In re David Walter Moore
Attorney-Respondent

Commission No. 2022PR00072

Synopsis of Hearing Board Report and Recommendation
(November 2023)

The Administrator charged Respondent in a two-count complaint with dishonestly converting over $8,800 in client and/or third-party funds in connection with a personal injury matter and engaging in the unauthorized practice of law. The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent converted funds and engaged in the unauthorized practice of law, but failed to prove by clear and convincing evidence that Respondent's conversion was dishonest. It recommended that Respondent be suspended for eighteen months, stayed after six months by a one-year period of probation with conditions designed to address Respondent's recordkeeping and client trust accounting practices.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

DAVID WALTER MOORE,

Attorney-Respondent,

No. 6183355.

Commission No. 2022PR00072

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent in a two-count complaint with dishonestly converting over $8,800 in client and/or third-party funds in connection with a personal injury matter and engaging in the unauthorized practice of law. The Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent converted funds and engaged in the unauthorized practice of law, but failed to prove by clear and convincing evidence that Respondent's conversion was dishonest. It recommended that Respondent be suspended for eighteen months, stayed after six months by a one-year period of conditional probation.

INTRODUCTION

The hearing in this matter was held remotely by videoconference on April 12, 2023, before a panel of the Hearing Board consisting of Carl E. Poli, Chair, Cristin Duffy, and Chet Epperson. Rachel C. Miller represented the Administrator. Respondent was present and represented by James A. Doppke.

PLEADINGS AND MISCONDUCT ALLEGED

On September 6, 2022, the Administrator filed a two-count complaint against Respondent, charging him with knowingly using at least $8,803.05 in funds belonging to his clients and/or third parties for his own business or personal purposes, without authorization, in violation of Illinois Rules of Professional Conduct 1.15(a) and 8.4(c); and continuing to appear in cases and hold himself out as an attorney after his name was removed from the Master Roll of attorneys authorized to practice law in Illinois, in violation of Illinois Rule of Professional Conduct 5.5(a).

In his Answer, Respondent admitted the factual allegations set forth in the Complaint but did not admit knowingly converting funds.

EVIDENCE

The Administrator called Respondent as an adverse witness. Administrator's Exhibits 1 through 4 were admitted into evidence. (Tr. 48.) Respondent testified on his own behalf. He presented no other evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings, the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Clear and convincing evidence requires a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. In re Santilli, 2012PR00029, M.R. 26572 (May 16, 2014) (Hearing Bd. at 3) (citing People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991)). In determining whether the Administrator has met that burden, it is the responsibility of this hearing panel to determine the credibility of witnesses, weigh and resolve conflicting testimony, and make factual findings based upon all of the evidence. Winthrop, 219 Ill. 2d at 542-43.

I. In Count I, the Administrator charged Respondent with dishonestly converting at least $8,803.05 in funds belonging to his clients and/or third parties.

A. Summary

The Administrator proved that Respondent violated Rule 1.15(a) by using at least $8,803.05 in funds for his own business or personal purposes, without authorization to do so, when he should have been holding those funds for his clients and/or third parties. However, the Administrator failed to prove that Respondent's conversion of funds was dishonest, and therefore failed to prove that he violated Rule 8.4(c).

B. Admitted Facts and Evidence Considered

Respondent was licensed to practice law in Illinois in 1982. He is a solo practitioner who practices in the areas of criminal defense, personal injury, traffic, and contracts. During the time of the alleged misconduct, Respondent owned and operated a solo practice in Downers Grove, and maintained and was the sole signatory on an IOLTA client trust account at Bank Financial. (Ans. at pars. 1-2; Tr. 18-19.)

In January 2017, Jason Cook sustained injuries in a motorcycle collision. In November 2017, Respondent and Jason agreed that Respondent would represent Jason and his wife, Yulia Cook, in a personal injury matter arising from the collision. Respondent and the Cooks agreed that Respondent would receive attorney fees equal to one-third of any settlement if the parties reached a settlement prior to the filing of a lawsuit. (Ans. at pars. 3-4; Tr. 19-20.)

In January 2019, Respondent and the Cooks agreed to accept a settlement offer of $42,500 from GEICO Casualty Group, the insurer of the other driver. On March 1, 2019, the Cooks signed a release of claims against GEICO. A few weeks later, GEICO sent Respondent a check for $42,500, which Respondent deposited in his trust account on April 2, 2019. (Ans. at par. 6; Tr. 22-23; Adm. Ex. 1 at 3.)

Respondent testified that, once he received the settlement check, he did not immediately pay any of the liens or claims for reimbursement. (Tr. 23.) He did, however, pay $7,500 to the Cooks on April 16, 2019, before he took any fees. He had determined that he could pay that amount to the Cooks without fear of overpaying them or using funds that might later be needed for some other purpose. (Tr. 26-27; Adm. Ex. 1 at 5.)

Respondent testified that he withdrew his fees incrementally rather than in one lump sum because he was concerned there might not be enough money to pay the medical liens, the final amount of which he had not yet determined. In addition, even though Respondent was entitled to one-third of the settlement, he and Jason had discussed decreasing his fee if Jason's medical expenses were large. (Tr. 23-24.)

On November 4, 2019, Respondent paid an additional $2,500 to the Cooks. As of this date, he still had not paid any medical liens or claims for reimbursement. He gave the Cooks the second payment because Jason was having difficulty paying his medical expenses, and Respondent was trying to help him manage his bills. (Tr. 29-30; Adm. Ex. 1 at 24.)

In March 2020, Respondent paid $9,180.34 to the medical providers that had treated Mr. Cook, in full payment of their liens. He tried to negotiate the liens down but was unsuccessful. (Tr. 31-32; Adm. Ex. 1 at 34.)

As of May 28, 2020, Respondent should have been holding $9,153.66 in his trust account on behalf of third-party insurers, whose claims for reimbursement remained unpaid. On that day, however, the balance in his trust account fell to $350.61. (Ans. at pars. 7-9.) At hearing, Respondent acknowledged that he withdrew funds in excess of what he was entitled to and used those funds for personal and living expenses without the Cooks' authorization. (Tr. 28-29, 34.)

Respondent made a deposit of $4,200 into his trust account on October 9, 2020, and another one on October 15, 2020, for $1,450. (Adm. Ex. 1 at 45.) Respondent testified that he is not sure what those deposits were for but believes he had resolved a personal injury case around that time. (Tr. 34.)

On October 13, 2020, Respondent issued a check in the amount of $2,800 to one of the third-party insurers. On October 14, 2020, he issued a check in the amount of $3,000 to another third-party insurer. (Adm. Ex. 1 at 47.) The claim for $3,000 was originally higher but he negotiated it down. He believes the money to pay that claim came from a fee he earned on the settlement of a small personal injury case for another client. (Tr. 35.)

Respondent testified that on July 21, 2021, he received communication from the ARDC that the Cooks had complained about a delay in their settlement, and that an investigation into his conduct had been docketed. (Tr. 36.)

On August 9, 2021, Respondent deposited $3,913.08 of his own funds into his client trust account. (Tr. 36; Adm. Ex. 1 at 59.) On August 14, 2021, he paid $3,821.87 to the remaining third-party insurer, after negotiating that claim down from its original amount. (Tr. 36-37; Adm. Ex. 1 at 63.) On September 20, 2021, Respondent paid $2,287.55 to the Cooks, which was the amount remaining from the settlement after everything else had been taken care of. (Tr. 37-38, 60; Adm. Ex. 2.)

Respondent testified that, during the time he was handling the Cooks' matter, he was not keeping accurate records of the amounts he withdrew as fees. He acknowledged that he could have done better with respect to his recordkeeping. He now understands what his recordkeeping responsibilities are when he receives settlement funds and recognizes that it was "poor planning"

on his part to simply leave "all the funds" – meaning the total settlement instead of separating out his fees – in his trust account. (Tr. 61-62.)

C. Analysis and Conclusions

Rule 1.15(a)

A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Ill. R. Prof'l Cond. 1.15(a). Rule 1.15(a) obligates attorneys holding client or third-party funds to safeguard those funds. In re Woods, 2014PR00181, M.R. 28568 (Mar. 20, 2017) (Hearing Bd. at 19). An attorney violates Rule 1.15(a) where the attorney uses client or third-party funds without authorization, thereby causing the balance in the account into which those funds were deposited to fall below the amount the attorney should be holding. Id.

In his Answer, as well as in his testimony at hearing, Respondent admitted that he withdrew at least $8,803.05 from his client trust account over and above the attorney fees to which he was entitled for his representation of the Cooks; that he did so without authorization; and that he used the funds for his own business or personal purposes. Accordingly, we find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 1.15(a).

Rule 8.4(c)

It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Ill. R. Prof'l Cond. 8.4(c). In conversion cases, dishonesty is not established simply because the balance in an attorney's trust account falls below the amount the attorney should be holding for a client or third person. In re Bleiman, 2016PR00132, M.R. 29458 (Sept. 20, 2018) (Hearing Bd. at 12). In general, the Hearing Board seeks to ascertain whether the attorney knowingly used funds that did not belong to him or whether the failure to maintain the

proper balance resulted from unintentional errors such as sloppy bookkeeping. In re Knowles, 2015PR00073, M.R. 28744 (Sept. 22, 2017) (Hearing Bd. at 16).

The Administrator argued at hearing that we should infer dishonesty from the facts that Respondent withdrew funds incrementally over time, converted a fairly large sum, used the funds for living expenses, and did not tell the Cooks or third-party insurers that he had used their funds. While those circumstances may be sufficient to arouse suspicions, suspicion alone does not satisfy the Administrator's burden of proof. See Winthrop, 219 Ill. 2d at 550 (quoting In re Lane, 127 Ill. 2d 90, 111, 535 N.E.2d 866 (1989) (while circumstances may arouse suspicion, "'suspicious circumstances, standing alone, are not sufficient to warrant discipline'"); In re Petti, 00 CH 28, M.R. 18446 (Jan. 23, 2003) (Review Bd. at 4) (Administrator's burden is not met merely by proof of suspicious circumstances).

That is particularly true where Respondent's testimony about his handling of the funds and deficient recordkeeping, which we found to be credible, largely explains those suspicious circumstances. We accept Respondent's testimony that he withdrew his attorney's fees incrementally rather than in one lump sum because he wanted to ensure that he had sufficient funds to pay the medical liens once the final amounts were known. We also accept his testimony that he made several partial settlement payments to the Cooks prior to paying the liens and claims for reimbursement because they had asked for payment, he knew they were struggling with paying medical bills, and he wanted to help them. Finally, we accept Respondent's testimony that he was not keeping accurate records of the funds he was withdrawing.

We acknowledge that it took Respondent a substantial amount of time to complete payment to the third-party insurers, which, in turn, delayed his final payment to the Cooks. However, we accept his testimony that he attempted to negotiate down the medical liens and claims for

reimbursement, and that, in two of the three claims for reimbursement, he was successful. We infer that those negotiations resulted in some delay. In addition, we find this matter akin to In re Fritzshall, 02 CH 89, M.R. 20187 (Sept. 26, 2005) (Review Bd. at 10), where the Review Board declined to find that a delay in paying third parties constituted clear and convincing evidence of dishonest conversion.

Moreover, the Administrator presented no evidence to refute Respondent's credible testimony. In fact, other than Respondent's testimony and the admissions in his Answer, the only evidence presented by the Administrator to support the dishonesty charge consists of bank statements and cancelled checks. While that evidence unequivocally establishes that Respondent converted funds, we find it insufficient to establish that Respondent intentionally took funds he knew he was not entitled to. See id. at 9-10 (evidence consisting of bank records and respondent's admissions in his answer was insufficient to prove dishonest conversion of funds).

Here, as in Fritzshall, the Administrator failed to present evidence of circumstances that, in other cases, were found sufficient to prove dishonesty. For example, there was no evidence that Respondent was experiencing financial difficulties at the time of his conversion; that the third-party insurers had contacted him seeking payment of their claims; that any of his checks were returned for insufficient funds; or that he was unable to complete payment to the third-party insurers or the Cooks by the time of hearing. See id. at 12-14 (distinguishing cases where other evidence of dishonesty was presented).

As the Review Board in Fritzshall noted, in cases where respondents were found to have engaged in dishonest conversion, "there was some evidence that they knowingly misused client funds or failed to pay lienholders and were not merely neglectful." Id. at 14. There was no such evidence presented in this matter.

The Administrator had the burden of proving dishonesty by clear and convincing evidence. Winthrop, 219 Ill. 2d at 542. After considering the evidence as a whole, we find that the record does not contain clear and convincing evidence that Respondent's conversion of funds was knowing and intentional. The Administrator therefore did not meet his burden of proving that Respondent violated Rule 8.4(c).

II. In Count II, the Administrator charged Respondent with engaging in the unauthorized practice of law during a time when he was removed from the Master Roll.

A. Summary

The Administrator proved that Respondent violated Rule 5.5(a) by continuing to hold himself out as an attorney and practice law after he was removed from the Master Roll for failure to meet his continuing legal education obligations.

B. Admitted Facts and Evidence Considered

Illinois Supreme Court Rule 794 requires every Illinois attorney to complete 30 hours of continuing legal education (CLE) courses during a two-year reporting period. Illinois Supreme Court Rule 796 requires every Illinois attorney to submit a certification to the Minimum Continuing Legal Education (MCLE) Board within 31 days after the end of the reporting period stating whether the attorney complied with the CLE rules. (Ans. at pars. 15-16; see also Ill. S. Ct. Rs. 794 and 796.)

Based on the requirements of Rules 794 and 796, Respondent was required to complete 30 CLE hours by June 30, 2020 and submit his MCLE certification by July 31, 2020. Respondent did not complete 30 CLE hours by June 30, nor did he report his lack of compliance by July 31. (Ans. at pars. 17-20.)

Respondent was removed from the Master Roll on April 22, 2021, for failure to comply with his CLE obligations. Thereafter, he completed his outstanding MCLE requirements and paid

his past due registration fees. On April 21, 2022, was reinstated to the Master Roll. Between April 22, 2021, and April 21, 2022, however, Respondent continued to operate his law practice, appear in court on behalf of clients, and engage in the practice of law, despite being removed from the Master Roll. (Ans. at pars. 21-24.)

Respondent testified that, due to circumstances caused by the outbreak of the COVID pandemic, his regular CLE provider was not able to accept payment by check, which is the only method by which Respondent could pay the provider and which prevented Respondent from completing his CLE requirements in his usual way. He further testified that he was only able to find 10 hours of free CLE, which he completed but which was insufficient to meet his MCLE requirements. (Tr. 40.)

Respondent acknowledged that, when the ARDC contacted him about his registration status, he knew about the reporting requirements for Illinois attorneys related to continuing education requirements. (Tr. 38.) He also acknowledged that he knew that, after he was removed from the Master Roll on April 22, 2021, he was not allowed to practice law until he brought himself current with CLE credits. (Tr. 41.) He testified that he continued to practice law after this date because he felt that if he withdrew, it would be a bigger problem for his clients than if he merely continued their cases until he could get himself re-registered. (Tr. 48.)

C. Analysis and Conclusions

Rule 5.5(a)

A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. Ill. R. Prof'l Cond. 5.5(a). An attorney who practices law when he has been removed from the Master Roll for failing to comply with MCLE requirements violates Rule 5.5(a). In re James, 09 CH 40, M.R. 25222 (May 18, 2012) (Hearing Bd. at 28-29). To prove a violation of Rule 5.5(a), the Administrator is not required to establish that the attorney

intentionally or knowingly engaged in the unauthorized practice of law. In re Thomas, 2012 IL 113035, ¶ 77. Rule 5.5(a) is a strict liability offense and makes no exception for an attorney who is uninformed or confused about the status of his license. Id.; see also In re Susman, 2009PR00126, M.R. 26102 (Sept. 25, 2013) (Hearing Bd. at 32).

We are cognizant of the many challenges that arose during the pandemic, including that Respondent was unable to obtain CLE credits from his usual provider. We also believe Respondent's testimony that he thought it was better for his clients if he represented them in a limited fashion rather than withdrawing from representation during the time when he was removed from the Master Roll. However, given that a violation of Rule 5.5(a) is a strict liability offense, Respondent's intent and the circumstances that led to his failure to meet his MCLE requirements are irrelevant. The simple fact that he practiced law after he was removed from the Master Roll is sufficient to establish that he violated Rule 5.5(a). Moreover, Respondent did, in fact, intentionally and knowingly engage in the unauthorized practice of law, in that he knew he was not allowed to practice law until he completed his MCLE requirements, but he did so anyway.

Respondent was removed from the Master Roll on April 22, 2021. He continued to practice law for a year after being removed. The Administrator therefore proved that Respondent violated Rule 5.5(a).

EVIDENCE IN MITIGATION AND AGGRAVATION

Prior Discipline

Respondent has no prior discipline.

Mitigation

Respondent paid his clients and all third parties what they were owed prior to the complaint being filed in this matter. (Tr. 36-38.) Respondent testified that he now understands what his

recordkeeping responsibilities are when he receives settlement funds and acknowledged that it was "probably poor planning" on his part to simply leave all of the settlement funds in his trust account, rather than separating out his fees. (Tr. 61-62.) He testified that he regrets that he did not take better care of his records, and he regrets "the amount of time and the stress that it caused the Cooks because of that time to resolve the case." (Tr. 65.) He also acknowledged that he should have handled his attorney registration differently and found a way to complete all of his coursework. (Tr. 62.) He testified that he thought "more damage would be done" to his clients if he withdrew from their cases and required them to seek representation elsewhere, though he acknowledged that "maybe in retrospect" he was wrong. (Tr. 64.)

Aggravation

Respondent had been in solo practice for more than 37 years at the time of his misconduct and had experience in personal injury matters. (Ans. at pars. 1-2; Tr. 18-19.) Respondent did not complete payment to his clients and the third-party insurers until after the Cooks complained to the ARDC about the delay in receiving the final payment from him. (Tr. 36-38.) Respondent continued to practice law after he was removed from the Master Roll even though he knew that he was not allowed to do so. (Tr. 41.)

RECOMMENDATION

A. Summary

Based upon the nature of Respondent's misconduct, and taking into account the mitigating and aggravating factors, the Hearing Board recommends that Respondent be suspended for eighteen months, stayed after six months by a one-year period of probation with conditions designed to improve Respondent's recordkeeping and client trust accounting practices.

B. Analysis and Conclusions

The Administrator requested that Respondent be suspended for eighteen months and until further order of the Court, stayed after six months by a period of probation with conditions addressing Respondent's law office management and trust accounting practices. Respondent did not request a specific sanction but suggested that any suspension should be fully stayed by a period of probation with the conditions suggested by the Administrator.

In determining appropriate discipline, we are mindful that the purpose of these proceedings is not to punish the attorney but rather to safeguard the public, maintain the integrity of the profession, and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. We also consider the deterrent value of attorney discipline and "the need to impress upon others the significant repercussions of errors such as those committed by" Respondent. In re Discipio, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994) (citing In re Imming, 131 Ill. 2d 239, 261, 545 N.E.2d 715 (1989)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, In re Timpone, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993), while also recognizing that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances that may mitigate or aggravate the misconduct. In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003). In mitigation, Respondent has no prior discipline in over 40 years of practice. He fully cooperated in his disciplinary proceedings, accepted responsibility, and expressed remorse for his misconduct, and paid his clients and third parties what they were owed prior to the complaint being filed in this matter. While we certainly do not condone his unauthorized practice of law, we accept his

testimony that he was acting upon a sincere – albeit misguided – belief that he was protecting his clients' interests.

In aggravation, Respondent did not complete payment to his clients and the third-party insurers until after he learned that his clients had complained to the ARDC and an investigation had been docketed. In addition, Respondent was an experienced practitioner, including in personal injury matters, at the time of his misconduct, and should have recognized that he was mishandling client funds and that his recordkeeping was inadequate. Moreover, once he was removed from the Master Roll, he knew that he was not permitted to practice law until he became current with his CLE, but he did so anyway.

It is Respondent's misconduct despite years of experience that most concerns us and leads us to recommend a lengthy suspension. However, keeping in mind that the purpose of the disciplinary system is not to punish but to safeguard the public, the integrity of the profession, and the administration of justice, we believe that a suspension stayed in part by probation serves those purposes while also giving Respondent the opportunity to correct the problems that led to his misconduct. In fact, we believe that probationary conditions designed to improve and monitor Respondent's office practices are essential to assist Respondent, protect his clients, and prevent future misconduct.

While we agree with the Administrator that a suspension stayed in part by probation is appropriate in this matter, we disagree that the suspension should continue until further order of the Court, even if that provision were to be stayed by probation. Counsel for the Administrator presented no authority for a suspension until further order, and in fact acknowledged that she found no precedent for a suspension until further order in a case similar to this one that did not also involve a mental health component. (See Tr. 75, 78, 100.) This is not a matter where Respondent

has behaved in such a way as to cast doubt on his ability or willingness to adhere to professional standards in the future, which is the primary reason, other than the existence of mental health issues, that a suspension until further order is imposed. See, e.g., In re Levinson, 71 Ill. 2d 486, 376 N.E.2d 998 (1978) (suspension until further order imposed where respondent failed to answer the complaint or appear before the Hearing and Review Boards); Timpone, 157 Ill. 2d at 186 (suspension until further order imposed where respondent engaged in misconduct shortly after his three-year suspension for similar misconduct had ended); In re Wilkins, 2014PR00078, M.R. 28647 (May 18, 2017) (suspension until further order imposed where respondent failed to acknowledge wrongdoing or accept responsibility or express remorse for her misconduct). We thus decline the Administrator's request to recommend a suspension until further order of the Court.

Recognizing that each disciplinary case has unique facts and circumstances, we found guidance for our recommendation in the following cases.

In In re Geleerd, 2011PR00128, M.R. 26695 (Sept. 12, 2014), the Court imposed a one-year suspension, stayed after six months by conditional probation, where the attorney dishonestly converted about $7,800 in settlement funds due to two heirs, whom he could not locate at the time of settlement. He thereafter forgot about the funds and, because of his failure to monitor or reconcile his account, subsequently used them for his own purposes at a time when he was experiencing financial problems. Although the attorney did not set out with the intent to misappropriate the settlement funds, he was found to have engaged in dishonesty by making misrepresentations to one of the heirs when she inquired about the funds, and by not addressing the situation after he learned that the funds were missing from his client trust account.

In In re Meyer, 2014PR00137, M.R. 27586 (Nov. 17, 2015), an attorney consented to an eighteen-month suspension, stayed after five months by a one-year period of conditional probation, for converting more than $36,000 in client and lienholder funds over a four-month period in four client matters. While there was significant mitigation, in aggravation, the attorney had been disciplined several years earlier for engaging in the unauthorized practice of law in Michigan and other misconduct in the Michigan matter.

In In re Storment, 2018PR00032, M.R. 30336 (May 18, 2020), the Court imposed a one-year suspension, stayed after five months by a seven-month period of probation, on an attorney who converted $3,474.50 in settlement funds that he should have been holding for his client or lienholders. He also provided false information to the ARDC during its investigation of his conduct. In addition, he had been disciplined twice before, but that prior discipline occurred decades earlier and was for dissimilar misconduct, and therefore was not found to be significantly aggravating.

In In re Caithamer, 2012PR00079, M.R. 26179 (Sept. 25, 2013), an attorney consented to a one-year suspension, stayed after five months by a one-year period of conditional probation, for converting $14,722.59 in settlement proceeds in one client matter and misrepresenting the status of a lien to his client's subsequent counsel. In addition, in a separate matter, he was found to have attempted to obstruct justice by misrepresenting his identity to avoid service of process.

We find this case most analogous to Geleerd, in that, in both matters, the misconduct arose out of a single client matter in which the attorney used, without authorization, settlement proceeds in violation of Rule 1.15(a). The matters involve a similar amount of funds converted (about $7,800 in Geleerd, and about $8,800 in this matter). In both matters, the misappropriation of funds was due to poor recordkeeping practices rather than intentional dishonesty. While the attorney in

Geleerd engaged in some dishonest conduct and had prior discipline, Respondent engaged in the unauthorized practice of law.

We also find Meyer, Storment, and Caithamer instructive. While Respondent converted a lesser amount than the attorneys in Meyer and Caithamer, his misconduct occurred over a longer period of time and involved repeated unauthorized withdrawals of funds. And while, unlike the attorneys in Meyer and Storment, Respondent has no prior discipline, he engaged in additional serious misconduct by practicing law for a full year when he knew he was not allowed do so. Respondent's unauthorized practice of law demonstrated an intentional disregard for the rules of the Court and, standing alone, would warrant a short suspension. See, e.g., In re Vazanellis, 2014PR00022, M.R. 26820 (Sept. 12, 2014) (thirty-day suspension where attorney represented clients in multiple matters while removed from master roll for eighteen months). For that reason, we recommend six months of actual suspension instead of the five months imposed in Meyer, Storment, and Caithamer.

Our recommendation includes a requirement that Respondent complete certain continuing legal education courses, to ensure that he fully understands his professional obligations, particularly with respect to handling client funds, before he resumes practice. Our recommendation also includes probation to provide a period of accountability, to ensure that Respondent maintains trust accounting procedures that fully comply with the Illinois Rules of Professional Conduct after he resumes practice.

Accordingly, we recommend that Respondent be suspended for eighteen months, stayed after six months by a one-year period of probation, subject to the following conditions:

a. Within the first six months of his suspension, Respondent shall successfully complete the ARDC Professionalism Seminar as well as the on-demand CLE programs available on the ARDC website regarding maintaining a client trust account and handling client funds, and provide proof of attendance to the Administrator;

b. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;

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

d. During the period of probation, Respondent's practice of law shall be supervised by a licensed attorney acceptable to the Administrator. At least thirty (30) days prior to the start of the probationary term, Respondent shall provide the name, address, and telephone number of the supervising attorney to the Administrator. Respondent shall meet with the supervising attorney at least once within the first thirty (30) days of probation and shall meet with the supervising attorney at least once a month thereafter. Respondent shall authorize the supervising attorney to provide a report in writing to the Administrator, no less than every three (3) months, regarding Respondent's cooperation with the supervising attorney, the nature of Respondent's work, and the supervising attorney's general appraisal of Respondent's practice of law. Respondent shall provide notice to the Administrator of any change in supervising attorney within fourteen (14) days of the change, and any substitute supervising attorney must be a licensed attorney acceptable to the Administrator;

e. Respondent shall submit to an independent audit of his client trust account, conducted by an auditor approved by the Administrator, at Respondent’s expense, six (6) months after the commencement of probation. Respondent and the Administrator shall each receive copies of the audit. The audit shall establish Respondent’s maintenance of complete records of client trust accounts, required by Rule 1.15 of the Illinois Rules of Professional Conduct, including the following:

   i. the preparation and maintenance of receipt and disbursement journals, for all client trust accounts, containing a record of deposits and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited, and date, payee and purpose of each disbursement;

   ii. the preparation and maintenance of contemporaneous ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the date of each deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the dates, descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;

   iii. the maintenance of copies of all accountings to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients’ files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them;

iv. the maintenance of all client trust account checkbook registers, check stubs, bank statements, records of deposit, and checks or other records of debits;

v. the maintenance of copies of all retainer and compensation agreements with clients;

vi. the maintenance of copies of all bills rendered to clients for legal fees and expenses; and

vii. the preparation and maintenance of reconciliation reports of all client trust accounts, on at least a quarterly basis, including reconciliations of ledger balances with client trust account balances;

f. 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;

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

h. At least thirty (30) days prior to the termination of this period of probation, 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.

Respectfully submitted,

Carl E. Poli
Christin K. M. Duffy
Chet Epperson

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on November 27, 2023.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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