Matter of Funk
Del. Supr. Nos. 154, 1997 and 226, 1999 (12/16/99)
Board Case Nos. 40 and 45, 1995; 82, 1997

Disciplinary Rules: DLRPC 1.1, 1.15(a), 1.15(b), 1.15(d) and IG 2, 1.3, 1.4(a), 3.3(a)(2) and 8.4(b).

Sanctions Imposed: Disbarment.

The Delaware Supreme Court approved the findings and recommendations of a panel of the Board on Professional Responsibility (the "Board") and has ordered that Joseph E. Funk, a member of the bar since 1980, be disbarred from membership in the Delaware Bar.

The Court had temporarily suspended Funk from the practice of law on September 27, 1997, finding that Funk had been charged by federal authorities with “serious crimes” and was incarcerated. The Court of Chancery appointed a receiver for Funk’s law practice. Funk entered a plea of guilty in the Delaware District Court to a charge of possession of a firearm by a prohibited user (an unlawful drug user). The Court found that Funk had violated Rule 8.4(b) of the Delaware Lawyers’ Rules of Professional Conduct (the “Rules”) by committing a criminal act that reflected adversely on his honesty and fitness.

As aggravating factors, the Court considered that in December 1992, Funk conditionally admitted to violations of Rule 1.3 (failure to pay medical bills in an Industrial Accident Board matter as promised); Rule 1.4(a) (failure to keep a client reasonably informed and to respond to reasonable requests for information); and Rule 8.4(b) (guilty pleas in Delaware to carrying concealed a dangerous instrument and assault in the third degree; New Jersey indictment for unlawful possession of a weapon, possession of a prohibited device (hollow-point bullets), unlawful acquisition of a handgun; and summonses on charges of possession of an open container in a motor vehicle, consumption of alcohol in a motor vehicle, and possession of marijuana). In April 1994, the Court approved a conditional admission by Funk for violations of Rule 3.3(a)(2) (knowingly failing to disclose a material fact to a tribunal when disclosure is necessary to avoid a fraudulent act by the client); and Rule 8.4(d) (conduct prejudicial to the administration of justice by failing to disclose to the Family Court that his client, after showing proof that child support payments were current, had demanded and had been refunded amounts held in escrow required to be posted by his client). Funk failed to appear in proceedings before either the Board or the Court. No mitigating factors were presented.

Two other consolidated disciplinary cases against Funk had been stayed pending the outcome of the instant disciplinary proceedings. The first case alleged a violation of Rule 1.3 on the basis of Funk's failure to file suit on behalf of a client prior to the expiration of the statute of limitations. Funk had admitted the allegations. In the second case, the Board concluded that Funk had violated Rules 1.1, 1.15(a), 1.15(b), 1.15(d), and Interpretive Guideline No. 2, relating to failure to file personal and business tax returns and to pay taxes due for several years, and deficiencies in maintaining the books and financial records of his law office.

In its Opinion, the Court found: "The record reflects a pattern of unethical conduct by Funk that demonstrates a disgraceful history of complete disregard for his responsibilities as an officer of this Court imbued with public trust in the proper administration of justice. In Funk's case, the only appropriate sanction is disbarment."