<u>Matter of Benge</u>
Del. Supr. No. 76, 2001 (10/9/01)
Board Case Nos. 28, 46 and 47, 1999

<u>Disciplinary Rules</u>: DLRPC 1.1, 1.2(a), 1.3, 1.4(a), 1.5(a), 1.7(b), 1.9(a), 1.15(d), 3.4(c), 8.4(c) and 8.4(d).

<u>Sanctions Imposed</u>: Disbarred

John H. Benge, Jr., Esquire was disbarred by the Delaware Supreme Court, and his name stricken from the roll of attorneys entitled to practice before the courts of the State of Delaware. The disbarment was effective immediately upon the date of the Court's decision: October 9, 2001. *In re Benge*, Del. Supr., No. 76, 2001 (October 9, 2001).

The Court affirmed the findings of fact made by the Board on Professional Responsibility and found that the Board correctly determined the violations. Benge's misconduct occurred in the course of handling several trust and estate matters. The violations included Benge's failure to maintain the books and records of his law office pursuant to the Rules, including the records associated with funds held in escrow for an estate for which Benge was acting as the executor. The Court made no distinction between funds held by an attorney in the course of an attorney-client relationship and funds held in connection with acting as the executor of an estate. The Board found, and the Court agreed, that "estate escrow accounts are fiduciary accounts and the record keeping requirements of Rule 1.15 apply." *Id.* at page 6.

The Court found that Benge violated the following rules of the Delaware Lawyers' Rules of Professional Conduct ("Rules"):

- Rule 8.4(d) (6 counts) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

- Rule 3.4(c) (3 counts) - A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

- Rule 1.15(d) (2 counts) - A lawyer shall follow the detailed and specific requirements for the maintenance of attorneys' books and records, including the handling of fiduciary and non-fiduciary funds.

- Rule 8.4(c) (2 counts) - It is professional misconduct for a lawyer to engage in conduct involving fraud, deceit or misrepresentation.

- Rule 1.5(a) (1 count) - A lawyer's fee shall be reasonable.

- Rule 1.1 (1 count) - A lawyer shall provide competent representation to a client.

- Rule 1.2(a) (1 count) - A lawyer shall abide by a client's decisions concerning the objectives of the representation and shall consult with the client as to the means by which they are to be pursued.

- Rule 1.3 (1 count) - A lawyer shall act with reasonable diligence and promptness in representing a client.

- Rule 1.4(a) (1 count) - A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

- Rule 1.7(b) (1 count) - A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after consultation.

- Rule 1.9(a) (1 count) - A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

In addition, Benge was found to have violated Procedural Rule 7.4 of the Delaware Lawyers' Rules of Disciplinary Procedure: discipline may be imposed for violation of any disciplinary order, including orders of probation. Indeed, the Court noted that Benge had repeatedly violated disciplinary orders:

> Respondent was admitted to the Bar in 1976 and was not involved in any disciplinary proceedings until 1994. Since that time, however, he has been sanctioned repeatedly for professional misconduct. In 1995, Respondent was given a private admonition and was placed on two years probation for his failure

to protect the interests of an elderly client with a personal injury claim .... While Respondent was on private probation, his conduct precipitated four additional disciplinary proceedings, which resulted in a public reprimand and two years of public probation. Finally, in July 2000, Respondent was suspended for one year for numerous violations related to his representation of a creditor in a bankruptcy matter. This Court concluded that suspension was warranted because:

> The most recent ethical violations found by the Board, to which [Respondent] has filed no objections, occurred at a time when [Respondent] was already serving a period of public probation for prior violation of the Rules. [Respondent's] record reflects a persistent pattern of client neglect that has continued unabated despite the imposition of a public reprimand with a public probation. [Respondent's] disciplinary history demonstrates an inexcusable disregard for his responsibilities to his clients as an officer of this Court. [*In re Benge*, Del. Supr., 754 A.2d 871, 880 (2000).]

Respondent's most recent violations continue the same pattern of neglect. He has caused injury to his clients and failed to adhere to previous disciplinary orders. During his suspension, Respondent was ordered to make monthly payments to the Lawyers' Fund for Client Protection, but he failed to do so. Moreover, Respondent has not acknowledged his misconduct, expressed remorse, or offered any mitigating factors for the Court to consider.

In re Benge, Del. Supr., No. 76, 2001 (October 9, 2001) at pages12-13.