

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2279 Disciplinary Docket No. 3
: :
Petitioner : No. 99 DB 2015
: :
v. : Attorney Registration No. 48244
: :
NORMAN ORVILLE SCOTT, : (Philadelphia)
: :
Respondent : :
: :

ORDER

PER CURIAM

AND NOW, this 17th day of August, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, Norman Orville Scott is suspended from the Bar of this Commonwealth for a period of six months, and he shall 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 8/17/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 99 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 48244
	:	
NORMAN ORVILLE SCOTT	:	
Respondent	:	(Philadelphia)

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 8, 2015, Office of Disciplinary Counsel charged Norman Orville Scott, Respondent, with violation of the Rules of Professional Conduct and Rules of Disciplinary Enforcement. Respondent failed to file a timely Answer to Petition for Discipline.

On September 16, 2015, Petitioner and Respondent executed "Joint Stipulations of Fact and Law" wherein Respondent acknowledged his violation of the charged Rules and his failure to answer a DB-7 letter.

A disciplinary hearing was held on October 21, 2015, before a District I Hearing Committee comprised of Chair A. Harold Datz, Esquire and Members Philip N. Pasquerello, Esquire and Amy M.T. Vanni, Esquire. Petitioner introduced into evidence the Joint Stipulations of Fact and Law and Exhibits ODC-1 through ODC-13. Respondent appeared *pro se*. He introduced into evidence Exhibits R-1 through R-4 and testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on February 8, 2016, concluding that Respondent violated the Rules as contained in the Petition and recommending that he be suspended for a period of six months.

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 Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, 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 Norman Orville Scott. He was born in 1938 and was admitted to practice law in the Commonwealth in 1986. His current registered address is 325 Chestnut Street, Suite 800, Philadelphia, PA 19106. From at least December 2011 to at least June 30, 2015, Respondent's registered office address was located at One Liberty Place, 1650 Market Street, Suite 3600, Philadelphia PA 19102.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. Respondent has a record of prior discipline consisting of a Public Reprimand and Probation for a period of two years administered on March 27, 2015, and an Informal Admonition administered on October 31, 2014. Both sanctions involved Respondent's neglect of client matters for which he was appointed by the court.

Thompson Matter

5. On or about July 26, 2013, the Philadelphia Court of Common Pleas appointed Respondent to represent Derrick Thompson in Thompson's appeal to the Pennsylvania Superior Court. Stip. 9.

6. On August 5, 2013, Respondent's appearance was entered in the Superior Court in the Thompson Matter. Stips. 10, 11; ODC-1.

7. Respondent failed to promptly notify Thompson of Respondent's court-appointment and to ascertain the procedural history of the case. Stip. 30a.

8. From on or about September 24, 2013, until on or about June 15, 2014, Thompson made numerous attempts to contact Respondent without success. Stip. 30b.

9. By letter dated July 7, 2014, Respondent contacted Thompson and informed him that Respondent had "been appointed to represent [Thompson] in above referenced Post Conviction Relief Act case." Respondent also provided to Thompson, *inter alia*, Notes of Testimony from his criminal trial and other "related" documents, and requested information relating to trial counsel's stewardship. Stips. 12, 13; N.T. 9; PDC-2.

10. By letter dated July 14, 2014, which letter Respondent received on July 21, 2014, Thompson acknowledged receipt of Respondent's July 7 letter with enclosures and informed Respondent that "you may have confused my case with another one of your clients. Because I am not appealing my conviction under the PCRA statute...my conviction pertains to my direct appeal to the state superior court." Stips. 14, 15; N.T. 9; ODC-3.

11. Respondent failed to file a brief on Thompson's behalf. Stip. 16.

12. By Order dated March 11, 2015, which Respondent received, the Superior Court:

a. Dismissed the Thompson Matter based upon Respondent's failure to file a brief;

b. Directed the trial court to withhold counsel fees pertaining to the appeal; and

c. Directed Respondent to file with the court within 10 days a certification that Respondent notified Thompson of the dismissal of the appeal.

Stips. 18, 19, 20; N.T. 9; ODC-4.

13. Respondent failed to notify Thompson that the Thompson Matter was dismissed and to file any certification with the Court. Stips. 21, 30h.

14. On or about April 6, 2015, Respondent filed a "Motion for Reconsideration *Nunc Pro Tunc*" with the Superior Court in which Respondent averred, *inter alia*, that:

a. "[t]he file was mishandled in my office and the briefing schedule was not calendared"; and

b. The file was located and the brief will be filed no later than 30 days from the date reinstating the briefing schedule.

Stips. 22, 23; N.T. 9; ODC-5.

15. By Order dated April 9, 2015, the Superior Court reinstated Thompson's appeal in the Thompson Matter and set a due date for Thompson's brief of "May 8, 2015. **No extensions of time will be granted to Appellant.** Failure to file a brief by that date will result in re-dismissal of the appeal, without warning." (Emphasis in original). Stips. 22, 23; N.T. 9; ODC-6.

16. On or about April 21, 2015, Thompson, *pro se*, forwarded a "Memorandum of Law in Support of Motion for Reinstatement of Appeal Rights *Nunc Pro Tunc*" to the Superior Court in the Thompson Matter. By letter dated April 21, 2015, the Superior Court forwarded Thompson's documents to Respondent. Stip. 26, 27, 28; N.T. 9; ODC-7.

17. Respondent failed to file a Brief on or before May 8, 2015. Stip. 29.

18. If called to testify, Thompson would have stated that:

a. He did not receive any notice from Respondent that Respondent had been appointed to represent him until he received the July 7, 2014 letter (ODC-2);

b. From on or about September 24, 2013, until on or about June 16, 2014, he made numerous attempts to contact Respondent without success;

c. By letter dated August 25, 2014 (ODC-8), he informed Respondent that Respondent could speak with Ms. Karima Garner regarding his case and requested that Respondent provide him with information including, but not limited to, the status of his appeal and the procedures for challenging trial counsel's stewardship;

d. By letter dated September 26, 2014 (ODC-9), he requested: 1) Respondent's acknowledgement of his previous letters; 2) copies of his discovery material; and 3) the status of his appeal;

e. Respondent did not answer any of his written correspondence;

f. He addressed ODC-3, ODC-8 and ODC-9 to Respondent at Respondent's registered attorney address *via* certified mail, return receipt requested;

g. He received back each "green card" showing that Respondent had received ODC-3, ODC-8 and ODC-9; and

h. He did not receive notice from Respondent regarding the Superior Court's March 11, 2015 Order dismissing his appeal.

Stip. 30; ODC-2, 3, 8, 9.

Phum Matter

19. On December 7, 2007, Respondent was court-appointed to represent Sam Phum in a PCRA matter under caption *Commonwealth v. Phum*, which was dismissed by the Philadelphia Court of Common Pleas on the basis that the PCRA petition lacked merit. Stip. 34.

20. On or about May 2, 2011, Respondent filed an appeal to the Superior Court. Stip. 35.

21. Respondent failed to file a brief on or before the due date, which resulted in a remand Order for the trial court to determine if Respondent had abandoned Phum. Stip. 36.

22. By Order dated July 16, 2012, Judge Willis W. Berry, Jr., found that Respondent did not abandon Phum. Stip. 37.

23. Thereafter, the Superior Court set a new briefing schedule, and on August 16, 2012, Respondent filed appellant's brief. Stip. 38.

24. By Order dated April 25, 2013, the Superior Court reversed the Phum Matter and remanded it to the Philadelphia Court of Common Pleas for further proceedings, which Order Respondent received. Stip. 39.

25. On or about June 6, 2013, the record in the Phum Matter was returned to the Philadelphia Court of Common Pleas for proceedings consistent with the Superior Court's Order in the Phum Appeal, which has yet to be scheduled in the Philadelphia Court of Common Pleas. Stip. 40, 41.

26. On or about April 9, 2015, Phum filed a "Pro Se Motion to Withdraw Counsel" in the Phum Matter. Stip. 42.

27. If called to testify, Phum would have stated that:
- a. He did not receive any notification from Respondent regarding the outcome of the Phum Appeal;
 - b. From May 30, 2013 to at least February 15, 2015, he has made numerous and various attempts to contact Respondent regarding the Phum Matter and the Phum Appeal; and
 - c. Respondent failed to respond to his numerous and various communications.

Stip. 43.

Failure to Respond to DB-7 Letter

28. A DB-7 Request for Statement of Respondent's Position dated March 27, 2015 was served on Respondent by hand delivering the same to Respondent on March 27, 2015.

29. The DB-7 related to the Thompson and Phum matters.

30. Respondent failed to respond to the DB-7.

31. If called to testify, Rosanne DeFlavia would have stated that:

a. She is employed by the Office of Disciplinary Counsel as a secretary;

b. On May 4, 2015, she completed a letter of same date and envelope addressed to Respondent at his then-attorney registration address at One Liberty Place;

c. The envelope had the return address of the Office of Disciplinary Counsel;

d. She obtained Disciplinary Counsel Robert P. Fulton's signature on the May 4, 2015 letter, affixed the appropriate United States First Class Mail postage to the envelope, placed the May 4, 2015 letter in the envelope, and placed the envelope in the regular receptacle for outgoing mail within the Office of Disciplinary Counsel; and

e. the May 4, 2015 letter addressed to Respondent was not returned to the Office of Disciplinary Counsel.

Stip. 49; ODC-11.

32. Respondent cooperated with Petitioner by executing the Joint Stipulations of Fact and Law, which alleviated the need to have state prisoners transported to Philadelphia for the purpose of obtaining their testimony.

33. Respondent testified on his own behalf.

34. Respondent has experienced health issues in connection with a cancer diagnosis in early 2015. N.T. 12, 20.

35. On February 23, 2015, Respondent called the court administrator in Philadelphia and asked to be relieved of all cases for the next two months. N.T. 13.

36. On February 24, 2015, Respondent emailed a list of cases to court administration. This list did not include the Thompson and Phum cases. R-1.

37. In April 2015, Respondent asked to be relieved in all cases, except for one matter. N.T. 15.

38. Respondent admits that he did not follow up on his request to be removed from the cases. N.T. 16.

39. Respondent further admits that he continued to receive notices to appear from court administration regarding court appointments. N.T. 17-19.

40. On September 3, 2015, Respondent confirmed with the court that he had asked to be removed from court appointments. R-2; N.T. 16-17.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent 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)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

3. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

4. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

5. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

6. Pa.R.D.E. 203(b)(7) – A lawyer who without good cause fails to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, §87.7(b) for a statement of the respondent-attorney's position shall be subject to discipline.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent involving his court-appointed representation of two criminal defendants. Respondent failed to file a timely Answer; therefore, pursuant to Rule 208(b)(3), Pa.R.D.E. the factual allegations of the Petition are deemed admitted.

The nature of Respondent's case is that he failed to diligently represent, consult and communicate with his clients and engaged in conduct that was prejudicial to the administration of justice. By execution of the Stipulations of Fact, Law and Exhibits, Respondent has admitted his violation of the charged Rules and his failure to answer the DB-7 letter. Based upon the Joint Stipulations, the admitted factual allegations, the admitted exhibits and the testimony of Respondent at the disciplinary hearing, Petitioner has established by evidence that is clear and satisfactory, that Respondent violated all of the charged Rules of Professional Conduct and Rules of Disciplinary Enforcement. *Office of Disciplinary Counsel v. Grigsby*, 425 A.2d 730, 732 (Pa. 1981).

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. While there is no *per se* discipline in Pennsylvania, the Board examines precedent for the purpose of measuring "the [R]espondent's conduct against other similar transgressions." *In re Anonymous*, No. 56 DB 1994, 28 Pa. D. & C. 4th 398 (1995). The Supreme Court of Pennsylvania will consider applicable precedents, "being mindful of the need for consistency in the results reached in disciplinary cases so that similar misconduct is not punished in radically different ways." *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186, 190 (Pa. 1983).

Consideration is given to any aggravating or mitigating factors. *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004).

Respondent's prior record of discipline aggravates this matter. The evidence indicates that Respondent was subject to two prior incidents of discipline, one concluding in an informal admonition on October 31, 2014, and the other concluding in a public reprimand with probation for two years on March 27, 2015. The underlying facts of these matters involved Respondent's neglect of client cases, all of which were court appointments, and which included failure to communicate and respond to inquiries, failure to engage in diligent representation of the client, failure to expedite litigation, and in one case knowingly making a false statement of material fact to the court in an application to withdraw as counsel. Respondent's representation of his clients Thompson and Phum in the instant matter occurred within the same time frame as the prior discipline.

In mitigation, Respondent cooperated with Petitioner by signing the Joint Stipulations of Fact and Law and agreeing to the admissibility of Petitioner's exhibits. This cooperation obviated the need for Petitioner to secure the presence of Thompson and Phum from their respective state correctional institutions.

Respondent testified to serious health issues he has experienced starting in early 2015, which prompted him to request court administration to remove him from his court appointments. Respondent admits that he did not follow up on his requests, even after he continued to receive notices to appear from the court administrator. It was not until early September 2015 that Respondent confirmed with the court that he would be removed from court appointments. We sympathize with Respondent's medical concerns and recognize that he made some attempt to contact the court, however; we

note that the majority of the charged misconduct occurred before the onset of these issues.

A similar matter resulted in a suspension of one year and one day. The respondent in *Office of Disciplinary Counsel v. Mark David Johns*, No. 2105 D.D No. 3 (Pa. 2014) was charged in two separate matters involving issues of neglect and lack of communication. Johns had previously received an informal admonition and a private reprimand for matters of neglect. Johns offered no explanation for his misconduct. Like Respondent, Johns' misconduct in one of the matters occurred during the time frame of his disciplinary proceeding that resulted in the private reprimand.

Although Johns was suspended for one year and one day, the Board is not persuaded that Respondent's sanction should be the same and we agree with the Hearing Committee's recommendation that a shorter suspension is appropriate.

A six month period of suspension was imposed in the matter of *Office of Disciplinary Counsel v. Ronald James Gross*, 2150 D.D. 3 (Pa. 2015). Gross failed to respond to the DB-7 letter, engaged in neglect and misrepresentation to his client, and communicated *ex parte* with a magisterial district justice. Although he had a prior informal admonition, he cooperated with Petitioner, which served as mitigation and resulted in a short suspension.

Given Respondent's cooperation with Petitioner, the misconduct at issue, and Respondent's ongoing health issues, the Board is persuaded that the recommendation of six months is appropriate and will serve to protect the public from unfit attorneys and preserve public confidence in the legal system. *Office of Disciplinary Counsel v. Stern*, 526 A.2d 1180 (Pa. 1987).

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Normal Orville Scott, be Suspended from the practice of law for a period of six months.

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: 

Lawrence M. Kelly, Board Member

Date: June 22, 2016

Board Member Cordisco did not participate in the adjudication.