

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1266 Disciplinary Docket No. 3
Petitioner :
 : No. 79 DB 2007
v. :
 : Attorney Registration No. 85470
STEPHEN MICHAEL FRANKEL, :
Respondent : (York County)


ORDER

PER CURIAM:

AND NOW, this 21st day of April, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 23, 2008, it is hereby

ORDERED that Stephen Michael Frankel is suspended from the Bar of this Commonwealth for a period of fifteen months retroactive to September 24, 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 Patricia Nicola
As of: April 21, 2009
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1266 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 79 DB 2007
v.	:	
	:	Attorney Registration No. 85470
STEPHEN MICHAEL FRANKEL	:	
Respondent	:	(York 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 July 18, 2007, the Supreme Court of Pennsylvania issued a Rule on Stephen Michael Frankel to show cause why he should not be placed on temporary suspension as a result of criminal convictions for possession of drug paraphernalia, intentional possession of controlled substance, and misapplication of entrusted property. After receiving no response, on September 24, 2007 the Court entered an order placing

Mr. Frankel on temporary suspension and referring the matters to the Disciplinary Board pursuant to Pa.R.D.E. 214(f)(1).

Office of Disciplinary Counsel filed a Petition for Discipline against Respondent on October 22, 2007. Respondent filed an Answer to Petition for Discipline on January 2, 2008.

A disciplinary hearing was held on March 3, 2008, before a District III Hearing Committee comprised of Chair Thomas C. Clark, Esquire, and Members Larry B. Selkowitz, Esquire and Jason J. Legg, Esquire. Respondent appeared pro se. Petitioner admitted 14 exhibits, presented no documentary evidence, and rested its case on documentary evidence. Respondent testified on his own behalf and admitted two exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on July 2, 2008 and recommended that Respondent be suspended for 15 months retroactive to September 24, 2007.

Petitioner filed a Brief on Exceptions on July 22, 2008 and requested oral argument before the Board, which request was withdrawn by Petitioner on August 15, 2008.

This matter was adjudicated by the Disciplinary Board at the meeting on September 15, 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, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving professional 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 Stephen Michael Frankel. He was born in 1971 and was admitted to the practice of law in Pennsylvania in 2000. His attorney registration address is 2130 Bayberry Court, York PA 17403. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order of the Supreme Court of Pennsylvania dated September 24, 2007, Respondent was placed on temporary suspension from the practice of law as a result of his March 31, 2006 conviction of two counts of possession of drug paraphernalia and one count of possession of a controlled substance, and his November 9, 2006 conviction of one count of misapplication of entrusted property.

4. The drug offenses involved two separate incidents, one on March 21, 2005 and the second on April 29, 2005, and both involved the possession of drug paraphernalia and/or small amounts of a controlled substance, namely cocaine.

5. On March 31, 2006, Respondent entered guilty pleas and was sentenced to 90 days to one year incarceration in a county facility, and a consecutive 12 months of probation. The sentencing order included a provision that allowed Respondent to serve his incarceration at an inpatient treatment facility.

6. On September 15, 2005, a criminal complaint was filed against Respondent containing 28 counts of theft by failure to make required disposition of funds under 18 Pa. C.S. Section 3927(a), one count of misapplication of entrusted property under 18 Pa.C.S. Section 4113, and one count of criminal conspiracy under 18 Pa.C.S. Section 903.

7. The criminal complaint alleged that Respondent and his adoptive father, Mark David Frankel, had taken monies out of the trust account of the law firm of Frankel & Associates that were dedicated to other purposes. The criminal complaint contained 28 theft counts alleging a total theft of \$564,865.48 from the law firm's trust account. The single count of misapplication of entrusted property contended that \$564,865.48 was the amount of entrusted monies that had been misapplied. The conspiracy count contended that Respondent conspired with Mark Frankel to commit the crime of theft by failure to make required disposition of the escrowed funds.

8. A bench trial was held in November 2006 and the trial court rendered a verdict whereby Respondent was acquitted of all 28 theft counts and acquitted on the count for criminal conspiracy. The court found Respondent guilty of misapplication of entrusted property to the limited extent of \$40,000. Mark Frankel was convicted of theft offenses.

9. On December 6, 2006, Respondent was sentenced to a period of two years of probation, restitution of \$40,000, and community service of 500 hours.

10. The court further ordered that a Hummer automobile that was purchased with \$40,000 be sold to generate restitution monies.

11. Respondent testified on his own behalf and the following undisputed facts were established. These facts in part pertain to a time period prior to his arrests. (See paragraphs 4, 5 and 6.)

- A. Following his admission to the bar in Pennsylvania, Respondent began to work for his adoptive father's law firm, Frankel & Associates. Respondent and his adoptive father, Mark Frankel, have had a dysfunctional relationship over the years, due in part to the sexual abuse inflicted upon him by his adoptive father and for this reason Respondent was reluctant to practice law with him, but believed he owed a debt to his adoptive father for sending him to college and law school.
- B. Frankel & Associates was a professional corporation and Mark Frankel was always the sole stockholder. Mark Frankel was disbarred by the Supreme Court of Pennsylvania in June 2004.
- C. Respondent worked as an associate.
- D. Respondent discovered that the firm's financial operations were in serious disarray and spent substantial time attempting to re-create accounts to determine the nature and category of expenses and incomes, and create a workable budget for the firm's operations. Through this process, Respondent began to understand that the financial position of the firm was not good.
- E. As a result of his efforts, the firm's expenses were substantially cut back to provide the firm with additional income.

- F. In late 2003 or early 2004, Respondent learned that the escrow account was short, and was initially told by Mark Frankel and the bookkeeper that the shortage was a mistake and totaled around \$50,000.
- G. During the course of a continuing investigation, Respondent began to learn that the escrow deficiency may have exceeded \$3 million.
- H. Respondent learned that his adoptive father had engaged in a scheme whereby the firm used funds due to clients from current settlements to pay for past escrow obligations to prior clients. It was also discovered that the firm's federal payroll tax responsibilities were being improperly paid out of the escrow account.
- I. Respondent did not report his adoptive father's actions to the appropriate authorities.¹
- J. Respondent began to work at correcting the escrow deficiency through additional cost cutting measures, including foregoing any salary or bonuses for himself.
- K. Respondent's adoptive father put pressure on him to solve these financial problems but was not himself helpful in resolving them.

¹ Petitioner did not charge Respondent with violation of RPC 8.3(a).

- L. During this time frame, Respondent's wife suffered through a difficult pregnancy with their first child.
- M. These professional and personal problems and responsibilities led Respondent to use drugs more frequently than he had in the past, and by the summer of 2004 he was addicted to drugs.
- N. In the late summer of 2004, Respondent admitted himself to Hershey Medical Center because he was experiencing suicidal thoughts. Respondent in his youth was sexually abused by his adoptive father.
- O. It was also during this time that Respondent made the decision to purchase a Hummer automobile, which required him a distribution of \$40,000 of firm monies from the escrow account to himself. There is no dispute that the \$40,000 was the proceeds of the firm as that particular settlement had earned a \$200,000 fee.
- P. Respondent was aware that there were former clients who were still short funds.
- Q. There is no dispute that Respondent was owed at least \$40,000 from the firm at the time he decided to pay himself from the firm's proceeds.

12. Respondent introduced two letters from his drug counselor, Kathleen

Holden, M.Ed.

13. Respondent first sought out-patient drug addiction treatment on August 24, 2006, following his successful completion of an in-patient rehabilitation program at Colonial House, a drug and alcohol treatment facility in York, Pennsylvania.

14. Ms. Holden diagnosed Respondent with addiction to cocaine with underlying depression. In her clinical opinion, Respondent was self-medicating himself in an attempt to escape the depression caused by the stressors in his life, most notably the escrow account debacle at the law firm.

15. Ms. Holden made a causal connection between Respondent's drug addiction and his drug convictions.

16. Ms. Holden did not make a causal connection between Respondent's drug addiction and his conviction for misapplication of funds.

17. The main focus of Respondent's treatment is for mental health issues such as reducing the underlying depression that led to the drug use.

18. At the time of the letter dated February 10, 2008, Ms. Holden indicated that Respondent's recovery from drug addiction was successful.

19. Respondent cooperated with Petitioner and expressed sincere remorse for his conduct.

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) – Conviction of the crimes of intentional possession of a controlled substance, use/possession of drug paraphernalia, and

misapplication of entrusted funds constitutes an independent basis for the imposition of discipline.

2. Respondent met his burden of proof relating to the standard established in Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), as to a causal connection between his drug addiction and his drug convictions. He is entitled to mitigation of his disciplinary sanction.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of Respondent's criminal convictions for intentional possession of a controlled substance, use/possession of drug paraphernalia, and misapplication of entrusted funds, which convictions form the bases of the charges of professional misconduct.

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 case precedent for the purpose of measuring Respondent's conduct against other similar transgressions. In re Anonymous No. 56 DB

1994, 28 Pa. D. & C. 4th 398 (1995). The Board also weighs any aggravating and mitigating factors.

Respondent's criminal conduct is serious. His drug offenses resulted in incarceration for 90 days to 12 months and his misapplication offense resulted in two years probation, restitution in the amount of \$40,000, and 500 hours of community service. These convictions have brought disrepute to the legal profession, particularly Respondent's acts involving entrusted property.

In a successful attempt to mitigate the sanction imposed, Respondent introduced letters from Kathleen Holden, M.Ed., his drug counselor. Ms. Holden stated in her letters of January 30, 2008 and February 10, 2008 that Respondent became addicted to drugs due to the pressure he was under at the law firm. The addiction was a cause of Respondent's arrest and conviction for drug paraphernalia and possession. Respondent's testimony bears out this evidence, as he increased his use of drugs and was essentially using cocaine to self-medicate during the summer of 2004, which prefaced his arrest and conviction on the drug charges. The Board concludes that Respondent has met the Braun standard by demonstrating that his cocaine addiction was a causal factor in his drug convictions. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

This case presents a sad situation. As a new and inexperienced lawyer, Respondent was tasked by his adoptive father, the senior member of the firm, with the nearly impossible responsibility of repairing a large shortfall in his law firm's escrow account. This shortfall was not due to any misconduct on Respondent's part, but rather was the fault of Respondent's adoptive father, who was eventually convicted of theft offenses in relation to this shortfall. All new attorneys face challenges in the workplace;

Respondent's challenge was unlike anything this Board has witnessed. Respondent had no other direct supervision when he became an attorney aside from his adoptive father, who had a powerful hold over Respondent's conduct as a result of his sexual abuse and the financial control he exerted over him. Respondent's involvement in the law firm's financial problems caused stress and resulted in his eventual addiction to cocaine. Respondent also had domestic and personal problems that existed prior to and during the time that this misconduct occurred. In attempting to carry out his responsibilities, he went without a salary. Unfortunately, Respondent found himself mired in the firm's financial problems and engaged in questionable misconduct of his own when he used \$40,000 that was the firm's portion of a settlement for his own purposes instead of applying it to the shortfall to reimburse other clients.

The Hearing Committee has recommended a suspension of 15 months retroactive to September 24, 2007, the date of Respondent's temporary suspension by the Supreme Court. Respondent requests a suspension of one year or less. Petitioner contends that a four year period of suspension is warranted. Petitioner cites several cases to support this lengthy suspension; however, the Board finds that such cases are inapplicable to the unique facts of the instant matter, as they involve more egregious acts of misconduct. See, Office of Disciplinary Counsel v. Lawrence T. Foti, No. 89 DB 2001, No. 835 Disciplinary Docket No. 3 (Pa. July 24, 2003) (attorney converted \$29,000 from personal injury settlements and was suspended for three years even after meeting the Braun standard); Office of Disciplinary Counsel v. Keith Acton Halterman, Nos. 34 DB 2001 and 120 DB 2001, No. 655 Disciplinary Docket No. 3 (Pa. Oct. 9, 2003) (attorney who was convicted of possession of cocaine and violated Rules of Professional Conduct for

practicing while on suspension, neglecting clients, and engaging in misrepresentations to clients was suspended for three years with no finding of Braun.)

The Board has given careful consideration to the recommendations and is persuaded that the Hearing Committee's recommendation is appropriate discipline for Respondent's misconduct. The misconduct requires a suspension of more than one year as a trigger to the reinstatement requirements of Rule 218, Pa.R.D.E. This is certainly a case where Respondent needs to go through the reinstatement process and prove his fitness. The unique circumstances of this matter support a 15 month period of suspension.

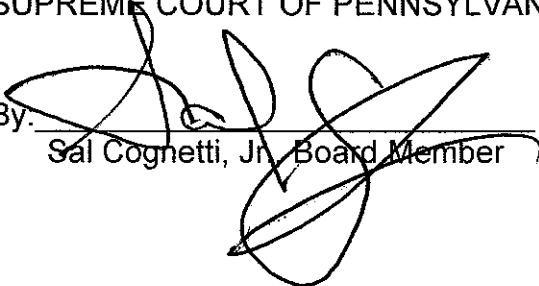
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Stephen Michael Frankel, be Suspended from the Bar of this Commonwealth for a period of 15 months retroactive to September 24, 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: 
Sal Cognetti, Jr. Board Member

Date: December 23, 2008

Board Members Gephart, O'Connor, Lawrence and Bevilacqua dissent and would recommend a 15 month suspension not retroactive.

Board Members Newman and Raspanti dissent and would recommend a two year suspension retroactive to September 24, 2007.