

IN THE SUPREME COURT OF PENNSYLVANIA

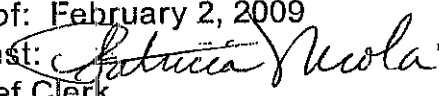
OFFICE OF DISCIPLINARY COUNSEL, : No. 1437 Disciplinary Docket No. 3
Petitioner :
v. : No. 150 DB 2007
ROBERT ALTON WILSON, : Attorney Registration No. 18461
Respondent : (Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 2nd day of February, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 22, 2008, it is hereby ORDERED that Robert Alton Wilson be subjected to public censure by the Supreme Court.

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: February 2, 2009
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

| | | |
|--------------------------------|---|---------------------------------|
| OFFICE OF DISCIPLINARY COUNSEL | : | No. 150 DB 2007 |
| Petitioner | : | |
| | : | |
| v. | : | Attorney Registration No. 18461 |
| | : | |
| ROBERT ALTON WILSON | : | |
| Respondent | : | (Allegheny 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 October 22, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against Robert Alton Wilson, Respondent. The Petition charged Respondent with violation of Rule of Professional Conduct 8.2(a) arising from allegations that Respondent made statements in a Reply Brief in the Superior Court of Pennsylvania, that the decision of the judge in the lower court was politically motivated. Respondent filed an Answer to Petition for Discipline on December 5, 2007.

A disciplinary hearing was held on February 28, 2008, before a District IV Hearing Committee comprised of Chair William D. Phillips, Esquire, and Members John E. Hall, Esquire, and David S. Posner, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on June 20, 2008. The Committee concluded that Respondent violated Rule 8.2(a) and recommended that he be publicly censured by the Supreme Court of Pennsylvania.

This matter was adjudicated by the Disciplinary Board at the meeting on July 19, 2008.

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, is vested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged conduct of an attorney admitted to practice law in 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 Robert Alton Wilson. He was born in 1944 and was admitted to practice law in the Commonwealth of Pennsylvania in 1973. His attorney registration address is 3380 Babcock Boulevard, Pittsburgh Pa 15237.

3. By Order of Court and Opinion of the Court dated July 10, 2006, Judge Alfred B. Bell of the Court of Common Pleas of Westmoreland County, denied Contestant's Action to Set Aside the August 22, 2001, Will of Robert Neal, in the matter captioned In re: Estate of Robert Thomas Neal, al dic. Robert T. Neal, al dic. Robert T. Neal, Jr., filed at No. 65-01-1659.

4. The contestant, Amelia F. Lippert, died on April 18, 2002.

5. On December 1, 2006, Respondent filed a Brief for Appellant, the Estate of Amelia F. Lippert, Deceased, by Clare L. Pebworth, Executrix, in the Superior Court of Pennsylvania.

6. On December 28, 2006, Frank W. Jones and Aaron M. Kress filed a Brief for Appellee, Dorothy Evans, Executrix of the Estate of Fred N. Evans, Deceased.

7. On January 12, 2007, Respondent filed a Reply Brief on behalf of the Appellant.

8. In the Reply Brief Respondent stated, among other things that:

a. The contestant, Amelia F. Lippert, had only one avenue of recourse to challenge the Will in question;

b. That lone avenue of recourse was necessarily the Court of Common Pleas of Westmoreland County; and,

c. "Amelia is not the one who proffered an invitation for politics to enter the case."

9. Respondent further stated, among other things:

J. Raymond Ambrose, Esq., is the scrivener of the questioned 2001-will and the person whose handiwork is being reviewed. He is the husband of the Hon. Donetta Ambrose, President Judge of the United States District Court in Pittsburgh; the Honorable Judge Ambrose is a former Westmoreland County Common Pleas Judge. The deposition testimony of Amelia read into evidence (R. 1-34) on which Judge Bell

places so much weight was taken by Aaron M. Kress, Esq., on April 18, 2002 as part of discovery. Mr. Kress questioned Amelia in part as follows (R. 4, I. 6-12):

Q. Where do you live?

A. 1202 Princeton Avenue, Natrona Heights, Pennsylvania.

Q. Would you repeat your address, please.

A. 1202 Princeton Avenue, Natrona Heights, Pennsylvania.

Q. Is that in Allegheny County?

A. Allegheny County.

Obviously, Mr. Kress felt that line of questioning to be important as no other question of Amelia was asked two times, and if that line of questioning had appeared one time, it could have been dismissed to prosecutorial nervousness; it didn't. Every time Mr. Kress had an out-of-county witness on the stand, he sought to establish residency.

10. In the Reply Brief Respondent stated, among other things:

This questioning technique could have been offered for only one objective - to stress neither Amelia nor her attorney were residents of Westmoreland County and could not be constituents of Judge Bell. As

noted in Appellant's Brief (p. 5), on January 12, 2004, Judge Bell granted Mr. Kress' Motion against Amelia's Estate thus suppressing Amelia's Estate's ability to establish the presence of Stage IV Alzheimer's Disease in Uncle Bobby through Dr. Wecht. Judge Bell's decision in that instance can be viewed only as politically motivated as Amelia's Estate had not violated any Pennsylvania law - common or statutory - in obtaining the opinion of Dr. Wecht.

11. Respondent further states in the Reply Brief, among other things:

There is an appearance at least of an impropriety in the outcome of this case being skewed against a deceased - Allegheny - County-resident in favor of a high-profile Westmoreland County-politico -- namely, J. Raymond Ambrose, Esq. when the evidence adduced on cross-examination so strongly suggests the description of and/or chain of events as disclosed by Ms. Pierchalsky and Mr. Ambrose does not exist. Documentary evidence overlooked by Judge Bell does not support a "clear and convincing" presentation on the part of Freddy's Estate necessary to justify upholding the 2001-will. Amelia's Estate does not want to re-try this matter: if a new trial has to be within the four corners of

Westmoreland County, a judge should be brought in from outside the county to preside. Judge Bell should really be reversed.

12. When Respondent made the statements in his Reply Brief that “Judge Bell’s decision in that instance can be viewed only as politically motivated...,” and “there is an appearance at least of an impropriety in the out come of this case being skewed against the deceased-Allegheny-County-resident in favor of a high-profile Westmoreland-County-politico...,” Respondent knew his statements were false or he made them with reckless disregard as to their truth or falsity concerning the integrity of Judge Bell.

13. When Judge Bell received Respondent’s Reply Brief to the Superior Court, Aaron M. Kress, Esq., opposing counsel in the underlying will contest, asked Judge Bell whether Judge Bell was going to report the Respondent to the Disciplinary Board for his comments in the Reply Brief.

14. Judge Bell neither reported Respondent to the Board nor directed anyone to do so.

15. Attorney Kress reported Respondent to the Board.

16. Judge Bell testified at the disciplinary hearing. None of the decisions issued in the course of the will contest in the Neal Estate matter were politically motivated.

17. No aspect of the Neal Estate will contest was decided based upon the residency of any of the participants or the counsel who participated.

18. Respondent produced no evidence to show that Judge Bell was politically motivated, nor did he produce evidence to show that he had a reasonable belief that Judge Bell was politically motivated.

19. Respondent has a prior history of discipline. He received a Private Reprimand in 2006 for violations of Rules of Professional Conduct 3.3(d) and 8.4(d). The misconduct arose as part of the litigation involved in the instant matter. Respondent filed a Petition to Exhume the body of Robert Neal in Allegheny County but failed to disclose to the Court that decedent's daughter was not a beneficiary under the will; a will contest was pending in Westmoreland County; the decedent was a resident of Westmoreland County; the autopsy would be used in the will contest; and no notice of the motion before the Judge in Allegheny County was given to the Westmoreland County Court or the attorney representing the Estate of the decedent in the will contest.

20. Respondent testified on his own behalf at the disciplinary hearing. He admitted that in retrospect he should have phrased his comments in a better manner. He insisted that he did not offer the comments with a motive to malign Judge Bell.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

RPC 8.2(a) - A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to a judicial or legal office.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charge against Respondent that he violated Rule 8.2(a) of the Rules of Professional Conduct

by making statements that he knew to be false or with reckless disregard to the truth of falsity concerning the integrity of a judge. Specifically, Respondent filed a Reply Brief on behalf of his client in the Superior Court, in which he stated that the decision of the lower court judge was politically motivated.

To establish a prima facie case of making false statements or accusations, Petitioner bears the initial burden of establishing that an attorney, based upon his own knowledge, made false allegations in a court pleading. This can be accomplished by presenting documentary evidence or testimony from the victims of the allegations stating that the allegations are false. The burden then shifts to Respondent to establish that the allegations are true or that he had an objective reasonable belief that the allegations were true, based upon a reasonable diligent inquiry. Office of Disciplinary Counsel v. Price, 732 A.2d 599 (1999).

Upon review of the record, the Board concludes that Petitioner met its burden of proof via the presentation of Judge Bell's testimony. In contrast, nothing produced in the record lends evidentiary support for the statements Respondent made in his Reply Brief about Judge Bell. The Board concludes Respondent did not meet his burden of proof and has violated Rule of Professional Conduct 8.2(a).

Petitioner recommends that Respondent be suspended for a period of three months. The Hearing Committee rejected this recommendation, based on its finding that Respondent allowed his frustration and exasperation to prevail in the manner in which he handled the will contest. This was a hotly contested matter with some degree of animus exhibited between Respondent and opposing counsel, Aaron Kress. Mr. Kress had already reported Respondent to the Board for an incident during the will contest that resulted in Respondent receiving a Private Reprimand. Mr. Kress was the complainant in the instant matter. It is clear that Respondent became too personally involved in the matter and lost his objectivity and his professionalism. A review of the record indicates that the Committee has accurately depicted Respondent's handling of the Neal Estate will contest, which culminated in Respondent's excessive hyperbole in his Reply Brief. Respondent admits that he should not have used the language he did and did not intend to malign Judge Bell.

The Committee recommends a public censure to address Respondent's misconduct. The Board concurs with this recommendation. While the Board is cognizant that public censures have limited application as an effective sanction in most disciplinary cases, the instant matter presents a situation wherein the facts are perfectly

tailored to a public censure. Respondent inappropriately impugned a judge's integrity; the Supreme Court should address that attack with a verbal censure.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert Alton Wilson, be subjected to a Public Censure.

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: 
Francis X. O'Connor, Board Member

Date: October 22, 2008

Board Member Newman did not participate in the adjudication.