

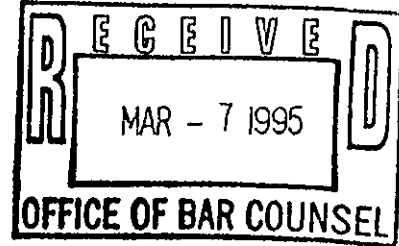
STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 1st day of March, 1995, the following order was made and entered:

Lawyer Disciplinary Board, Complainant

vs.) No. 22628

Anthony J. Sparacino, Jr., a member of The
West Virginia State Bar, Respondent

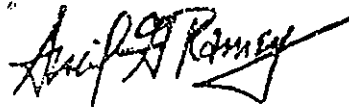


On a former day, to-wit, November 18, 1994, came the complainant, the Lawyer Disciplinary Board, by Teresa A. Tarr, its attorney, pursuant to Rule 3.10, Rules of Lawyer Disciplinary Procedure, and presented to the Court its written recommended disposition in the above-captioned proceeding recommending that (1) respondent's license to practice law in the State of West Virginia be suspended for a period of twenty-one months, with twelve months to be deferred while the respondent undergoes a period of supervision following reinstatement; (2) upon completion of the nine-month suspension, respondent shall be automatically reinstated without further application and shall serve a period of supervision for two years; (3) charges of embezzlement, violations of criminal statutes, and violation of Rules 8.4(b) and 8.4(d) be dismissed; and (4) respondent reimburse the Lawyer Disciplinary Board for the expenses incurred in the investigation of this matter in the amount of Four Hundred Sixteen Dollars and Ten Cents (\$416.10). On the same day, came the Office of Lawyer Disciplinary Counsel, by Teresa A. Tarr, its attorney, pursuant to Rule 3.11 of the Rules of Disciplinary Procedure, and presented to the Court its concurrence to the aforesaid written recommended disposition.

There being heard neither consent nor objection by the respondent within the time period provided in Rule 3.11 of the Rules of Lawyer Disciplinary Procedure, the Court is of opinion to and doth hereby adopt the recommendations of the Lawyer Disciplinary Board. It is therefore ordered that (1) respondent's license to practice law in the State of West Virginia be suspended, effective April 3, 1995, for a period of twenty-one months, with twelve months of suspension deferred while the respondent undergoes a period of supervision following his reinstatement; (2) upon completion of the nine-month suspension, respondent shall be automatically reinstated without further application and shall serve a period of supervision for two years; (3) lawyer disciplinary charges of embezzlement, violations of criminal statutes, and violation of Rules 8.4(b) and 8.4(d), be, and they hereby are, dismissed; and (4) respondent reimburse the Lawyer Disciplinary Board for the expenses incurred in the investigation of this matter in the amount of Four Hundred Sixteen Dollars and Ten Cents (\$416.10). Justice Brotherton absent. Judge Fred L. Fox, II, sitting by temporary assignment.

A True Copy

Attest:



Clerk, Supreme Court of Appeals

**BEFORE THE LAWYER DISCIPLINARY BOARD
OF WEST VIRGINIA**

IN RE: ANTHONY J. SPARACINO, JR
a member of the
West Virginia State Bar

I.D. No. 94-03-012

**HEARING PANEL SUB-COMMITTEE REPORT
FINDINGS OF FACTS, CONCLUSIONS OF LAW,
MITIGATION AND RECOMMENDED DISCIPLINE**

The Hearing Panel Sub-Committee, having reviewed the Stipulated Findings of Fact, Conclusions of Law, and Recommended Discipline in this matter, does find them to be acceptable and, consistent with the Stipulated Findings of Fact, Conclusions of Law, and Recommended Discipline, does make the following Findings of Fact, Conclusions of Law, and Recommended Discipline:

FINDINGS OF FACTS

1. Anthony J. Sparacino, Jr., ("Respondent") is a licensed member of the West Virginia State Bar who practices law in Raleigh County, West Virginia and is subject to the disciplinary jurisdiction of the West Virginia Supreme Court of Appeals and its properly constituted Lawyer Disciplinary Board ("Board").
2. Respondent Sparacino was involved, in 1986, in a contract mining venture known as Glenview Resources, Inc. ("Glenview") with another person who was a former client of Respondent Sparacino. By the year 1989 Glenview had experienced significant financial problems and ceased operations. In 1993 Respondent Sparacino owed approximately \$50,000.00 to the Internal Revenue Service ("hereinafter IRS") in back taxes for 1991/92 personal taxes and an additional amount of taxes of approximately \$110,000.00

representing a one hundred percent penalty assessment under a 1990 interpretation of federal tax laws relating to corporate 941 withholdings for Glenview.

3. During the time period from April of 1993 until at least December of 1993 Respondent, pursuant to negotiation and agreement with the IRS, paid the IRS \$500.00 per month in back tax payments. During 1993 Respondent also experienced additional serious financial problems, arising from his involvement with Glenview when the United Mine Workers placed suggestions on both his personal and his business accounts. During 1993 neither the IRS nor the United Mine Workers interfered in any way with the operation of Respondent Sparacino's client trust account.

4. During at least the period from January, 1993, through November 16, 1993, and before, Respondent Sparacino knowingly allowed amounts of money, representing earned fees on settled cases, to remain in his client trust account after settlement and distribution. During that same period of time, with the exception of one occasion in November of 1993, Respondent did not deposit any personal funds into his client trust account. Respondent's commingling of personal funds related solely to fees from settlements which were allowed to remain in the client trust account.

5. During the time period of at least January, 1993, through November 16, 1993, Respondent commingled his personal funds with his client trust fund account in order to avoid suggestions placed on his accounts by the United Mine Workers and to avoid any similar activity by the IRS, should they decide to take such action. During that period of time Respondent drew against those portions of his own funds allowed to remain in the client trust account on an as needed basis. Respondent never maintained a written record of the personal funds that he kept in or withdrew from the client trust account, relying instead on his memory.

6. Prior to August, 1993, Respondent Sparacino represented Gregory Aaron, a minor, seeking recovery for injuries sustained by him in a motor vehicle collision which occurred November 25, 1992. The primary contact between Gregory Aaron and Respondent Sparacino was Aaron's mother, Shirley Aaron. Respondent Sparacino promptly negotiated a settlement of the claim of Gregory Aaron and on August 3, 1993, a summary proceeding was held before the Honorable Robert Burnside, Judge of the Circuit Court of Raleigh County, for the purpose of reviewing the proposed minor's settlement involving Gregory Mark Aaron, then age 16. Respondent Sparacino represented Mrs. Aaron, as guardian, at the hearing.

7. On the date of the hearing, August 3, 1993, and after Judge Burnside had approved the proposed settlement for Gregory Mark Aaron, Respondent Sparacino immediately deposited the \$6,000.00 in settlement funds into his client trust fund account. Respondent had a check prepared payable to himself in the amount of \$1,500.00 and entered on its "For" line was: "Legal fee - Gregory Aaron". Respondent Sparacino also wrote himself a check in the amount of \$20.20 for expense reimbursement. Medical providers for Gregory Aaron received payments totalling approximately \$1,066.09. Respondent Sparacino provided Gregory Aaron and his mother, as his guardian, a check in the amount of \$600.00. The amount immediately disbursed from the trust account in connection with the Aaron settlement was \$3,188.29.

8. Pursuant to agreement and direction of his client, Respondent Sparacino held in his trust account \$2,813.71 which was to be placed in an existing certificate of deposit in the name of Gregory Aaron in the Bank of Raleigh. Judge Burnside had suggested that, if possible, the net proceeds of the settlement should be deposited in an interest-bearing savings account in a financial institution authorized to do business in the State of West Virginia where such funds should remain until Gregory Aaron reached his majority or until

the Court ordered otherwise. When Respondent Sparacino spoke to Ms. Aaron on August 3, 1993, he assured her that he would take steps immediately to find out if the bank would allow him to place the money in the pre-existing certificate of deposit account and, if so, that he would deposit the money without delay.

9. On August 4, 1993, Respondent Sparacino telephoned Brenda Troitino who is a Customer Service Representative with the Bank of Raleigh known to Respondent Sparacino. Respondent wanted to make sure that he could add the balance of the settlement funds of Gregory Aaron could be added to the existing certificate of deposit which the Bank of Raleigh maintained for Ms. Aaron, as guardian for Gregory Aaron. Ms. Troitino confirmed, during the telephone conversation with Respondent Sparacino, that the money could be placed in the certificate of deposit account, which was then numbered 1-8553-C.

10. Later that day, Judy Oxley, Respondent's secretary and bookkeeper, prepared a check payable to the Bank of Raleigh in the amount of \$2,813.71 for deposit in Gregory Aaron's certificate of deposit account. Judy Oxley then placed the check and Respondent's letter dated August 4, 1993, confirming his conversation with Ms. Troitino, in an envelope and put it in the outgoing mail basket on her desk. The envelope had the name of Brenda Troitino hand written or typed on the outside and the envelope was sealed. The envelope with Brenda Troitino's name on it was not mailed in the ordinary course of business because Respondent Sparacino had specifically indicated to his secretary, Judy Oxley, shortly after the check and letter were prepared that he intended to personally take the envelope to the Bank of Raleigh office.

11. Thereafter, Respondent Sparacino did not take the check to the bank. Instead, the envelope and the check remained in his offices and the related \$2,813.71 remained in Respondent's client trust fund account. On August 31, 1993, Respondent

Sparacino wrote a \$2,800.00 check payable to himself drawn upon the trust fund account.

At the time the check for \$2,800.00 was written, the trust fund account balance was \$3,028.69. After the check in the amount of \$2,800.00 was written and paid the account balance in the trust fund account was \$221.10.

12. On November 4, 1993, the original Aaron certificate of deposit was due for renewal. On November 10, 1993, Ms. Aaron went to a branch of the Bank of Raleigh to check the amount, after renewal, of the certificate of deposit. She spoke to bank employee Ann Killen about the matter. Ms. Aaron became upset about the amount of money then in the certificate of deposit. Ms Aaron told Ms. Killen that: (a) there was supposed to be more money in the account; (b) that her attorney was supposed to have placed about \$2,800.00 additional in the certificate of deposit in August of 1993 and (c) that she was going to talk to her attorney, Mr. Sparacino, about the matter.

13. At some point between November 10 and November 12, 1993, Ms. Aaron spoke to Respondent Sparacino about the missing \$2,800.00 at his offices. Respondent Sparacino reported to Ms. Aaron that his secretary had quit at about the time the check was supposed to have gone to the bank, and that it was misplaced in the file. Respondent told Ms. Aaron that he would reopen the file and take the money to the Bank of Raleigh.

14. Respondent Sparacino promptly personally delivered the August 4, 1993, check and accompanying letter to Brenda Troitino at the Bank of Raleigh. There he handed the check and letter to Ms. Troitino. Respondent told Ms. Troitino that he did not bring the letter and check to her on August 4, 1993 because he believed Ms. Troitino had been on vacation. Respondent told Ms. Troitino that she was the only one who knew what was going on and who could add the money to the certificate of deposit so he had wanted to wait until she got back from vacation. Respondent further explained that the letter and check were inadvertently placed in the Aaron file where they were forgotten.

15. Ms. Troitino was not on vacation on August 4, 1993, and was working at the bank on that date and the next work week. Brenda Troitino had, in fact, taken vacation days on August 12 and 13 and August 16, 1993. Ms. Troitino was not the only employee of the Bank of Raleigh who could have added the money to the Gregory Aaron certificate of deposit.

16. On or about November 8, 1993, Respondent Sparacino had withdrawn a partial fee from the client trust fund account in connection with another case. This left only \$911.63 in the trust account on that date. Between November 8 and November 15, 1993, Respondent Sparacino did not make any more deposits or withdrawals through his trust account. At the time that Respondent Sparacino delivered the Aaron check to the bank, Respondent had arranged for the deposit of \$2,700.00 of his personal funds into the client trust fund account. Ms. Troitino deposited the \$2,813.71 check immediately upon receipt and that check was honored upon presentation for payment without complication. The Aaron check cleared the books of the Bank of Raleigh on November 16, 1993.

CONCLUSIONS OF LAW

17. Respondent Sparacino has admitted that, by allowing his personal funds arising from client settlements to remain in his client trust fund account over a long period of time after settlement, he violated Rule 1.15(a) of the West Virginia Rules of Professional Conduct. Additionally, Respondent admits that his deposit of \$2,700.00 in his client trust fund account in November in order to assure that the Aaron check delivered to the Bank of Raleigh would be honored upon presentation constitutes a commingling of personal funds in a client trust fund account. Rule 1.15(a) of the Rules of Professional Conduct provides:

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the

state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation.

18. Respondent Sparacino admits that by his failure promptly to deliver the \$2,813.71 in Aaron funds to the Bank of Raleigh for deposit in a certificate of deposit account and by his use of money of clients from a client trust fund, he violated Rules 1.15(b) and 8.4(c) of the Rules of Professional Conduct. Rule 1.15(b) provides:

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive...

Rule 8.4(c) states that "[i]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

MITIGATION

19. At the beginning of the year 1989 and proceeding to the present time, Respondent Sparacino, although able to continue his solo practice of law, has experienced extreme financial pressure arising from business reversals relating to the Glenview matter, the disputes with the United Mine Workers and, particularly, with significant ongoing problems with the Internal Revenue Service. During 1993 the actions of the United Mine Workers resulting in the freezing of personal accounts of Respondent, or attempts at such, placed great financial stress upon Respondent Sparacino. Additionally, during 1993 and before, Respondent Sparacino continuously negotiated with the Internal Revenue Service and numerous other creditors concerning the circumstances under which his repayment of a large amount of money could occur. All of these financial problems resulted in substantial personal and mental stress in the life and law practice of Respondent Sparacino.

20. As a result of the filing of the Statement of Charges in this proceeding, and upon the urging of his counsel in this proceeding and of friends, Respondent Sparacino sought, for the first time, treatment by mental health professionals M. Khalid Hassan, M.D., and John Johnson, M.S.W., of Beckley, West Virginia. Following interviews with Respondent Sparacino and administration of appropriate tests, Dr. Hassan and Mr. Johnson determined that Respondent suffers an adjustment disorder, mixed emotional (DSM IV Category 309.28). They have concluded, further, that but for this mental status, Respondent Sparacino would not have dealt negligently and improperly with the funds of Gregory Aaron in 1993. Respondent has been actively attending outpatient treatment and is now able to cope with the strains and challenges of daily practice of law. It is further the opinion of Dr. Hassan and Mr. Johnson that Respondent Sparacino represents no threat to clients or to others whose funds he is holding, particularly after the Aaron incident was brought to his attention.

21. Character witnesses available to testify on behalf of Respondent Sparacino in this matter confirm that Respondent Sparacino's reputation for good character, particularly as it relates to honesty and his handling of entrusted funds of others, including millions of dollars of funds of the State of West Virginia, is excellent.

RECOMMENDED DISCIPLINE

22. The Respondent shall be suspended by Order of the Supreme Court of Appeals of West Virginia for a period of twenty-one (21) months, of which suspension Respondent shall serve nine months actual suspension upon entry of the Supreme Court's decision. The twelve-month balance of the suspension shall be deferred while Respondent undergoes a period of supervision following his reinstatement. Upon serving the nine (9) month actual suspension, Respondent Sparacino shall be automatically reinstated without

further application or order and Respondent Sparacino will serve a period of supervision of two (2) years. The supervision to be served by Respondent Sparacino shall be as described in Paragraph 23. Respondent shall be entitled to serve as a paralegal to another lawyer or law firm, including Bernard Greer, Esq., during the period of his suspension.

23. Following the nine month actual suspension and Respondent's reinstatement, Respondent will be supervised for a period of two years by another attorney who is licensed to practice law in West Virginia. Respondent is required to submit a plan of supervision to Disciplinary Counsel. Upon approval by Disciplinary Counsel, Respondent shall implement the plan. The plan of supervision may be presented prior to the end of the nine month period of actual suspension and review of the plan by Disciplinary Counsel shall be prompt. If Respondent fails to implement and/or comply with the terms of the plan and/or to successfully complete the period of supervision, he shall be subject to suspension for the additional period of suspension which was deferred. Upon notice to the Respondent of its allegations of failure to implement or complete the period of supervision, Disciplinary Counsel shall present facts supporting the charge of failure to implement and/or comply with the plan to a Subcommittee Hearing Panel. After a full and fair hearing, the Panel shall report its finding and recommendation for action directly to the Supreme Court of Appeals which may enter its immediate order for the suspension of Respondent for the remaining 12 months or may take such additional action as it deems appropriate. Upon successful completion of the two-year period of supervision Respondent shall no longer be subject to the additional period of suspension as outlined in Paragraph 22.

24. The balance of the charges made against Respondent Sparacino in the Statement of Charges in this proceeding, particularly those which charge illegal activity, embezzlement, violations of criminal statutes and violation of RPCs 8.4(b) and (d) of the West Virginia Rules of Professional Conduct are hereby dismissed.

25. Respondent Sparacino shall pay all costs of this proceeding by a reasonable payment schedule agreed upon by both parties.

R. Kemp Morton
R. KEMP MORTON, CHAIRMAN

DATE: 10, 6, 94

Elisabeth Rose
ELISABETH ROSE, ESQUIRE

DATE: 10, 10, 94

Priscilla Haden
MRS. PRISCILLA HADEN

DATE: 10, 18, 94