

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1744 Disciplinary Docket No. 3
Petitioner :
: No. 97 DB 2011
v. :
: Attorney Registration No. 32744
CLAYTON WILLIAM BOULWARE, :
Respondent : (Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 4th day of September, 2013, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 16, 2013, it is hereby

ORDERED that Clayton William Boulware is suspended from the practice of law in this Commonwealth for a period of six months, followed by a period of probation for three years, subject to the following conditions:

- 1. Respondent shall continue treatment with Dr. Gail Kase or another similarly qualified mental healthcare professional, who is to direct and supervise his activities.
- 2. Respondent shall cooperate with directions of the mental healthcare professional supervising his treatment, take medications as prescribed and engage in therapy and counseling sessions as directed.
- 3. Respondent shall file quarterly written reports with the Secretary of the Board and shall attach reports verifying the above counseling and treatment and that he is not a threat to repeat his criminal behavior.

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 9/4/2013

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1744 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 97 DB 2011
v.	:	
	:	Attorney Registration No. 32744
CLAYTON WILLIAM BOULWARE	:	
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 November 3, 2011, Office of Disciplinary Counsel filed a Petition for Discipline against Clayton William Boulware. The Petition charged Respondent with violation of Rule of Professional Conduct 8.4(b) and Rule of Disciplinary Enforcement 203(b)(1) based on his criminal conviction of two counts of invasion of privacy. Respondent did not file an Answer to Petition.

A disciplinary hearing was held on April 4, 2012 before a District II Hearing Committee comprised of Chair Denis A. Gray, Esquire, and Members George P. Wood,

Esquire, and John P. Elliott, Esquire. Petitioner moved into evidence Exhibits ODC-1 through ODC-13 and marked for identification Exhibit ODC-14. Petitioner did not present any witnesses. Respondent was represented by John Armstrong, Esquire. He presented the testimony of two witnesses and testified on his own behalf. He moved into evidence Exhibit R-1.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 7, 2012, concluding that Respondent violated the Rules as charged in the Petition, and recommending that Respondent be suspended for a period of six months with probation for three years.

Petitioner filed a Brief on Exceptions on September 26, 2012 and contends that a suspension for one year and one day is the appropriate discipline.

Respondent filed a Brief Opposing Exceptions on October 19, 2012 and urges the Board to accept the recommendation of the Hearing Committee.

This matter was adjudicated by the Disciplinary Board at the meeting on January 23, 2013.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, 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 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.

2. Respondent is Clayton William Boulware. He was born in 1955 and was admitted to practice law in the Commonwealth of Pennsylvania in 1980. Respondent is currently on active status and his attorney registration address is 9801 Germantown Pike, Suite 211, Lafayette Hill, Montgomery County, Pennsylvania 19444. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of professional discipline.

4. Following Respondent's admission to the bar in 1980, he worked for Schnader, Harrison, Segal & Lewis, the Philadelphia District Attorney's Office and White McCullen and Singley before accepting a job with Prudential Financial Company in 1988. He was employed with Prudential for 20 years before losing his employment in June 2008, as part of a "downsizing." (N.T. 130-135)

5. Respondent is employed with Resources for Human Development, Inc. ("RHD") as a full-time corporate counsel. (N.T. 24)

6. On September 9, 2008, a criminal complaint was filed by the Springfield Township Police Department, charging Respondent with Stalking, Corruption of Minors, Invasion of Privacy, Open Lewdness and Disorderly Conduct.

7. The facts giving rise to the complaint consist of the following events, which took place on the afternoon of September 9, 2008 at the Acme Market in the Flourtown section of Springfield Township.

8. Respondent, who is six feet six inches tall and wears size 15 shoes, attached a video camera to his shoe, entered the Acme Market, and attempted to and did

videotape up the skirts of two females, a minor and an adult, without their knowledge or consent. (ODC-1; N.T. 129, 155)

9. The sixteen year old victim was shopping with her mother. (ODC-1, 2)

10. Respondent followed the girl around the store, standing close behind her in many of the aisles. (ODC-1,2)

11. As the girl bent over to pick up some milk, Respondent stood close behind her with his foot extended toward her, walked away from her but immediately returned. It was at that time the girl noticed the camera affixed to Respondent's shoe and quickly walked away to find her mother. (ODC -1,2)

12. Respondent continued to pursue his minor victim until he saw her talking to her mother. (ODC-1,2)

13. Thereafter, the girl reported the incident to the store manager and other employees, but continued shopping with her mother. (ODC -1,2)

14. Respondent reappeared behind the girl. The camera remained attached to his shoe. (ODC -1, 2)

15. As the girl went to seek assistance from a manager, Respondent attempted to leave. When the girl's mother attempted to block Respondent's path, Respondent pushed her and ran toward the front of the store. (ODC-1,2)

16. Respondent was detained by store personnel at the front door until the police arrived at the scene. (ODC-1,2)

17. Earlier in the day on the date of Respondent's arrest, Respondent had followed an adult woman through the same Acme Market, repeatedly stopping to stand close to her, and videotaped up her skirt without her knowledge or consent. This adult victim reported the incident to the Springfield Township Police. (ODC -1,3)

18. On September 9, 2008, the Springfield Township Police obtained a search warrant to view the contents of the memory card of the camera which they had recovered from Respondent. (ODC -4)

19. Contained on the memory card of that camera were video clips showing Respondent attaching the camera to his shoe, walking into and through various stores, and filming up the skirts or dresses of a series of unidentified females. (ODC-5,6,13) The memory card also revealed that Respondent had videotaped women at the pool of his apartment complex in Lafayette Hill. (ODC-5,6,13; N.T. 180)

20. On January 7, 2009, a Criminal Information was filed against Respondent in the Court of Common Pleas of Montgomery County, charging Respondent with two counts of Stalking, one count of Corruption of Minors, two counts of Invasion of Privacy, once count of Open Lewdness, and two counts of Disorderly Conduct.

21. On May 2, 2011, Respondent, while represented by counsel, entered a guilty plea before the Honorable Richard J. Hodgson, to two counts of Invasion of Privacy.

22. Respondent was sentenced on that date to probation for a period of two years and payment of a \$300 fine as to the first count. As to the second count, he was sentenced to probation for a period of one year to run consecutively with the sentence imposed in the first count.

23. Special conditions of Respondent's sentence included compliance with any conditions of probation, payment of a monthly offender supervision fee, and the requirement that Respondent have no contact with his two victims and continue psychiatric treatment as deemed necessary.

24. Because Respondent's crimes were sexual offenses, his probation is through the Montgomery County Adult Probation and Parole Department, Sex Offender

Supervision Program, which has prohibited Respondent from engaging in activities such as consumption of alcohol, viewing pornography, and socializing with children.

25. Respondent did not appeal his conviction.

26. Respondent reported the fact of his conviction to the Secretary of the Disciplinary Board.

27. At the April 4, 2012 disciplinary hearing, Respondent presented live testimony of himself and two witnesses: Gene Schneyer, General Counsel for RHD, Respondent's current employer; and Dr. Gail Kase, a psychiatrist who treated Respondent from August 8, 2008 through May 2009 and, after a two-year hiatus, from May 2011 through January or February of 2012. (N.T. 61-63, 183, 106)

28. Mr. Schneyer hired Respondent as part-time corporate counsel for RHD in July 2010. (N.T. 20)

29. RHD is a social nonprofit agency consisting of approximately 3500 full and part-time employees with a presence in 13 states. (N.T. 20, 23)

30. Respondent did not disclose his arrest to RHD before he was hired. He waited to do so until shortly after he was hired and had begun work for the company. (N.T. 21, 46)

31. Mr. Schneyer reported Respondent's arrest to Peg Mowet, the chief operating officer, and informed her that he had absolutely no concerns about Respondent's presence in the workplace or with females. (N.T. 27) Mr. Schneyer and Ms. Mowet agreed not to disclose the arrest to other RHD employees. (N.T. 26)

32. Respondent remains corporate counsel for RHD and as of January 2012, is a full-time employee. (N.T. 24)

33. Mr. Schneyer testified credibly that Respondent is a "top notch" and "excellent" employee. (N.T. 24) Respondent has not had any problems relating to discipline or his interaction with female employees during his employment at RHD. (N.T. 25)

34. Dr. Gail Kase was qualified as an expert with no objection from Petitioner.

35. Dr. Kase first met with Respondent on August 8, 2008, a month before his arrest. Respondent's basis for seeing Dr. Kase was for panic attacks from stress in his life. (N.T. 64, 77) Initial treatment consisted of weekly psychotherapy and psychopharmacologic management. (ODC-14; R-1)

36. Following Respondent's arrest, his sessions with Dr. Kase increased to twice per week with some extended sessions. (ODC-14; R-1; N.T. 62)

37. Respondent's treatment continued until May 2009. (N.T. 106)

38. Dr. Kase testified credibly at the hearing that Respondent discontinued treatment at that time because "events in his life were precluding it." Dr. Kase was unable to provide a specific reason for the cessation of treatment, but did acknowledge that Respondent did so despite her advice that he continue treatment. (N.T. 107-108)

39. Dr. Kase did not have any concern in May 2009 that Respondent might engage in the type of behavior that led to his arrest. (N.T. 110) She described the arrest as "so devastating that it was -- it was like a bucket of cold water being thrown over someone who was not quite awake. He was very far from ever being in that place again. I don't think he's at risk." (N.T. 110)

40. In May 2011, just after Respondent's conviction and sentencing, he reinitiated treatment with Dr. Kase and continued through January or February 2012. (N.T.

61-64) Respondent's basis for resuming treatment was that he was having anxiety and needed to get it back under control. (N.T. 111)

41. Dr. Kase testified credibly within a reasonable degree of medical certainty that Respondent is not a risk for repeating the behavior leading to his arrest. (ODC-14; R-1; N.T. 72) She described his criminal conduct as a discrete episode, a "bubbling over, a one time event, I believe." (N.T. 100-101)

42. On December 20, 2008, Dr. Kase issued a report in connection with Respondent's criminal charges which concluded that Respondent's criminal conduct was "not a symptom of a sexual disorder" (ODC-14, R-1), as a sexual disorder has a history to it. (N.T. 100-101)

43. In the December 20, 2008 report, Dr. Kase attributed Respondent's conduct to "overwhelming stress" and described his criminal behavior as "a symptom of intense anxiety along with insufficient coping mechanisms." (ODC -14, R-1)

44. Dr. Kase did not prepare any other report for use in connection with the disciplinary matter or that addressed any time period after December 20, 2008.

45. Although Dr. Kase reviewed her treatment notes before appearing at the hearing, she did not bring them with her to the hearing and was unable to respond specifically to questions concerning Respondent's psychological history, previous counseling, and details of her discussion with Respondent about the circumstances of his arrest. (N.T. 78-81, 99-100)

46. Dr. Kase was unable to definitely state whether she had any knowledge when she wrote the December 20, 2008 report that Respondent had engaged in a series of episodes of videotaping unsuspecting women leading up to his arrest. She

did not believe that Respondent had disclosed the other incidents to her, but could not be sure. (N.T. 99-102)

47. Dr. Kase did not provide expert testimony identifying a psychiatric diagnosis as a causal factor of Respondent's criminal behavior. (N.T. 55-128) Dr. Kase maintained the conclusion reflected in her December 20, 2008 report that Respondent's behavior was not a symptom of a sexual disorder. (ODC-14, R-1, N.T. 100-101, 105-106)

48. All of the opinions developed and expressed by Dr. Kase at the hearing were based solely on information Dr. Kase derived from her psychotherapy sessions with Respondent. (N.T. 102) Dr. Kase did not consult with Respondent's court-mandated therapist. (N.T. 103-106, 124, 199-200)

49. From the time of Respondent's May 2, 2011 conviction and sentencing through the present, the probation department has deemed it necessary that Respondent continue psychiatric treatment. (ODC-9, N.T. 211-216) Mandated treatment has included an initial evaluation and group therapy sessions for sexual offenders under the supervision of David Schwartz, which were continuing on a weekly basis as of the date of the disciplinary hearing. (N.T. 213-217) Respondent has attended every session and has been compliant with all aspects of his probation. (N.T. 167)

50. Neither Respondent nor Petitioner presented David Schwartz as a witness or otherwise introduced evidence of Mr. Schwartz's assessment of Respondent.

51. Respondent testified on his own behalf at the April 4, 2012 disciplinary hearing.

52. In July 2008, following a two-year dispute with his mortgage company and initiation of foreclosure proceedings, Respondent "gave up the property" to "get out from under [the mortgage]." (N.T. 135-138, 145, 192-194) He did so in favor of an

intended living arrangement with a woman who was twenty years his junior and with whom he had been engaged in an "open relationship" (N.T. 129) involving a "swinging lifestyle" (N.T. 140) and sexual activity carried out "by filming one another and then looking at it." (N.T. 141)

53. Respondent explained that the purpose of engaging in the criminal behavior was for "sexual arousal" (N.T. 155) or "sexual gratification" (N.T. 178, 181) at a time when he was seeking to end his relationship with the woman, rendering her and her willingness to engage in his preferred type of sexual behavior inaccessible to him. Respondent explained that he engaged in the criminal behavior as a way to "somehow stay connected with the kind of behavior or relationship [he] was in before." (N.T. 156)

54. For at least the two weeks leading up to Respondent's arrest, he admittedly followed women he did not know around local establishments to videotape them up their skirts or dresses without their knowledge or consent. (N.T. 177-179) As part of his plan, Respondent ingested alcohol to lower his inhibitions, strapped a camera to his shoe before entering local stores, identified females wearing skirts or dresses, and stalked them from behind throughout the store, standing close enough to them to capture what Respondent has referred to as "up-skirt" pictures. (N.T. 152-157, 174-176)

55. Respondent's testimony reveals that when he engaged in the criminal misconduct, he knew it was wrong and he knew there would be legal consequences if he was caught. (N.T. 177-178)

56. When Respondent's conduct was noticed by the minor victim's mother, he sought to flee the supermarket, which demonstrated his knowledge that the conduct was inappropriate and/or criminal. (ODC-1,2)

57. Respondent believed he could engage in the behavior without being caught. By his own account, he believed at the time that he was “not entering [his victims’] space” so they were “not going to know what [he had] done.” Respondent thought he could “somehow do this surreptitiously without them knowing, without them feeling his presence, or anything else.” (N.T. 157)

58. Respondent admitted that he was clearly invading the space of his victims. (N.T. 156-157) He further admitted that what he did was “totally insane and horribly wrong.” (N.T. 158)

59. Respondent is extremely sorry for what he did and acknowledged how intimidating and frightening it would be to have a stranger invade your privacy. (N.T. 158, 160)

60. Respondent is prepared to deal with the repercussions of his admittedly wrong behavior. (N.T. 172)

61. During the course of his therapy with Dr. Kase and group therapy as part of his probation, Respondent has been able to reestablish appropriate boundaries in his life and has learned to deal with stress in his life. (N.T. 158-159)

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) – Conviction of a crime shall be grounds for discipline.

2. 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.

IV. DISCUSSION

In this case of first impression our task is to determine the appropriate level of discipline for an attorney who marred his spotless disciplinary record by engaging in a bizarre and aberrational course of conduct over a two-week period that culminated in his pleading guilty to two counts of invasion of privacy. For the reasons that follow we recommend that Respondent be suspended from the practice of law for six months followed by three years of probation with conditions related to treatment for his underlying mental health problems.

In September 2008, Respondent, who is 6 feet 6 inches tall, videotaped the undergarments of unsuspecting females by positioning a video camera, which he had attached to his size fifteen sneaker, under the skirts of his victims while they were shopping in malls and supermarkets. Respondent’s serial invasions of privacy came to an abrupt halt on September 8, 2008, when a 16-year-old girl he had been stalking and filming while she was shopping with her mother in an Acme market noticed the camera attached to Respondent’s sneaker and reported him to the store manager. When Respondent realized that his scheme had been uncovered he pushed his victim out of his path and bolted for the door. Store personnel prevented Respondent’s escape and detained him until the police arrived. As it turned out, the police had received a complaint earlier in the day from an Acme customer who had been stalked in the same manner by a male fitting Respondent’s description. Additionally, a search of

Respondent's camera revealed a memory card that contained video clips of "under the skirt" shots of unidentified women taken at other shopping venues. Respondent was charged with stalking, corruption of minors, invasion of privacy, open lewdness and disorderly conduct.

On May 2, 2011, Respondent pleaded guilty to two counts of invasion of privacy and was sentenced to a total of three years of probation and a three hundred dollar fine. Because Respondent's crimes were deemed sexual offenses, the conditions of his probation were set by the Sex Offender Supervision Program of the Montgomery County Probation Department. Those conditions consist of continuation of psychiatric treatment as well as prohibitions against the consumption of alcohol, viewing pornography, and socializing with children. Respondent has thus far complied with all of the conditions of his probation.

Respondent's criminal conviction, as well as his frank admissions of wrongdoing at his disciplinary hearing, conclusively establish the violations of the Rules of Professional Conduct with which he was charged. The only issue for our consideration is the appropriate level of discipline to be imposed. Pa.R.D.E. 214(e) and (f)(1). To that end we must consider not only the facts and circumstances surrounding the conviction, Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982) but also whether there are any aggravating or mitigating factors. Office of Disciplinary Counsel v. Francis Peter Eagen, III, No. 102 DB 2003, 73 Pa. D.&C. 4th 217 (2004).

Respondent admitted at his disciplinary hearing that his conduct was deliberate and for the purpose of "sexual arousal" (N.T. 15) or "sexual gratification" (N.T. 178, 181). He testified that during the two weeks preceding his arrest he followed women unknown to him in order to videotape them under their skirts or dresses without

their knowledge or consent. While Respondent's admissions certainly support the conclusion that his invasions of the privacy of his victims were motivated by his sexual desire, and thus fit under the rubric of sexual misconduct, in the opinion of Respondent's treating psychiatrist, Dr. Gail Krase, he does not have a sexual disorder. Dr. Krase testified credibly that Respondent's conduct was "a symptom of intense anxiety along with insufficient coping mechanisms" (ODC-14, R-1) caused by a series of stressful events in his life, which included the loss of a job he had held for 20 years with Prudential Insurance Co., the abandonment of his house after a two-year dispute with his mortgage company, and the dissolution of a complicated relationship with his girlfriend. Finally, Dr. Krase testified that Respondent is not at risk for repeating the behavior that led to his arrest. Petitioner neither challenged Dr. Krase's qualifications nor offered witnesses to rebut her opinions. The hearing committee found her testimony to be credible; we agree with its assessment.

We could not find a case with facts identical to those presented here. Cases involving convictions for sexual misconduct that resulted in the most severe impositions of discipline did not seem to be apposite to the unique facts and circumstances of this case. For example, the respondent in Office of Disciplinary Counsel v. Christie, 639 A.2d 782 (Pa. 1994) received a five-year suspension after being convicted of 13 counts of indecent exposure, sexual harassment, endangering the welfare of a child, and unlawfully dealing with a child. The same disciplinary sanction was imposed upon the respondent who was convicted of possessing child pornography in Office of Disciplinary Counsel v. Robert Vincent Mitchell, 73 DB 2000 (Pa. Aug. 1, 2012). Finally, a respondent who was convicted of criminal trespass and unlawful interception of oral communications consisting of private, sexual information

was suspended for three years in Office of Disciplinary Counsel v. James Martin Fogerty, No. 59 DB 2003 (Pa. May 27, 2005). These cases provide little guidance in determining the appropriate level of discipline in the instant matter.

We are mindful of the bedrock principle that the purpose of the disciplinary system is not to punish but rather to protect the public and uphold the integrity of the profession. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). The evidence of record supports the conclusion that Respondent does not have a sexual disorder and is not at risk for repeating the behavior which led to his arrest and conviction. Further, according to Respondent's employer, Gene Schneyer, Esquire, General Counsel for RHD, Respondent is a valued and productive employee who never engaged in inappropriate conduct with his female coworkers.

Respondent has accepted responsibility for his conduct. He pleaded guilty in his criminal case and promptly notified the Secretary of the Disciplinary Board of his conviction. He cooperated fully with the disciplinary system and admitted to the facts alleged in the petition for discipline as well as to the violations of the Rules of Professional Conduct and Disciplinary Enforcement charged therein. He issued a sincere apology for his actions, which he described as totally reprehensible and despicable (N.T. 171). Moreover, Respondent's therapist testified that Respondent has worked diligently to deal with his issues and understand how stress caused him to engage in behavior that for him was entirely unprecedented and anomalous. Finally, we note that Respondent has no history of discipline in his thirty years at the bar.

Notwithstanding Respondent's pristine disciplinary record, sincere efforts at rehabilitation, honest admissions of wrongdoing and acceptance of responsibility therefor, as well as the unlikelihood of recidivism, we believe that some measure of

public discipline is required in order to fulfill our responsibility to uphold the integrity of the profession and to protect the public. Accordingly, we recommend that Respondent be suspended for six months to be followed by a three year period of probation with conditions designed to ensure that he will continue to address his personal problems and keep the Board apprised of his status.

V. RECOMMENDATION


The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Clayton William Boulware, be Suspended from the practice of law for a period of six months, to be followed by three years of Probation with the following Conditions:

1. Respondent shall continue treatment with Dr. Gail Krase or another similarly qualified mental healthcare professional, who is to direct and supervise Respondent's activities.
2. Respondent shall cooperate with directions of the mental healthcare professional supervising his treatment, take medications as prescribed and engage in therapy and counseling sessions as directed.
3. Respondent shall file quarterly written reports with the Secretary of the Board and shall attach reports verifying the above counseling and treatment and that he is not a threat to repeat his criminal behavior.

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: 
Howell K. Rosenberg, Board Member

Date: 5/16/2013

Board Members Momjian and Hastie did not participate in the adjudication.