

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 54 DB 1995
Petitioner :
 :
v. : Attorney Registration No. []
 :
[ANONYMOUS], :
Respondent : ([] County)

OPINION

I. HISTORY OF PROCEEDINGS

On April 7, 1995, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, [], on the basis that Respondent did not appear for his scheduled Informal Admonition on March 6, 1995. Respondent did not file an Answer. A hearing was held on this matter before Hearing Committee [] comprised of Chairperson [], Esquire, and Members [], Esquire, and [], Esquire. Respondent appeared pro se. Petitioner was represented by [], Esquire. The Committee filed its Report on September 29, 1995 and recommended a Public Censure. Neither party filed Briefs on Exceptions.

This matter was adjudicated by the Disciplinary Board at the meeting of December 7, 1995.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now 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, [], Esquire, was born in 1949, was admitted to practice law in the Commonwealth of Pennsylvania in 1983, and his last registered office address is []. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By letter dated February 9, 1995, [], Chief Disciplinary Counsel, informed Respondent that:

a. He had previously been advised of complaints filed against him alleging violations of the Rules of Professional Conduct and that the investigation into those complaints had been completed;

b. It had been determined that he should receive informal admonitions on Monday, March 6, 1995 at 10:00 a.m. in the District [] Office, [], in regard to files [] and [], for violations of Rules of Professional Conduct 1.3, 1.4(a), and 1.4(b);

c. He had the option of notifying the Secretary of the Disciplinary Board and the Office of Disciplinary Counsel, in writing, within twenty days of receiving the February 9, 1995 letter, that he did not wish to receive the informal admonitions and that he would prefer to have the question of his conduct decided by formal proceedings pursuant to Rule 208(a)(6), Pa.R.D.E. and §87.54, Disciplinary Board Rules.

4. The letter was sent by certified mail, return receipt requested, to Respondent's registered business address, [].

5. The letter was returned undelivered to Office of Disciplinary Counsel with the envelope bearing a new address, [].

6. On February 22, 1995, the letter was mailed again, this time to the [] address, and delivery was accomplished. The Return Receipt reflects a delivery date of February 24, 1995 and a signature "[Respondent]."

7. Also, on February 22, 1995, Chief Disciplinary Counsel's secretary, [C], contacted Respondent by telephone to advise him of the issuance of the letter to his [] address and the reissuance of the letter to his [] address.

8. During Respondent's February 22, 1995 telephone conversation with [C], Respondent stated that he had received notice from the postal service to pick up his certified mail, and that he intended to do so, as well as stating his intention to appear for the scheduled informal admonition.

9. Respondent did not notify either the Disciplinary Board Secretary or the Office of Disciplinary Counsel, in writing or otherwise, that he did not wish to receive the informal admonition and that he wanted the question of his conduct to be decided by formal proceedings.

10. Respondent did not appear for his scheduled informal admonition on March 6, 1995.

11. By letter to Respondent dated March 7, 1995, Chief Disciplinary Counsel stated that:

a. Respondent had indicated to [C] that he would appear for the informal admonition at the scheduled time;

b. He had not appeared for the scheduled informal admonition;

c. He had not notified Chief Disciplinary Counsel that he would not appear;

d. He should contact [C] to reschedule the administration of the informal admonition.

12. The March 7, 1995 letter to Respondent was sent by certified mail, return receipt requested, to Respondent's [] address.

13. The Return Receipt reflects a delivery date of March 10, 1995, and a signature "[Respondent]."

14. Chief Disciplinary Counsel's Office received no response to that letter.

15. Respondent testified that his disciplinary problems stemmed from his involvement in a primary election for judge. Respondent concentrated on his political aspirations and neglected his professional responsibilities. (N.T. 21)

16. Respondent testified that other family problems occurred during the time frame of the misconduct. (N.T. 21-22)

17. Respondent testified that he "screwed it up, basically" and that he had no real excuse for his misconduct. (N.T. 28)

III. CONCLUSIONS OF LAW

Respondent's willful failure to appear before Disciplinary Counsel for his scheduled Informal Admonition constitutes a ground for discipline pursuant to Rule 203(b)(2), Pa.R.D.E.

IV. DISCUSSION

This matter is before the Board as a result of Respondent's failure to appear for an Informal Admonition scheduled for March 6, 1995. Through letter of March 7, 1995, Office of Disciplinary Counsel informed Respondent that he could reschedule the Informal Admonition. Respondent provided no response to this letter. Formal proceedings were instituted against Respondent as a result of his failure to appear for the Informal Admonition.

Petitioner and Respondent stipulated to the fact that Respondent did not appear for his scheduled Informal Admonition, and that he did not provide notice to Petitioner that he would not appear. Respondent's actions are clearly violative of Rule 203(b)(2), Pa.R.D.E., which states that a willful failure to appear for an informal admonition constitutes a ground for discipline. The sole issue before the Board is the appropriate sanction to be imposed.

In considering the appropriate measure of discipline, the Board is cognizant of Respondent's failure to appear and his underlying misconduct consisting of failure to file PCRA petitions in four matters to which he had been court appointed. Respondent also failed to communicate with these clients. The Board must also

weigh Respondent's prior history of discipline consisting of four Informal Admonitions administered on October 2, 1994. The basis for these Informal Admonitions was Respondent's failure to act with reasonable diligence in representing clients in post-conviction matters. Respondent received a Private Reprimand on February 1, 1996 for failure to file a brief in a post-conviction matter.

At the hearing, Respondent testified that his disciplinary problems were caused by his political aspirations. At the time of the misconduct, Respondent was actively running a judicial campaign and neglected his professional responsibilities. Respondent also alluded to family problems and a tax lien filed by the IRS. Respondent testified that "things fell between the cracks". (N.T. 21) He admitted that he did not have a real defense for his misconduct. (N.T. 23) He also testified that he was finished with politics, and he planned to move back to a law practice in []. (N.T. 13, 22)

The Hearing Committee recommended a Public Censure based on their reasoning that Respondent has already been subject to an Informal Admonition and a Private Reprimand, and, despite these experiences, continued to fail to perform his responsibilities to

his clients. It is the Board's duty to review all pertinent facts and circumstances in a case in order to assess a fair disciplinary sanction. The purpose of disciplinary proceedings are not to punish the 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). Review of the record indicates that Respondent is aware that his involvement in politics caused him to neglect his law practice, and because of this awareness he is planning to move back to a practice in [] and concentrate on that practice, instead of politics. The Board notes that Respondent has been licensed to practice law in Pennsylvania since 1982, and his first encounter with the disciplinary system was in 1994, around the time he became involved in politics. Although failing to appear at an Informal Admonition is a serious act, Respondent demonstrated subsequent cooperation by appearing and participating at the disciplinary hearing. The Board is of the opinion that since Respondent has pinpointed the root cause of his problems and is voluntarily remedying the situation, a Private Reprimand would best serve to effectuate the purpose of the disciplinary system.

V. DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania determines that the Respondent, [], shall receive a Private Reprimand.

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: _____
Thomas A. Leonard,
Vice-Chairman

Date: March 18, 1996

Board Member Carson did not participate in the December 7, 1995 adjudication.

O R D E R

AND NOW, this 18th day of March, 1996, upon consideration of the Report and Recommendation of Hearing Committee [] filed September 29, 1995; it is hereby

ORDERED that the said [RESPONDENT] of [] County be subjected to a 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.

Costs are to be paid by the Respondent.

BY THE BOARD:

Chairman