

IN THE SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL, | : | No. 1655 Disciplinary Docket No. 3 |
| Petitioner | : | |
| | : | No. 57 DB 2009 |
| v. | : | |
| | : | Attorney Registration No. 85306 |
| DONALD CHISHOLM, II, | : | |
| Respondent | : | (Philadelphia) |

ORDER

PER CURIAM:

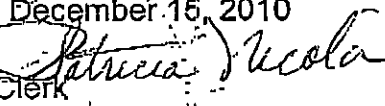
AND NOW, this 15th day of December, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 16, 2010, it is hereby

ORDERED that Donald Chisholm, II, is suspended from the practice of law for a period of six months, the suspension is stayed in its entirety and he is placed on probation for a period of one year, subject to the following:

1. Respondent shall take the Bridge the Gap Course from an accredited provider.
2. Respondent shall take six hours of Continuing Legal Education credits in the area of ethics in addition to his normal Continuing Legal Education annual requirement.
3. At least ten days prior to the expiration of the period of probation, Respondent shall provide to the Board his Certificates of Attendance for the courses taken.
4. Respondent shall not commit any violations of the Rules of Professional Conduct in this or any other jurisdiction where he is admitted to practice, shall not commit

any criminal violations and shall make quarterly sworn certifications to the Board that he is in compliance with this condition.

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: December 15, 2010
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| v. | : | Attorney Registration No. 85306 |
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| DONALD CHISHOLM, II | : | |
| 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, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Donald Chisholm, II. The Petition charged Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of his alleged misconduct in two client matters. Respondent filed an Answer to Petition for Discipline on June 5, 2009.

A disciplinary hearing was held on August 17, 2009, before a District I Hearing Committee comprised of Chair Michael D. Jones, Esquire, and Members Michael L. Korniczky, Esquire, and Sarah L. Westbrook, Esquire. At the disciplinary hearing, Respondent was represented by Samuel C. Stretton, Esquire, and the Office of Disciplinary Counsel was represented by Gloria Randall Ammons, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 28, 2010. It concluded that Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 5.5(a), and 8.4(d), and Pennsylvania Rules of Disciplinary Enforcement 203(b)(3) and 217(j)(4)(iv)-(vii). It recommended that Respondent be suspended for a period of six months, with the suspension stayed and probation for one year, with completion of Bridge the Gap and six additional hours of CLE within the probationary period, with no future violations of the Rules. This matter was adjudicated by the Disciplinary Board at the meeting on April 14, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave, Harrisburg, Pennsylvania, is vested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of any 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 Donald Chisholm, II. He was born in 1971 and was admitted to practice law in the Commonwealth of Pennsylvania in 2000. His office for the practice of law is located at Stephen Girard Building, 21 S. 12th St., Suite 100, Philadelphia PA 19107. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a record of prior discipline. He received a Private Reprimand with probation of one year in 2005 for forging his client's signature on bail receipts. In 2008, Respondent received a Public Censure for failing to pursue criminal appeals on behalf of two clients.

Caesar Matter

4. By letter dated May 17, 2006, the Court of Common Pleas of Philadelphia County appointed Respondent to represent Lamont Caesar in his Superior Court appeal.

5. By letter to Mr. Caesar dated May 10, 2007, Respondent addressed Mr. Caesar's appeal of his guilty pleas on three consolidated matters and acknowledged a May 30, 2007 deadline for filing briefs.

6. On June 14, 2007, Respondent filed an Application for Extension of Time to File the Brief on behalf of Mr. Caesar.

7. On June 15, 2007, the Superior Court granted Respondent's Application for Extension.

8. Mr. Caesar's brief was due on or about July 12, 2007.

9. Respondent failed to file Mr. Caesar's brief by the extended due date.

10. By Order dated August 16, 2007, the Superior Court dismissed Mr. Caesar's appeal as a result of Respondent's failure to file a brief.

11. On August 28, 2007, Respondent filed an Application to Reinstate Appeal and Accept Attached Brief wherein Respondent stated that he had prepared an application for extension of time to file Mr. Lamont's brief but failed to file the application prior to the dismissal of the appeal due to Respondent's being out of town for a personal family matter.

12. On September 4, 2007, the Superior Court granted the Application to Reinstate Appeal. The brief which Respondent filed on behalf of Mr. Caesar as an attachment to the Application to Reinstate Appeal was docketed as filed.

13. Mr. Caesar attempted to contact Respondent by telephone on numerous occasions and was informed by Respondent's office that Respondent would return his calls.

14. Respondent failed to respond to any of Mr. Caesar's telephone calls.

15. By letter to Respondent dated April 27, 2008, Mr. Caesar requested information about his appeal and complained about Respondent's failure to respond to any of his telephone messages.

16. Respondent failed to respond to Mr. Caesar's letter.

17. By Memorandum Opinion dated April 29, 2008, the Supreme Court quashed Mr. Caesar's appeal as Respondent failed to include the required Rule 2119(f) concise statement in Respondent's appellate brief and the Commonwealth objected to the

defect; accordingly, the Court was precluded from addressing the merits of Mr. Caesar's claim on appeal.

18. Respondent failed to notify Mr. Caesar that the appeal had been quashed.

Respondent's Transfer to Inactive Status for Non-Compliance with CLE Requirements

19. By letter to Respondent dated September 28, 2007, the Pennsylvania Continuing Legal Education Board notified Respondent that he had not met his CLE requirements for the 2007 Compliance Year ending December 31, 2007.

20. Respondent received the September 28, 2007 letter.

21. By letter to Respondent dated February 22, 2008, the CLE Board notified Respondent that he was non-compliant with his CLE requirements.

22. Respondent also received the letter dated February 22, 2008.

23. By letter to Respondent dated May 28, 2008, the CLE Board notified Respondent that:

a. the process of preparing the list of non-compliant attorneys for submission to the Supreme Court was nearing completion;

b. the final list would be prepared by CLE as of 4:00 pm on June 27, 2008; and

c. Respondent should take advantage of the time remaining to remedy the situation.

24. Respondent received the letter dated May 28, 2008.

25. By Order dated August 7, 2008, effective September 6, 2008, the Supreme Court of Pennsylvania directed that Respondent be transferred to inactive status pursuant to Rule 111(b) of the Pennsylvania Rules for Continuing Legal Education for failure to comply with Continuing Legal Education requirements.

26. The Supreme Court Prothonotary mailed a copy of the August 7, 2008 Order to Respondent at Stephen Girard Building, 21 S. 12th Street, Suite 1050, Philadelphia, PA 19107.

27. On October 6, 2008, Respondent filed his Statement of Compliance with the Disciplinary Board, wherein he certified that he had fully complied with the provisions of the Order of the Supreme Court, with the applicable provisions of the Pennsylvania Rules of Disciplinary Enforcement and with the applicable Disciplinary Board Rules.

28. Respondent was reinstated to active status on October 8, 2008.

29. While Respondent was on inactive status between September 6, 2008 and October 8, 2008, he was listed as attorney of record for the plaintiff in two civil matters in the Court of Common Pleas of Philadelphia County.

30. While Respondent was on inactive status between September 6, 2008 and October 8, 2008, he was listed as attorney of record for the defendant in two criminal cases in Philadelphia.

31. Respondent failed to notify the court, his clients or opposing attorneys in the above cases that he had been transferred to inactive status.

Chapman Matter

32. In or around June 2006, Respondent was court-appointed to represent Tarik Chapman in his criminal matter.

33. On November 26, 2007, Respondent, on behalf of his client Mr. Chapman, filed a Notice of Appeal Nunc Pro Tunc.

34. On February 13, 2008, Respondent filed in Superior Court an Application to Withdraw as counsel.

35. By Order dated March 5, 2008, the Superior Court, upon consideration of Respondent's Application to Withdraw:

a. directed the trial court to conduct an on-the-record determination as to whether the appellant's waiver of counsel was knowing, intelligent and voluntary;

b. directed the trial court to notify the Prothonotary of the Superior Court of its determination within 30 days of the date of the filing of the Superior Court's Order; and

c. vacated the existing briefing schedule.

36. On April 23, 2008, the trial court held a hearing, at which time Mr. Chapman expressed his desire not to waive counsel on appeal.

37. By Order dated April 30, 2008, the Superior Court ordered Respondent to continue as counsel, and established a briefing schedule.

38. Respondent received a copy of the April 30, 2008 Order.

39. Thereafter, Respondent failed to file a brief by the due date or timely request an extension to file the brief.

40. On June 25, 2008, Respondent filed a Nunc Pro Tunc Application for Extension of Time to File Brief.

41. By Order dated June 26, 2008, the Superior Court granted Respondent's Application for Extension of Time to File Brief. The Order provided that Appellant's Brief was due by July 28, 2008, and that no further extensions would be granted.

42. Respondent failed to file a brief on or before July 28, 2008.

43. On or about August 6, 2008, Respondent filed a second Application for Extension of Time to File Brief.

44. By Order dated August 11, 2008, the Superior Court denied Respondent's Application for Extension and mailed a copy of the Order to Respondent at his Philadelphia address, although the address used the wrong zip code.

45. By Order dated September 3, 2008, the Superior Court dismissed Mr. Chapman's appeal due to Respondent's failure to file a brief and mailed a copy of the Order to Respondent at his Philadelphia address.

46. Respondent failed to notify Mr. Chapman of the dismissal of his appeal.

47. Under Pa.R.D.E. 217(b), Respondent was required to withdraw from Mr. Chapman's matter by September 6, 2008, as a result of his transfer to inactive status.

48. Instead of withdrawing from Mr. Chapman's matter, on October 2, 2008, Respondent filed in Superior Court an Application to Reinstate Appeal and Accept Attached Brief.

49. In the Application to Reinstate Appeal, Respondent stated that he was transferred to inactive status and needed to take 24 credits of CLE in order to be in compliance and resume active status. Respondent further stated that he had taken all of the required CLE courses.

50. By Order dated October 6, 2008, Superior Court:

- a. granted Respondent's application to reinstate the appeal;
- b. vacated its September 3, 2008 Order;
- c. ordered that appellant's brief was due on October 20, 2008; and
- d. ordered that no further extensions of time would be granted.

51. Mistakenly believing that the Superior Court had accepted the brief attached to the Application to Reinstate Appeal filed on October 2, Respondent failed to file Mr. Chapman's brief on or before October 20, 2008.

52. By Order dated December 4, 2008, Superior Court:

- a. dismissed Mr. Chapman's appeal due to Respondent's failure to file a brief;
- b. ordered that if Respondent was court-appointed, counsel fees be withheld; and
- c. ordered Respondent to file a certification that Mr. Chapman had been notified of the dismissal.

53. The Superior Court Prothonotary mailed a copy of the December 4, 2008 Order to Respondent at his Philadelphia address.

54. On January 5, 2009, Respondent filed a second Application to Reinstate Appeal and Accept Attached Brief, wherein he stated:

a. on October 2, 2008, when Respondent filed an Application to Reinstate Appeal, Respondent also attached a brief;

b. on October 6, 2008, the Superior Court had granted the application to reinstate the appeal; and

c. Respondent, who had filed similar applications in the past with the briefs attached, assumed the Court had accepted the attached brief but apparently "misread" the October 6, 2008 Order, which required Respondent to file a brief by October 20, 2008.

55. By Order dated January 7, 2009, the Superior Court granted Respondent's application, vacated its December 4, 2008 Order, reinstated the appeal and directed the Prothonotary to accept for filing Respondent's brief.

56. By Order dated June 18, 2009, the Superior Court affirmed Mr. Chapman's conviction and permitted Respondent to withdraw as counsel.

Mitigating Factors

57. Respondent has been a sole practitioner since approximately 2002. He was without secretarial or other office support during the pertinent time of the misconduct.

58. Respondent handled many court appointed Post Conviction Hearing Relief Petitions and appeals during the pertinent time.

59. Respondent stopped taking Post Conviction Hearing Relief and appellate cases in 2008 recognizing that he was receiving too many and that he was not able to keep up with the work.

60. At the time of the disciplinary hearing, Respondent was in the process of obtaining part-time secretarial help.

61. Respondent represented that he had not received some of the Superior Court's Orders because at the time of the disciplinary violations he was a sub-tenant in an office where the primary tenant failed to pay rent and Respondent was subsequently locked out of the office by the landlord.

62. Respondent is a defendant in the Municipal Court of Philadelphia County in a code enforcement matter and has an open judgment in the Court of Common Pleas of Philadelphia County and an open judgment in the Municipal Court of Philadelphia County.

63. Respondent is a single father and was at the time of the disciplinary violations the primary caretaker for his two teenage sons. By the time of the disciplinary hearing, the boys were ages 13 and 19, and one son still resided with him while the other son was in college.

64. Respondent is involved in the community and has been a coach for youth sports since he was 19 years of age.

65. Respondent presented the testimony of five character witnesses.

66. These witnesses provided credible testimony that Respondent has a reputation in the community as a truthful and honest person and as an excellent trial lawyer.

67. Respondent fully cooperated with Petitioner.

68. The Hearing Committee expressly found that Respondent “showed sincere remorse” for his actions and is taking affirmative steps to prevent similar misconduct in the future.

69. Indeed, the office fo Disciplinary Counsel acknowledged that “Respondent’s testimonial expressions that accepted responsibility and conveyed an understanding of his misconduct . . . were credible, weighty, and obviate the need for a reinstatement hearing.” Brief of the Office of Disciplinary Counsel to the Hearing Committee at 27.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.
4. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.
5. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make an informed decision.
6. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.

7. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

8. Pa.R.D.E. 203(b)(3) – Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline.

9. Pa.R.D.E. 217(j)(4)(iv)-(vii) –Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (iv) representing himself or herself as a lawyer or person of similar status; (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3); (vi) rendering legal consultation or advice to a client; and (vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing office or any other adjudicative person or body.

IV. DISCUSSION

Before this Board is the matter of Donald Chisholm, II, who is charged with violating Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of his misconduct with respect to two clients and his failure to withdraw from one of those representations after being transferred to inactive status for failure to comply with Continuing Legal Education requirements.

The record shows that Respondent was appointed to represent Lamont Caesar in an appeal to the Superior Court. Respondent failed to file a brief with the Court after being given opportunities to do so. His inaction resulted in the dismissal of the appeal. Respondent filed an application to reinstate the appeal, which was granted and a brief was

filed. The appeal was ultimately quashed for other reasons. Further, Respondent did not communicate with his client during the period of representation.

In a separate matter, Respondent was also court-appointed to represent Tarik Chapman in an appeal to the Superior Court. Respondent, after being given several opportunities by the court to file a brief on behalf of Mr. Chapman, failed to timely file a brief. Mr. Chapman's appeal was dismissed, but Respondent never notified his client regarding the dismissal. Respondent then filed an application to reinstate the appeal, which was subsequently granted and Respondent then filed a brief. However, during this representation, Respondent was on inactive status for approximately one month and did not withdraw from Mr. Chapman's case, although he was required to do so.

Petitioner has the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Petitioner's evidence in the nature of the joint stipulations and exhibits proved the essential facts and circumstances of the violations charged in the Petition for Discipline. In addition, Respondent admitted the factual allegations of the Petition as well as the charged violations of the Rules. The remaining issue before the Board is the discipline to be imposed.

A range of discipline has been imposed on attorneys with a prior record of discipline who engaged in neglect of client matters. This range is between a private reprimand and suspension for one year and one day. Cases falling in the upper end of discipline involve severe neglect and the presence of several aggravating factors. In the matter of Office of Disciplinary Counsel v. Vivian Sye-Payne, 142 DB 2004, 1130 Disciplinary Docket No. 3 (Pa. April 17, 2006), the respondent was suspended for one year

and one day for failing to act with reasonable diligence, communicate with clients and attend scheduled hearings in four matters. The respondent in that matter had a lengthy history of discipline, did not show remorse for her misconduct, and blamed others for her wrongdoing. It is clear that Respondent's misconduct here does not rise to the same level of seriousness.

At the same time, it is clear that cases in the lower range of discipline resulting in private reprimand or a public censure are inapplicable herein. Respondent has been publicly censured and reprimanded for prior instances of misconduct. Imposing similar discipline will not suffice to impress upon Respondent the seriousness of his misconduct nor convince him that change must be made to his method of practice.

The Hearing Committee has recommended a suspension of six months stayed, with probation for one year and conditions of Bridge the Gap and six additional hours of CLE, and no future violations of the Rules. We note that Petitioner and Respondent made similar recommendations to the Committee and have no objections to the Committee's Report.

This recommendation takes a middle of the spectrum approach, and is appropriate for several reasons. Foremost, it acknowledges that Respondent presented persuasive mitigating factors. It is clear that Respondent's workload and lack of office support, coupled with his responsibilities as a single father with primary custody of two teenage sons made for a demanding personal life at the time of this misconduct, and made it difficult for him to meet deadlines on all of his cases. The evidence suggests that Respondent is an otherwise competent trial attorney. Importantly, Respondent testified credibly as to the steps he has taken, or will take, to prevent a recurrence of the

circumstances which led to his neglect. For example, Respondent recognized the need to obtain secretarial assistance to alleviate some of his administrative burdens. He has also removed his name from lists for court appointed PCRA appeals.

Moreover, Respondent cooperated fully with Petitioner and entered into stipulations to ease the hearing process. Respondent showed sincere remorse, expressing acceptance of responsibility and conveying an understanding of his misconduct.

It is undisputed that Respondent neglected two client matters and failed to withdraw while on inactive status. The Board is mindful of the serious nature of the repeated neglect and Respondent's history of discipline. Nevertheless, given the mitigating factors present in this matter, the Board agrees with the Committee's analysis of this matter and recommends six months stayed suspension. The Board further recommends a period of probation of one year, during which time Respondent shall be required to complete the Bridge the Gap program and six additional CLE credits. Respondent should be fully aware that any additional violations during the time frame of his probation will necessarily lead to more severe discipline.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Donald Chisholm, II, be Suspended from the practice of law for a period of six months; that the suspension be stayed in its entirety and that he be placed on Probation for a period of one year, subject to the following conditions:

1. Respondent shall take the Bridge the Gap Course from an accredited provider;
2. Respondent shall take six (6) hours of PA Continuing Legal Education credits in the area of Ethics in addition to his normal CLE annual requirement;
3. At least ten (10) days prior to the expiration of the period of Probation, Respondent shall provide to the Board his Certificates of Attendance for the courses taken; and,
4. 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 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: 
Gerald Lawrence, Board Member

Date: September 16, 2010

Board Members Jefferies, Bevilacqua, Nasatir and McLemore dissented and would recommend a six month suspension.