfactory evidence that he suffered from a psychiatric disorder which had a causal connection to his misconduct.

The Hearing Committee recommended that Respondent be suspended for one year and one day. This recommendation primarily focused on Respondent's unauthorized practice of law, with the Committee citing applicable precedent relating to such misconduct. The recommendation fails to consider the totality of the circumstances. In addition to practicing law while prohibited from doing so, in violation of a Supreme Court Order, Respondent misappropriated client funds and failed to cooperate with Petitioner.

The Board's analysis of the facts leads to the conclusion that Respondent's acts warrant more than a one year and one day suspension. The unauthorized practice of law, standing alone, would in all consequence result in a one year and one day suspension. Office of Disciplinary Counsel v. Harry Curtis Forrest, Jr., 134 DB 2003, 966 Disciplinary Docket No. 3 (Pa. March 24, 2005). Likewise, the mishandling of client funds, standing alone, would warrant at least a one year and one day suspension, as the Supreme Court has held that mishandling of client money abuses the trust between the

lawyer and the client and is an egregious act of misconduct. Office of Disciplinary Counsel v. Lewis, 426 A.2d 1138 (Pa. 1981), Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997). The Board is persuaded that a two year period of suspension is appropriate. In reaching this sanction the Board is guided by the matter of Office of Disciplinary Counsel v. Stephen W. Simpson, 74 Pa. D. & C. 4th 206 (2005), which involved an attorney who misused IOLTA account funds and commingled client funds while on inactive status. He was suspended for two years, with consideration given to his lack of prior discipline and his expressions of remorse and embarrassment. The instant Respondent has also expressed his remorse and has no history of discipline during his nearly twenty years of legal practice. A two year period of suspension addresses the serious nature of the underlying misconduct while allowing Respondent the necessary time to resolve personal issues and achieve the level of fitness required to practice law in Pennsylvania.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, William J. Weiss, be suspended from the practice of law for a period of two years.

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: 

William A. Pietragallo, Board Member

Date: May 23, 2008

Board Members Newman, Storey and Cagnetti did not participate in the adjudication.

Board Member Saidis dissented and would recommend a five year suspension.