

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2272 Disciplinary Docket No. 3
: :
Petitioner : No. 110 DB 2015
: :
v. : Attorney Registration No. 25826
: :
JOHN KLINGER MORT, : (Juniata County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 30th day of June, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, John Klinger Mort is suspended from the Bar of this Commonwealth for a period of one year and one day, and he is directed to comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 6/30/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 110 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 25826
	:	
JOHN KLINGER MORT	:	
Respondent	:	(Juniata County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on June 19, 2015, Office of Disciplinary Counsel charged John Klinger Mort, Respondent, with violations of Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement arising out of Respondent's failure to appear for an Informal Admonition and related misconduct. Respondent failed to respond to the Petition for Discipline.

Respondent failed to appear at the prehearing conference on September 10, 2015, and failed to appear at the disciplinary hearing held on October 15, 2015,

before a District III Hearing Committee comprised of Chair Walter T. Grabowski, Esquire and Members Timothy P. Polishan, Esquire and Kenneth R. Shutts, Esquire.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on February 3, 2016, concluding that Respondent violated the Rules as contained in the Petition for Discipline and recommending that he be suspended for a period of one year and one day.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on April 21, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62625, Harrisburg, PA 17106-2625, is invested pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), with the power and 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 said Rules of Disciplinary Enforcement.

2. Respondent is John Klinger Mort. He was admitted to practice law in the Commonwealth of Pennsylvania in 1977. His attorney registration address is 18 South Main Street, P.O. Box 205, Mifflintown, PA 17059. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no record of prior discipline in Pennsylvania.

4. In accordance with Pa.R.D.E. 208(a)(2), it was determined that Respondent should receive an Informal Admonition as a result of his misconduct in file No. C3-14-95. ODC-22.

5. By letter sent certified and first-class mail dated March 25, 2015, directed to Respondent's registered address, Chief Disciplinary Counsel, Paul J. Killion informed Respondent that:

a. In connection with complaint No. C3-14-95 filed against him by Clint Coder, a Reviewing Member of a Hearing Committee had directed that Respondent should receive an Informal Admonition for violating Rules of Professional Conduct ("RPC") 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.15(e), 8.1(a), 8.1(b), and Pa.R.D.E. 203(b)(7);

b. Pursuant to Pa.R.D.E. 208(a)(6) and D.Bd. Rule §87.54, Respondent had the right to demand, in writing, within 20 days, that a formal proceeding be instituted against him before a hearing committee, and in the event of such demand, need not appear for the administration of the Informal Admonition and the matter would be disposed of in the same manner as any other formal hearing; and

c. Pursuant to D.Bd. Rule §87.52, Respondent's neglect or refusal to appear for an Informal Admonition without good cause would constitute an independent act of professional misconduct and would automatically result in formal proceedings relating to such act of misconduct and the grievance upon which such informal admonition was to relate.

ODC-22.

6. The letter further described the factual circumstances surrounding Respondent's violations as follows:

a. Respondent violated Pa.R.D.E. 203(b)(7) by failing to respond to Petitioner's DB-7 Request for Respondent's Position dated April 28, 2014, to Petitioner's DB-7A Supplemental Request for Respondent's Position dated December 24, 2014, and to Petitioner's numerous requests for responses;

b. Respondent violated RPC 1.3 by failing to promptly disburse trust funds held in the Coder and Prye matters;

c. Respondent violated RPC 1.4(a)(2), (a)(3) and (a)(4) by failing to communicate with Mr. Coder concerning the payment of his title insurance policy, despite Mr. Coder's request for an update regarding this matter;

d. Respondent violated RPC 1.15(e) by failing to promptly disburse the funds held in trust for the Coder and Prye matters to the appropriate payees; and

e. Respondent violated RPC 8.1(a) and 8.1(b) by: (1) falsely representing to Petitioner that he sent documentation and payment to the title insurance company in the Coder matter; (2) fabricating the letter purportedly sent to the title insurance company and providing it to Petitioner in an attempt to mislead its investigation; and (3) misrepresenting to Petitioner that he was waiting on the Coder title

insurance policy and working on the Prye matter in an attempt to mislead its investigation.

ODC-22.

7. Respondent did not demand that a formal proceeding be instituted against him with regard to the allegations giving rise to the imposition of the Informal Admonition in C3-14-95, pursuant to Pa.R.D.E. 208(a)(6).

8. As a result of Respondent's failure to demand the institution of formal proceedings against him, Respondent is deemed to have violated the Rules of Professional Conduct and Rule of Disciplinary Enforcement set forth in Chief Disciplinary Counsel's March 25, 2015 letter.

9. By letter sent certified and first-class mail dated May 15, 2015, directed to Respondent's registered address, Chief Disciplinary Counsel informed Respondent that:

a. Respondent had been advised previously of a complaint against him alleging violations of the Rules of Professional Conduct in which it was determined that Respondent should receive an Informal Admonition; and

b. Chief Disciplinary Counsel had scheduled Respondent's Informal Admonition for Tuesday, May 26, 2015 at 2:00 p.m. at the Office of Chief Disciplinary Counsel, in Harrisburg, Pennsylvania.

ODC-23.

10. The certified mailing was accepted by Respondent on June 2, 2015. ODC-23.

11. Respondent failed to appear on May 26, 2015, for his Informal Admonition. ODC-24; ODC-25.

12. By letter sent certified and first-class mail dated May 27, 2015, directed to Respondent's registered address, Chief Disciplinary Counsel requested that Respondent advise him, within ten days from Respondent's receipt of the letter, whether Respondent had "good cause" for his failure to appear for his Informal Admonition. ODC-24.

13. Respondent did not answer Chief Disciplinary Counsel's letter nor did he provide good cause for his failure to appear for his Informal Admonition. ODC-25.

14. On June 19, 2015, a Petition for Discipline was filed at 110 DB 2015 relating to Respondent's failure to appear for the Informal Admonition. ODC-25.

15. Respondent was personally served with the Petition for Discipline on June 25, 2015. ODC-25.

16. Respondent failed to file an Answer to the Petition for Discipline.

17. By letter dated July 30, 2015, sent by the Secretary of the Disciplinary Board, Respondent was notified of the September 10, 2015 prehearing conference and the October 15, 2015 hearing. ODC-26.

18. By letter dated September 1, 2015, Petitioner sent Respondent Petitioner's exhibits. ODC-1.

19. Respondent failed to appear at the prehearing conference on September 10, 2015.

20. Respondent failed to appear at the disciplinary hearing on October 15, 2015.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct and Rule of Disciplinary Enforcement:

1. Pa.R.D.E. 203(b)(2) – Willful failure to appear before Disciplinary Counsel for imposition of an informal admonition shall be grounds for discipline.
2. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.
3. As a result of Respondent's failure to demand the institution of formal proceedings against him, pursuant to Pa.R.D.E. 208(b)(6), Respondent is conclusively deemed to have violated the Rules of Professional Conduct set forth in Chief Disciplinary Counsel's March 25, 2015, letter:
 - a. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client;
 - b. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - c. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter;
 - d. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information;

e. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

f. RPC 1.15(e) - Except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment;

g. RPC 8.1(a) – An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact;

h. RPC 8.1(b) – An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary

authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; and

i. Pa.R.D.E. 203(b)(7) – Failure of a respondent-attorney without good cause to respond to Disciplinary Counsel’s request under Disciplinary Board Rules and Procedures §87.7(b) for a statement of the respondent-attorney’s position is grounds for discipline.

IV. DISCUSSION

Petitioner bears the burden of proving, by a preponderance of evidence that is clear and satisfactory, that Respondent’s actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441 (Pa. 2000). Petitioner has met that burden by virtue of facts pled in the Petition for Discipline, which are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E., because of Respondent’s failure to file an Answer to Petition.

Respondent’s misconduct arose from his failure to appear for an Informal Admonition and his resulting failure to show good cause for his nonappearance. The underlying misconduct that was to have been addressed by the imposition of the Informal Admonition involved two client matters in which Respondent collected money from real estate settlement matters and then failed to disburse that money to the proper recipients. He did not answer the Petition for Discipline or appear at the prehearing conference and the disciplinary hearing, nor has he filed any responsive briefs. The

evidence of record proves that Respondent received notice of each stage of the proceeding by certified mail and/or hand-delivery to his attorney registration address.

It is well-established by the evidence of record that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This matter is ripe for the determination of discipline. Both Petitioner and the Hearing Committee have recommended that Respondent be suspended for a period of one year and one day. After considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), the Board is persuaded that suspension for one year and one day is appropriate discipline.

In evaluating professional discipline, each case must be determined on its own particular facts and circumstances. *Office of Disciplinary Counsel v. Lucarini*, 427 A.2d 186 (Pa. 1983). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts and deter unethical conduct. *Office of Disciplinary Counsel v. Czmus*, 889 A.2d 117 (Pa. 2005).

The seriousness of Respondent's underlying misconduct has been significantly aggravated by his failure to appear for the Informal Admonition, and thereafter by his failure to participate in the disciplinary process. The sole mitigating factor is that Respondent has no record of discipline in Pennsylvania. Respondent was admitted in 1977 and practiced law without a blemish on his record for more than 35 years. We are troubled by Respondent's apparent lack of interest in a professional license that he maintained for many years without issue.

Respondent has exhibited a lack of respect for his professional duties and for the disciplinary process in general. He has made no effort to confront and address his discipline issues and has provided no evidence that he values his privilege to practice law. He has eschewed any meaningful opportunity for early dialogue with Office of Disciplinary Counsel to remedy the underlying misconduct, and he has forfeited his chance to accept responsibility and express remorse. For the protection of the public, Respondent must be removed from the practice of law.

Prior disciplinary cases have resulted in suspension for a period of one year and one day when attorneys failed to appear for an informal admonition and subsequently failed to participate in the disciplinary process. *See, Office of Disciplinary Counsel v. Michael E. Groulx*, 2209 D.D. 3 (Pa. 2015); *Office of Disciplinary Counsel v. Anne Michelle Campbell*, 1610 D.D. 3 (Pa. 2010); *Office of Disciplinary Counsel v. William Walsh*, 1139 D.D. 3 (Pa. 2006); *Office of Disciplinary Counsel v. Kenton O'Neil*, 980 D.D. 3 (Pa. 2004).

In light of the precedent, suspension must apply. A period of one year and one day will protect the public until such time as Respondent affirmatively demonstrates that whatever the cause of his difficulties, he is fit to practice law.

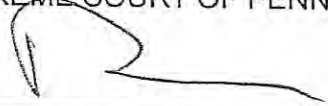
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, John Klinger Mort, be Suspended from the practice of law for a period of one year and one day.

It is further recommended that 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

By: 
Brian John Cali, Board Member

Date: May 10, 2016

Board Member Cordisco did not participate in the adjudication.