

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: December 8, 2011

D-64-11

In the Matter of JOHN J.
KELLEHER, an Attorney.

COMMITTEE ON PROFESSIONAL
STANDARDS,

MEMORANDUM AND ORDER

Petitioner;

JOHN J. KELLEHER,

Respondent.

(Attorney Registration No. 2944619)

Calendar Date: November 7, 2011

Before: Mercure, Acting P.J., Peters, Lahtinen, Malone Jr.
and Stein, JJ.

Peter M. Torncello, Committee on Professional Standards,
Albany (Steven D. Zayas of counsel), for petitioner.

Per Curiam.

Respondent was admitted to practice by this Court in 1999.
He maintains an office for the practice of law in the City of
Albany.

Respondent has not answered or otherwise replied to a
petition of charges or to petitioner's instant motion for a
default judgment, although both were duly served upon him. In
support of its motion, petitioner has filed proof by affidavit of
the facts constituting the alleged misconduct. Under the
circumstances, respondent is deemed to have admitted the charges
and we grant petitioner's motion (see e.g. Matter of Rothenberg,

15 AD3d 772 [2005])). Further, based on such admission and the proof submitted by petitioner, we find respondent guilty of the charged misconduct.

In violation of the disciplinary rules,¹ respondent converted funds received on behalf of a client. Specifically, respondent received settlement checks totaling \$60,000 on behalf of the client in April 2007, he deposited the checks into his business account, and then used the funds for personal purposes (see former Code of Professional Responsibility DR 1-102 [a] [4], [5], [7]; DR 9-102 [c] [4] [22 NYCRR 1200.3 (a) (4), (5), (7); 1200.46 (c) (4)]; Rules of Professional Conduct [22 NYCRR 1200.0] rules 8.4 [c], [d], [h]; 1.15 [a]). Respondent did not provide the client with her share of the proceeds until November 2010.

Respondent's misconduct is aggravated by a letter of caution that he received in 2010 for not responding to client communications, failing to properly supervise his paralegal's activities and being absent from his law office for significant periods of time. Moreover, by not responding to the petition of charges or the instant motion, respondent has evinced a disregard for his fate as an attorney.

Having considered the factors and circumstances presented, and in order to protect the public, deter similar misconduct and preserve the reputation of the bar, we conclude that respondent should be disbarred (see e.g. Matter of Macalino, 37 AD3d 951 [2007]; Matter of Kahn, 37 AD3d 949 [2007]).

Mercure, Acting P.J., Peters, Lahtinen, Malone Jr. and Stein, JJ., concur.

¹ The alleged misconduct occurred prior to and after April 1, 2009, the effective date of the Rules of Professional Conduct.

ORDERED that petitioner's motion for a default judgment is granted; and it is further

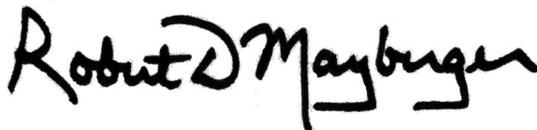
ORDERED that respondent is found guilty of professional misconduct as charged and specified in the petition; and it is further

ORDERED that respondent is disbarred and his name is stricken from the roll of attorneys and counselors-at-law of the State of New York, effective immediately; and it is further

ORDERED that respondent is commanded to desist and refrain from the practice of law in any form, either as principal or as agent, clerk or employee of another; and respondent is hereby forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law or its application, or any advice in relation thereto; and it is further

ORDERED that respondent shall comply with the provisions of this Court's rules regulating the conduct of disbarred attorneys (see 22 NYCRR 806.9).

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court