

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 110, Disciplinary Docket
Petitioner : No. 3 - Supreme Court
:
:
v. : No. 77 DB 1995 - Disciplinary
Board
:
:
: Attorney Registration No. []
[ANONYMOUS] :
Respondent : ([] 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

The Pennsylvania Supreme Court issued an Order on May 31, 1995 temporarily suspending Respondent, [], from the practice of law and referring this matter to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E. This Order was issued on the basis of Respondent's conviction in the Court of Common Pleas

of [] County of two counts of Homicide by Vehicle. As a result of this conviction, Respondent was sentenced to six to twenty-three months imprisonment and thirty-six months probation.

Office of Disciplinary Counsel (Petitioner) filed a Petition for Discipline against Respondent on July 24, 1995, on the basis of Respondent's conviction. No Answer was filed. A hearing was held on November 15, 1995, before Hearing Committee [] comprised of Chairperson [], Esquire, and Members [], Esquire, and [], Esquire. Respondent was represented by [], Esquire. Petitioner was represented by [], Esquire. The Committee filed its Report on March 27, 1996 and recommended a One Year Suspension retroactive to the date of the Temporary Suspension. No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Board at the meeting of April 30, 1996.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, 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, [], is a formerly admitted attorney in Pennsylvania, having been admitted to practice law on or about December 12, 1990, and having been suspended from the practice of law by Order of the Supreme Court of Pennsylvania dated May 31, 1995.

3. Respondent formerly maintained an office for the practice of law in []. His permanent home address is [].

4. On or about November 16, 1992, Respondent was operating a motor vehicle on [] Road in [] Township, [] County, PA, when his vehicle was caused to leave the road and collide with one or more objects. This collision caused the death of another person, a passenger in the vehicle, one [A].

5. After an Information was filed, a trial was held as to various charges in the Court of Common Pleas of [] County, commencing on August 30, 1993.

6. Respondent was found guilty of homicide by vehicle while operating a vehicle at an unsafe speed or a speed greater than was reasonable and prudent under the conditions and guilty of

homicide by vehicle while exceeding speed limits, both misdemeanors of the first degree.

7. On or about January 17, 1995, Respondent was sentenced to imprisonment in [] County Correctional Facility for not less than six months nor more than twenty-three months and thirty-six months of probation to be served consecutive to the incarceration.

8. Respondent spent three months in the correctional facility and three months in the [] Center. (N.T. 66 - 67)

9. Following his release, Respondent went to his parents' house in [] and began working as a waiter.

10. Respondent stopped practicing law in January of 1995 but was not suspended from practicing in Pennsylvania and New Jersey until the Spring of 1995.

11. Respondent does not fully remember the events of the accident.

12. Respondent is appropriately and deeply remorseful over the death of his friend.

13. Dr. [B], M.D., has had Respondent in rehabilitative therapy since August 1995. Respondent sought help putting his life back together and dealing with his depression and grief.

14. Dr. [B] testified that Respondent is a stable person of excellent judgement who sees problems clearly. (N.T. 49)

15. Four character witnesses testified as to Respondent's good reputation for integrity and decency. (N.T. 20 - 41)

16. Judge [C], by letter, stated that Respondent was an honorable person and has not attempted to minimize his responsibility for the accident. (P-8)

17. Respondent has no prior record of discipline.

III. CONCLUSIONS OF LAW

As a result of his conviction of the crimes for which he was suspended pursuant to Rule 214, Pa.R.D.E., Respondent has engaged in misconduct which constitutes an independent ground for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

IV. DISCUSSION

Conviction of a serious crime (punishable by imprisonment for one year or upward, Pa.R.D.E. 214(i)) constitutes an independent ground for discipline. Pa.R.D.E. 203(d)(1). Respondent's certificate of conviction is conclusive evidence of his conviction. Pa.R.D.E. 214(e). The only issue before the Board is the appropriate level of discipline to be imposed.

The principal function of the disciplinary system is to

determine the fitness of an attorney to continue the practice of law. Office of Disciplinary Counsel v. Duffield, 537 Pa. 485, 644 A.2d 1186 (1994). Where the disciplinary proceeding arises out of an attorney's conviction of a crime, our inquiry must focus on whether the attorney's character, as shown by his conduct, makes him unfit to practice law from the standpoint of protecting the public and the courts. Office of Disciplinary Counsel v. Casety, 511 Pa. 177, 512 A.2d 607 (1986).

On November 16, 1992, Respondent and his friend and co-worker, [A], were involved in a one car accident after an evening of visiting several bars. Respondent was driving his friend's car. Respondent was injured and his friend was killed in the accident. Respondent was charged with several counts of homicide by vehicle and was ultimately convicted after trial of two counts.

He was sentenced to serve six to twenty-three months in prison and three years probation as a result of his conviction.

The consequences of Respondent's actions are devastating, as one person was killed and Respondent himself injured to the point where his memory of the accident is nebulous at best. The Board's responsibility at this time is not to function as another sentencing court, but to determine whether Respondent's conduct renders him unfit to practice law from the

standpoint of protecting the public and the courts. In this capacity the Board must conduct a de novo review of the record. This record reveals that Respondent is thirty-five years of age and was admitted to practice law in this jurisdiction in 1990. From November 1990 until October 1993 he was employed at the law firm of [] in [], Pennsylvania. After the trial, he then worked at his father's law offices for six months. Respondent was sentenced in January 1995 and served his time at the [] County Correctional Facility and in the work release program. After he was released, he moved to his parents' home in [] and found employment as a waiter, which he continues to do.

Several members of the bar and friends of Respondent testified on his behalf as to his good reputation for integrity and decency. His therapist, Dr. [B], testified as to Respondent's rehabilitation efforts. Although he was not convicted of driving under the influence, Respondent decided to stop using alcohol in an effort to get his life together. Respondent described the difficulty he has had accepting that he caused the death of a friend and living with this knowledge every day. He is thoroughly remorseful. He is beginning to feel better about himself and look to his future. He testified that he feels ready to move on and is anxious to practice law again. The record indicates that Respon-

dent's conduct, while demonstrating a serious lack of judgment, does not render him unfit to practice law.

The Hearing Committee recommended a one year retroactive suspension. The Board agrees that such a recommendation is appropriate in light of the facts of this case and prior case law addressing this issue. In Re Anonymous No. 75 DB 92, 19 Pa. D. & C. 4th 143 (1993) (attorney convicted of homicide by vehicle received a one year and one day suspension retroactive to the temporary suspension). In the instant case, the Board does not believe that a one year, one day suspension is warranted. We are not persuaded that the facts of this case necessitate Respondent's participation in the reinstatement process. We are satisfied from our thorough review of the record that the purpose of the disciplinary system will be effectuated through a one year suspension retroactive to May 31, 1995.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be suspended from the practice of law for a period of one (1) year, retroactive to May 31, 1995.

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: _____
Duke George, Jr., Member

Date: June 25, 1996

Board Members McGivern and Witherel did not participate in the
April 30, 1996 adjudication.

PER CURIAM:

AND NOW, this 13th day of August, 1996, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 25, 1996, it is hereby

ORDERED that [Respondent], be and he is SUSPENDED from the Bar of this Commonwealth for a period of one (1) year, retroactive to May 31, 1995, and he shall comply with all the provisions of Rule 217 Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.