

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL :
Petitioner : No. 106 DB 1995
 :
V. : Attorney Registration No. []
 :
[ANONYMOUS] : ([] County)
Respondent :

OPINION

I. HISTORY OF PROCEEDINGS

On August 11, 1995, a Petition for Discipline was filed against Respondent, []. Respondent did not file an Answer. A hearing was held on November 16, 1995, before Hearing Committee [] comprised of Chairperson [], Esquire, and Member [], Esquire. Alternate Member [], Esquire, was unable to attend the hearing on that date and the Committee proceeded with two members, as permitted by Rule 206(a), Pa.R.D.E. Respondent appeared pro se. Petitioner was represented by [], Esquire. The Committee filed its Report on January 11, 1996 and recommended a Public Censure and a six month Suspension. No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Board at the meeting held on March 7, 1996.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner (Office of Disciplinary Counsel), whose principal office is located at Suite 400, Union Trust Building, 501 Grant Street, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent was born in 1949, was admitted to practice law in the Commonwealth of Pennsylvania in 1974, and his office is located at []. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3 . On or about November 4, 1992, [A], the brother of [B], died in El Paso, Texas.

4 . On February 1, 1993, [B] and her sister, [C], met

with Respondent at his office, at which time they provided Respondent with certain documents, including [A's] handwritten will.

5 . On that same day, [B] and [C] retained Respondent to review the documents and determine if [A's] estate had any assets, and to represent the estate, if necessary.

6. Also on that date, they paid Respondent \$500.00 for his services.

7. Respondent had never before represented either [B] or [C]. Respondent did not communicate to them, in writing, the rate or basis of the fee which he would be charging either before he was retained or within a reasonable time thereafter.

8 . [B], however, had a previous relationship with Attorney [D's] firm, the firm with which Respondent was associated at the time he agreed to handle the matter.

9 . Subsequently, [B] sent Respondent additional documents concerning [A].

10. [B] was able to speak with Respondent on two occasions in about March of 1993 and April of 1993, concerning her brother's estate.

11. On the second occasion, Respondent told [B] that he had not yet assembled enough information concerning her brother's estate to give her a progress report.

12. From April of 1993 until January of 1995, [B] and

[C] telephoned Respondent on several occasions to inquire as to the status of the matter.

13. On each occasion, Respondent was unavailable and a message was left for him to return their calls.

14. Despite the repeated attempts by [B] and [C] to contact Respondent, he did not communicate with them until his letter of January 31, 1995.

15. By letter to Attorney [D], by whom Respondent is employed, dated August 12, 1994, [B] requested the return of the original documents which she and her sister had submitted to Respondent.

16. [B] did not receive any response to her letter.

17. By letter dated January 31, 1995, Respondent returned to [B] the documents which she had given to him, and stated his findings with regard to her brother's estate. He also refunded to her the \$500.00 which had been paid to him for this matter.

18. The Petitioner brought four actions against Respondent prior to the instant case, including:

a. In No. 43 DB 92, the Disciplinary Board found that Respondent violated Disciplinary Rules 1.3, 1.4(a), 1.16(d), and 8.4(c). By Order dated July 31, 1995, the Disciplinary Board ordered Respondent to receive a Private Reprimand and placed him on one year's probation under the supervision of Attorney [D].

b. In No. 9 DB 89, the Disciplinary Board found that Respondent violated Disciplinary Rules 6-101(A) (3), 7-101(A) (1) & (2), and 1-102 (A). (4) By Order dated January 27, 1989, the Board ordered Respondent to receive

a Private Reprimand.

c. In file No. C4-86-8291, a Reviewing Member of a Hearing Committee of the Disciplinary Board found that Respondent violated Disciplinary Rules 6-101(A)(3), 7-101(A)(2), and 9-102 (B) (4). On October 23, 1987, Respondent received an Informal Admonition from Disciplinary Counsel.

d. In file No. C4-85-103, a Reviewing Member of a Hearing Committee of the Disciplinary Board found that Respondent violated Disciplinary Rules 6-101(A)(3) and 1-102(A)(4). On September 24, 1985, Respondent received an Informal Admonition from Disciplinary Counsel.

III. CONCLUSIONS OF LAW

Respondent's conduct has violated the following Rules of Professional Conduct:

1. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.
2. RPC 1.4(a) - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline filed against Respondent alleging that he did not diligently represent his clients nor did he respond to their requests for information as to the status of their legal situation.

Petitioner and Respondent stipulated to the underlying facts of the matter, and Respondent does not dispute that these facts support violations of Rules 1.3 and 1.4(a). The sole issue before

the Board at this time is the appropriate measure of discipline to be imposed. As with all disciplinary matters, this case must be evaluated according to the totality of its facts. The nature and gravity of the offense, as well as the presence of mitigating and/or aggravating circumstances, and the existence of a record of prior discipline are important factors to consider.

Respondent was retained by his clients in February 1993 to review documents of their deceased brother and ascertain whether an estate could be raised. These clients had previously retained Respondent's employer for other matters, and the employer asked Respondent to handle this particular matter. From approximately April 1993 to January 1995, Respondent failed to communicate with his clients, even though they repeatedly requested information from him. In January 1995, Respondent corresponded with his clients as to his legal opinion of the matter and refunded the \$500 they had paid him. The clients were not unduly prejudiced by Respondent's misconduct as there were no assets in the estate. This case is a relatively simple matter of neglect. However, it is compounded by Respondent's prior record of discipline. If Respondent were before the Board for the first time,, case law suggests that the nature of the misconduct would warrant an informal admonition. In the case of In Re Anonymous No. 70 DB 89, 10 Pa. D. & C. 4th 453 (1990), an attorney who failed to communicate with his client and failed to

pursue his client's case received an informal admonition. An attorney who failed to provide his client with a written statement concerning the basis of his fee and failed to communicate with his client received an informal admonition. In Re Anonymous No. 32 DB 90, 11 Pa. D. & C. 4th 372 (1990). Unfortunately, this is not Respondent's first contact with the disciplinary system, and for that reason the Board does not believe that an informal admonition is suitable under the circumstances. Respondent received an Informal Admonition in 1985 and 1987 and a Private Reprimand in 1989. In July 1995 the Board adjudicated a case against Respondent and determined that he should receive a Private Reprimand, which was subsequently administered in February 1996. For the purposes of this matter the Board will not consider the February 1996 discipline relative to Respondent's recidivism because that matter and the instant matter were going on at the same time and were part of the same problem. The other incidents of discipline must be weighed in the final disposition as they indicate Respondent's propensity to neglect cases. Case law suggests that the presence of a prior record is an aggravating factor and an attorney who has a prior record will be accorded a harsher sanction than an attorney who has an unblemished record. office of Disciplinary Counsel v. Davis,, 532 Pa. 22, 614 A.2d 1116 (1992).

The Hearing Committee recommended a Public Censure and a

six month Suspension based on Respondent's violations and his history of recidivism. The Committee was of the opinion that Respondent had not learned anything from his prior experiences with the system. The Board does not agree that the recommended sanction is appropriate. Initially, the Board notes that the Committee's sanction involving two types of public discipline is not authorized by the Rules of Disciplinary Enforcement. The Committee, pursuant to the Rule 204, Pa.R.D.E., may recommend a Public Censure or a Suspension, but not a combination of both. This is considered double discipline and is inappropriate. The disciplinary system in Pennsylvania employs a range of sanctions to respond to a range of misconduct. A Public Censure is a less severe form of discipline than a Suspension, and generally acts that warrant a Public Censure reflect the fact that those acts are less egregious than the acts that warrant a suspension.

In the instant matter, the Board does not perceive that a form of public discipline is necessary to effectuate the goals of the disciplinary system, which are not to punish an attorney but to determine the attorney's fitness to practice law and to ensure that the integrity of the bar and the interests of the public are protected. Office of Disciplinary Counsel v. Duffield, 537 Pa. 485, 644 A.2d 1186 (1994). A Private Reprimand will convey the seriousness of the misconduct and Respondent's obligation to adhere

to the Rules of Professional Conduct. In Re Anonymous No. 47 DB 91, 18 Pa. D. & C. 4th 418 (1993) and In Re Anonymous No. 89 DB 90, 16 Pa. D. & C. 4th 519 (1991). The misconduct was not grave.

Respondent returned the \$500, the clients were not prejudiced, and Respondent cooperated with Petitioner by admitting the misconduct.

In situations lacking client injury and intent on the attorney's part, a Private Reprimand can be effective. Additionally, the Board is of the opinion that Respondent can benefit from a practice monitor. Respondent was a sole practitioner from the time that he became a member of the bar. He testified that he never had a successful practice. Now he is an associate at a firm, and he should be given the opportunity to demonstrate his ability to thrive in a more structured environment. A practice monitor will help ensure that Respondent is attuned to his obligations to meet deadlines and communicate with clients. Although Respondent's current monitor is his employer, the Board is not satisfied with this arrangement and believes a neutral outside attorney would be more appropriate in the role of a practice monitor. As a condition of this Private Reprimand, Respondent will have to change his practice monitor.

V. DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania determines that the Respondent, [], should receive a

Private Reprimand.

It is further determined that Respondent should be placed on Probation for a period of one (1) year. Respondent shall select a practice monitor subject to the approval of the office of Disciplinary Counsel. The practice monitor shall do the following during the period of Respondent's probation:

1. Meet with Respondent on a monthly basis to review Respondent's workload and verify deadlines and regular client contact;
2. Said review shall specifically address whether Respondent has returned client telephone calls; kept his clients informed as to the status of their matters; replied to requests for information; and, surrendered any client files if discharged;
3. Shall file quarterly written reports on a Board approved form with the Secretary; and,
4. Immediately report to the Secretary any violation of the Respondent of the terms and conditions of probation.

The expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

Date: June 14, 1996

Board Members McGivern and Rudnitsky recused themselves.

Board Member Carson did not participate in the March 7, 1996 adjudication.

O R D E R

AND NOW, this 14th day of June, 1996, upon consideration of the Report and Recommendation of Hearing Committee [] filed January 11, 1996; it is hereby

ORDERED that the said [RESPONDENT] of [] County be subjected to PRIVATE REPRIMAND by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for a period of one (1) year. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel. The practice monitor shall do the following during the period of Respondent's probation:

Conditions:

1. Meet with the Respondent on a monthly basis to review Respondent's workload and verify deadlines and regular client contact;
- 2 . Said review shall specifically address whether Respondent has returned client telephone calls; kept his clients informed as to the status of their matters; replied to requests for information; and, surrendered any client files if discharged;
3. File quarterly written reports on a Board approved form with the Secretary; and
4. Shall immediately report to the Secretary of the Board any violations of the Respondent of the terms and conditions of probation.

Failure to comply with the above Conditions shall be grounds for reconsideration of this matter under the specific provision of Enforcement Rule 203 (b) (2) and Disciplinary Board Rule 87.53 (b) .

Costs are to be paid by the Respondent.

BY THE BOARD:

Chairman

Board Members McGivern and Rudnitsky recused themselves.