

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1253 Disciplinary Docket No. 3
Petitioner :
 : No. 53 DB 2007
v. :
 : Attorney Registration No. 28224
PAUL J. ELIAS, :
Respondent : (Westmoreland County)

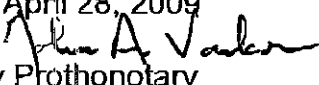
ORDER

PER CURIAM:

AND NOW, this 28th day of April, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board dated January 30, 2009, it is hereby

ORDERED that Paul J. Elias is suspended from the Bar of this Commonwealth for a period of one year and one day retroactive to May 10, 2007, 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 John A. Vaskov
As of: April 28, 2009
Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1253 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	No. 53 DB 2007
	:	
PAUL J. ELIAS	:	Attorney Registration No. 28224
	:	
Respondent	:	(Westmoreland 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 April 10, 2007, upon a Joint Petition for Emergency Temporary Suspension and Related Relief filed by Office of Disciplinary Counsel and Paul J. Elias, the Supreme Court of Pennsylvania ordered that Paul J. Elias be placed on temporary suspension following his criminal conviction of conspiring to commit mail

fraud and wire fraud, in violation of 18 U.S.C. Section 1341 and Section 1343. Office of Disciplinary Counsel filed a Petition for Discipline on February 29, 2008, based on Respondent's criminal conviction. Respondent filed an Answer to Petition for Discipline on March 27, 2008. Each of the allegations contained in the Petition for Discipline were admitted.

A disciplinary hearing was held on June 17, 2008, before a District IV Hearing Committee comprised of Chair James G. Gordon, Esquire, and Members Steven R. Wolf, Esquire, and Philip B. Hart, Esquire. Respondent was represented by Robert I. Johnston, Esquire. Petitioner offered into evidence eight exhibits which were admitted, the Petition for Discipline and the Answer. Respondent testified on his own behalf and offered into evidence ten exhibits, which were admitted. By letter dated August 4, 2006, the parties submitted Joint Proposed Additional Findings of Fact to the Hearing Committee, which were admitted.

The Hearing Committee filed a Report on September 24, 2008, finding that Respondent engaged in professional misconduct and recommending that he be suspended for one year retroactive to May 10, 2007, the effective date of the temporary suspension.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on November 12, 2008.

II. 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 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules 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 Paul J. Elias. He was born in 1953 and was admitted to practice law in the Commonwealth of Pennsylvania in 1978. His attorney registration address is 13 Greenview Drive, Jeannette PA 15644. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

4. On February 21, 2007, a one count information was filed in the United States District Court for the Western District of Pennsylvania charging Respondent with violating 18 U.S.C. Section 371, conspiracy to Commit Offense or to Defraud United States, a felony, by conspiring with others to commit mail fraud and wire fraud, in violation of 18 U.S.C. Section 1341 and 1343, respectively.

5. On March 5, 2007, a hearing was held in the United States District Court for the Western District of Pennsylvania before Senior District Judge Gustave Diamond, at

which Respondent waived prosecution by indictment and entered a plea of guilty, pursuant to a plea agreement with the United States Attorney's Office.

6. At the March 5, 2007 hearing, Respondent acknowledged to Judge Diamond that the following summary of evidence as presented by the United States Attorney's Office was accurate:

a. From on or about 2003 through 2005, Respondent was a party to an agreement with Joseph M. Stabile to devise and execute a scheme to defraud using the United States mail;

b. Mr. Stabile and his wife operated a company called Celestial Burial Case (hereafter Celestial) using numerous business names;

c. Mr. Stabile was President and Chief Executive Officer of Celestial and Respondent acted as legal counsel for Celestial from 2001 through 2006;

d. Celestial purported to be in the business of the sale to consumers of future need caskets, burial vaults and funeral merchandise;

e. Celestial customers paid in advance for merchandise that "they would not receive until their death" at an undetermined future time;

f. In order to protect purchasers of future need burial merchandise, the Pennsylvania Future Interment Law, 63 P.S. Sections 480.1 - 480.11 required that sellers of future need funeral merchandise deposit 70 percent of the funds received from customers into trust funds

established for that purpose and that those funds held in trust remain intact until delivery of the merchandise;

g. The various versions of contracts used by Celestial include wording that acknowledged Celestial's requirements to establish and fund trusts and falsely represented that Celestial was adhering to this requirement;

h. On or about January 28, 2002, Respondent's role expanded from serving as counsel to Celestial to also serving as secretary of Celestial;

i. Respondent, as secretary, received the incoming business mail for Celestial;

j. From on or about July 9, 2003, to on or about January 24, 2005, Respondent improperly deposited checks payable to Celestial from Celestial's customers, which were for the payment of at-need burial merchandise and trust fund payments, into Respondent's IOLTA account at First National Bank;

k. None of these Celestial customers' payments were properly deposited into a trust fund and some of these funds were subsequently converted to the personal use of the co-conspirators;

l. From on or about August 4, 2003, to on or about November 15, 2004, Respondent improperly deposited checks payable to Celestial from customers, which were for the payment of at-need burial merchandise and

trust fund payments, into Respondent's Attorney at Law Account at First National Bank;

m. None of these Celestial customers' trust fund payments were properly deposited into a trust fund account and some of these funds were subsequently converted to the personal use of Mr. Stabile and Respondent;

n. From on or about June 8, 2004, to on or about June 21, 2004, Respondent improperly deposited checks payable to Celestial from Celestial customers, which were for payment into trust funds, into an account in the names of Respondent and Denise D. Elias at First National Bank;

o. None of these Celestial customers' trust fund payments were properly deposited into a trust fund account and these funds were subsequently converted to the personal use of Respondent;

p. From on or about February 25, 2004, to on or about May 14, 2004, Respondent deposited checks payable to Celestial from Celestial's customers, which were for the payment of at-need burial merchandise and trust fund payments, into an account in the name of Celestial Life Planning Inc., at First National Bank;

q. None of these Celestial customers' trust fund payments were properly deposited into a trust fund account and some of these funds were subsequently converted to the personal use of Mr. Stabile and

Respondent. The amount of Celestial customers' trust fund payments deposited in the bank accounts controlled by Respondent as a result of this fraud was greater than \$10,000 and was less than \$30,000 and the amount of loss reasonable foreseeable to Respondent was equal to the amount in that range;

r. Respondent had actual knowledge of the requirement that a percentage of the monies received from pre-need customers were required to be placed in trust and that the Celestial pre-need customers were told that their monies would be placed in trust;

s. On or about March 21, 2005, a pre-need customer identified by the initials E.G.S. mailed a letter, two Future Customer Data Forms and a check in the amount of \$521 to Celestial and on or about March 24, 2005, this check was received and cashed by Respondent in furtherance of the scheme and conspiracy.

7. On October 18, 2007, a sentencing hearing was held at which Judge Diamond sentenced Respondent to probation for a term of five years with conditions, restitution in the amount of \$34,307.02 to the individual victims at the rate of not less than ten percent of his gross monthly earnings, and a special assessment of \$100.

8. At the time of the sentencing hearing, Judge Diamond specifically noted that he was satisfied that Respondent would not commit another crime of that sort or any sort in the future.

9. Respondent cooperated with the government in accordance with his plea agreement, which warranted a departure "downward" from the sentence otherwise to be imposed.

10. Respondent testified at the disciplinary hearing.

11. Respondent took complete responsibility for all acts giving rise to the federal prosecution and the instant disciplinary matter.

12. While in private practice, Respondent met Mr. Stabile, who had a storefront and office in the same building where Respondent's law office was located.

13. Mr. Stabile solicited Respondent's legal services regarding various legal matters and an attorney-client relationship developed on a number of issues.

14. At some point Mr. Stabile approached Respondent and asked him if he would accept into his office accounts, including his IOLTA account, certain funds and disburse them at his direction. Respondent indicated a willingness to help.

15. Over time, a volume of money was deposited into Respondent's accounts, \$14,806.15 of which represented trust funds in that they were pre-payments of future funeral merchandise.

16. During this time, Mr. Stabile produced documents on a quarterly basis verifying that other monies were in fact being held in trust.

17. Respondent had regular communications with a corporate entity which held monies in trust for Mr. Stabile.

18. Respondent did not act with a motive to profit from the activity. Respondent admitted that he was "stupid" and repeatedly stated that he would never do anything to take a dime from the customers of Celestial.

19. When the seriousness of the situation became apparent to Respondent, he without hesitation cooperated fully and completely with the authorities.

20. Respondent was not a calculating participant in the scheme.

21. There is no evidence of financial gain by Respondent.

22. At no time did Respondent falsify any documents.

23. Respondent offered eight character letters from individuals who have known Respondent and worked with him in his capacity as lawyer.

24. Respondent currently works for Adelphi Village as a counselor for juveniles. He has made payments toward his restitution since his plea.

25. Respondent's legal career has focused on the area of poverty law. He has associated himself with many organizations devoted to non-profit pursuits affording protection to community members in Westmoreland County. He has worked for Legal Aid, the Food Bank, Seton Hill Child Services, and Adelphi Village, among others.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rule of Disciplinary Enforcement:

1. Pa.R.D.E. 203(b)(1) – Conviction of a crime which under Rule 214 (relating to attorneys convicted of crimes) may result in suspension is grounds for discipline.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of Respondent's criminal conviction for conspiracy to commit mail fraud and wire fraud. Respondent admitted that his criminal conviction constitutes a per se ground for discipline under Pa.R.D.E. 203(b)(1).

In attorney discipline matters involving a criminal conviction for a “serious crime” (one punishable by more than one year imprisonment), the sole issue to be determined is the extent of final discipline to be imposed. The appropriate discipline is that which is necessary to meet the disciplinary system's goals. The Supreme Court has stated that “[t]he primary purpose of our system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system.” Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986).

In assessing the level of discipline, the Board examines the circumstances surrounding the criminal acts and weighs any aggravating and mitigating factors. In re Anonymous No., 56 DB 1994, 28 Pa.D. & C. 4th 398 (1995).

Respondent was a party to a scheme with Joseph Stabile to defraud customers of Celestial Burial Case, a future-needs funeral merchandise business. Under the Pennsylvania Future Interment Law, 63 P.S. Section 480.1 – 480.11, sellers of such merchandise must deposit 70 percent of the funds received from customers into trust funds established for that purpose and held in trust until delivery of the merchandise. Checks payable to Celestial by customers for future-needs merchandise were not deposited into trust funds, but rather in Respondent's IOLTA account, Attorney at Law Account, or personal account, at the behest of Joseph Stabile. The facts of the matter show that Mr. Stabile was the key principal in the criminal activity and Respondent, though a participant, was not a calculating participant.

Respondent testified on his own behalf as to his complete and total responsibility for the criminal activities for which he was charged. He expressed sincere remorse and his belief that he would never engage in criminal conduct again. Respondent has been on temporary suspension effective May 10, 2007. He has been employed as a night counselor for juveniles at Adelphi Village and continues to pay court ordered restitution. Respondent presented eight character letters from attorneys and community members who have long standing relationships with Respondent. These letters portray Respondent as an honest, hard-working individual who has been a valuable member of the Westmoreland County community.

The Hearing Committee has recommended a suspension of one year, retroactive to May 10, 2007, the effective date of the temporary suspension. The Board

recommends a one year and one day suspension retroactive to May 10, 2007. While the facts of record demonstrate that Respondent has no prior history of discipline, cooperated with the authorities, accepted full responsibility for his actions, is making a concerted effort to pay restitution, and has a long history of commitment to worthwhile community projects, the inescapable fact remains that he was convicted of a felony and is on probation until 2012. Respondent must go through the reinstatement process required by a one year and one day suspension to show that he is fit to practice law in the future. A one year and one day suspension fulfills this Board's duty to recommend a sanction that will protect the public.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Paul J. Elias, be suspended from the practice of law for a period of one year and one day, retroactive to May 10, 2007.

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: 
Francis X. O'Connor, Board Member

Date: January 30, 2009

Board Members Gentile, Jefferies, Bevilacqua and Leonard did not participate in the adjudication.