

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1157, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 60 DB 2005
v.	:	
	:	Attorney Registration No. 78527
GUSTEE BROWN	:	
Respondent	:	(Erie 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 May 3, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against Gustee Brown, Respondent. The Petition charged Respondent with professional misconduct in two client matters. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on November 14, 2005, before a District IV Hearing Committee comprised of Chair Craig E. Coleman, Esquire and Members Charles J. Avalli, Esquire, and Carl A. Parise, Esquire. Respondent did not appear for the hearing.

The Hearing Committee filed a Report on March 8, 2006, finding that Respondent engaged in professional misconduct and recommending that he be disbarred.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on March 29, 2006.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, 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, Gustee Brown, was born in 1958 and was admitted to practice law in the Commonwealth in 1996. His most recent attorney registration address

is 621 Boston Store Place, Erie PA 16501. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order of Court dated October 15, 2004, effective November 14, 2004, the Supreme Court of Pennsylvania suspended Respondent for a period of one year and one day for misconduct constituting the unauthorized practice of law.

4. By Order of Court of the United States District Court, Western District of Pennsylvania, dated January 24, 2005, Respondent was suspended for a period of one year and one day.

5. As of this date, Respondent remains suspended.

6. In October 2004, Respondent was "locked out" of his apartment at 621 Boston Store Place in Erie, as the owner took possession of the apartment for non-payment of rent.

7. Respondent left no forwarding address.

8. Respondent failed to notify the Administrative Office of the Disciplinary Board of any change of address.

9. As of September 29, 2005, Respondent had not advised Attorney Registration of any other address than 621 Boston Place Erie PA 16501.

10. From February 2005 through September 2005, Brian J. Kline, an Investigator with Office of Disciplinary Counsel, made repeated unsuccessful attempts to locate and serve Respondent with the Petition for Discipline and Notices of the pre-hearing conference and disciplinary hearing. He telephoned Respondent at three different

numbers, contacted the property manager for the apartment building at 621 Boston Store Place, contacted the Prothonotary in Erie County, the Pennsylvania Department of Motor Vehicles, and the Erie County Public Defender, which was Respondent's previous employer.

11. Mr. Kline attempted to contact Respondent's sister and mother-in-law, without success.

12. All correspondence that Office of Disciplinary Counsel sent to Respondent since December 2004 has been returned and marked "Moved, Left No Address, Unable to Deliver".

13. All correspondence sent to Respondent at his registered address in Erie by the Pennsylvania Lawyers Fund for Client Security was returned, marked "Moved, Left No Address".

14. Respondent did not file an Answer to Petition for Discipline.

15. Respondent did not appear at the pre-hearing conference held on October 7, 2005 or the disciplinary hearing held on November 14, 2005.

Charge I – Billinger Matter

16. On November 19, 2003, following a jury trial in the Court of Common Pleas of Erie County, Anthony Billinger, while represented by Bruce Sandmyer, Esquire, was convicted of aggravated assault, recklessly endangering another person, and possessing an instrument of crime.

17. In December 2003, Respondent was contacted by Robin Tate and Brenda Ross for the purpose of assisting with Mr. Billinger's appeal.

18. At Respondent's request, Ms. Tate paid him \$300 to file a Petition to Set Bond on behalf of Mr. Billinger.

19. Although Respondent had not regularly represented Mr. Billinger, the basis or rate of the fee was not communicated in writing to Mr. Billinger or to anyone on his behalf, before or within a reasonable time after commencing the representation.

20. On December 16, 2003, Respondent filed a Petition to Set Bond on behalf of Mr. Billinger. The Petition was denied by the Court on January 8, 2004.

21. On January 28, 2004, Mr. Sandmyer filed a Motion to Withdraw which was denied by the Court.

22. By letter dated January 27, 2004, Respondent wrote to Mr. Billinger regarding the Court's denial of the Petition to Set Bond. Respondent informed Mr. Billinger that an appeal would be well worth the effort.

23. On January 30, 2004, Mr. Sandmyer filed a post-sentencing motion, which was denied by the Court.

24. In February 2004, the National Legal Professional Associates referred Mr. Billinger to Kyle W. Rude, Esquire, to represent Mr. Billinger in his appeal to the Superior Court of Pennsylvania.

25. Mr. Rude visited Mr. Billinger in prison and filed a Praecipe for Appearance with the Superior Court.

26. Mr. Rude entered his appearance on March 22, 2004 and filed a Motion for Extension of Time to file an Amended Concise Statement of Matters Complained of on Appeal with the Court of Common Pleas of Erie County.

27. On March 23, 2004, Mr. Billinger terminated Mr. Rude's representation, after Respondent contacted Mr. Billinger or someone on his behalf and agreed to represent him in his appeal to the Superior Court.

28. On March 26, 2004, Respondent filed a Notice of Appearance in the Erie County Court of Common Pleas.

29. On April 22, 2004, Brenda Ross, Mr. Billinger's sister, paid Respondent \$2,500 to represent Mr. Billinger in the appeal.

30. Respondent did not convey the basis or rate of his fee to Mr. Billinger in writing, within a reasonable time.

31. On April 27, 2004, Respondent advised Ms. Ross that he had filed the brief in Mr. Billinger's appeal and had ordered the trial transcript.

32. On May 21, 2004, Respondent filed a Statement of Matters Complained of on Appeal on behalf of Mr. Billinger in the Court of Common Pleas of Erie County.

33. Respondent failed to enter his appearance on behalf of Mr. Billinger in the Superior Court.

34. Respondent took no further action on behalf of Mr. Billinger.

35. From April 2004 to October 2004, Mr. Billinger wrote to Respondent approximately twice per month requesting information about his case.

36. Respondent did not reply to any of the letters, nor did he in any way communicate with Mr. Billinger or anyone on his behalf.

37. On October 18, 2004, the Superior Court wrote to Mr. Rude stating that an Order had been entered by which:

a. Mr. Billinger's appeal had been dismissed for failure to file a brief;

b. Mr. Rude was directed to file with the court, within ten days, a certification that the client had been notified of the dismissal;

c. Mr. Rude was advised that failure to comply might result in a referral to the Disciplinary Board;

d. The trial court was directed to withhold counsel fees if Mr. Rude had been court-appointed.

38. Upon receipt of the Superior Court's letter, Mr. Rude, by letter dated October 20, 2004, wrote to the Court, with certification attached thereto which stated that even though he had been terminated as appellate counsel by Mr. Billinger in favor of another attorney, Mr. Rude notified Mr. Billinger by first class mail of his dismissal of his appeal .

39. By letter dated October 22, 2004, Mr. Billinger informed Eleanor Valecko, Deputy Prothonotary of the Superior Court, that Respondent represented him in an appeal.

40. From October 2004 to January 2005, Brenda Ross attempted to contact Respondent by telephone but without success, as the telephone had been disconnected, leaving no forwarding number.

41. After Respondent's suspension by the Supreme Court of Pennsylvania effective November 14, 2004, Respondent did not inform Mr. Billinger or anyone on his behalf that he was unable to practice law.

42. By letter dated January 11, 2005, sent to Respondent at 621 Boston Store Place, Erie PA 16501, Ms. Ross expressed her dissatisfaction with his representation of Mr. Billinger and stated that she had been unsuccessful in trying to contact him by telephone.

43. In that same letter, Ms. Ross requested a refund of the \$2,500 she had paid to Respondent for the appeal.

44. The January 11, 2005 letter was returned to Ms. Ross marked "addressee unknown, moved, no forwarding address."

45. Respondent failed to return to Ms. Ross or Mr. Billinger any of the unearned fee paid to him.

46. Since April 27, 2004, Respondent has not communicated with Ms. Ross or Mr. Billinger.

47. Respondent did not complete the work for which he was retained.

48. Respondent did not earn the \$2,500 paid to him by Ms. Ross.

Charge II – Hammons Matter

49. In August 2003, Respondent was retained by Denise Hammons to assist her in renegotiating the mortgage payments on her parents' property in order to avoid mortgage foreclosure.

50. In early September 2003, Respondent met with Ms. Hammons at his law office and informed her that his fee would include a \$200 retainer as well as \$25 for every action or appearance he made thereafter.

51. At the same time, Respondent further requested that Ms. Hammons send to him documents related to renegotiating the mortgage payments.

52. Shortly thereafter, Ms. Hammons complied with Respondent's request for documents.

53. On September 5, 2003, Ms. Hammons met with Respondent at his law office and paid him \$100 toward the retainer.

54. Although Respondent had not regularly represented Ms. Hammons, the basis or rate of his fee was not communicated to her in writing within a reasonable time.

55. From mid-September to early October 2003, Ms. Hammons frequently telephoned and visited Respondent's office, leaving numerous telephone and written

messages in his office mail slot requesting information about her case and that Respondent contact her.

56. Respondent failed to contact Ms. Hammons and did not take any action on her behalf.

57. On October 10, 2003, Ms. Hammons provided Respondent with a money order for \$50, and sometime thereafter paid an additional \$50, bringing to \$200 the total amount paid to Respondent.

58. On various occasions throughout the rest of October and through December 2003, Ms Hammons left written notes in Respondent's mail slot and under the door to his office, asking that he return her file and the unearned portion of the fee she paid him.

59. Respondent took no action on behalf of Ms Hammons.

60. Respondent has not communicated with Ms Hammons since October 2003.

61. Respondent has not returned Ms. Hammons' file nor did he refund any portion of the unearned fee she paid to him.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 - A lawyer shall provide competent representation to a client.
2. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a) - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.
4. RPC 1.5(b) - When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client in writing, before or within a reasonable time after commencing the representation.
5. RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

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

Additionally, the Board concludes that Respondent received proper service of the Petition for Discipline pursuant to Pa.R.D.E 212, which provides that in the event a respondent-attorney cannot be located and personally served with notice as required under these rules, such notices may be served on the respondent-attorney by addressing them to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with Enforcement Rule 219(d).

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with professional misconduct in regard to his handling of two client matters. Respondent has absented himself from participation in every phase of the proceedings due to his unknown whereabouts. The record demonstrates that numerous attempts were made to locate Respondent and effectuate personal service. These attempts being unsuccessful, service of the Petition for Discipline was made by substituted service, which is permitted under Pa.R.D.E. 212 in situations where the respondent-attorney cannot be located and personally served.

It is uncontradicted that Respondent failed to enter his appearance in the Billinger matter in the Superior Court of Pennsylvania. Respondent took no further action on behalf of his client after a Statement of Matters Complained of on Appeal was filed. Respondent did not reply to Mr. Billinger's letters and did not keep him informed of the status of his matter. Respondent did not return to Ms. Ross the unearned portion of the fee she paid him on behalf of Mr. Billinger. Respondent did not inform Mr. Billinger of any address change, nor did he inform his client of his suspended status in November 2004.

Likewise, in the Hammons matter, Respondent accepted \$200 from his client and took no action to pursue her case. There was virtually no communication with Ms. Hammons, nor did he bother to return the unearned portion of her fee.

In determining the appropriate disciplinary sanction, it is important to review all facts and circumstances of the case at bar. Office of Disciplinary Counsel v. Campbell, 345 A.2d 616 (Pa. 1975). Respondent's professional conduct is abysmal. He has demonstrated very little regard for his clients, who entrusted him with their legal problems. He has shown little respect for his license to practice law. He has already been suspended for one year and one day by the Supreme Court as a result of his numerous instances of the unauthorized practice of law. His inability to participate in the proceedings against him is of his own doing, as he failed to notify the Attorney Registrar of his change of address. Respondent has essentially disappeared.

The Board has considered cases in which a lawyer abandoned his or her practice and disappeared. In the matter of In re Anonymous No. 75 DB 94 & 7 DB 95, 34

PA. D. & C. 4th 32 (1994), the attorney was convicted of bad check charges, then disappeared leaving behind clients who had paid her for representation which was not forthcoming. The Supreme Court disbarred this attorney. Lawyers who misappropriated funds and then disappeared were disbarred in the matters of In re Anonymous No. 34 DB 91, 15 Pa. D.& C. 4th 495 (1992), and In re Anonymous No. 30 DB 87, 49 Pa. D. & C. 3d 1 (1988). A lawyer who walked away from his practice, failed to complete work or refund fees he had received from five clients, and failed to participate in the disciplinary process was disbarred. In re Anonymous No. 101 DB 92, 23 Pa. D. C. 4th 168 (1994). Recently, an attorney was disbarred after he converted client funds to his own use and abandoned his practice without notification to his clients, the courts, or the Attorney Registrar. Office of Disciplinary Counsel v. Kenneth J. Roe, 64 DB 1998, 461 Disciplinary Docket No. 3 (Pa. July 30, 2003).

Respondent's actions toward his clients and his professional obligations raise grave questions as to his fitness to practice law. Respondent's history of practice over the past several years indicates that he poses a danger to the public if left to his own devices. The Board would be remiss in its duty to protect the public if it did not take away Respondent's privilege to practice law for a lengthy period of time.

As the record is devoid of any mitigating circumstances whatsoever that would cause the Board to reconsider its determination, the Board recommends that Respondent be disbarred.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Gustee Brown, be Disbarred from the practice of law in this Commonwealth.

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: _____
Robert C. Saidis, Member

Date: May 1, 2006

O R D E R

PER CURIAM:

AND NOW, this 18th day of August, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 1, 2006, it is hereby

ORDERED that Gustee Brown be and he is disbarred from the Bar of this Commonwealth, 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.