

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1496 Disciplinary Docket No. 3  
Petitioner :  
v. : No. 163 DB 2008  
: Attorney Registration No. 2351  
CAROL J. CLARFELD, :  
Respondent : (Philadelphia)

ORDER

**PER CURIAM:**

AND NOW, this 5<sup>th</sup> day of August, 2009, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated May 28, 2009, the Joint Petition In Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Carol J. Clarfeld is suspended on consent from the Bar of this Commonwealth for a period of two years and she shall comply with all the provisions of Rule 217, Pa.R.D.E. Respondent shall make restitution to Mary Carey in the amount of \$2,346.45 within thirty days from the date of this Order

A True Copy Patricia Nicola

As of: August 5, 2009

Attest

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

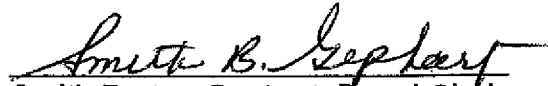
OFFICE OF DISCIPLINARY COUNSEL : No. 163 DB 2008  
Petitioner :  
v. : Attorney Registration No. 2351  
CAROL J. CLARFELD :  
Respondent : (Philadelphia)

RECOMMENDATION OF THREE-MEMBER PANEL  
OF THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Smith Barton Gephart, Sal Cognetti, Jr. Cognetti, Jr., and R. Burke McLemore, Jr., has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on February 27, 2009.

The Panel approves the Joint Petition consenting to a Two Year Suspension with restitution to Mary Carey in the amount of \$2,346.45 within 30 days from the date of the Court's Order approving the Joint Petition and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.

  
Smith Barton Gephart, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: May 28, 2009

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
v. : 163 DB 2008  
: Atty. Reg. No. 2351  
CAROL J. CLARFELD, :  
Respondent : (Philadelphia)

JOINT PETITION IN SUPPORT OF DISCIPLINE  
ON CONSENT UNDER RULE 215(d), Pa.R.D.E.

OFFICE OF DISCIPLINARY COUNSEL  
PAUL J. KILLION

CHIEF DISCIPLINARY COUNSEL

Amelia C. Kittredge  
Disciplinary Counsel  
1635 Market Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19103

and

Ellen C. Brotman, Esquire  
Counsel for Respondent  
Montgomery, McCracken, Walker  
& Rhoads, LLP  
123 South Broad Street  
Philadelphia, PA 19109

**FILED**

FEB 27 2009

Office of the Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania



April 26, 1971. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. The Respondent's attorney registration address is 606 West Arbutus Street, Philadelphia, PA 19119.

4. On October 15, 2008, ODC filed a Petition for Discipline against the Respondent, to which Respondent filed an Answer on November 13, 2008. A Hearing in the matter is scheduled for February 26, 2009.

5. After conferring with Ms. Brotman and reviewing all of the evidence, the Respondent, Carol J. Clarfeld, has agreed to enter into this Joint Petition.

**SPECIFIC FACTUAL ADMISSIONS AND RULES OF PROFESSIONAL  
CONDUCT VIOLATED**

**I. THE MISCONDUCT**

6. Ms. Judy Dempsey, a resident of Philadelphia, passed away in January 2003, leaving a Will bequeathing all her property and possessions to her niece, Mary Carey, a longstanding resident of White Plains, New York. The Will designated the Respondent as the Executrix of the Estate. The Estate was modest, consisting of a home in Philadelphia that sold for \$83,300, the contents of the house, and a bank account containing approximately \$3000.

7. The misconduct, which Respondent admits, has four aspects. First, from the time that she assumed the handling of the Estate in 2003, until October 2006, the Respondent made

a total of eighteen withdrawals from the Estate's bank account, amounting to \$5312. Respondent is not able to account for \$2,346.45 of those funds, which Respondent knowingly misappropriated to her own use. The withdrawals were in cash, or were direct deposited to the Respondent's personal (not IOLTA) bank account. In addition to the withdrawals, Respondent received a fee of \$6,000, which was deducted from the proceeds of the sale of the house.

8. Respondent also admits that she failed to act with reasonable diligence and promptness in her role as the personal representative of the Estate. Among other things, the Respondent failed to file an Inheritance Tax Return within nine months after the death of the decedent and, in fact, no Return has been filed to date, thereby subjecting Ms. Carey to potential interest and penalties; failed to file an Inventory of the assets of the Estate until January 2009, well after the commencement of the disciplinary proceeding; and failed to file a Status Report within two years of the decedent's death, and annually thereafter pursuant to Supreme Court Orphans' Court Rule 6.12, stating that the administration of the Estate had not been completed and showing a date by which the personal representative reasonably believed the administration would be completed. Again, the Respondent belatedly filed a Status Report in January 2009, but the Report is incomplete. Furthermore, Respondent has failed to file an Account, and

failed also to state an account informally to Ms. Carey. Thus, more than six years after Ms. Dempsey's death, the Estate administration has not been completed, although the assets of the Estate were identified and liquidated as of August 2004, when Ms. Dempsey's residence was sold.

9. The third aspect of the misconduct is a failure to communicate. Ms. Carey attempted to contact the Respondent numerous times to learn the status of the Estate, and to obtain documentation concerning the Estate administration and the liquidation of the assets. The Respondent failed to return telephone calls, and failed to respond to letters from Ms. Carey sent by certified and regular mail. On the occasions Ms. Carey did reach the Respondent, the Respondent failed to explain the essential information necessary for Ms. Carey to make meaningful decisions about the Estate, such as the requirement to file an Inheritance Tax return so that interest and penalties were not incurred. In 2006, having heard nothing about the status of the Estate for some time, Ms. Carey discovered on the Internet the name of the Chairman of the Public Service Committee of the Probate Section of the Philadelphia Bar Association, who offered to examine the Register of Wills file and convey to Ms. Carey the status of the Estate, which he did. The Chairman wrote to the Respondent on Ms. Carey's behalf asking for an explanation of the failure to diligently administer the Estate, but he

received no answer to his letter.

10. The final aspect of the misconduct is that the Respondent misrepresented the status of the Estate and failed to inform Ms. Carey that she was withdrawing funds from the Estate, which were used for Respondent's own benefit. In addition, Respondent omitted to inform Ms. Carey about such basic information as the amount of money in the decedent's bank account at the date of death, and did not provide additional information to keep Ms. Carey sufficiently informed. In 2009, Disciplinary Counsel supplied Ms. Carey with a copy of the Settlement Sheet for the sale of the residence in August 2004, which Ms. Carey stated she had never previously seen.

**RULES OF PROFESSIONAL CONDUCT VIOLATED**

11. Respondent admits that based on the above conduct, she has violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- c. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;



- d. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- e. (Former) RPC 1.15(a), which states that a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship 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 representation;
- f. (Former) RPC 1.15(b), which states that upon request by the client or third person, a lawyer shall promptly render a full accounting regarding property of the client or third person in connection with a client-lawyer relationship; and
- g. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit

or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

12. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the bar of this Commonwealth for a period of two years, with Restitution made to the beneficiary, Ms. Carey, in the amount of \$2,346.45, representing the amounts the Respondent withdrew from the Estate account, and for which she is not able to account.

13. Respondent hereby consents to that discipline being imposed upon her by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that she consents to the recommended discipline and including the mandatory acknowledgments contained in Rule 215(d)(1) through (4), Pa.R.D.E.

14. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that:

- a. The aggravating circumstances are that Respondent has two prior Informal Admonitions, imposed in 2003 and 2004. In 2003, Respondent violated (Former) RPC 1.15(b) and RPC 8.4(d), in that after a client terminated the representation and requested a full accounting of unearned fees, Respondent failed to

account, such that the client filed a complaint in Municipal Court and obtained a judgment, which Respondent failed to pay. As a Condition of the discipline, Respondent was required to pay to the former client the amount of the judgment. In 2004, Respondent violated RPCs 1.3, 1.4(a), 1.4(b), 1.5(b), and (Former) 1.15(b). Respondent failed to act with reasonable diligence and promptness in representing a client in a divorce action, resulting in the court issuing a Notice to Terminate; failed to properly communicate with the client; failed to have a written fee agreement; failed to render a full accounting; and failed to promptly refund any unearned fee. A Condition of the discipline required that Respondent provide an accounting to the client and refund any unearned fee.

- b. The mitigating circumstances are as follows:
  - (i) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
  - (ii) She is remorseful for and embarrassed by her misconduct and understands she should be disciplined, as is evident by her

consent to receiving a two-year suspension, with the requirement of Restitution.

(iii) At the time of the Hearing, the Respondent would present evidence that she misappropriated the funds because she was in desperate financial circumstances, facing the imminent loss of her home through Sheriff's sale. Ms. Clarfeld was unable to obtain representation and used the funds to hire an attorney to assist her in preventing the foreclosure and Sheriff's sale. At the time Ms. Clarfeld used these funds, she believed that she would be receiving payment from another client, enabling her to replace these funds quickly.

(iv) At a Hearing, Ms. Clarfeld would present character testimony of several attorneys and former clients who would testify that her conduct in misappropriating these funds is inconsistent with her character and her reputation in the community for honesty and caring for her clients.

15. Discipline for misappropriation of funds from an

Estate runs the gamut of public discipline from a public censure to lengthy suspensions and disbarment. In *ODC v. James A. Bolden*, 165 DB 2003, the Board stated categorically that "[c]ases involving abuse of a fiduciary relationship for the benefit of the respondent, failure to account and failure to distribute fiduciary funds have consistently resulted in public discipline." Bolden was suspended for three years in a matter involving misappropriation of \$120,000 from an Estate.

In *ODC v. John T. Olshock*, 28 DB 2002, the respondent misappropriated \$18,000, closer to the amount in this case, and also received a suspension of three years. The matter was aggravated because of the respondent's position as First Assistant District Attorney of the County.

In *ODC v. Daniel J. Evans*, 152 DB 2000, the respondent was disbarred for misappropriating \$90,000 from an Estate. The respondent stated that he believed that the Estate owed him substantial amounts of money for work he did in connection with renting the residential property that was part of the Estate. As here, Respondent Evans was not diligent in closing the Estate and failed to heed the beneficiary's numerous requests for an accounting.

In *ODC v. Anonymous (Charles S. Morrow)*, No. 132 DB 88, 7 Pa. D. & C.4<sup>th</sup> 331 (1990), the respondent received a two-year suspension for misappropriating approximately \$5000 in client funds over a sixteen-month period. The Board said:

"Unquestionably when the unauthorized conversion of client funds is aggravated with misrepresentation, the discipline is more severe." *Id.* at 11, 7 Pa. D.&C. 4<sup>th</sup> at 350. The respondent had a prior informal admonition.

Respondent herein has two prior Informal Admonitions for somewhat similar conduct in 2003 and 2004. Here, in addition to failing to account for all funds, Respondent has admitted the additional misconduct of misrepresentations, and neglect and failure to communicate, which aggravate the matter. The length of the suspension appropriately reflects the gravity of an attorney's conversion of funds from a client and the attendant conduct, particularly in a fiduciary relationship such as occurred here. In addition to the length of the suspension, the Condition that Respondent tender Restitution of the amount for which she cannot account, is appropriate.

16. For the reasons set forth above, Respondent has agreed to serve a suspension of two years with Restitution, a disposition which reflects applicable precedent and the primary goals of the disciplinary system.

17. WHEREFORE, Petitioner and Respondent respectfully request that:

- (a) Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., the three-member panel of the Disciplinary Board review and approve the above Joint Petition in Support of Discipline On Consent

and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court enter an Order:

- (i) suspending Respondent from the practice of law for a period of two years; and
  - (ii) requiring that Respondent make restitution to Mary Carey in the amount of \$2346.45 within thirty days of the Court's Order approving the Joint Petition.
- (b) Directing Respondent to comply with all of the provisions of Rule 217, Pa.R.D.E.
- (c) Pursuant to Rule 215(i), the three-member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition and that all expenses be paid by Respondent before the imposition of discipline under Rule 215(g), Pa.R.D.E.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

By Amelia C. Kittredge  
Amelia C. Kittredge  
Disciplinary Counsel

and

By Ellen C. Brotman  
Ellen C. Brotman, Esquire  
Counsel for Respondent



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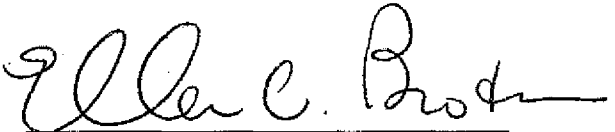
VERIFICATION

The statements contained in the foregoing Joint Petition  
In Support of Discipline on Consent Under Rule 215(d),  
Pa.R.D.E. are true and correct to the best of our knowledge or  
information and belief and are made subject to the penalties  
of 18 Pa.C.S. §4904, relating to unsworn falsification to  
authorities,


2/24/09  
Date

  
Amelia C. Kittredge  
Disciplinary Counsel

2/24/09  
Date

  
Ellen C. Brotman, Esquire  
Counsel for Respondent

2/24/09  
Date

  
Carol J. Clarfeld, Esquire  
Respondent

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AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

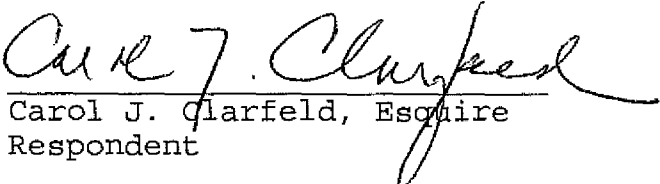
Respondent, Carol J. Clarfeld, Esquire hereby states that she consents to the imposition of a suspension from the practice of law for a period of two years, with Restitution, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

1. Her consent is freely and voluntarily rendered; she is not being subjected to coercion or duress; she is fully aware of the implications of submitting the consent; and she has consulted with counsel in connection with the decision to consent to discipline;

2. She is aware that there is presently pending a proceeding involving allegations that she has been guilty of misconduct as set forth in the Joint Petition;

3. She acknowledges that the material facts set forth in the Joint Petition are true; and

4. She consents because she knows that if the charges continued to be prosecuted in the pending proceeding, she could not successfully defend against them.

  
Carol J. Clarfeld, Esquire  
Respondent

Sworn to and subscribed

before me this 25th  
day of February, 2009.

  
Notary Public

