

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1243 Disciplinary Docket No. 3
Petitioner :
 : No. 32 DB 2007
v. :
 : Attorney Registration No. 91262
MICHAEL PATRICK MURPHY, JR., :
Respondent : (Philadelphia)

ORDER

PER CURIAM

AND NOW, this 22nd day of September, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated June 4, 2008, it is hereby

ORDERED that Michael Patrick Murphy, Jr., is suspended for a period of six months, the suspension is stayed in its entirety and he is placed on probation for a period of four years, subject to the following conditions:

1. Respondent shall abstain from using alcohol or any other mind-altering chemical;
2. Respondent shall regularly attend Alcoholics Anonymous meetings on a weekly basis;
3. Respondent shall obtain a sponsor in Alcoholics Anonymous and maintain weekly contact with that sponsor;
4. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule §89.293(c);
5. Respondent shall furnish his sobriety monitor with his Alcoholics Anonymous sponsor's name, address and telephone number;

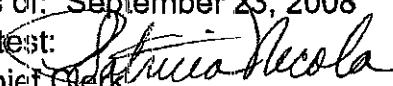
6. Respondent shall establish his weekly attendance at Alcoholics Anonymous meetings by providing written verification to the Board on a Board-approved form;
7. Respondent shall undergo any counseling, out-patient or in-patient treatment, prescribed by a physician or alcohol counselor;
8. Respondent shall file with the Secretary of the Board quarterly written reports;
9. With the sobriety monitor, Respondent shall:
 - a) meet at least twice a month
 - b) maintain weekly telephone contact
 - c) provide the necessary properly executed written authorizations to verify his compliance with the required substance abuse treatment; and
 - d) cooperate fully.
10. The appointed sobriety monitor shall:
 - a) monitor Respondent's compliance with the terms and conditions of the order imposing probation;
 - b) assist Respondent in arranging any necessary professional or substance abuse treatment;
 - c) meet with Respondent at least twice a month and maintain weekly telephone contact with him;
 - d) maintain direct monthly contact with the Alcoholics Anonymous chapter attended by the Respondent;
 - e) file with the Secretary of the Board quarterly written reports; and
 - f) immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of the probation.

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

A True Copy Patricia Nicola

As of: September 23, 2008

Attest:


Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1243 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	No. 32 DB 2007
	:	
	:	Attorney Registration No. 91262
	:	
MICHAEL PATRICK MURPHY, JR.	:	
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

On April 27, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against Michael Patrick Murphy, Jr., Respondent. The Petition charged Respondent with professional misconduct based on his conviction of aggravated assault by vehicle while driving under the influence, recklessly endangering another person, and driving under the influence of alcohol or controlled substance. Respondent filed an Answer to Petition for

Discipline on May 14, 2007, in which he admitted each and every paragraph of the Petition, including the Rules violations. Respondent raised the issue of his alcoholism in New Matter.

A disciplinary hearing was held on July 9, 2007, before a District I Hearing Committee comprised of Chair Martin L. Trichon, Esquire, and Members Natalie Ramsey, Esquire, and Catherine M. Recker, Esquire. Respondent was represented by John Rogers Carroll, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on November 29, 2007, finding that Respondent committed professional misconduct and recommending that he receive probation for four years with conditions.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting held on January 30, 2007.

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 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, 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 Michael Patrick Murphy, Jr. He was born in 1979 and was admitted to practice law in the Commonwealth in 2003. Respondent maintains his office for the practice of law at Martin J. Sobol & Assoc. PC, 1760 Market Street, Ste. 1200, Philadelphia PA 19103. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

4. On May 13, 2006, at around 3:00 a.m., Respondent entered the westbound lanes of the Pennsylvania Turnpike heading the wrong direction, that is, east, due to having a blood alcohol content of .20 percent.

5. Due to his state of intoxication, Respondent proceeded to go eastward in the westbound lane and crashed head-on with a vehicle, causing personal injury to two of the passengers of that vehicle, and causing another passenger to suffer bodily injury, including a broken right femur, necessitating surgical insertion of a rod, plates and bolts.

6. On June 6, 2006, as a result of the conduct on May 13, 2006, Respondent was arrested and charged by the District Attorney of Chester County with aggravated assault by vehicle while driving under the influence, 75 Pa.C.S.A. §3735.1; recklessly endangering another person, 18 Pa.C.S.A. §2705; and driving under the influence of alcohol or controlled substance, 75 Pa.C.S.A. §3802(c).

7. On January 12, 2007, Respondent entered a plea of guilty to the above crimes. He was sentenced as follows: on the aggravated assault by vehicle, Respondent received a term of incarceration of not less than six months nor more than 23 ½ months at the Chester County Prison, with the first three months of parole subject to electronic home confinement, and the period of parole to be followed by probation for a period of six years; 516 hours of community service; restitution to the victims; fine of \$1500 and court costs; alcohol treatment. On the conviction for recklessly endangering another person, Respondent was sentenced to two years probation, to run concurrent with the assault by vehicle sentence. The DUI charge merged with the assault by vehicle charge.

8. Respondent was incarcerated on January 12, 2007 and was eligible for work release on January 23, 2007.

9. Respondent presented the expert testimony of Winston Collins, Ph.D, who has been the Director of Addictive Behavior Treatment Services at J.F.K. Community Mental Health Center for 22 years. Dr. Collins has also been a character and fitness evaluator for the Pennsylvania Board of Law Examiners and an evaluator for Lawyers Concerned for Lawyers.

10. Petitioner did not challenge Dr. Collins' qualifications as an expert nor did it present its own expert witness testimony.

11. Dr. Collins opined that Respondent was alcoholic and his driving under the influence and causing an accident on the Pennsylvania Turnpike on May 13, 2006, was causally related to his alcoholism.

12. Dr. Collins described Respondent as a functional alcoholic, as he continued his use of alcohol despite having recurrent alcohol-related problems.

13. Dr. Collins opined that Respondent was in denial regarding the true nature of his alcohol use and was therefore unable to have any meaningful personal analysis of his alcohol experiences and also unable to modify his behavior.

14. Respondent provided a full and accurate history to Dr. Collins from which the Doctor was able to reach a reliable diagnosis of alcoholism.

15. Respondent's use of alcohol increased from high school to college in both the amount he drank and the frequency of his drinking occasions, resulting in many problems, including fights with others and personal injury to himself.

16. Respondent incurred over \$15,000 in credit card charges for alcohol-related purchases over a five year period from college through law school.

17. During law school, Respondent continued to drink to excess on the weekends.

18. In November 2000, his first year in law school, he was arrested for driving while intoxicated in West Chester, Pennsylvania. The case resulted in an ARD disposition and the charges were dismissed.

19. Respondent reported his ARD in his application to the Pennsylvania Bar in 2003, and conveyed that the DUI was an isolated incident as he was a moderate drinker who rarely became drunk.

20. Respondent's pattern of drinking continued after he became a lawyer. He described drinking alcohol as a common daily part of his life.

21. Respondent tried to cut back on his alcohol consumption after his marriage, but still drank to excess outside the presence of his wife, who had expressed concern that he was drinking too much.

22. On the occasion of his brother-in-law's college graduation on May 12, 2006, Respondent played golf with friends, then drank four beers during dinner and continued drinking at a bar in Levittown.

23. Respondent has no recollection of how many beers he consumed on the night of May 12, 2006 and into the early morning hours of May 13, 2006. Respondent has no recollection of the details of the accident. His blood alcohol level on the morning of May 13, 2006 was found to be .24%.

24. Following the May 13, 2006 accident, Respondent sought treatment, as he was humbled by what he had done and was able to realize he had an alcohol problem. He began attending Alcoholics Anonymous meetings and has been sober for 16 months, as of the date of the disciplinary hearing.

25. In June 2006 Respondent enrolled in Rehab After Work, a five week intensive outpatient treatment program for alcoholism. He successfully completed the program with a good prognosis at the time of discharge.

26. Respondent was thereafter treated at Life Counseling Services in Philadelphia on a weekly basis from July 2006 until October 2006.

27. Since December 4, 2006, Respondent has been attending weekly individual counseling session with Dr. Collins.

28. Dr. Collins gives Respondent a very good prognosis and recommends that he stay involved in AA and continue psychological treatment. He opined that Respondent is not a danger to the courts or to the public.

29. At the time of the hearing Respondent was attending five AA meetings a week.

30. Respondent entered into a voluntary sobriety monitor agreement with the Lawyer's Assistance Committee of the Pennsylvania Bar Association.

31. Respondent's sobriety monitor, Brian Quinn, Esquire, confirmed that Respondent is very compliant with the requirements of the program.

32. Kevin Callahan, Esquire, is Respondent's sponsor in AA. He confirms that Respondent has a good understanding of what is necessary to stay sober.

33. Martin Sobol, Esquire, is Respondent's employer. Mr. Sobol described Respondent's legal work and competence as beyond reproach.

34. Respondent never appeared at work under the influence of alcohol. Respondent immediately informed his employer of the circumstances of the accident occurring on May 13, 2006.

35. Mr. Sobol observed that Respondent has handled the stress of the accident and his recovery in an admirable fashion and has not let the circumstances deter his advancement at work.

36. Respondent cooperated in the disciplinary proceedings.

37. Respondent expressed sincere remorse for his actions.

38. Respondent timely reported his conviction to the Secretary of the Disciplinary Board.

39. Respondent failed to promptly notify the United States District Court for the Eastern District of Pennsylvania of his conviction in the state courts of Pennsylvania.

40. Respondent explained his late notice to the District Court as a result of his confusion about the meaning of the phrase "serious crime."

III. CONCLUSIONS OF LAW

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

1. 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.

2. Pa R.D.E. 203(b)(1) - Conviction of a crime, which under Enforcement Rule 214 (relating to attorney convicted of crimes) may result in suspension, shall be grounds for discipline.

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline charging Respondent with professional misconduct stemming from his conviction for the crimes of aggravated assault by vehicle while driving under the influence and reckless endangerment. As this disciplinary proceeding is based upon a criminal conviction, the sole issue to be determined is the extent of the final discipline to be imposed. Rule 214(f)(1), Pa.R.D.E. Respondent was sentenced to six to 23 ½ months imprisonment, probation for six years and 516 hours of community service, as well as restitution to the victims, a fine and court costs.

Respondent put forth the defense that his alcoholism is a mitigating factor, as it caused his misconduct. To establish mitigation under Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), Respondent must establish by clear and convincing evidence a causal connection between his psychiatric disorder and his misconduct. The evidence of record demonstrates that Respondent met his burden of proof. It is clear that with a blood alcohol level of more than .20%, Respondent's excessive drinking caused the accident on May 13, 2006. Respondent's expert, Winston Collins, Ph.D., testified credibly that based upon his clinical judgment which included extensive experience in treating individuals suffering from substance disorder, Respondent suffers from alcoholism, did so at the time of the misconduct, and his alcoholism was a casual factor in the misconduct. Dr. Collin supported his opinion with factual details of Respondent's history as set forth in

the findings of fact. While Petitioner argued that Respondent's statements concerning his use of alcohol have been inconsistent and highlight his ability to vary his story, Dr. Collins credibly explained that Respondent's prior statements concerning his drinking and pre-recovery conduct were part of the "denial" effect which prevailed while Respondent was still an active alcoholic. Dr. Collins gave Respondent a good prognosis for recovery and opined that Respondent is not a danger to the courts or to the public. Respondent's testimony and that of his employer and alcohol sponsors support the conclusion that Respondent is sober and dedicated to his recovery, as demonstrated by his participation in Alcoholics Anonymous, counseling, and his involvement with the Lawyer's Assistance Committee.

It is the Board's responsibility to sanction Respondent for his misconduct. Respondent's crime was serious, yet it is important to emphasize that he has already pled guilty and been convicted and sentenced in the criminal courts and, as such, has paid his debt to society. The task before the Board is not to punish him again for his actions, but to impose a sanction that will protect the public from any misconduct as a lawyer, not as a driver of motor vehicles. There is no evidence that Respondent's misconduct had any bearing on his professional demeanor, nor in any way harmed his clients or the courts. Respondent's employer praised his legal competence and diligence and observed that Respondent's work performance was very effective. Probation of four years has been recommended by the Hearing Committee. This is a sound recommendation, as Respondent's practice of law is unlikely to harm the public and he has shown that he is

doing well in treatment. In short, Respondent is still fit to practice law and should be allowed to do so under the structure of probation and a sobriety monitor.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Michael Patrick Murphy, Jr., be placed on probation for a period of four years subject to the following conditions:

1. Respondent shall abstain from using alcohol or any other mind altering chemical;
2. Respondent shall regularly attend Alcoholics Anonymous meetings on a weekly basis;
3. Respondent shall obtain a sponsor in Alcoholics Anonymous and maintain weekly contact with that sponsor;
4. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule §89.293(c);
5. Respondent shall furnish his sobriety monitor with his Alcoholics Anonymous sponsor's name, address and telephone number;
6. Respondent shall establish his weekly attendance at Alcoholics Anonymous meetings by providing written verification to the Board on a Board approved form;
7. Respondent shall undergo any counseling, out-patient or in-patient treatment, prescribed by a physician or alcohol counselor;
8. Respondent shall file with the Secretary of the Board quarterly written reports;
9. With the sobriety monitor, Respondent shall:
 - a) meet at least twice a month;
 - b) maintain weekly telephone contact;
 - c) provide the necessary properly executed written authorizations to verify his compliance with the required substance abuse treatment; and

- d) cooperate fully.
10. The appointed sobriety monitor shall:
- a) monitor Respondent's compliance with the terms and conditions of the order imposing probation;
 - b) assist Respondent in arranging any necessary professional or substance abuse treatment;
 - c) meet with Respondent at least twice a month, and maintain weekly telephone contact with Respondent;
 - d) maintain direct monthly contact with the Alcoholics Anonymous chapter attended by the Respondent;
 - e) file with the Secretary of the Board quarterly written reports; and
 - f) immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of the probation.

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: 
William A. Pietragallo, Board Member

Date: June 4, 2008

Board Member O'Connor dissents and would recommend six months suspension followed by five years probation.

Board Member Jefferies did not participate in the adjudication.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No: 1243 Disciplinary Docket
Petitioner : No.3
v. :
: No. 32 DB 2007
: Attorney Registration No. 77754
MICHAEL PATRICK MURPHY, JR. :
Respondent : (Philadelphia County)

DISSENTING OPINION TO THE 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:

The basic facts of this case are clear. Respondent on June 6, 2006 was charged with eight vehicle and traffic violations resulting in a plea to three charges, one felony, and two misdemeanors.

With a blood alcohol content of .20, Mr. Murphy drove east in the westbound lanes of the Pennsylvania Turnpike resulting in a head-on collision with another vehicle. A passenger in the other car suffered serious and permanent injuries.

This was Respondent's second DUI, having had one with a .21 blood alcohol content in 2000.

The majority is of the opinion that this is a motor vehicle case and not a lawyer misconduct matter.

Were it not for certain facts I might agree, however, that is not the case here.

In his 2003 application to the Pennsylvania Bar, Respondent said he was a moderate drinker who had only been drunk once since 2000. He affirmed this under oath, in a deposition taken in February 2007 wherein Respondent said he drank moderately, one or two beers on a weekend. In contrast, during the same time period (2006 into early 2007) he told his social worker that he had been a heavy drinker all through his college years, law school and time in private practice.

In 2003, Respondent led Dr. Winston Collins to believe that he had no family history of alcoholism.

After the accident and realizing his license to practice law was at stake, Respondent opined that his family had a history of alcohol dependency and that his father, grandfather, uncle, stepbrother and aunt were all alcoholics.

In 2003, preparing for admission to the bar, Respondent said there was no real prior use of alcohol.

In 2006, when his qualifications as a lawyer were in question and he needed the Braun defense, Respondent said he drank from age 15, had fallen down drunk, and was drunk during his wedding ceremony and honeymoon. Additionally he testified he drank two to three drinks a night and was usually drunk on the weekends.

In 2003, Mr. Murphy said life was good; he was a good student, no discipline problems with the exception of the 2000 DUI, after which he had learned his lesson.

Contrast that testimony with his statement in 2006 where Respondent claims that "life was a disaster" due to his drinking.

In 2003 Respondent met with Dr. Collins and indicated he had no problems.

In 2007, when requesting mitigation under Braun, Respondent admitted he may not have been truthful with Dr. Collins.

Respondent's manipulation of the facts to produce an outcome beneficial to his own interest, regardless of the truth, is the issue that gives me trouble.

When Respondent wanted to be admitted to the bar he said one thing and then when we flash forward three years to Respondent wanting to keep his law license, he either reiterates his position or changes it to a vastly different and conflicting one, depending upon his audience.

I firmly believe the honesty and integrity of the Respondent is at issue.

Apparently Mr. Murphy is an alcoholic and has met the Braun defense. This allows mitigation.

His accident was not the result of his law practice; that further allows mitigation.

He says he is getting treatment and does not drink now. All of this is commendable along with his apparent contrition and remorse for the actions he undertook resulting in permanent injuries to another person.

This being said, I have difficulty resolving the issue of the conflicting testimony given by Respondent when he asked to become a member of the Bar and portrayed himself in a good light, and the testimony directly contrary when Respondent requests he be allowed to keep his license to practice.

Honesty goes to the heart of our profession. If we cannot trust other lawyers and if the public cannot trust us, our image is tarnished. We as a Board need to consider this.

As Justice Eakin wrote in ODC v. Czmus, 889 A.2d 1197,1204 (2007) in quoting Daniel Webster: " Tell me a man is dishonest, and I will answer he is no lawyer. He cannot be, because he is careless and reckless of justice; the law is not in his heart, is not the standard and rule of his conduct".

Mr. Murphy made material and apparently false statements in connection with his application for admission to the Bar, and yet again in 2007 in a sworn deposition. I find this deceitfulness difficult to swallow.

In ODC v. Surrick, 749 A.2d 441,449 (2000) the court ruled "Truth is the cornerstone of the judicial system; a license to practice law requires allegiance and fidelity to the truth".

Mr. Murphy has not been truthful. He may be a good lawyer who had a drinking problem but he also appears to be a lawyer who is less than truthful when the situation called for it in order to advance his career.

In my opinion, the majority did not adequately consider the issue of Respondent's fitness to practice, considering his disregard for the truth.

I believe a six-month suspension is necessary, as requested by Disciplinary Counsel, followed by the four years of probation.

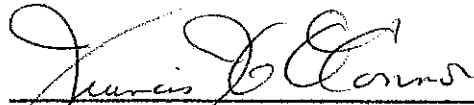
As a Board we cannot overlook the lack of honesty just because the actions of our attorney result in a motor vehicle accident. Honesty and integrity should always be first and foremost in this profession.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

Date: June 4, 2008

By:



Francis X. O'Connor, Member