139.PCB

[3-Dec-1999]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: William A. Hunter, Esq., Respondent
PCB Docket No. 99.26

Final Report

Decision No. 139

The hearing panel filed its report in this matter on October 1, 1999. We held a hearing on October 1, 1999, pursuant to Administrative Order No. 9, Rule 8D. Special Bar Counsel William Dorsch appeared. Respondent appeared, represented by counsel Peter Langrock.

After consideration of the oral argument and of briefs submitted by the parties, we must recommend to the Supreme Court that Respondent be disbarred. We rely upon the findings of fact, conclusions of law and recommended sanctions which appear in the hearing panel report, adopted as our own by reference here and attached hereto as Exhibit 1. Because this disbarment recommendation is based upon a conviction for a serious crime, we would begin the period of disbarment retroactive to the date of conviction, October 5, 1998.

Dated at Montpelier, Vermont this 3rd day of December, 1999.

PROFESSIONAL CONDUCT BOARD

/s/
_____
Robert P. Keiner, Esq. Chair

RECUSED
_____
Steven A. Adler, Esq.

/s/
_____
John Barbour

/s/
_____
Charles Cummings, Esq.

/s/
_____
Paul S. Ferber, Esq.

/s/
_____
Michael Filipiak

/s/
_____
Barry E. Griffith, Esq.

/s/

Robert F. O'Neill, Esq. | Mark L. Sperry, Esq.

ABSENT

Ruth Stokes | Joan Wing, Esq.

/s/

Jane Woodruff, Esq. | Toby Young

CONCURRING AND DISSENTING

I take no issue with the recommendation as made by the entire Board. However, I feel that the retroactive date should not be at the time of sentencing (10/5/98), but at the time of his plea.

/s/

Alan S. Rome, Esq.

Attachment (Hearing Panel Report)

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: William A. Hunter, Esq., Respondent
PCB Docket No. 99.26

HEARING PANEL REPORT
TO THE PROFESSIONAL CONDUCT BOARD

On June 17, 1998, Respondent pled guilty to one count of mail fraud, a felony under the United States Criminal Code. On October 5, 1998, the United States District Court for the District of Vermont entered a felony judgment of conviction against Respondent. This conviction was based upon a plea agreement.

On November 13, 1998, Special Bar Counsel William Dorsch filed a Petition of Misconduct pursuant to Supreme Court Administrative Order No. 9, Rule 14(D). It is not contested that Respondent has been convicted of a serious crime as defined by the Code of Professional Responsibility. The only issue to be determined is the extent of the final discipline to be imposed. This matter was referred to us by the full Professional Conduct

Board to make a recommendation as to what that sanction should be.

We held a hearing on June 24, 1999, at which Respondent, his counsel, Peter Langrock, Esq., and Special Bar Counsel William Dorsch, Esq. and Aileen Lachs, Esq. appeared and participated. A Stipulation of Facts was presented as to many issues. Respondent testified as did two medical experts, one proffered by each party.

After review of all of the credible, reliable, admissible evidence, including the Stipulation of Facts, signed by Respondent on June 24, 1999, attached hereto as Exhibit A and incorporated herein by reference, we recommend that Respondent should be disbarred as a result of his engaging in serious criminal activity in violation of DR 1-102(A)(3). Our findings and analysis are summarized below.

Introductory Facts

1. Respondent, William A. Hunter, was licensed to practice law in the State of Vermont on December 19, 1985. Since January 10, 1999, his license has been suspended.

2. Respondent was convicted in October of 1998 of devising a scheme and artifice to defraud law clients and others for whom he was holding funds in trust, to deprive these individuals of their right to honest services, and to obtain money by means of false and fraudulent pretenses, representations, and promises, through embezzlement, conversion and secret self-dealing with respect to funds he held in trust and obtaining funds by misrepresentation, concealment and false pretenses.

3. It was part of the scheme that Respondent would commingle funds held in trust and in escrow for various law clients, and deposited the funds into various accounts, including accounts unrelated to his law practice or the client, and avoided keeping detailed records as required by law concerning the use of client trust accounts.

4. The misuse of these trust accounts occurred during a period beginning in 1993 and ending in 1996.

Standards for Imposing Lawyer Discipline

5. In considering the appropriate sanction to recommend, we consider the duty violated, the lawyer's mental state, the actual or potential injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors. Standard 3.0, Standards for Imposing Lawyer Sanctions, American Bar Association (1991 ed.).

The Duties Violated

6. The criminal conduct committed by Respondent involved the misuse of trust accounts in 11 different matters. See paragraphs 6 thorough 55 of Exhibit A.. The conduct detailed in paragraphs 6 through 55 show the violation of four duties:

a. the duty he owed to his clients to preserve their property ,

b. the duty he owed to his clients to be candid and

honest ,

c. the duty he owed to the public to maintain personal integrity and abide by the laws against serious criminal conduct , and

d. the duty he owed to the legal system to speak honestly and truthfully to the court .

Respondent's State of Mind

7. Respondent's mental state, in devising and acting pursuant to a scheme to defraud and to obtain money by false pretenses, was that he acted intentionally. While considerable evidence was introduced concerning Respondent's complaint of suffering from attention deficit disorder, we have examined the transcript of Respondent's change of plea. There is no suggestion therein that Respondent did not act with the full mental capacity alleged in the indictment and admitted to when he pled guilty to one count of mail fraud. While we will address this issue more fully below under our analysis of mitigating circumstances, it is apparent that Respondent committed this criminal activity with the mens rea alleged by the indictment and admitted to at the change of plea hearing. While we are not constrained to employ a criminal law analysis to Respondent's mental state, a review of his guilty plea and its underpinnings aids us in our task.

Actual or Potential Injury Caused by the Lawyer's Misconduct

8. Respondent caused potential and actual injury to his clients and did so as follows:

a. The Respondent caused injury to Larry and Lila Carrara when he failed for five months to forward their settlement money. Exhibit A at 32-37.

b. Respondent caused injury to Lisa Polston, the beneficiary of the Pazda Estate, by failing to comply with her repeated requests that he pay funds to her so that she could pay her own bills. Instead, without her knowledge or consent, Respondent used this money for other purposes. Exhibit A at 43.

c. Respondent caused injury to Marie Louise and Ronald Thorburn when he obtained $20,000 by false pretenses. They believed that the funds were being used to make repairs at their inn, when in fact the money was used to benefit Respondent. Exhibit A at 48.

d. Respondent caused potential injury to Lorle Adlerbert when he failed to secure the loan to the Hammondsville Environmental Forestry Associates, Inc. and when he executed a stipulation which placed Ms. Adlerbert's loan in an inferior position, all without Ms. Adlerbert's knowledge or consent.

The Existence of Aggravating or Mitigating Factors

AGGRAVATING FACTORS

9. There are a number of aggravating factors present.

10. We find from Exhibit A a significant record of prior discipline. Standard 9.22(a). The first three disciplinary matters detailed below primarily concerned neglect of client matters. The fourth disciplinary matter concerned the mismanagement of client funds, in addition to neglect of more than twenty client matters. Six of the client matters which were part of the criminal scheme to defraud involved activity which occurred after the third public discipline detailed below was imposed..

11. The record of prior discipline is as follows:

a. Public reprimand on August 8, 1991, in PCB File No. 89.65, for violation of DR 7-108 (communication with jurors);

b. Public reprimand on August 8, 1991, in PCB File No. 89.51, for violation of DR 1-102(A)(4) (dishonesty, fraud, deceit or misrepresentation), DR 1-102 (A)(5) (conduct prejudicial to the administration of justice), and DR 5-103 (B) (guaranteeing financial assistance to a client);

c. Public reprimand and nine month probation with conditions on December 22, 1994, in PCB File No. 91.43, for violating DR 6-101(A)(3) (neglecting client matters) and DR 1-102 (A)(5) (conduct prejudicial to the administration of justice), in PCB File No. 93.12 for violating DR 6-101(A)(3) (neglecting client matters) and DR 1-102 (A)(5) (conduct prejudicial to the administration of justice), and in PCB File No. 93.32 for violating DR 6-101(A)(3) (neglecting client matters) and DR 9-102(B)(4) (failing to relinquish client property); and

d. Three year suspension beginning January 10, 1997, on October 3, 1997, in PCB file numbers 94.02, 94.14, 94.27, 94.46, 95.41, 95.42, 95.77, 96.09, and 96.30 for violating DR 6-101(A)(3) (neglecting client matters), DR 1-102(A)(5) (conduct prejudicial to the administration of justice), DR 1-102(A)(7) (conduct adversely reflecting upon his fitness to practice law), DR 5-105(C) (representing multiple clients with conflicting interests), DR 5-101(A) (involvement in a legal matter with a conflicting personal interest), and DR 9-102 (failure to handle client funds properly).

12. We find from Exhibit A that, in many instances, Respondent acted with a dishonest or selfish motive. Standard 9.22(b). Respondent testified that he did not have a selfish or dishonest motive when he began using other people's funds in order to finance projects which he felt were worthy and which would benefit disadvantaged people. While that may have been his initial intent, at some point Respondent began to misuse client funds in order to cover up his previous professional misconduct or in order to benefit himself economically. There are several instances which evidence this dishonest or selfish motive.

a. The Respondent benefitted personally when he loaned $20,000 of Lorle Adlerbert's money to the Hammondsville Environmental Forestry Associates, Inc. (HEFA), of which he was a director and for which he received $5,500 directly. Even if the $5,500 was payment for legal frees incurred in another matter, because the loan permitted Mr. Harrington to pay the respondent the past due fees. The Respondent also benefitted personally when he executed a stipulation which prioritized the plaintiff's debt over the debt to Lorle Adlerbert in the matter of Moore v. HEFA, Inc., in order to avoid HEFA's liability. Exhibit A at 18-26.

b. The Respondent benefitted personally when he obtained money from Larry and Lila Carrara by false pretenses. He used their money to pay part of a $13,858.86 debt for which Respondent had become personally liable by unethically assuming responsibility for the debt of a client. Exhibit A at 37.

c. The Respondent neglected his representation of Biff Mithoefer. Due to Respondent's failure to attend to Mr. Mithoefer's case, Mr. Mithoefer owed the plaintiff $2,750. Respondent used other client's monies to pay this debt for Mr. Mithoefer, thus avoiding a potential professional conduct complaint or malpractice claim from Mr. Mithoefer. Exhibit A at 27.

d. The Respondent benefitted by using other client's trust account monies to pay himself for services rendered to David Mitchell. By doing so, there was a net loss of $4,500 of his clients' trust account and a net gain of $9538.95 to Respondent's own accounts. Exhibit A at 28-30. See also self dealing involving client funds and Nyline Turgeon and Nancy Kelleher (Kimball), described in Exhibit A at 49-54.

e. The Respondent personally benefitted from his mismanagement of the Pazda Estate. He used this money, placed in his client trust account, to pay a personal bill received from the IRS. Exhibit A at 55. The Respondent benefitted also from his lies in the Pazda Estate matter. His lies to Honorable Sarah Vail, the Probate Judge handling the Pazda Estate, about the whereabouts of the estate funds distracted the judge from her concern about the management of the Estate and delayed her further inquiry into his conduct. Exhibit A at 44-45. The lie to Attorney Patrick Ankuda, the successor administrator, avoided a complaint to the Court.

f. The lies to Jean Bewley, Mary Louise Thorburn, Doug and Nancy Reed also benefitted the Respondent because those lies permitted him to pay off the Pazda Estate debt for which he was personally responsible as administrator. Stipulation at 45, 46 and 48.

13. We find from Exhibit A an obvious pattern of misconduct, Standard 9.22(c).

14. We find from Exhibit A many examples of multiple offenses, Standard 9.22(d).

15. We find that the victims of Respondent's misconduct were vulnerable. Standard 9.22(h). The Respondent's willingness to provide legal services to clients with little or no financial means in no way excuses his mismanagement of their funds. On the contrary, clients who have little or no resources are the most vulnerable to misconduct, and deserve the very best and most professional service.

MITIGATING FACTORS

16. Respondent advances two mitigating factors. The first is that he was motivated by a genuine desire to help people obtain financing. We decline to find the absence of a dishonest or selfish motive, Standard 9.32(b), for the reasons discussed above.

17. The second mitigating factor is Respondent's claim of a mental impairment, attention deficit disorder. Most of the hearing before us was devoted to testimony regarding whether or not Respondent actually suffers from such an impairment. There was substantial and conflicting testimony on this issue. It is the opinion of this panel, for the reasons that follow, that whether or not Respondent suffered from attention deficit disorder when the misconduct occurred, the characteristics of the disorder are not mitigating of the specific misconduct here.

18. Attention deficit disorder is characterized by impulsive behavior, inattention to detail, forgetfulness, poor attention, distractability, lack of organization. Since most people have these qualities at least sometimes during their lives, there needs to be chronic and severe impairment in these areas which is demonstrated across settings, e.g. family, peer, education, work. There also must be reliable data, including signs and symptoms during childhood. See testimony of Dr. Paul Cotton at Panel hearing transcript at pages 49-53.

19. There exist a number of contraindications for attention deficit disorder in Respondent. He showed outstanding capacity to succeed during childhood, adolescence and adulthood, across all settings. He achieved high honors, was admitted to and succeeded at schools of great distinction (e.g. Yale, Princeton and Harvard), was a Rhodes Scholar, was elected at a very young age to the Vermont State House, and performed this service while attending law school and running a newspaper. See Panel hearing transcript at pages 54-60.

20. While Respondent testified that taking on too many tasks at once and believing that he could juggle them all resulted from attention deficit disorder, his accomplishments belie such an explanation. His ability to pass the bar exam, complete college and law school at competitive universities, and review and make legislation suggest a strong ability to concentrate and focus on tasks at hand, consistently and for many years.

21. However, even if Respondent did and does suffer from attention deficit disorder, this does not explain the misconduct to which he has stipulated. That misconduct includes numerous instances in which the Respondent was dishonest to clients. In many of those instances he

benefitted from these lies. Attention deficit disorder does not explain Respondent's lying to clients. See testimony of Dr. Ray Abney at Panel hearing transcript at pg. 31, and of Dr. Paul Cotton at Panel hearing transcript at pgs. 61-66.

22. Even assuming that Respondent suffers from attention deficit disorder, that would not explain or mitigate lying to other attorneys or to a probate judge. "...[A]ttention deficit disorder is a disorder of attention. It is not a disorder of speaking truthfully." Testimony of Dr. Paul Cotton at Panel hearing transcript at p. 65, lines 4-6.

23. The complexity of many of the financial transactions at issue in this case indicate that Respondent's conduct was not controlled by attention deficit disorder. Respondent's consistent ability to balance his client trust account in contrast to his other accounts contradicts attention deficit disorder. This conduct illustrates attention to detail, concentration and precision - all contrary to the characteristics which define attention deficit disorder. See Dr. Paul Cotton's testimony at Panel hearing transcript at pg. 67, lines 5-11.

24. In sum, while attention deficit disorder may explain a disorganized practice and neglect of client matters, it cannot and does not explain Respondent's intentional and repeated use of his clients' money without their permission, lying to clients, attorneys and judges, and covering up the misconduct in order to protect or benefit himself.

25. Respondent also suggested that he has learned from his mistakes and has rehabilitated himself. Indeed we are encouraged that Respondent sought professional help and is now taking medication. This may be helpful to him in some areas of the practice of law but cannot be characterized as rehabilitative (and there for mitigating) with regard to the misconduct here.

26. Respondent has told this Board in the past, on several occasions, that he had learned from his mistakes and was competent to practice law in an ethical fashion. Experience has demonstrated that those statements were untrue. In fact, while being disciplined for one set of misconduct in another case, Respondent was committing misconduct in this one.

27. There was no evidence that Respondent's recent experiences will keep him from using his clients' money in future. There was no testimony concerning an ability to handle other people's money in a responsible manner, only that Respondent now attends appointments on time and takes on fewer tasks.

28. To the contrary, Respondent admits that he intentionally failed to consult with his clients before spending their money. He was aware that this was wrong, but he did it anyway. He offers as an explanation that he had "no interest in doing ... [the] detail work..." of consulting with his clients and that he was convinced that his clients would agree to spend their money the way he had chosen. This is not the product of a mental impairment but of arrogance. Respondent knew and understood that he was violating the rules of conduct, and his decision to do so was purposeful. See Panel hearing transcript at pages 139-141, and change of plea hearing transcript at page 25.

Conclusion

Applying the applicable Standards , we conclude that Respondent should be disbarred

Dated at Montpelier , Vermont this 1st day of October, 1999.

/s/

Robert P. Keiner, Esq.
Hearing Panel Chair

/s/

Jane Woodruff, Esq.
Hearing Panel Member

/s/

John Barbour
Hearing Panel Member

Attachment Exhibit A

Distribution:
William M Dorsch, Special Bar Counsel
Peter Langrock, Esq., Counsel for Respondent

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

IN RE: Professional Conduct Board File No. 99.26
William Hunter, Respondent

STIPULATION OF FACTS

The respondent and Bar Counsel hereby stipulate to the following facts in the above-entitled matter.

GENERAL:

1. On October 5, 1998, the United States District Court for the District of Vermont entered a felony judgment of conviction against the respondent for mail fraud. The conduct at issue in that case included mishandling of client funds and misrepresentations concerning those funds. The conviction and much of the conduct at issue in the federal case underlies this Professional Conduct Board complaint.

2. The respondent repeatedly placed client funds in his personal or general office account during the period 1993-96. Those funds should

have been held in the respondent's office trust account on behalf of the clients.

3. In many instances when the funds were improperly placed in the respondent's personal or general office account, he used the funds for personal expenses. He also used funds held in his client trust account for his personal benefit.

4. The respondent repeatedly allowed the office client trust account to be depleted such that the balance in the account was considerably less than the client funds that he supposedly was holding.

5. The respondent repeatedly overdrew his office and personal bank accounts. However, he did not overdraw the client trust account.

WILLIAM AND VIRGINIA WESTCOM:

6. The respondent represented William and Virginia Westcom in the matter of the Estate of James Clifford Westcom v. Brian McAllister and Robert Wylie, Docket No. LP-68-91 I, Lamoille County Probate Court. The estate matter resulted from a wrongful death action on behalf of the Westcom's son and granddaughter.

7. On or about April 14, 1993, the respondent received $32,500 from the carrier for Robert Wylie. He deposited this sum of money into Vermont National Bank account #19535830, which was his personal account. See Exh. 4. The respondent was a fiduciary for the estate for so long as he held this money.

8. By correspondence dated June 13, 1993, the respondent informed his clients, William and Virginia Westcom, that he was holding a total of $42,015.41, which consisted of the $32,500 from the Wylie carrier, $10,000 received from the insurance carrier for Shawn McAllister, accrued interest on the Wylie money in the amount of $316.66 and accrued interest on the McAllister money in the amount of $198.75. See Exh. 2.

9. The representations specified in the prior paragraph were not true. The balance in Vermont National Bank account #19535830 dropped to $21,000 on April 19, 1993 remained at this level through April 20, 1993 and never increased any higher through May 18, 1993. The balance during the period May 18 through June 14, 1993 remained below $20,000. See Exh. 4-6. The balance increased to $34,000 on June 14 when the respondent deposited $20,000 from his home equity line of credit, and the balance remained above $33,000 until July 6, 1993, when it dropped below $32,500. See Exh. 7.

10. Throughout most of the time period that the respondent had a fiduciary duty to hold money on behalf of the Westcom Estate, the balance in his personal account (where he had originally placed the money) was less than $32,500.

11. On numerous occasions William and Virginia Westcom requested that the respondent send them money from the estate which was due them. Mr. Westom needed to be reimbursed for his out of pocket expenses for the funeral. The respondent did not do so, yet he had paid his own fees soon after his receipt of the funds.

12. On or about July 13, 1993, the respondent paid $19,908.50 to

Attorney Vincent Illuzzi as payment to the estates of Whitney and Christian Larow and to the LaRows for accident reconstruction, and other costs. The transactions which preceded this payment were as follows: the respondent took $20,000 out of his home equity line of credit in June, and put this money into his personal account. He then purchased, in July 1993, a bank check in the amount of $19,906 using the funds from his personal account. He deposited the bank check into his client trust account, and then paid Mr. Illuzzi with a check written on the client trust account.

13. In September 1993, the respondent paid the Westcoms $16,300 out of his client trust account. Since the Westcom money was not put in the client trust account, the Westcoms were paid with other clients' money.

LORLE ADLERBERT:

14. The respondent represented Lorle Adlerbert and her husband, now deceased, Bo Adlerbert, for many years in a variety of matters, including the setting up of a family trust, the Adlerbert Family Trust. Mishandling of funds from this trust during the period 1992 through 1996 was the subject matter of a prior professional conduct board complaint, PCB File No. 96.30, in which the respondent stipulated to: loaning client's funds without obtaining adequate security in violation of DR 6-101(A)(3); loaning a client's funds to another client without adequate disclosure in violation of DR 5-105(C); loaning client funds to a corporation for which he served on the board without adequate disclosure in violation of DR 5-101(A); and failing to repay client funds in violation of DR 9-102.

15. Lorle Adlerbert inquired on many occasions as to the status of her trust money during the above referenced period. By letter dated July 1, 1993, the respondent informed Mrs. Adlerbert that he had received interest on the loan in the amount of $1338.95, was holding the money in a First Vermont Bank account and that the monthly loan payments would be placed directly into the account from then on. See Exh 10.

16. Contrary to that representation, the respondent had received no interest towards the loans and paid the interest out of his own funds in the amount of $1338.95.

17. By the above misrepresentation to Lorle Adlerbert, the respondent covered the fact that the client was not receiving periodic payments on a loan, as he represented. Rather, the respondent was paying the funds himself, which made it appear that the loan repayment was timely and that the client's funds were secure.

HAMMONDSVILLE ENVIRONMENTAL FORESTRY ASSOCIATES:

18. The respondent represented Thomas P. Harrington with regard to the logging of land in Reading by Mr. Harrington's company, Hammondsville Environmental Forestry Associates, Inc. ("HEFA") The respondent represented Mr. Harrington at the closing and arranged for the purchase of the wood lot in the name of HEFA.

19. At the time of the transaction, the respondent was also a registered agent for HEFA and a director and incorporator of HEFA.

20. In the summer of 1993, the respondent arranged a loan to Mr. Harrington of approximately $35,000 to purchase the wood lot in Reading.

The loan was to be repaid from the logging proceeds.

21. The Adlerbert Trust provided $20,000 of the $35,000 loan. Lorle Adlerbert was another client of the respondent. See further discussion of Lorle Adlerbert and the Adlerbert Trust above). Lorle Adlerbert was not informed about, nor did she consent to, use of the trust money for this purpose. The respondent also did not secure the loan until August 3, 1994.

22. The respondent was entitled to a "finders fee" in the amount of $5500. See Exh. 8. He alleges that this was money for work done in connection with another corporation owned by Thomas Harrington, but that he told Mr. Harrington that he could call it a finder's fee to justify the money coming out of the Hammondsville account. Exhibit 8, which refers to this sum of money as "finders fee and legal fees" was created by the respondent, except possibly for the last column of the document.

23. The respondent collected three monthly $2,500 interest payments on the loan to Mr. Harrington. However, he misinformed Lorle Adlerbert that the monthly payments received on her money were substantially less than $2,500.

24. A dispute arose in late 1993 concerning the Reading land. When the dispute could not be resolved, the neighbor of the Reading Wood lot brought a lawsuit against HEFA. Moore v. Hammondsville Environmental Forestry Association, Inc. Windsor Superior Court, Docket No. 5220-94-WrC. On September 27, 1995, the respondent executed a stipulation between the plaintiffs, Helen and Pamela Moore, and the defendant, HEFA, which made a debt to the plaintiffs superior to the loan from Lorle Adlerbert. See Exh. 9 at para 2. The respondent did not consult or inform Lorle Adlerbert before signing the stipulation.

25. The respondent compromised Lorle Adlerbert's security without her knowledge or consent. In doing so, the respondent benefitted another client in which he had personal financial involvement.

26. The respondent also represented Mr. Harrington during this period in a Chapter 7 bankruptcy proceeding. The respondent did not list the Reading Wood lot as an asset, which he should have done. Mr. Harrington was successfully discharged in the summer of 1994.

BIFF MITHOEFER:

27. The respondent represented Biff Mithoefer in a fee collection matter brought by Mr. Mithoefer's former attorney, Brian Dempsey. The respondent failed to meet numerous deadlines in the case, including Requests to Admit and two Supreme Court deadlines for filing the brief. This resulted in a trial court decision for Mr. Dempsey and dismissal of the appeal. The respondent then settled the matter with Mr. Dempsey and, on or about June 22, 1994, the respondent paid this debt from his client trust account in the amount of $2,750. There was no prior payment into the client trust account by Mr. Mithoefer to pay this debt. See Exh. 11.

DAVID MITCHELL:

28. The respondent represented David Mitchell regarding a commercial real estate transaction. On or about November 22, 1994, Mr.

Mitchell paid a retainer to the respondent in the amount of $5,038.95. The respondent deposited this money in his Vermont National Bank personal and general accounts.

29. On four separate occasions, three of them prior to the date that the respondent received the retainer check, the respondent paid himself fees for this case and deposited the checks into his Vermont National Bank account. The payments for his fees were made out of the respondent's client trust account, despite there being no David Mitchell funds in the client trust account.

30. The net effect of these transactions, during the period June 20, 1994 through December 6, 1994, was a depletion of the client trust account by $4,500, and an increase in the respondent's personal and general accounts by $9,538.95. See exh. 11 & 12.

THOMAS MELENDY:

31. The respondent represented Thomas Melendy in the defense of a collection action brought by a financial institution. Attorney Illerdon Mayer represented the financial institution. In an effort to resolve the dispute, Mr. Melendy paid $125 each month toward the debt, and sent this sum to the respondent, sometimes in cash. The respondent did not forward all of the money to Attorney Mayer and did not set the money aside. On or about July 1, 1994, the respondent paid the remaining sum due on the debt ($2,250) out of his client trust account. Since the respondent had already spent the money he had received from Mr. Melendy, the respondent used other people's money from the client trust account to pay the debt balance.

LARRY AND LILA CARRARA:

32. The respondent represented Larry and Lila Carrara in a lawsuit. The matter settled and the respondent received a check from the carrier in the amount of $23,750 on or about October 14, 1994.

33. The respondent placed the settlement check which was made payable to the Carraras and the respondent into his Chittenden Bank client trust account.

34. The respondent did not pay the Carraras their portion of the settlement ($13,876) until March 29, 1995, despite their repeated inquiries about the money. During the period October 1994 through March 1995, the respondent's client trust account balance was near zero.

35. In order to pay the Carraras their share of the settlement, the respondent withdrew $15,000 from the Pazda Estate and paid it into his client trust account. He did this the same day he paid the Carraras their money.

36. Prior to paying the Carraras their share of the settlement, and immediately after receipt of the settlement check, the respondent paid himself for fees related to the Carrara matter. See Exhs. 13 and 14.

37. Immediately following payment to the Carraras of their money in March 1995, the respondent received their approval to return the money to the respondent. He told them that he intended to loan the money to a client who had meals and room taxes he could not pay. However, the

respondent knew that these representations were false. Instead the respondent used the money to pay the portion of another client's debt for which the respondent had become responsible to Lavalley Building Supply in the amount of $13,858.86. See Exh. 15.

MIRACLE SNACK BAR:

38. The respondent represented Josiah Lupton, the owner of Miracle Snack Bar. Mr. Lupton was rebuilding the snack bar which had burned down. The respondent guaranteed a portion of Mr. Lupton's bill with Lavalley Building Supply. As a result, when Lavalley sued for payment, the respondent became a judgment debtor and was obligated for a portion of the judgment.

39. On March 29, 1995, the respondent received a message from Mr. Lupton's attorney, Illerdon Mayer, stating that if the respondent did not appear the next day for a deposition with his client, he might report an ethical violation. See Exh. 17. Also during this period, the respondent was deeply involved in his third professional conduct investigation and on notice that guaranteeing a client's debt was a code violation.

40. The respondent then used the reloaned money from the Carraras to pay the respondent's share of the Lupton debt.

41. By doing so, the respondent assured that his liability was satisfied, but only partially satisfied the client's liability.

THE ESTATE OF BENJAMIN PAZDA:

42. The respondent was appointed by the District of Windsor Probate Court as Administrator of the Estate of Benjamin Pazda, and served as administrator from January, 1994 until November, 1995. The decedent's daughter, Lisa Polston, was the sole beneficiary of the estate. The total estate was valued at approximately $80,000 in January 1994 when it first began.

43. Despite numerous requests from Ms. Polston for money since she had significant bills to pay, the respondent failed to pay her money from the estate. Instead the respondent used the estate money to loan money to other clients, which he did without the permission or knowledge of Ms. Polston. By June of 1995, when the respondent learned he was under investigation by the federal government, the estate account balance was less than $7,000. See exh. 19.

44. When asked by the Honorable Sarah Vail, the probate judge handling the estate, about the management of the money in the estate, the respondent said that the money was invested in certificates of deposit and money market accounts. That was not true. The respondent did not tell the judge that the funds had been loaned to other clients, which was an unethical conflict of interest.

45. In doing so, the respondent distracted the judge from her concern about the management of the estate and delayed her further inquiry into his conduct. However, on or about November 1995, the Court replaced the respondent with another attorney, Patrick Ankuda, and in January 1996, Hon. Sarah Vail filed a complaint with the Professional Conduct Board.

46. The respondent also lied to attorney Patrick Ankuda. The respondent had told Mr. Ankuda that the sum of $38,327.50 which had been forwarded to Mr. Ankuda represented the proceeds of a Vermont National Bank account and that the sum of $52,534.88 which had been forwarded to Mr. Ankuda had represented a series of loans or notes to third parties made by the Estate. Mr. Ankuda requested statements to track the interest payments for these funds. However, the respondent had borrowed money from other people to make these payments to Mr. Ankuda so he had to estimate the interest and pay it himself. See Exh. 18.

47. The respondent failed to meet the Court's reporting requirements as administrator. He used the estate funds other than to pay creditors or beneficiaries in violation of his fiduciary duties as administrator, and in doing so depleted the funds.

48. In order to pay back the Pazda Estate, the respondent borrowed money from other clients and depleted his client trust account. See Exh. 20. For example he used money from Gary Thomas, Doug and Nancy Reed, Jean Bewley and Mary Louise and Ronald Thorburn. Meanwhile, in March 1996, he misinformed Jean Bewley that he was holding this client's money when he had already spent it. Similarly, he lied to Marie Louise and Ronald Thorburn. In December, 1995, the respondent told these clients that he needed $20,000 for renovations on their Inn in Hartland, Vermont. He told them that because Attorney Kevin Dailey not available and the money was needed right away. In fact, attorney Daly was available and the respondent already had sufficient money for renovations. The respondent needed the money for his own purposes.

NYLINE TURGEON:

49a The client represented Nyline Turgeon in a civil matter. The matter was settled and a check in the amount of $1,750 was paid by the claims service to the respondent and Ms. Turgeon. The respondent placed the money into his Vermont National Bank personal account.

50a The respondent then made a check payable to Ms. Turgeon in the amount of $1,500 from his Chittenden Bank client trust account. The net result of this series of transactions was that the client trust account lost $1,500 while the respondent's personal account gained $1,750, approximately $1500 more than the respondent collected for his fee in this matter. See exh. 22.

NANCY KELLEHER:

51a The respondent represented Nancy Kelleher (now Kimball) concerning a vehicular collision. The matter was resolved and a settlement check in the amount of $4,550 was sent by the carrier on or about February 9, 1995, made payable to Ms. Kelleher and the respondent. The respondent placed this check into his Vermont National Bank personal account.

52a Prior to this, on or about December 14, 1995, the respondent deposited a check into his personal account in the amount of $1,000 made payable to him for fees in this case. The check was written on his Chittenden Bank client trust account.

53a On or about February 11, 1995, the respondent forwarded a

check to Ms. Kelleher for the sum of $2,650 and on March 29, 1995 he forwarded the sum of $941 to James McGlinn, DC, an expert in the Kelleher matter. Both checks were written from the client trust account.

54a The net effect of these transactions was a net gain of $5,550 in the personal account and a net loss of $4,591 in the client trust account. See exh. 23.

DIRECT PERSONAL USE OF CLIENT TRUST ACCOUNT:

55a On or about February 2, 1995, the respondent made a payment for his newspaper, the Black River Tribune, to the Internal Revenue Service out of his client trust account.

CLIENT INJURY:

56. Bar Counsel cannot refute the respondent's contention that, with respect to the above instances, all clients have been made whole.

DATED at Cavendish, Vermont, this 24th day of June 1999.

/s/

_____
William A. Hunter, Esq.
Respondent

DATED at Middlebury, Vermont, this 24th day of June 1999.

/s/

_____
Peter F. Langrock, Esq.
Attorney for the respondent

DATED at Burlington, Vermont, this 24th day of June 1999.

/s/

_____
William M Dorsch
Bar Counsel

In re Hunter (99-534)

[Filed 28-Dec-2000]

ENTRY ORDER

SUPREME COURT DOCKET NO. 99-534

NOVEMBER TERM, 2000

In re William Hunter, Esq.	}	APPEALED FROM:
	}	
	}	
	}	Professional Conduct Board
	}	
	}	
	}	DOCKET NO. 99.26

In the above-entitled cause, the Clerk will enter:

Respondent William A. Hunter appeals from the recommendation of the Professional Conduct Board that he be disbarred as a result of engaging in illegal conduct involving a serious crime in violation of DR 1-102(A)(3) of the Code of Professional Conduct. He contends that the Board erred (1) by failing to consider his mental disability as a mitigating factor, (2) by failing to address the evidence respondent presented on seven other mitigating factors, and (3) by failing to explain why disbarment is the appropriate sanction to protect the public. We adopt the Board's recommendation and disbar respondent effective October 5, 1998.

The parties stipulated to the facts before the Board. On June 17, 1998, respondent pled guilty to one felony count of mail fraud in the United States District Court for the District of Vermont. On October 5, 1998, the court entered a felony conviction against respondent. The conduct at issue involved mishandling of client funds and misrepresentations about those funds during the period from 1993-1996. Respondent repeatedly deposited client funds in his personal account or his general office account when these funds should have been held in respondent's client trust account on behalf of clients. In many instances, respondent used client funds in his office or personal account for personal expenses, and he also used funds in the client trust account for his personal benefit. The parties' stipulation of facts details eleven separate matters in which respondent mishandled client funds, illustrating that respondent repeatedly used client funds without the permission of the client and lied to clients, attorneys and a probate judge to cover up his misconduct.

Pursuant to A.O. 9, Rule 14(D) (Cum. Supp. 1998) (formal proceedings after conviction for serious crime), special bar counsel filed a petition of misconduct against respondent. There was no dispute that respondent was convicted of a serious crime. The only issue before the Board was the sanction to be imposed for the undisputed conduct. The Board's decision was based on the parties' stipulation of facts and the testimony of respondent and two expert medical experts, one proffered by each side, concerning whether respondent had a mental disability that mitigated the misconduct. Applying the ABA's Standards for Imposing Lawyer Sanctions, the Board concluded that disbarment

was appropriate under three separate standards. See ABA, Standards for Imposing Lawyer Sanctions, Standard 4.61 (disbarment appropriate when lawyer knowingly deceives client with intent to benefit lawyer or another, and causes serious injury or potentially serious injury to client); Standard 5.1 (disbarment appropriate when lawyer engages in serious

criminal conduct or intentional conduct involving dishonesty, fraud, deceit or misrepresentation that adversely reflects on lawyer's fitness to practice law); Standard 6.1 (disbarment appropriate when lawyer makes false statement with intent to deceive court).

Further, the Board found several aggravating factors: (1) respondent has a significant record of prior discipline, (2) respondent acted with a dishonest or selfish motive, (3) respondent exhibited a pattern of misconduct, (4) respondent is responsible for multiple offenses, and (5) the victims of respondent's misconduct were vulnerable. See ABA Standards, supra, Standard 9.2 (listing factors that may be considered aggravating and justifying increase in degree of discipline to be imposed). It considered but rejected several mitigating factors advanced by respondent. First, the Board rejected respondent's claim that he was motivated by a genuine desire to help people obtain financing because it had previously found that respondent had a dishonest or selfish motive for much of the misconduct. Second, the Board rejected respondent's claim that his mental disorder, attention deficit disorder (ADD), be considered a mitigating factor. It concluded that ADD would explain a disorganized practice and neglect of client matters, but did not explain repeated use of client's money without permission, lying to clients, attorneys and judges, and covering up the misconduct to protect himself. Third, the Board rejected respondent's claim that he has been rehabilitated by obtaining professional help and taking medication for ADD because addressing his ADD is not rehabilitative of the misconduct that is not attributable to the mental disability. The Board found no credible evidence that respondent had learned from his mistakes and now has the ability to handle client funds in a responsible manner. In view of the aggravating factors and the absence of mitigating factors, the Board unanimously concluded that disbarment is the appropriate sanction.

Although we make the ultimate decision on discipline, we accord deference to the Board's recommendations. See In re Berk, 157 Vt. 524, 527-28, 602 A.2d 946, 948 (1991). Before this Court, respondent raises three issues. He contends first that the Board erred in failing to consider his mental disability as a mitigating factor. He concedes: "No one has suggested that ADD was a direct cause of the infractions." He contends, however, that the Board's past decisions have recognized a mental impairment as a mitigating factor without requiring a showing that the mental impairment caused the misconduct. We have held otherwise.

In In re Hunter, 167 Vt. 219, 224-25, 704 A.2d 1154, 1157 (1997), respondent argued that ADD caused the disorganization of his practice which resulted in the many instances in which he neglected client matters. We rejected this claim because the evidence did not show that ADD caused respondent's most egregious misconduct, misappropriation of client funds by loaning them to other clients without permission to do so. See id. at 225, 704 A.2d at 1157. In so ruling, we adopted the ABA Standard requiring that the respondent show direct causation between the mental disability and the offense before the mental disability may be considered as a mitigating factor. See id.; ABA Standards, supra, Standard 9.3(i)(2) and commentary (1992 amendments). Other courts have similarly required a showing of causation before considering a mental disability as a mitigating

factor. See, e.g., Oklahoma Bar Assoc. v. Busch, 976 P.2d 38, 56

(Okla.1999) (rejecting respondent's claim that ADD mitigated his misconduct because "there is no causal connection between respondent's condition and the ethical violations in contest"). Thus, we reject respondent's contention that he need not show that the mental disability caused the misconduct.

As in respondent's previous disciplinary proceeding, we conclude again that ADD does not explain respondent's most egregious conduct: (1) loaning client funds to other clients without permission, (2) lying to clients, attorneys and a judge about client funds, and (3) using client funds to make loans and payments for his personal benefit. Indeed, respondent presented no evidence that ADD caused this misconduct. His treating psychiatrist, who testified as his medical expert, testified that ADD does not explain respondent's lies to clients about their funds. Accordingly, we agree with the Board that ADD is not a mitigating factor to this misconduct.

Second, respondent contends that the Board erred in failing to address seven other mitigating factors upon which he presented evidence. Despite the Board's statement that respondent advanced two mitigating factors, the Board's decision addresses many of the factors respondent advances as mitigating. Respondent contends that the Board failed to address as mitigating factors: (1) that he had personal and emotional problems, (2) that he made timely, good faith efforts to make restitution, (3) that he made a full and free disclosure of his conduct to the disciplinary board, (4) that he has a good character and reputation, (5) that he has in the interim been rehabilitated, (6) that other sanctions have been imposed for the misconduct, and (7) that he has shown remorse.

On the contrary, the Board explicitly rejected his claim of rehabilitation because addressing his mental illness did not address the most egregious misconduct, which was not attributable to the mental illness. The Board's decision also implicitly rejects any contention that respondent has shown remorse, as it found that his claim that he had learned from past mistakes was not credible. In addition, although the Board's decision did not explicitly consider as mitigating factors whether respondent had personal and emotional problems or whether other sanctions were imposed, these factors are apparent in the Board's decision, and we have no doubt that they were taken into account in the discipline recommendation. See People v. Goldstein, 887 P.2d 634, 642 (Colo. 1994) (consideration of respondent's other sanctions and emotional problems apparent from Board's findings that respondent was convicted of felony and sentenced to three years probation and continued mental health counseling for emotional disorder he alleged responsible for the misconduct). Further, as in Goldstein, the other sanctions imposed for the criminal conviction, a two-year probationary sentence and 200 hours of community service, are not so severe as to create a mitigating factor. See id. at 643 (rejecting sanction on criminal conviction as mitigating where respondent was placed on probation for three years and ordered to perform 150 hours of community service; finding case distinguishable from prior case where factor was mitigating because respondent was not directly responsible for securities fraud but was imprisoned for more than a year).

We also reject respondent's claim that his good character and reputation are mitigating. In respondent's previous disciplinary proceeding, we stated that "any mitigating effect that good character and reputation evidence might have had on the Board's choice of sanction is

necessarily diminished when, as here, the attorney has been previously disciplined." See Hunter, 167 Vt. at 227,

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704 A.2d at 1158. In light of respondent's continuing and escalating pattern of misconduct, as well as the multiple offenses, such evidence would have little or no effect on the discipline imposed here.

Respondent's contention that we should consider as mitigating factors that all clients have been made whole, and that he made full and free disclosure to the disciplinary board, are compromised by the multiple disciplinary proceedings. The misconduct in this case was occurring during the proceedings for the previous case, and thus, it is not clear at all that respondent made full and free disclosure to the disciplinary board, for example by self-reporting, nor that he made restitution before disciplinary proceedings were initiated, see ABA Standards, Standard 9.32 commentary (lawyers who make restitution before initiation of disciplinary proceedings present best case for mitigation). In sum, we agree with the Board that there are no clearly mitigating factors in this case.

Finally, respondent contends that disbarment is not consistent with the primary purpose of lawyer sanctions, which is to protect the public. He contends that all the misconduct upon which this proceeding is based happened before he was diagnosed and treated for ADD. Respondent maintains that he has since made tremendous positive changes in his life, and thus, disbarment is not necessary at this point to protect the public. Respondent relies on two cases.

In Iowa Supreme Court Bd. of Prof'l Conduct v. Erbes, 604 N.W.2d 656 (Iowa 2000), the lawyer was charged with neglecting clients' matters and failing to cooperate with the investigation into those matters by the disciplinary authority. Because the lawyer: (1) had successfully addressed his depression with counseling and medication, (2) had consequently completely transformed his office to meet his high standards, (3) had learned from his experience, and (4) posed no current threat to the public, the court determined that a public reprimand was the appropriate sanction. Id. at 658-59. This case is inapposite. First, in Erbes, the lawyer's misconduct was caused by his mental illness, and thus, addressing the mental illness was rehabilitative. Second, the charges of neglect against the lawyer in Erbes were far less serious than the charges of intentional deceit here. Most importantly, however, the Board in Erbes concluded that Erbes was no longer a threat to the public. In this case, we cannot reach this conclusion.

The other case upon which respondent relies, Cincinati Bar Assoc. v. Stidham, 733 N.E.2d 616 (Ohio 2000), is also distinguishable. In that case, the lawyer was charged with multiple offenses involving mishandling of client funds, generally caused by his severe depression. The court found numerous factors mitigating against the board's recommendation of indefinite suspension. First, the lawyer had no prior disciplinary record. Most importantly, the court found that he was being treated for the depression that caused the misconduct, and that he had changed his office and accounting practices to prevent future problems. None of these factors is present here.

We agree with respondent that "disciplinary sanctions are not intended

to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." Hunter, 167 Vt. at 226, 704 A.2d at 1158. We have, however, already imposed the maximum sanction short of disbarment for other conduct of respondent, and the misconduct here is more serious than that we have found in the past. As we noted above, some of the misconduct involved here occurred while the last disciplinary action was pending, indicating that

the last sanction or its threat was inadequate to deter continuing misconduct.

We conclude that disbarment is the appropriate sanction to protect the public. Respondent engaged in serious criminal conduct, misused clients funds for his own benefit, and lied to clients, attorneys and the court to cover up his misconduct. The ABA Standards for Imposing Lawyer Sanctions recommend disbarment for each of these actions. We are not persuaded that there are any overriding mitigating factors in this case - ADD cannot be considered the cause of the most egregious conduct - and there are certainly several aggravating factors. Moreover, all of the misconduct is directly related to respondent's practice of law. Accordingly, we agree with the Board's recommendation that respondent be disbarred. See Goldstein, 887 P.2d at 644 (attorney disbarred for deceitful conduct in handling legal matters despite claims that mental disorder contributed to misconduct); The Florida Bar v. Clement, 662 So. 2d 690, 699 (Fla. 1995) (attorney disbarred for misuse of client funds where referee found that mental illness did not cause misconduct); Busch, 976 P.2d at 56 (attorney disbarred for misuse of client funds where court found no causal connection between misconduct and ADD).

The Board recommended that disbarment be effective October 5, 1998, the date of respondent's conviction. Because neither party has contested this date, we accept the recommendation of the Board.

Respondent William A. Hunter is hereby disbarred, effective October 5, 1998.

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
James L. Morse, Associate Justice

_____
Denise R. Johnson, Associate Justice

_____
Frederic W. Allen, Chief Justice (Ret.)
Specially Assigned