

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 63 DB 1995  
Petitioner :  
v. : Atty Registration No. [ ]  
[Anonymous] :  
Respondent : ([ ] 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 April 28, 1995, a Petition for Discipline was filed against the Respondent.

On July 6, 1995, the matter was referred to Hearing Committee [ ] , consisting of [ ] , Esquire, Chairperson, [ ] , Esquire and [ ] , Esquire, Members.

On August 28, 1995, a Disciplinary Hearing was held.

On August 28, 1995, Hearing Committee Member [ ] recused himself.

On December 26, 1995, a Hearing Committee Report was filed recommending a six (6) month suspension; three (3) months stayed with a Public Censure and Probation.

This matter was adjudicated at the March 7, 1996, meeting of the Disciplinary Board.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 400, Union Trust Building, 501 Grant Street, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), with the power and the 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, [ ], Esquire, was born in 1955, was admitted to practice law in the Commonwealth of Pennsylvania in 1980, and her office is located at [ ]. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. In about early July of 1993, [A] contacted Respondent concerning the possibility of her representing him.

4. [A] had been found guilty of first degree murder on February 9, 1991, in the Court of Common Pleas of [ ] County, and his conviction had been upheld by the Superior Court on July 8, 1993.

5. On August 11, 1993, Respondent was retained by [A] to represent him concerning his criminal matter, and she accepted a payment of \$1,000.00 on his behalf to do so.

6. By letter dated August 11, 1993, to [A], Respondent informed him that, pursuant to his decision in the matter, she would either file a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, or a Petition under the Post-Conviction Relief Act (PCRA).

7. Although Respondent had never before represented [A], she failed to communicate to him, in writing, the rate or basis of the fee she would be charging him, either at the time she was retained or within a reasonable time thereafter.

8. By letter to Respondent dated August 13, 1993, [A] asked that Respondent pursue an appeal in the Supreme Court of Pennsylvania.

9. By letter to [A] dated November 16, 1993, Respondent told him that she had prepared a draft of a PCRA petition, but was in need of additional transcripts. She stated further that she

would "be in touch shortly."

10. Respondent never took action of record on behalf of [A] either to file an appeal or a PCRA petition.

11. Respondent failed to respond to repeated requests by [A] and members of his family for information concerning her representation of him.

12. In about March of 1994, Attorney [B] informed Respondent that he was now representing [A] and asked that she send him [A's] file.

13. Respondent did not respond to Attorney [B].

14. By his letter dated April 28, 1994, Attorney [B] again requested the file and also requested the return of the unused portion of the \$1,000.00 paid to Respondent.

15. By letter dated May 5, 1994 [A] informed Respondent that she was discharged and asked that Respondent send him his file and the "unused fee."

16. Respondent did not respond to [A].

17. However, in about August of 1994, Respondent sent [A's] file, without any cover letter, to Attorney [B].

### III. CONCLUSIONS OF LAW

1. Respondent's failure from August 11, 1993, to take any action on [A's] behalf to file a Petition under the Post-Conviction Relief Act, constituted a lack of diligence on her part

in representing her client, in violation of Rule of Professional Conduct 1.3.

2. Respondent's failure during the time she represented [A] to respond to requests by him and on his behalf for information concerning her representation of him constituted a failure on her part to keep her client informed about the status of his legal matter and to promptly comply with reasonable requests for information, in violation of Rule of Professional Conduct 1.4(a).

3. Respondent's failure to communicate to [A] whom she had never before represented, the basis or rate of a fee she was charging, in writing, before or within a reasonable time after commencing her representation of him, was in violation of Rule of Professional Conduct 1.5(b).

4. Respondent's failure upon termination of representation to comply with requests by [A] and on his behalf to deliver his file and to refund any portion of the fee paid to her which had not been earned was in violation of Rule of Professional Conduct 1.16(d).

#### IV. DISCUSSION

The misconduct in the instant case would ordinarily amount to, at most, a private reprimand. However, recidivism may be considered an aggravating factor and result in more severe discipline. When considering the appropriate discipline, Responde-

nt's prior record must be considered. Office of Disciplinary Counsel v. Grisby 425 A.2d 730 (PA 1981).

On June 24, 1992, Respondent received two (2) informal admonitions for failure to communicate with two distinct clients in separate matters.

On June 16, 1995, Respondent received a private reprimand for failing to keep her client advised of the status of a divorce matter and falsely advised this client of the receipt and the date of receipt of a divorce decree.

A pattern of misconduct, including neglect of legal matters, counseling clients to undertake dishonest acts in court proceedings, deceitful use of an affidavit, and commingling of entrusted funds, resulted in disbarment. However, the misconduct in this case was far more extensive than Respondent's in the current matter. Office of Disciplinary Counsel v. Davis \_\_\_\_\_ Pa. \_\_\_\_\_ 614 A.2d 1116 (1992).

In In Re Anonymous No. 40 DB 88, 4 Pa. D. & C. 4th (1989), an attorney with a history of four informal admonitions and a private reprimand resulted in a two (2) year suspension imposed by the Supreme Court without opinion.

In In Re Anonymous No. 24 DB 89, 8 Pa. D. & C. 4th 207 (1990), the same attorney was found to have again engaged in neglect in a legal matter and in making misrepresentations to his client.

He was found to have willfully failed to take any action on an estate matter and to have knowingly misrepresented the status of the case to the client. The attorney also failed to return the client's property until a request was made by new counsel. In its Report, the Disciplinary Board stated that "Respondent's lengthy disciplinary record and his continued neglect of entrusted legal matters necessitate the imposition of a stringent disciplinary sanction, for apparently his repeated brushes with the Disciplinary Board have failed to illuminate the gravity of his misconduct." The attorney received a one-year suspension, to be served consecutive to the two-year suspension he had received in In Re Anonymous No. 40 DB 88, supra.

Clearly, attorneys with prior disciplinary records are subject to more severe discipline than attorneys who do not have any record of prior discipline. This is especially true where the subsequent misconduct is of the same type as the previous misconduct for which the attorney has been disciplined.

In the present case, the Respondent has served as a part-time magistrate for the U.S. District Court for the [ ] District of Pennsylvania, has taught, and has engaged in substantial pro bono work.

It is the Board's hope that the Respondent will take the necessary steps to correct the deficiencies in her method of practice, and an appropriate first step in this matter would be the

refund of the "unused fee". Due to the fact that the Respondent's conduct in the specific case was basically of the same type as that in which she previously engaged, it warrants public discipline. Where had she no prior record, a private reprimand would have been sufficient discipline.

The Hearing Committee recommended that Respondent be suspended from the practice of law for six (6) months with three (3) months of the suspension be stayed on the following conditions:

- (a) Respondent is to receive a public reprimand;
- (b) Respondent is placed on probation for a period of three (3) months following the three (3) month suspension;
- (c) Respondent is to file periodic reports as recommended by Disciplinary Counsel;
- (d) Respondent is to refund the sum of one thousand dollars (\$1,000.00) to her former client, [A] and provide proof of said refund to Disciplinary Counsel.

This Board feels the recommendation of the Hearing Committee is excessive and not the appropriate discipline for the misconduct at issue. This Board believes that a Public Censure would be an appropriate discipline.



V.           RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [ ] be subjected to a Public Censure.

It is further recommended that the Court direct that Respondent pay all of the necessary expenses incurred in the investigation and processing of this matter pursuant to Rule 208(g), Pa.R.D.E.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

By: Robert N.C. Nix, III, Member

Date: April 29, 1996

Board Member Friedman recused himself.

Board Member Carson did not participate in the March 7, 1996 adjudication.

O R D E R

PER CURIAM:

AND NOW, this 30th day of May, 1996, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 29, 1996, it is hereby

ORDERED that [RESPONDENT] 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.