

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1325 Disciplinary Docket No. 3
Petitioner :
v. : No. 53 DB 2006
PAULA C. SCHARFF, : Attorney Registration No. 65634
Respondent : (Montgomery County)

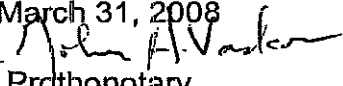
ORDER

PER CURIAM:

AND NOW, this 31st day of March, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated November 5, 2007, the Petition for Review and Exceptions and Objections and response thereto, the request for oral argument is denied pursuant to Rule 208(e)(4), Pa.R.D.E., and it is hereby

ORDERED that Paula C. Scharff is suspended from the Bar of this Commonwealth for a period of ninety days and she 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.

A True Copy John A. Vaskov
As of: March 31, 2008
Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 53 DB 2006
Petitioner	:	
v.	:	Attorney Registration No. 65634
PAULA C. SCHARFF	:	
Respondent	:	(Montgomery 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

On March 20, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Paula C. Scharff, Respondent. The Petition charged Respondent with violations of Rules of Professional Conduct 8.4(a), 8.4(b), and 8.4(c) arising out of

allegations that she engaged in sexual activity with a client who was imprisoned at the Lehigh County Prison. Respondent filed an Answer to Petition for Discipline on April 21, 2006.

Hearings took place on August 29, 2006, October 23, 2006, November 16, 2006, January 5, 2007, and January 30, 2007 before a District II Hearing Committee comprised of Chair Robert F. Morris, Esquire, and Members Lawrence R. Scheetz, Esquire, and Michael T. Taylor, Esquire. Respondent was represented at the hearings by Samuel D. Miller, III, Esquire, and Laurence S. Shtasel, Esquire. Messrs. Miller and Shtasel withdrew their appearance on March 7, 2007 and Samuel C. Stretton, Esquire, entered his appearance for the Respondent. Petitioner presented its case through the testimony of CO Ronald Gumhold, the eye witness to the occurrence, and his supervisor, Captain Robert McFadden, who questioned Respondent about what had happened immediately after the occurrence. Petitioner also offered the testimony of Warden Dale Meisel and Deputy Warden Nancy Afflerbach. Respondent offered her own testimony and that of one character witness.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on July 19, 2007, finding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline, and recommending that Respondent be suspended for a period of 120 days.

Petitioner filed a Brief on Exceptions on July 31, 2007.

Respondent filed a Brief on Exceptions and request for oral argument on August 10, 2007.

Petitioner filed a Brief Opposing Exceptions on August 23, 2007.

Oral argument was held on September 7, 2007 before a three member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on September 10, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, 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 Paula C. Scharff. She was born in 1967 and was admitted to practice law in the Commonwealth in 1992. She maintains her office at 101 Flannery Drive, Jeffersonville PA 19403-2877, and is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior history of discipline.

4. Commencing in or about 1991, Respondent has had a close personal relationship with Jose Luis Gonzalez, also known as Jose Rodriguez. This relationship has been romantically and emotionally charged and has entailed sexual contact.

5. Respondent met Gonzalez when he was a fifteen year old resident of a juvenile detention facility in Montgomery County at which she was employed as a receptionist .

6. Gonzalez, who was 28 as of September 2004, has been incarcerated at various Pennsylvania state and county correctional institutions during the following periods: August 4, 1994 through December 14, 1999; August 10, 2000 through June 30, 2003; August 28, 2003 until the present.

7. On various occasions when Gonzalez was incarcerated, Respondent received telephone calls from him, visited him and wrote to him, including two to three hour visits approximately every two weeks from December 2003 to March 2004, when he was in Graterford Prison.

8. In July 2003, when Gonzalez was released from prison, Respondent met him in Allentown, Pennsylvania, on three occasions, including one where they went to a motel and engaged in sexual intercourse.

9. During a seven - week period from late August through mid-October 2003, when Gonzalez was incarcerated at Lehigh County Prison (LCP), he made 72 collect calls

to Respondent, which she accepted, of which 64 were recorded, and they spoke in excess of 14.2 hours.

10. For about six months prior to September 13, 2004, Gonzalez was in solitary confinement at SCI Frackville and Respondent was unable to meet with him or speak to him by telephone, but she corresponded with him.

11. From that correspondence, Respondent became aware that Gonzalez would be transferred to LCP on or about September 13, 2004.

12. Prior to September 2004, Respondent provided legal advice to Gonzalez but she had not entered her appearance as his counsel in any matter.

13. Respondent independently verified that Gonzalez had a court date on September 15, 2004, and advised him that she planned to attend and visit him at that time.

14. Respondent had four telephone conversations with Gonzalez while he was incarcerated at LCP on September 14, 2004. She had a telephone conversation with him on September 16 and one on September 18, 2004, for a total of 1.4 hours.

15. During the September 14 conversation, Respondent was extremely upset and expressed feelings of jealousy and betrayal and berated Gonzalez for sending her a letter to be transmitted to another prisoner, in which Gonzalez asked that prisoner to help find a female "pen pal" for Gonzalez.

16. On September 15, 2004, Respondent went to LCP, identified herself as Gonzalez's attorney, signed the visitors' log at 11:25 a.m., identifying Gonzalez as a "client"

and purpose of visit as "legal", and provided her expired attorney registration card and a PennDOT photo ID as identification.

17. In reliance upon Respondent's representation that Gonzalez was her client and the purpose of the visit was for legal matters, prison personnel sent Respondent to a contact visiting room adjacent to a main visiting room, where she was greeted by Corrections Officer Ronald Gumhold, who was the visiting room officer.

18. CO Gumhold is an experienced corrections officer, having performed various functions in the Lehigh County prison system for nearly 18 years at the time of the incident in September 2004.

19. When Respondent came to the visiting room, she asked CO Gumhold to see Gonzalez and stated that she was the inmate's attorney.

20. CO Gumhold directed Respondent to visiting room 4, a small enclosed room adjacent to the large main room, with a windowed door and a separate window facing the main room.

21. During his shift, CO Gumhold left his desk at the front of the room to make two rounds of the visiting area per hour, pursuant to prison protocol.

22. CO Gumhold passed near enough to visiting room 4 to look into the room and he observed that as the visit progressed, Gonzalez gradually moved his chair closer to Respondent.

23. Respondent's visit with Gonzalez lasted approximately two and a half hours.

24. Based upon his experience CO Gumhold became concerned about inappropriate activity in visiting room 4 due to the duration of Respondent's visit and the fact that the inmate and Respondent had moved their chairs out of the normal position to sit next to each other.

25. CO Gumhold told the other officers in the room his feeling that something was wrong and he walked to the room and looked inside.

26. CO Gumhold observed that:

a. Respondent and Gonzalez were standing in the corner of the room;

b. Respondent's shirt was pushed up to reveal her breasts and her skirt was up near her waist to reveal her upper thighs;

c. Gonzalez's pants were dropped near his ankles to reveal his buttocks, thighs and part of his legs;

d. Respondent had her arms around Gonzalez and they were kissing and hugging;

e. Gonzalez was pumping up against Respondent;

f. Respondent was not resisting or calling for help or crying.

27. CO Gumhold believed that the parties were having intercourse.

28. When Respondent saw CO Gumhold she pushed Gonzalez off of her but did not say anything.

29. CO Gumhold told them to stop what they were doing and called for assistance from other corrections officers and Captain Robert McFadden, the captain of security at LCP.

30. CO Gumhold observed Respondent reassembling her clothing as rapidly as she could, and Gonzalez reassembling his clothing.

31. CO Gumhold's testimony about these events is credible.

32. Captain McFadden came to the visiting room where he saw Respondent and Gonzalez. He observed that Respondent appeared nervous and her clothing was disheveled and her skirt twisted.

33. Captain McFadden confronted Respondent with the allegation of sexual activity made by CO Gumhold and she replied that nothing had happened, that she and Gonzalez has just kissed goodbye.

34. Captain McFadden gave credible testimony as to his observations of the incident.

35. Warden Dale Meisel of LCP sent a letter to Respondent dated September 16, 2004, advising her that she was no longer permitted to enter LCP.

36. Gonzalez was transferred to state custody.

37. Respondent was not charged with any criminal activity as a result of the incident.

38. Subsequent to the events of September 15, 2004, Respondent and her husband, Steven Interrante, communicated with representatives of the prison by e-mail, requesting access to any recording made by the camera in the visiting room.

39. Mr. Interrante's e-mail attempted to use his status as a state constable to obtain information without revealing his relationship to Respondent, but LCP did not provide a substantive response.

40. Respondent attempted to utilize her personal relationship with Deputy Warden Nancy Afflerbach as a way to gain information about prison employees at LCP.

41. Ms. Afflerbach is the Deputy Warden of Treatment at LCP and knows Respondent through Respondent's friendship with Ms. Afflerbach's stepdaughter.

42. Respondent telephoned Ms. Afflerbach at home on January 6, 2006 to ask questions regarding prison procedure and specifically about CO Gumhold and another staff member.

43. Between April 2005 and February 2006, Petitioner communicated with Respondent and her counsel concerning the instant matter.

44. Respondent lied to Petitioner in her verified response to the Request for Statement of Respondent's Position, in four subsequent letters, and in her verified Answer to Petition for Discipline when she stated that she had not had an intimate relationship with Gonzalez since approximately 1994.

45. In these documents Respondent claimed that she had nothing more than a platonic relationship with Gonzalez. She did not reveal that she had sexual contact with Gonzalez in July 2003.

46. The responses provided by Respondent were based upon her own information; she did not at any time direct her counsel to correct the false statement in those documents.

47. Respondent's misrepresentations were material, in that they were intended to mislead the disciplinary system as to her motives and proclivity for engaging in sexual activity with Gonzalez and for lying about improper behavior with Gonzalez at the prison.

48. Respondent is not remorseful for the incident which took place at LCP on September 15, 2004.

49. Respondent denies that she had sexual intercourse with Gonzalez on September 15, 2004. She claims that when she went to hug and kiss him goodbye he jerked her forward and pulled her against him and at that point CO Gumhold appeared at the window. (N.T. 11/16/06 p. 73, 74)

50. Respondent provided conflicting testimony about her false statements to Office of Disciplinary Counsel. On cross-examination on November 16, 2006, she admitted that she lied in her Answer to Petition for Discipline about her last sexual contact with Gonzalez. She believed that it was not material to the investigation of the prison incident. (N.T. 11/16/06 p. 164-165)

51. On cross-examination on January 30, 2007, Respondent stated that she did not see where she had lied and did not recall being asked on cross-examination previously about the several different times where she gave false statements about her relationship with Gonzalez. She further stated she did not know Petitioner would be allowed to delve into her personal life. (N.T. 1/30/07 p. 113, 114)

52. Respondent claims she never intended to deceive anyone about things in her personal life but she did not trust the disciplinary process. (N.T. 1/30/07 p. 110)

53. Respondent is married and has two young children.

54. Respondent has been active in her community and serves in West Norriton as a member of the Civil Service Commission and is a volunteer at Visitation of the Blessed Virgin Mary church.

55. Respondent has served on the Montgomery County Youth Center Board and has been a Vice Chair of the Women in the Profession Committee of the Montgomery County Bar Association.

56. Respondent has been very active in political activities, serving in various capacities in the Republican Party in Montgomery County.

57. Kenneth Milner, Esquire, has known Respondent for seven or eight years and described Respondent's reputation in the community for honesty and integrity as excellent.

III. CONCLUSIONS OF LAW

1. By engaging in sexual activity with a prisoner in a room which was open to view by members of the public, Respondent engaged in, and/or aided or abetted Gonzalez in engaging in, indecent exposure, in violation of 18 Pa.C.S.A. §3127; and open lewdness, in violation of 18 Pa.C.S.A. §5901.

2. By engaging in such conduct Respondent violated:

a. RPC 8.4(a) – It is professional misconduct for a lawyer to violate, or attempt to violate, the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through another, or do so through the acts of another;

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

c. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent that she committed professional misconduct by engaging in sexual activity with a prisoner at the Lehigh County Prison. Respondent outright denies the charges. Five days of hearing were conducted with many hours of testimony and multiple exhibits. The resolution of the question of whether Respondent engaged in sexual activity

rests on the credibility of two witnesses, as the versions given by CO Gumhold and Respondent are diametrically opposed. The Hearing Committee definitively found that the testimony of CO Ronald Gumhold was credible and entitled to great weight. According to the Committee, CO Gumhold was straight forward in his answers and his testimony was consistent and unshaken despite lengthy and repetitive cross-examination. The Committee found CO Gumhold to be an unbiased observer, having never before seen or met Respondent or Gonzalez, and having no personal animus or bias against them. The Board gives great deference to the credibility findings of the Hearing Committee. Nothing in the record serves to convince us that the Committee erred in finding CO Gumhold to be a credible observer.

The Committee found the testimony of Respondent regarding the events of September 15, 2004 to be not believable. The Committee determined that Respondent's credibility was shattered by her admission of lying to Office of Disciplinary Counsel in her verified Answer to Petition for Discipline. The Committee concluded that Respondent chose to conceal the truth regarding her relationship with Gonzalez. Again, the Board gives great deference to the Committee's findings on Respondent's credibility. The Committee's findings are wholly supported by the record. At one point Respondent admitted that she lied in several different documents; later she denied that she lied and didn't recall her testimony that she lied in several different places. Respondent further admitted that she didn't trust the disciplinary process and did not believe her personal life should be questioned in detail.

While it is not clear that Respondent entered LCP with the intent to have sexual contact with Gonzalez, it is clear that at some point in the lengthy visit sexual contact occurred. This contact constituted open lewdness and aiding and abetting in indecent exposure. These criminal acts are violative of the Rules of Professional Conduct and subject Respondent to sanction. Respondent used her status as an attorney to gain access to the visiting room and exhibited very poor judgment in her subsequent activities, which reflects adversely on her honesty and fitness as a lawyer. Respondent later denied the activity to prison authorities. This denial is understandable as she was in an embarrassing and humiliating situation, but it is not excusable. Her false statements to prison staff constitute dishonesty and misrepresentation.

Respondent is not charged with perjury in connection with her false statements in the Answer to Petition for Discipline and the verified response to request for her position in this disciplinary matter; however, these false answers certainly constitute an aggravating circumstance. Respondent compounded the seriousness of her situation by lying in direct abdication of her professional obligations.

The relevant question pertaining to sanction is to what extent Respondent's behavior reflects on her fitness to practice law. The Board is not interested in judging the relationship Respondent has with Gonzalez; the basis for the Board's oversight lies in the fact that Respondent used her status as an attorney to obtain a visit with a prisoner, engaged in sexual activity which demonstrated her appalling lack of discretion and judgment, and subsequently lied to prison officials concerning that activity. Moreover, the

Board is very troubled by Respondent's continued lack of veracity during the investigation and prosecution of this matter. She lied not once but at least twice in verified statements as well as in letters sent to Petitioner by her counsel. Respondent did not attempt to correct these false statements, and certainly she had the opportunity to do so. In the end she was confronted on the witness stand under oath whereupon she revealed the true nature of her relationship with Gonzalez. This behavior reflects as much on Respondent's fitness as does the actual misconduct engaged in at the prison.

Respondent offered mitigating circumstances in that she has no prior record of discipline, she is very involved in her community, and she has a good reputation in the community, by the account of her character witness.

The Hearing Committee, following a thoughtful analysis, has recommended a 120 day period of suspension. Petitioner contends that a suspension of one year and one day is appropriate, while Respondent takes the position that her misconduct warrants a private reprimand.

The Board's recommendation is a public censure. A recent case involving an attorney who attempted to bring illegal substances into the Allegheny County Prison resulted in a public censure. Office of Disciplinary Counsel v. Richard McCague, 175 DB 2003, 940 Disciplinary Docket No. 3 (Pa. Dec 1, 2005). Therein, the attorney was convicted of the summary offense of disorderly conduct. The attorney was aware that he was violating jail policy. He was asked four separate times by a corrections officer to remove items of contraband from his person. Each time the attorney removed one thing

until he could no longer conceal the items. His reason for violating jail policy was to help his client buy protection inside the jail; however, the Board specifically noted that zealous advocacy does not include violating jail policies. The Board noted that while the attorney did not harm any clients, he did not exercise good judgment. The Board recommended a public censure based on the fact that the attorney was convicted of a criminal offense which demeaned the legal profession.

Respondent's misconduct, standing alone, may have resulted in private discipline, as the actual misconduct is not as offensive as the lies that occurred in the aftermath. Respondent chose to make this case about more than an incident in the prison. She aggravated her misconduct by rejecting her fundamental responsibility to be truthful in disciplinary proceedings, thus elevating her sanction to a public censure before the Supreme Court.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Paula C. Scharff, be subjected to a Public Censure before the Supreme Court .

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: 

Stewart L. Cohen, Board Member

Date: November 5, 2007

Board Members Pietragallo, Baer, Cognetti and Buchholz did not participate in the adjudication.