

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1461 Disciplinary Docket No. 3
Petitioner :
 : No. 156 DB 2007
v. :
 : Attorney Registration No. 38016
FRANK ANTHONY MAZZEO, :
Respondent : (Lackawanna County)

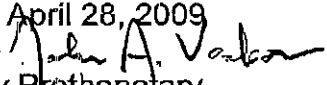
ORDER

PER CURIAM:

AND NOW, this 28th day of April, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated January 30, 2009, the Petition for Review and response thereto, it is hereby

ORDERED that Frank Anthony Mazzeo is suspended from the Bar of this Commonwealth for a period of five years 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.

A True Copy John A. Vaskov
As of: April 28, 2009
Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 156 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 38016
	:	
FRANK ANTHONY MAZZEO	:	
Respondent	:	(Lackawanna 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 November 1, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against Frank Anthony Mazzeo, Respondent. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of his representation of a client in a Social Security matter. Respondent filed an Answer to Petition for Discipline on December 14, 2007.

A disciplinary hearing was held on March 6, 2008, before a District III Hearing Committee comprised of Chair John Henry Reed, Esquire, and Members Victor A. Neubaum, Jr., Esquire and Lori R. Hackenberg, Esquire. While previously represented by counsel up to and including the pre-hearing conference, Respondent appeared pro se at the disciplinary hearing and did not request a continuance to seek representation. The parties agreed to a Joint Stipulation of Facts with supporting exhibits attached, which was admitted into evidence. Petitioner introduced the testimony of one witness. Respondent introduced the testimony of six witnesses and testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed an Amended Hearing Committee Report on August 15, 2008, finding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of five years.

Respondent filed a Brief on Exceptions on September 3, 2008, and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on September 23, 2008.

On October 16, 2008, Respondent filed a Petition to Reopen for Allowance of Additional Evidence, seeking to submit an evaluation on behalf of Respondent by Dr. Robert G. Yager.

Petitioner filed an Answer to Respondent's Petition to Reopen the Record on October 17, 2008, contending that such request was untimely.

Oral argument was held before a three member panel of the Disciplinary Board on October 24, 2008. The panel granted the Petition to Reopen for purposes of admitting in the record the letter of Dr. Yager.

This matter was adjudicated by the Disciplinary Board at the meeting on November 12, 2008.

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 Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 the aforesaid Rules.

2. Respondent is Frank Anthony Mazzeo. He was born in 1958 and was admitted to practice law in the Commonwealth in 1983. His attorney registration address is 407-408 Mulberry Professional Plaza, 426 Mulberry St., Scranton PA 18503. 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. Respondent represented Enos C. White in a Social Security Disability matter. At the time that Mr. White sought representation, he was receiving welfare benefits and food stamps, and living in a camper with no electricity or running water.

5. Mr. White, who is marginally able to read and write, applied for Social Security Disability and Supplemental Security Income (SSI) benefits in November 1999, based upon various conditions, including pain in the lower back and hips, tendonitis in the left arm, as well as chronic obstructive lung disease, a seizure disorder, and a history of deep vein thrombosis. Mr. White alleged his disability commenced on June 9, 1997.

6. Mr. White's application for benefits was denied on August 3, 2000. On August 28, 2000 he filed a timely request for a hearing before an Administrative Law Judge.

7. On August 9, 2000, Respondent and Mr. White executed a standard fee agreement utilized by the Social Security Administration. In pertinent part, this agreement provided that Respondent's fee could not exceed the lesser of 25% of past due benefits or \$4,000.00. This agreement further provided that in the event past due benefits were awarded, both Mr. White and Respondent would be advised by the Social Security Administration of the amount of such benefits, the specific maximum fee that could be charged, and that Respondent would then have 15 days to seek additional fees by filing a written statement with the presiding ALJ.

8. Following a hearing, by Notice of Decision dated April 4, 2002, Mr. White was determined to be disabled as of June 9, 1997, and was also determined to be eligible

for Supplemental Security Income (SSI). This Notice of Decision was sent to Mr. White and Respondent.

9. This Notice of Decision included an Order formally approving the August 9, 2000 fee agreement executed by Respondent and Mr. White.

10. On May 24, 2002, Respondent was issued a check, payable to him, by the Social Security Administration in the amount of \$3,748.00 for attorney fees in Mr. White's case. This amount was computed based upon a \$4,000.00 fee, less a processing fee of \$252.00.

11. By letter dated May 28, 2002 to Mr. White, the Social Security Administration addressed the question of fees related to the SSI portion of Complainant's claim. The SSA again approved the aforementioned fee agreement. It indicated that once the processing of all aspects of Mr. White's Social Security claim was complete, it would determine whether or not Respondent could charge additional fees in connection with his work on Mr. White's SSI claim. SSA indicated that it would send Mr. White another letter once these determinations were made. Respondent was provided with a copy of this letter.

12. By Notice of Award (related to disability benefits) dated June 11, 2002, Mr. White was advised about the start date of his benefits. This Notice also indicated the SSA had withheld \$4,000.00 from his past due benefits to pay Respondent, who could charge a maximum of \$4,000.00 for his work. Respondent was provided with a copy of this Notice.

13. On June 19, 2002, Respondent sent a letter to Mr. White requesting that he pay additional legal fees. Specifically, Respondent pointed out that Mr. White's past due Social Security Benefits totaled \$20,921.36. However, in that Mr. White had received Public Assistance from the Commonwealth of Pennsylvania during the time frame for which Mr. White was being awarded SSI benefits, the Commonwealth was entitled to reimbursement in the amount of \$8,011.50. Thus, the amount to Mr. White in past due SSI benefits was \$12,909.86. Respondent requested that Mr. White pay him 25% of this amount.

14. On June 25, 2002, Mr. White appeared in Respondent's office in response to his June 19, 2002 request for additional legal fees. Mr. White paid Respondent \$1,717.00 and was provided with a receipt signed by "J. Shoemaker."

15. By letter from the SSA dated June 26, 2002 to Mr. White, he was advised that the maximum fee he owed Respondent in connection with all aspects of his Social Security claim was \$4,000.00. A copy of this letter was forwarded to Respondent.

16. Again, Mr. White appeared in Respondent's office on July 12, 2002, and paid Respondent an additional fee of \$1,614.00 which, in combination with his prior payment of \$1,717.00, constituted approximately 25% of the balance of past due SSI payments, as aforesaid. Again, Mr. White was provided with a receipt signed by "J. Shoemaker."

17. By letter dated July 31, 2002, Mr. White was advised by a representative of the Pennsylvania Office of Inspector General that Respondent would be paid legal fees

in the amount of \$2,002.88, in that, through his actions, the Inspector General had been successful in obtaining reimbursement from the Social Security Administration in an amount of \$8,011.50. This letter went on to advise Mr. White that if the amount of this legal fee that was to be paid by the Inspector General exceeded the total amount of fee to which Respondent was entitled, that Mr. White should contact him to obtain a refund. Respondent received a copy of the Inspector General's July 31, 2002 letter.

18. Following receipt of the Inspector General's letter, Mr. White made a series of telephone calls to Respondent concerning what Mr. White believed was an overpayment of fees to Respondent. Respondent did not take any action regarding Mr. White's concerns.

19. Mr. White eventually contacted his local Public Assistance Office for help. Disability Advocate Regge Episale referred Mr. White's complaint that he had been overcharged to the Social Security Administration Office of Hearing and Appeals. Respondent was sent a copy of Ms. Episale's letter.

20. By letter dated May 30, 2003, Lisa Janoski, Senior Attorney at the Social Security Administration Office of Hearings and Appeals, advised Office of Special Counsel in Falls Church, Virginia, of her conclusion that Respondent had violated the law and regulations of the Social Security Administration "by collecting additional money from the claimant and after a fee agreement was approved and the fee disbursed to the attorney by the Social Security Administration."

21. By letter dated January 26, 2005, Social Security Administration Counsel Edward Aldrich advised Respondent that the Social Security Administration had determined that Respondent was paid an excessive fee. Repayment of \$5,333.38 was demanded. By letter dated February 4, 2005, Respondent requested 90 days to respond to Mr. Aldrich's letter.

22. By letter dated November 1, 2005, Social Security Administration Counsel Asim Akbari noted that Respondent had not provided a substantive response to Attorney Aldrich's letter of January 26, 2005. Repayment of \$5,333.88 within 14 days was again demanded. Respondent received this letter.

23. By letter dated November 10, 2005, Respondent advised Attorney Akbari that "after thoroughly reviewing my file on this matter the only fee I received on Enos White's behalf was for \$3,748.00. My file contains no other evidence of any other monies received [sic] by my office from him or on his behalf from any other source."

24. By undated letter sent December 22, 2005, Attorney Akbari reviewed the circumstances and again demanded repayment of \$5,333.88 in 14 days. Respondent received this letter.

25. By letter to Attorney Akbari dated January 19, 2006, Respondent stated, "I do not owe Mr. White any money. The copies of the receipts sent to me do not bear my name, nor are they signed by anyone in my office. They were manufactured by Mr. White. In addition, no funds were received from the Commonwealth of Pennsylvania in this matter."

26. By letter dated May 8, 2006, the Lackawanna County Bar Association Fee Dispute Committee issued an Informal Advisory Letter Opinion to the effect that Respondent was overpaid in the amount of \$3,331.00 (\$1,717.00 + \$1,614.99), which payments he was not entitled to be given according to the fee agreement which had been entered into. Respondent received this letter opinion.

27. Despite the demands for repayment by the Social Security Administration and despite the opinion letter, Respondent failed to provide Mr. White with any refund.

28. In July 2006, Mr. White filed a complaint about this matter with Office of Disciplinary Counsel.

29. Respondent was sent a DB-7 Request for Statement of Respondent's Position on November 27, 2006.

30. Respondent answered by letter dated December 15, 2006, as follows:

a. in paragraphs 8 – 11, he denied receiving additional fees from Enos White during the months of June and July 2002, in the amounts of \$1,717.00 and \$1,614.00, notwithstanding the existence of a receipt signed by "J Shoemaker," which he claimed were fabrications.

b. in paragraphs 12-13, he denied receiving \$2,002.88, or any other money, from the Commonwealth of Pennsylvania.

c. in paragraph 19, he claimed that the only fee he received was in the amount of \$3,748.00, which was paid directly to him by the Federal Government, presumably the Social Security Administration.

Respondent specifically denied having collected \$1,717.00 and \$1,614.00 from Mr. White, and specifically denied collecting \$2,002.88 from the Commonwealth of Pennsylvania.

d. Respondent attached to the Answer Exhibit A, purported to be a Memo to Mr. White wherein Respondent states to Mr. White that his fee was paid in full and to disregard any prior letter.

31. By Supplemental Request for Statement of Respondent's Position (DB-7A) dated April 12, 2007, Disciplinary Counsel alleged that Respondent's December 15, 2006 DB-7 answer was replete with misrepresentations, and that Respondent had thus violated additional Rules of Professional Conduct.

32. This DB-7A was served upon Respondent on April 30, 2007.

33. By letter dated May 2, 2007, Respondent admitted that the allegations made by Disciplinary Counsel in the initial DB-7 Letter of November 27, 2006 were true, and Respondent's December 15, 2006 letter of response was rescinded, in that its contents were false. Respondent fabricated the Memo attached as Exhibit A to the Answer to DB-7.

34. On May 2, 2007, Respondent forwarded a check for \$5,081.88 to Mr. White, claiming that the amount represented full reimbursement; however, on September 21, 2007, Respondent made an additional payment to Mr. White in the amount of \$1,803.63, which amount purportedly included statutory interest as well as a refund of legal fees Mr. White had paid Respondent.

35. On August 16, 2007, the Social Security Administration commenced proceedings via Notice of Intent to Disqualify for the purpose of disqualifying Respondent from representing individuals in connection with matters before the Social Security Administration.

36. On August 22, 2007, Respondent executed an Acceptance of Disqualification. As a result, he is currently disqualified from handling matters before the Social Security Administration.

37. Respondent testified on his own behalf.

38. Respondent has handled over 800 Social Security cases in his career and has had no other similar fee issues.

39. Respondent panicked when he received the letters from the Social Security Administration regarding the excessive fee and did not react properly.

40. Respondent did not seek advice from colleagues or his wife about the situation and tried to handle it on his own.

41. Respondent apologized profusely to Mr. White at the hearing and accepted full responsibility for his actions.

42. Respondent's disqualification from handling SSA matters has resulted in a 50% reduction in his legal practice.

43. Respondent is active in his community and church and maintains loyal friends and colleagues at the bar.

44. Post hearing, Respondent was permitted by the Board to admit into the record a letter from Dr. Robert G. Yager, Jr.

45. Dr. Yager is a psychiatric supervisor at Clarks Summit State Hospital. He does not currently treat nor has he ever treated Respondent in any professional context.

46. Dr. Yager indicates that he “suspects that Attorney Mazzeo suffers from symptoms of depression and social anxiety.” See Addendum Exhibit “A”.

III. CONCLUSIONS OF LAW

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

1. RPC 1.5(a) – A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

2. RPC 8.1(a) – An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.

3. 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.

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

Respondent did not prove by clear and convincing evidence that he suffers from a psychiatric disorder which caused his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of a Petition for Discipline charging Respondent with violations of Rules of Professional Conduct 1.4(b), 1.5(a), 8.1(a), 8.4(b), and 8.4(c). Respondent admits that over the course of five years, and in regard to one matter involving his client Enos White, he charged an excessive fee, collected the money and then kept the money when confronted about it. Respondent lied to his client, lied to the Social Security Administration, and lied to Disciplinary Board Counsel in trying to cover up his misconduct. Ultimately, Respondent admitted his misconduct and made his client whole.

Respondent's misconduct is very serious. The initial act of collecting an excessive fee from Mr. White was problematic but could have been resolved immediately when pointed out to Respondent. Instead, Respondent committed egregious acts of unprofessional behavior by lying; not just once, but several times. Respondent's client was not an educated person conversant with the legal system, nor was he a person of

economic means. The public perception of Respondent's actions is that an educated lawyer callously took advantage of an uneducated, nearly destitute individual in an attempt to make a profit.

Yet the evidence supports Respondent's statements that his behavior in this matter was an isolated event in his legal career of 25 years. Respondent has handled some 800 cases before the Social Security Administration and none of them culminated in the unethical way that the instant case was resolved. Respondent's actions in Mr. White's matter have disqualified him from representing individuals before the Social Security Administration. Respondent is already experiencing the sting of that determination as his legal practice has been reduced by 50%. This matter is an unfortunate example of an attorney committing one unprofessional act and compounding it by subsequent lies and misrepresentations to hide the original problem.

Mitigating factors present in this matter are Respondent's lack of prior discipline, his acknowledgment of wrongdoing and apology to his client at the hearing, his active participation in his community and the regard that he is held in by colleagues at the bar. While Respondent attempted to mitigate his sanction by presenting evidence that his misconduct was caused by a psychiatric disorder, the Board concludes that the letter from Dr. Robert G. Yager is insufficient to meet the Braun standard. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

The Hearing Committee has recommended a five year period of suspension. The Board concurs that Respondent's serious misconduct warrants a lengthy suspension.

In deference to the Committee's analysis of the facts of record, and with recognition of the mitigating factors, the Board is persuaded that Respondent be suspended for a period of five years; that he serve one year and one day, and that the remainder of the suspension be stayed with probation.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Frank Anthony Mazzeo, be suspended from the practice of law for a period of five years with one year and one day served and the balance of the suspension stayed and probation with the following condition:

1. Respondent shall not commit any violations of the Rules of Professional Conduct in this or any other jurisdiction where he is admitted to practice, must not commit any criminal violations, and must make quarterly sworn certifications to the Board (with copies to Disciplinary Counsel) that he is in compliance with this condition.

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: January 30, 2009

Board Members Gentile, Jefferies, Bevilacqua and Leonard did not participate in the adjudication.

Board Members Brown, Buchholz and Lawrence dissent and would recommend a five year suspension with two years served, three year stayed suspension and probation.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 156 DB 2007
Petitioner :
v. : Attorney Registration No. 21174
FRANK ANTHONY MAZZEO :
Respondent : (Lackawanna County)

DISSENTING OPINION

DISCUSSION

A majority of the Disciplinary Board has recommended that Respondent be suspended for a period of five years with the entire suspension stayed but for one year and one day with Respondent serving the remainder of his five year suspension on probation.

I dissent. I would recommend to the court that Respondent serve a five year suspension with two years served and the remaining three year period stayed with Respondent serving probation.

Respondent, who has no prior history of discipline, represented a gentleman with marginal reading and writing abilities in a social security matter for which Respondent's fee was paid in full from the proceeds of the social security award. Nonetheless, Respondent sought from his client additional fees above the amount to which Respondent was entitled. When Respondent's

client at a later date questioned the propriety of the additional fees Respondent took various actions to cover up his misconduct. Those actions included misrepresentations to the Social Security Administration, the Lackawanna County Bar Association and the Office of the Disciplinary Counsel.

At his Disciplinary Hearing, Respondent testified that he panicked when he received inquiries regarding the excessive fee from the Social Security Administration and acknowledged that he did not react properly. Unfortunately, he compounded his misconduct by his less than truthful responses to the Office of Disciplinary Counsel's initial inquiries.

The hearing committee that presided in this matter, while acknowledging that there existed strong factors in mitigation and that this appeared to be an isolated incident, nonetheless was unimpressed by Respondent's testimony. The hearing committee recommended to the Disciplinary Board that Respondent be suspended for five years.

I agree with the majority of the Disciplinary Board that the hearing committee's recommendation is excessive. Respondent should be given some credit for his record of no prior discipline, for his community and church activities, and for the high regard in which he is held by friends in the community and colleagues at the Lackawanna Bar.

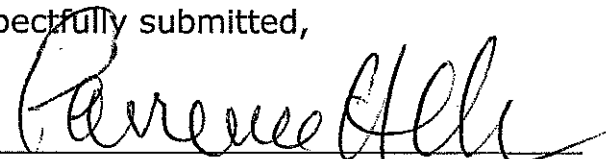
However, in my opinion, Respondent was the beneficiary of too much credit from a majority of the Board. I would give more deference to the

hearing committee which had an opportunity to observe Respondent during his testimony and also hear the testimony of the witnesses. As the Board majority notes, a *Braun* defense was not established by Respondent. The majority's recommendation would be more appropriate if such a defense had been established.

For these reasons, I recommend that Respondent be suspended from the practice of law for a period of five years; that he serve two years of the suspension and that the remaining three years of the suspension be stayed with the same probation conditions recommended by the majority of the Board.

Respectfully submitted,

By:



Laurence H. Brown, Board Member

Date: January 30, 2009

Board Members Buchholz and Lawrence joins in this Dissent.