

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 244 Disciplinary Docket
Petitioner : No. 3
:
v. : No. 70 DB 1995
:
: Attorney 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 May 16, 1995, a Petition for Discipline was filed against Respondent, []. No Answer was filed by Respondent. A hearing on this matter was held on September 6, 1995, before

Hearing Committee [] comprised of Chairperson [], Esquire, and Members [], Esquire, and [], Esquire. Respondent appeared pro se. Petitioner was represented by [], Esquire. The Committee filed its Report on January 4, 1996 and recommended a six month suspension and restitution as a condition to reinstatement. No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Board at the meeting held on March 7, 1996.

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, [], was admitted to practice law in the Commonwealth on October 23, 1979, maintains his office at [] and is subject to the disciplinary jurisdiction of the

Disciplinary Board of the Supreme Court (Stipulation of Facts, Paragraph 2).

CHARGE I: THE [A] MATTER

3. On or about May 15, 1989, the late [A] consulted Respondent about filing a divorce from his wife, [B]. He was accompanied by his niece, [C]. (Stipulation of Facts, Paragraph 3).

4. On May 15, 1989, [A] paid Respondent an initial retainer of \$100.00 in cash (Stipulation of Facts, Paragraph 4).

5. On June 9, 1989, [C] on behalf of [A] wrote Respondent a check for \$400.00 for the balance of Respondent's fees in filing the divorce (Stipulation of Facts, Paragraph 5; Exhibit A).

6. Respondent never filed a divorce on [A's] behalf (Stipulation of Facts, Paragraph 6).

7. [A] died in September 1990 (Stipulation of Facts, Paragraph 7).

8. On September 11, 1990, [D], Esq., wrote to Respondent advising him of [A's] death and notifying Respondent that Attorney [D] represented [A's] estate by its personal representative, [C]. Attorney [D] requested return of [A's] \$400.00. Respondent did not respond to this correspondence in any

way. (Stipulation of Facts, Paragraph 8; Exhibit B)

9. Attorney [D] wrote again on January 25, 1991, repeating his request for refund of the fee (Stipulation of Facts, Paragraph 9; Exhibit C). Respondent did not respond in any way to this request (Stipulation of Facts, Paragraph 9).

10. [C] attempted on several occasions to telephone Respondent about the matter, but Respondent did not return her calls (Stipulation of Facts, Paragraph 10).

11. [C], as personal representative of the estate of [A], is entitled to any refund of unearned fees. The fee in full was not earned because Respondent did not file the divorce. Respondent did not provide any accounting for fees paid in advance to Attorney [D] or [C] despite their requests (Stipulation of Facts, Paragraph 11).

CHARGE II: THE [E] MATTER

12. On April 10, 1993, [E] retained Respondent to file a divorce action against his wife, [F]. On that date, he paid Respondent the sum of \$100.00. (Stipulation of Facts, Paragraph 13)

13. On May 11, 1993, [E] received in the mail a Complaint in Divorce which Respondent had drafted. He executed the complaint and mailed it back to Respondent. (Stipulation of

Facts, Paragraph 14)

14. On July 6, 1993, [E] paid Respondent an additional \$200.00 in cash, and Respondent gave him a handwritten receipt (Stipulation of Facts, Paragraph 15; Exhibit D).

15. The Complaint Respondent drafted and [E] executed was never filed in the Court of Common Pleas (Stipulation of Facts, Paragraph 16).

16. On November 5, 1993, [F] died, at which time a divorce action was no longer necessary or possible (Stipulation of Facts, Paragraph 17).

17. [E] notified Respondent of his wife's death, and in two telephone calls requested a refund of the unearned portion of his fee. Respondent did not respond to this request nor did he refund the unearned portion of the fee to [E] (Stipulation of Facts, Paragraph 18).

18. [E] checked the court house and learned that the divorce complaint had never been filed (Stipulation of Facts, Paragraph 19).

19. As a result of the fact that the divorce had not been obtained, [E] believed he was liable for his wife's funeral expenses. He paid the funeral bill in the amount of \$3,580 (Stipulation of Facts, Paragraph 20).

20. On November 16, 1993, [E] wrote Respondent a letter formally demanding refund of his fee of \$300 (Stipulation of Facts, Paragraph 21; Exhibit E). Respondent did not respond to these requests, nor did he refund the unearned portion of his fee or provide [E] with an itemization of fees earned (Stipulation of Facts, Paragraph 21).

21. Respondent has been subject to prior discipline on two occasions:

a) On April 13, 1987, Respondent received a Private Reprimand. The basis of this action was a finding that Respondent had violated DR 6-101(A)(3) [neglect of a legal matter entrusted to him] by failing to make any effort to secure title insurance in a real estate matter for a period in excess of one year. (Petitioner's Exhibit No. 2)

b) On March 5, 1992, Respondent received a Private Reprimand. The basis of this action was that with regard to three different clients, Respondent had violated DR 6-101(A)(3) [neglect of a legal matter entrusted to him], RPC 1.3 [failing to act with reasonable diligence and promptness in representing a client], and RPC 1.4(a) [failing to keep clients informed about the status of a matter and to respond to reasonable requests for information]. (Petitioner's Exhibit No. 3)

III. CONCLUSIONS OF LAW

By his conduct in the [A] and [E] matters, Respondent violated the following Rules of Professional Conduct:

a) RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

b) RPC 1.15(b) - A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

c) RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as...refunding any advance payment of fee that has not been earned.

IV. DISCUSSION

This matter is before the Board for consideration of charges against Respondent that he failed to file a divorce complaint in two cases and never refunded the unearned fees that the clients paid to him upon retaining Respondent. Respondent entered into stipulations with the Petitioner as to the underlying facts of this matter and does not contest the allegations or his violations of the Rules. As the violations are admitted, the principal task of the Board is to determine the appropriate measure of discipline.

Respondent appeared at the disciplinary hearing and testified to his version of the situation. Although he admitted

he failed to promptly take action in filing the divorce complaints, he had no feasible explanation as to why he did not do so and why he never refunded the unearned fees to the clients. Respondent explained that he was very involved in civic affairs and he believed this involvement adversely impacted his law practice. Respondent also explained that he had been forced to move his office and this move occupied much of his time. Upon questioning by the Committee, Respondent admitted that he had discontinued most of his participation in community activities at least one year prior to the disciplinary hearing. He also admitted that his office move took place in January 1990, several years before the complaints in question were filed.

Respondent testified that he has no office staff and uses contract workers for his typing. Respondent does not maintain a trust account but opens one when necessary for a particular client. Respondent currently has eight or nine active files and spends approximately four and one half days in his office. Respondent testified that he has no problems with substance abuse. Based on the above evidence of record, it is clear that Respondent could offer no logical reason to justify his behavior.

Review of the case law indicates that Respondent's

current Rule violations standing alone would warrant some form of private discipline. In the case of In Re Anonymous No. 70 DB 89, 10 Pa. D. & C. 4th 453 (1990), an attorney who failed to communicate with his client and failed to pursue his client's case received an informal admonition. An attorney who failed to provide his client with a written statement concerning the basis of his fee and failed to communicate with his client received an informal admonition. In Re Anonymous No. 32 DB 90, 11 Pa. D. & C. 4th 372 (1990). An attorney who neglected legal matters and failed to communicate with clients received a private reprimand. In Re Anonymous No. 89 DB 90, 16 Pa. D. & C. 4th 519 (1991). However, Respondent has a prior record that must be considered in reaching a conclusion as to the appropriate discipline to be imposed. He received a private reprimand in April 1987 for failing to secure title insurance for his client for thirteen months. He received a private reprimand in March 1992 for his neglect of three different matters. Respondent has demonstrated a propensity for neglect through the years that has not been abated by the imposition of private discipline. Public discipline is required at this juncture to place the public on notice of the risks posed by Respondent's misconduct.

The Board is of the opinion that at this time the protection of the public does not require that Respondent be suspended from practice. A public censure would appropriately

address the concerns raised by Respondent's behavior and protect the public. Case law suggests that the imposition of a Public Censure is an appropriate response to the type of misconduct engaged in by Respondent. In the case of In Re Anonymous No. 86 DB 90, 17 Pa. D. & C. 4th 477 (1992), an attorney engaged in a pattern of misconduct that included neglect and failure to communicate with clients. The attorney had a prior record of discipline for similar conduct consisting of one informal admonition and one private reprimand. Based on the attorney's current and prior misconduct, he received a public censure. In the case of In Re Anonymous No. 54 DB 88, 5 Pa. D. & C. 4th 593 (1989), an attorney neglected legal matters by failing to take the appropriate actions and failing to keep clients advised of the status of matters. This attorney had a prior record of one informal admonition. The attorney received a public censure.

Respondent's neglect of his clients' cases appears to stem from his apparent disorganization and lack of administrative skills. In order to help ensure that Respondent has no more contact with the disciplinary system, the Board feels it is important to address the root causes of the misconduct. In this particular scenario, it is clear that Respondent would benefit from the guidance of a practice monitor. A practice monitor would ensure that Respondent appreciates that the practice of law is a business as well as a profession. Office of Disciplinary Counsel

v. Geisler, 532 Pa. 56, 614 A.2d 1134 (1992). The choice of the practice monitor would be subject to the approval of Office of Disciplinary Counsel, as the Board recognizes the inherent problems of choosing a practice monitor in a rural county.

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 Respondent be placed on probation for a period of one (1) year. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel. The practice monitor shall do the following during the period of Respondent's probation:

1. Meet with Respondent on a monthly basis to review Respondent's caseload;
2. File quarterly written reports on a Board-approved form with the Secretary of the Board; and
3. Immediately report to the Secretary of the Board any violation by the Respondent of the terms and conditions of probation.

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: _____
Carolyn Raven Rudnitsky, Member

Date: July 2, 1996

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

PER CURIAM:

AND NOW, this 19th day of August, 1996, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 2, 1996, it is hereby

ORDERED that [Respondent], be subjected to PUBLIC CENSURE by the Supreme Court.

It is further ORDERED that respondent be placed on probation for a period of one (1) year. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel. The practice monitor shall do the following during the period of Respondent's probation:

- (a) Meet with Respondent on a monthly basis to review Respondent's caseload;
- (b) File quarterly written reports on a Board-approved form with the Secretary of the Board; and
- (c) Immediately report to the Secretary of the Board any violation by the Respondent of the terms and conditions of probation.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.