

SUPREME COURT OF ILLINOIS

MONDAY, SEPTEMBER 27, 2004

THE COURT MADE THE FOLLOWING ANNOUNCEMENTS:

MISCELLANEOUS RECORD

M.R.19550 - In re: Kelvin Connell Bulger. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Review Board is allowed, and respondent Kelvin Connell Bulger is suspended from the practice of law for five (5) months. Suspension effective October 18, 2004.

Respondent Kelvin Connell Bulger shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

M.R.19553 - In re: Patrick Joseph Crotty. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed. Respondent Patrick Joseph Crotty is suspended from the practice of law for one (1) year and until further order of the Court, with all but the first five (5) months of the suspension stayed by probation for one (1) year, subject to the following conditions:

a. Respondent shall abstain from the usage of alcohol and any unprescribed controlled substances;

b. Respondent shall commence treatment by a board qualified/licensed mental health professional acceptable to the Administrator, and shall report to such qualified mental health professional on a regular basis of not less than once every week, with the Administrator advised of any change in attendance deemed warranted by such professional;

c. Respondent shall comply with all treatment recommendations of such qualified mental health professional, including the taking of medications as prescribed;

d. Respondent shall provide to such a qualified mental health professional an appropriate release authorizing the treating professional to: (1) disclose to the Administrator on at least a quarterly basis information pertaining to the nature of respondent's compliance with any treatment plan established with respect to respondent's condition; (2) promptly report to the Administrator respondent's failure to comply with any part of an established treatment plan; and (3) respond to any inquiries by the Administrator regarding respondent's mental or emotional state or compliance with any established treatment plans;

e. Respondent shall notify the Administrator within fourteen days of any change in treatment professionals;

f. Respondent shall, upon request by the Administrator, submit to random substance testing by a mental health professional or facility approved by the Administrator, within eight hours of receiving notice by the Administrator that he shall submit to the testing. The results of the tests shall be reported to the Administrator. Respondent shall pay any and all costs of such testing;

g. Respondent shall participate in a 12-step program by attending at least two meetings per week. Respondent is to maintain a log of his attendance at the meetings and submit it to the Administrator with his quarterly reports;

h. Respondent shall maintain a sponsor in the 12-step program and shall provide the name, address and telephone number of the sponsor to the Administrator or respondent's counsel within fourteen days of being placed on probation. Respondent shall request that the sponsor or respondent's counsel communicate with the Administrator in writing on a quarterly basis regarding respondent's participation and progress in the 12-step program and report any lapses in sobriety or usage of unprescribed controlled substances to the Administrator within 72 hours of his knowledge of that usage;

i. Respondent shall report to the Administrator any lapse in his sobriety or usage of unprescribed controlled substances within 72 hours of that usage;

j. Respondent shall attend a year-long Caduceus program specifically designed for the impaired professional;

k. Respondent shall attend meetings scheduled by the Commission probation officer as requested by the Administrator. Respondent shall submit quarterly written reports to the Administrator concerning the status of his practice of law and the nature and extent of his compliance with the conditions of probation;

l. Respondent shall notify the Administrator within fourteen days of any change of address;

m. Respondent shall comply with the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;

n. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation;

o. At least thirty (30) days prior to the termination of the period of probation, respondent shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct;

p. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated and will continue until further order of the Court.

Suspension effective October 18, 2004.

Order entered by the Court.

M.R.19554 - In re: Timothy Robert McAvoy. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is denied. This cause is remanded to the Commission for review by the Review Board.

Order entered by the Court.

M.R.19556 - In re: Michael Edward Marsh. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed, and respondent Michael Edward Marsh is suspended from the practice of law for two (2) years and until further order of the Court.

Order entered by the Court.

M.R.19560 - In re: Jennifer A. O'Neill. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed, and respondent Jennifer A. O'Neill is suspended from the practice of law for thirty (30) days. Suspension effective October 18, 2004.

Respondent Jennifer A. O'Neill shall reimburse the Disciplinary Fund for any Client Protection payments arising from her conduct prior to the termination of the period of suspension.

Order entered by the Court.

M.R.19569 - In re: Theodore S. Ashbell. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed, and respondent Theodore S. Ashbell is suspended from the practice of law for thirty (30) days. Suspension effective October 18, 2004.

Respondent Theodore S. Ashbell shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

M.R.19571 - In re: Barry Alan Mattes. Disciplinary Commission.

The motion by Barry Alan Mattes to strike his name from the roll of attorneys licensed to practice law in Illinois pursuant to Supreme Court Rule 762(a) is allowed, effective immediately.

Order entered by the Court.

M.R.19573 - In re: Burgess Francis Ervin. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed. Respondent Burgess Francis Ervin is suspended from the practice of law for two (2) years and until restitution is made, with the suspension stayed after one (1) year by probation subject to the following conditions if restitution is made within the first eleven (11) months of the suspension to Gerard Murphy in the amount of \$4,633, Dennis Vulich in the amount of \$11,496, Bernard Clay in the amount of \$2,600:

a. Respondent shall establish and utilize a system for the handling of funds belonging to clients and third parties and the maintenance of records that conforms to the requirements of Rule 1.15 of the Illinois Rules of Professional Conduct and instructions provided to respondent by the Administrator, including,

Trust Account Procedures

Basic accounting records that must be maintained daily and accurately:

Account Check Register - List sequentially all trust account deposits and trust account checks and maintain a current and accurate daily balance on the trust account.

Account Receipts Journal - List chronologically all deposits into the trust account. Each deposit will list the date of the deposit, the source of the deposit, the client matter, the deposit number, and the amount of the deposit. Maintain a copy of each item deposited.

Account Disbursement Journal - List chronologically all trust account disbursements. Identify each disbursement with the date of the disbursement check, the trust account check number, the payee, the purpose of the disbursement, the client matter, and the amount of the disbursement check.

Client Ledger Journal - List chronologically for each client matter all receipts, disbursements, and remaining balances. Prepare a separate page for each client matter and list chronologically all receipts and disbursements and remaining balances for each client matter.

Source documents which must be preserved for seven years:

Bank Statements

Deposit Slips

Cancelled checks - All trust account checks must have a named payee (no checks written to "cash") and the memo portion of the check must contain a reference to a client matter.

Time and billing records

Copies of records from client files that are necessary for a full understanding of the lawyer's financial transactions with the client: e.g., retainer and engagement agreements, settlement statements to clients showing the disbursement of the settlement proceeds, bills sent to clients and records of payments to other lawyers or non-employees for services rendered.

Reconciliations

There must be a running balance maintained for all ledgers and account books. The balances in the client ledger journal must be reconciled each month with the balances in the trust receipts and disbursement journals, the account checkbook register, and the bank statements. Records of these reconciliations must be maintained for seven years.

b. Respondent shall, within the first 30 days of probation, enroll in a law office management program sponsored by or through the Cook County, Chicago or other Bar Association and shall, upon enrollment, notify the Administrator, in writing, of the name of the attorney with whom respondent is assigned to work.

c. Respondent shall successfully complete the law office management program at least thirty days prior to the end of the probation term. Through respondent's participation in the law office management program, respondent shall establish and utilize the following:

i. A system for maintaining records as required by Supreme Court Rule 769;

ii. A diary and docketing system in accordance with the requirements established by the law office management program, including a mechanism by which approaching statutes of limitations and other filing deadlines are noted;

iii. A system by which telephone messages are recorded and telephone calls are returned in a timely manner;

iv. A system by which written requests by clients for the status of their legal matters are responded to, either orally or in writing, in a timely manner;

v. A system whereby clients are apprised at the outset of representation of the basis upon which fees will be calculated and costs paid;

vi. For cases in which the fee is to be calculated on an hourly basis, a system by which clients are provided with regular itemized billing statements provided at least quarterly, setting forth the services performed by respondent, the date upon which each service was performed, the time spent by respondent on each service and the amount to be charged to the client;

d. Respondent shall attend and successfully complete the course conducted by the Illinois Professional Responsibility Institute;

e. During the period of probation, respondent shall meet with Counsel for the Administrator on at least a quarterly basis and shall provide the Administrator with any and all documentation and records requested in order to verify his compliance with the above conditions;

f. Respondent shall notify the Administrator within fourteen days of any change of address;

g. Respondent shall comply with the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;

h. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation;

i. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remaining one (1)-year period of suspension shall commence from the date of the determination that any term of probation has been violated.

Suspension effective October 18, 2004.

Respondent Burgess Francis Ervin shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension/probation.

Order entered by the Court.

M.R.19579 - In re: Herbert Victor. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed, and respondent Herbert Victor is disbarred.

Order entered by the Court.

M.R.19580 - In re: Thomas Donald Fazioli. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed, and respondent Thomas Donald Fazioli is suspended from the practice of law for three (3) years.

The motion by respondent for a sixty (60)-day stay of suspension is allowed. Suspension effective November 26, 2004.

Respondent Thomas Donald Fazioli shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Fitzgerald, J., took no part.

Orders entered by the Court.

M.R.19582 - In re: James E. Pancratz. Disciplinary Commission

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed, and respondent James E. Pancratz is suspended from the practice of law for three (3) months. Suspension effective October 18, 2004.

Respondent James E. Pancratz shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Fitzgerald, J., took no part.

Order entered by the Court.

M.R.19583 - In re: Warren Joseph Nickel. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed, and respondent Warren Joseph Nickel is disbarred.

Order entered by the Court.

M.R.19590 - In re: Lona L. Monson. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose reciprocal discipline pursuant to Supreme Court Rule 763 is allowed, and respondent Lona L. Monson, who has been disciplined in the State of Oregon, is suspended from the practice of law in the State of Illinois for one (1) year and until she is reinstated to the practice of law in Oregon.

Respondent Lona L. Monson shall reimburse the Disciplinary Fund for any Client Protection payments arising from her conduct prior to the termination of the period of suspension.

Order entered by the Court.

M.R.19591 - In re: Gregory L. Waugh. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to strike the petition of Gregory L. Waugh for restoration pursuant to Supreme Court Rule 759 is allowed.

The motion by Gregory L. Waugh for appointment of a medical expert pursuant to Supreme Court Rule 760 is denied.

Orders entered by the Court.

M.R.19608 - In re: Arthur Christopher Robinson. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed, and respondent Arthur Christopher Robinson is suspended from the practice of law for one (1) year. Suspension effective October 18, 2004.

Respondent Arthur Christopher Robinson shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension.

Order entered by the Court.

M.R.19609 - In re: James Alan Malkus. Disciplinary Commission.

The motion by James Alan Malkus to strike his name from the roll of attorneys licensed to practice law in Illinois pursuant to Supreme Court Rule 762(a) is allowed, effective immediately.

Order entered by the Court.

M.R.19617 - In re: Andrew A. Xamplas. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed, and respondent Andrew A. Xamplas is suspended from the practice of law for one (1) year and until further order of the Court.

Order entered by the Court.

M.R.19618 - In re: Michael William Loker. Disciplinary Commission.

The motion by the Administrator of the Attorney Registration and Disciplinary Commission to approve and confirm the report and recommendation of the Hearing Board is allowed, and respondent Michael William Loker is disbarred.

Order entered by the Court.

M.R.19627 - In re: John Edward LaPine. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed, and respondent John Edward LaPine is suspended from the practice of law for two (2) years and until further order of the Court.

Order entered by the Court.

M.R.19628 - In re: Daniel J. McNamara. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed. Respondent Daniel J. McNamara is suspended from the practice of law for three (3) years and until further order of the Court, with the suspension stayed after the first ninety (90) days by a two (2)-year period of probation, subject to the following conditions:

a. Respondent shall abstain from the usage of alcohol and any unprescribed controlled substances;

b. Respondent shall continue treatment with Dr. Charles Polcaster or with another board qualified/licensed mental health professional acceptable to the Administrator, and shall report to such qualified mental health professional on a regular basis of not less than once every month, with the Administrator advised of any change in attendance deemed warranted by such professional;

c. Respondent shall comply with all treatment recommendations of Dr. Polcaster or any other such qualified mental health professional, including the taking of medications as prescribed;

d. Respondent shall provide to such a qualified mental health professional an appropriate release authorizing the treating professional to: (1) disclose to the Administrator on at least a quarterly basis information pertaining to the nature of respondent's compliance with any treatment plan established with respect to respondent's condition; (2) promptly report to the Administrator respondent's failure to comply with any part of an established treatment plan; and (3) respond to any inquiries by the Administrator regarding respondent's mental or emotional state or compliance with any established treatment plans;

e. Respondent shall notify the Administrator within seven days of any change in treatment professionals;

f. Respondent shall, upon request by the Administrator, submit to random substance testing by a mental health professional or facility approved by the Administrator, within eight hours of receiving notice by the Administrator that he shall submit to the testing. The results of the tests shall be reported to the Administrator. Respondent shall pay any and all costs of such testing;

g. Respondent shall continue to participate in a 12-step program by attending at least one meeting per week. Respondent is to maintain a log of his attendance at the meetings and submit it to the Administrator with his quarterly reports;

h. Respondent shall continue to maintain a sponsor in the 12-step program and shall provide the name, address and telephone number of the sponsor to the Administrator or respondent's counsel within fourteen days of being placed on probation. Respondent shall request that the sponsor or respondent's counsel communicate with the Administrator in writing on a quarterly basis regarding respondent's participation and progress in the 12-step program and report any lapses in sobriety or usage of unprescribed controlled substances to the Administrator within 72 hours of his knowledge of that usage;

i. Respondent shall report to the Administrator any lapse in his sobriety or usage of any unprescribed controlled substances within 72 hours of that usage;

j. Respondent shall attend meetings scheduled by the Commission probation officer as requested by the Administrator. Respondent shall submit quarterly written reports to the Administrator concerning the status of his practice of law and the nature and extent of his compliance with the conditions of probation;

k. Respondent shall notify the Administrator within fourteen days of any change of address;

l. Respondent shall comply with the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;

m. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation;

n. At least thirty (30) days prior to the termination of the period of probation, respondent shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct;

o. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remaining period of suspension shall commence from the date of the determination that any term of probation has been violated and will continue until further order of the Court.

Suspension effective October 18, 2004.

Order entered by the Court.

M.R.19629 - In re: Thomas Gerard Cosgrove. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission for leave to file exceptions to the report and recommendation of the Review Board is denied. Respondent Thomas Gerard Cosgrove is censured, as recommended by the Review Board.

Fitzgerald, J., took no part.

Order entered by the Court.

M.R.19631 - In re: Herbert E. Cleveland. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is denied.

Order entered by the Court.

M.R.19632 - In re: Jeffrey Scott Harris. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed, and respondent Jeffrey Scott Harris is censured and required to complete the professionalism seminar offered by the Illinois Professional Responsibility Institute within one (1) year of the entry of this order.

Order entered by the Court.

M.R.19633 - In re: Harry P. Friedlander. Disciplinary Commission.

The petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose reciprocal discipline pursuant to Supreme Court Rule 763 is allowed, and respondent Harry P. Friedlander, who has been disciplined in the State of Arizona, is censured in the State of Illinois.

Order entered by the Court.

M.R.19641 - In re: Noel Dennis. Disciplinary Commission.

The amended petition by the Administrator of the Attorney Registration and Disciplinary Commission to impose discipline on consent pursuant to Supreme Court Rule 762(b) is allowed. Respondent Noel Dennis is suspended from the practice of law for two (2) years, with the suspension stayed after one (1) year by probation subject to the following conditions:

a. Respondent shall establish and utilize a system for the handling of funds belonging to clients and third parties and the maintenance of records that conforms to the requirements of Rule 1.15 of the Illinois Rules of Professional Conduct and instructions provided to respondent by the Administrator, including:

Trust Account Procedures

Basic accounting records that must be maintained daily and accurately:

Account Check Register - List sequentially all trust account deposits and trust account checks and maintain a current and accurate daily balance on the trust account.

Account Receipts Journal - List chronologically all deposits into the trust account. Each deposit will list the date of the deposit, the source of the deposit, the client matter, the deposit number, and the amount of the deposit. Maintain a copy of each item deposited.

Account Disbursement Journal - List chronologically all trust account disbursements. Identify each disbursement with the date of the disbursement check, the trust account check number, the payee, the purpose of the disbursement, the client matter, and the amount of the disbursement check.

Client Ledger Journal - List chronologically for each client matter all receipts, disbursements, and remaining balances. Prepare a separate page for each client matter and list chronologically all receipts and disbursements and remaining balances for each client matter.

Source documents which must be preserved for seven years:

Bank statements

Deposit slips

Cancelled checks - All trust account checks must have a named payee (no checks written to "cash") and the memo portion of the check must contain a reference to a client matter.

Time and billing records

Copies of records from client files that are necessary for a full understanding of the lawyer's financial transactions with the client: e.g., retainer and engagement agreements, settlement statements to clients showing the disbursement of the settlement proceeds, bills sent to clients and records of payment to other lawyers or non-employees for services rendered.

Reconciliations

There must be a running balance maintained for all ledgers and account books. The balances in the client ledger journal must be reconciled each month with the balances in the trust receipts and disbursement journals, the account checkbook register, and the bank statements. Records of these reconciliations must be maintained for seven years.

b. During the period of probation, respondent shall meet with counsel for the Administrator on at least a quarterly basis and shall provide the Administrator with any and all documentation and records requested in order to verify his compliance with Condition (a);

c. During the period of probation, respondent shall successfully complete the Professionalism Seminar conducted by the Illinois Professional Responsibility Institute;

d. Respondent shall notify the Administrator within fourteen (14) days of any change of address;

e. Respondent shall comply with the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;

f. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation; and

g. Probation shall be revoked if respondent is found to have violated any of the terms of probation. The remaining one (1) year of suspension shall commence from the date of the determination that any term of probation has been violated.

Suspension effective October 18, 2004.

Respondent Noel Dennis shall reimburse the Disciplinary Fund for any Client Protection payments arising from his conduct prior to the termination of the period of suspension/probation.

Order entered by the Court.

M.R.19652 - In re: Irving Jay Levin. Disciplinary Commission.

The motion by Irving Jay Levin to strike his name from the roll of attorneys licensed to practice law in Illinois pursuant to Supreme Court Rule 762(a) is allowed, effective immediately.

Order entered by the Court.