

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 588 Disciplinary Docket No. 3
Petitioner :
v. : No. 95 DB 2000
: Attorney Registration No. 38637
MARK DAVID MAZZA, :
Respondent : (Philadelphia)

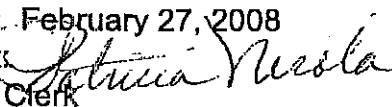
ORDER

PER CURIAM:

AND NOW, this 27th day of February, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 19, 2007, the Petition for Review and Exceptions and Objections and response thereto, the request for oral argument is denied pursuant to Rule 208(e)(4), Pa.R.D.E., and it is hereby

ORDERED that Mark David Mazza shall pay a fine of \$1,000.00 to the Disciplinary Board, and he is prohibited from filing a petition for reinstatement under Rule 218, Pa.R.D.E., until August 3, 2008.

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: February 27, 2008
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 588 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	No. 95 DB 2000
	:	
MARK DAVID MAZZA	:	Attorney Registration No. 38637
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 the Order of the Supreme Court of Pennsylvania dated July 14, 2006, 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 matter.

I. HISTORY OF PROCEEDINGS

Mark David Mazza, Respondent, was temporarily suspended on August 3, 2000 and disbarred on consent by the Supreme Court of Pennsylvania on July 24, 2003, based on Respondent's conviction of one count of bank fraud and one count of mailing a letter containing a threat to reputation. On September 24, 2004, Office of Disciplinary Counsel, Petitioner, filed a contempt petition with the Supreme Court, based on allegations that Respondent was willfully violating Rule 217(j)(4)(i), Pa.R.D.E. On November 2, 2004,

the Supreme Court entered an Order and Rule to Show Cause why Respondent should not be held in contempt for willful violation of Rule 217(j)(4)(i).

On March 11, 2005, the Supreme Court held Respondent in contempt for willful violation of Rule 217(j)(4)(i), Pa.R.D.E. On March 21, 2005, Respondent filed a Petition for Reargument and Reconsideration. On June 6, 2005, the Court reserved Respondent's disciplinary matter pending the disposition of a different case. By Order of July 14, 2006, the Court denied Respondent's Petition for Reargument and Reconsideration and referred Respondent's matter to the Disciplinary Board for a hearing and recommendation of appropriate sanction.

A sanction hearing was held on September 7, 2006 before a District I Hearing Committee comprised of Chair Alexander B. Giacobetti, Esquire, and Members Thomas M. Gallagher, Esquire, and Ryan J. Cassidy, Esquire. Respondent was represented by Samuel C. Stretton, Esquire. Petitioner presented Joint Stipulations of Fact, Law and Exhibits. Respondent offered his own testimony and that of one witness. Respondent introduced one exhibit.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 2, 2007 and recommended that Respondent be fined \$1,000 and be prohibited from seeking reinstatement until August 3, 2010.

Respondent filed a Brief on Exceptions and request for oral argument on April 13, 2007.

Petitioner filed a Brief on Exceptions on April 18, 2007 and a Brief Opposing Exceptions on April 26, 2007.

Oral argument was held on June 5, 2007 before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on July 21, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated 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 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. Mark David Mazza, Respondent, was born in 1957 and was admitted to practice law in Pennsylvania in 1983. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. On October 23, 1998, Respondent was found guilty by a jury of one count of bank fraud and one count of mailing a letter containing a threat to reputation, in a criminal case filed in the United States District Court for the Eastern District of Pennsylvania.

4. Respondent was sentenced to a term of imprisonment on March 1, 2000.

5. By Order of August 3, 2000, the Supreme Court of Pennsylvania temporarily suspended Respondent from the practice of law as a result of his federal convictions.

6. Upon entry of the temporary suspension Order, Respondent became a "formerly admitted attorney", as defined by Pa.R.D.E. 102(a), and prohibited from practicing law.

7. Respondent was served with a copy of the temporary suspension Order by letter of August 4, 2000.

8. From September 1994 through March, 2000, Respondent was employed as an attorney with the Law Offices of Jack Emas & Associates.

9. From March 2000 through the present, Respondent has been employed as a paralegal/administrator with the Law Offices of Jack Emas & Associates.

10. By Per Curiam Order dated December 7, 2000, the Supreme Court of Pennsylvania amended Rule 217, Pa.R.D.E., to include subsection (j), which by the express terms of the Order, applies:

a. Immediately to persons becoming formerly admitted attorneys on or after the date of such publication; and

b. Commencing January 1, 2001 to persons who are formerly admitted attorneys on the date of such publication.

11. The Rule 217(j) Order applied to Respondent as of January 1, 2001.

12. Pa.R.D.E. 217(j)(4)(i) prohibits a formerly admitted attorney from "performing any law-related activity for a law firm or lawyer if the formerly admitted attorney was associated with that law firm on or after the date on which the acts which resulted in

the disbarment or suspension occurred, through and including the effective date of disbarment or suspension...”

13. By letter dated December 6, 2002, Jack Emas, Esquire, and Respondent filed with the Office of the Secretary to the Board a notice of employment pursuant to Pa.R.D.E. 217(j)(5). Mr. Emas stated that Respondent is his employee and he is the attorney supervising Respondent’s activities.

14. On May 28, 2003, Respondent executed a verified Statement of Resignation, which was filed with the Supreme Court. Respondent was disbarred on consent by Order of July 24, 2003.

15. Respondent was served with the disbarment Order and corresponding Board Rules pertaining to disbarred attorneys.

16. By DB-7 Request for Statement of Respondent’s Position dated March 2, 20024, Respondent was placed on notice by Office of Disciplinary Counsel that he violated Pa.R.D.E. 217(j)(4)(i) by working as a paralegal in the law office of Jack Emas & Associates.

17. In his response, Respondent admitted that since the effective date of the temporary suspension order he had worked as a “legal assistant” with paralegal responsibilities for Jack Emas & Associates.

18. One of the documents attached in support of Respondent's answer was an affidavit signed by Michael A. Caudo, Esquire, Mr. Caudo is a solo practitioner who also works as an independent contractor for the Law Office of Jack Emas & Associates.

19. As an independent contractor, Mr. Caudo worked on client files originating from the Law Offices of Jack Emas & Associates.

20. Paragraph 15 of Mr. Caudo's affidavit states, in part, that Respondent prepares "initial drafts of documents which I revise, finalize, and sign for filing."

21. On May 3, 2004, Richard Hernandez, Disciplinary Counsel, provided Respondent with a copy of the Rule 217(j) Order and requested that Respondent advise him if Respondent would cease and desist from any further "law-related activities."

22. On May 14, 2004, Respondent requested additional information from Mr. Hernandez relating to Pa.R.D.E. 217(j).

23. On May 21, 2004, Mr. Hernandez responded and referred Respondent to several places where Respondent could research information regarding Rule 217(j).

24. On July 14, 2004, Respondent advised Mr. Hernandez that after unsuccessfully attempting to obtain additional information, and after discussing the matter with a friend who had obtained information from other disciplinary sources, Respondent considered himself in compliance with Pa.R.D.E. 217(j).

25. On September 24, 2004, Petitioner filed with the Supreme Court of Pennsylvania a Petition for Rule to Show Cause Why Respondent Should Not be Held in Contempt.

26. On November 4, 2004, the Supreme Court entered an Order and Rule to Show Cause why Respondent should not be held in contempt for willful violation of Pa.R.D.E. 217(j)(4)(i).

27. The parties briefed the issues for the Supreme Court.

28. By Order dated March 11, 2005, Respondent was held in contempt. Respondent filed a Petition for Reargument and Reconsideration with the Court.

29. On June 6, 2005, the Court issued an Order reserving Respondent's disciplinary matter pending the disposition in the William Perrone matter.

30. On July 14, 2006, the Court issued an order denying Respondent's Petition for Reargument and Reconsideration and referring the matter to the Board for a hearing to recommend the appropriate sanction.

31. Respondent testified on his own behalf before the Hearing Committee.

32. He claims he sought legal advice from as many as nine lawyers related to whether he was a "formerly admitted attorney" engaged in law-related activities in violation of Rule 217.

33. Respondent offered the name of several attorneys from whom he sought a legal opinion, but admitted he did not retain any attorney to provide legal advice.

34. Respondent offered the testimony of none of the lawyers.

35. Respondent offered no opinion letters and admitted that he received none.

36. Respondent engaged in law-related activities in willful violation of Rule 217 during his temporary suspension and after his disbarment.

37. These activities consisted of: drafting answers to complaints, motions, preliminary objections, and discovery pleadings; updating clients on the status of their matters; and discussing with Jack Emas and independent-contractor attorneys the investigative work relating to firm files.

38. In May 2001, Respondent knew that Rule 217(j) had been enacted by the Supreme Court and was effective as of January 1, 2001.

39. Respondent knew that the Order applied to formerly admitted attorneys.

40. Respondent knew he was prohibited from performing law-related activities at Emas & Associates.

41. Since August 2006, Respondent's job responsibilities consist of, inter alia, placing in an appointment book deadlines for discovery and independent medical examinations, the dates for appearing at depositions, hearings and trials, and filing deadlines; scheduling independent medical examinations and retaining medical professionals to conduct the examinations; reviewing the firm's billing records; reviewing investigative materials for new files; discussing with Mr. Emas the firm's files for the purpose of identifying issues and materials significant for a defense and settlement; advising independent contractors on deadlines; providing independent contractors with any new information or documents that come into the office.

42. Respondent has continued to engage in "law-related activities" by performing tasks that involve "legal work of a preparatory nature" and communicating with third parties on matters which are law-related.

III. CONCLUSIONS OF LAW

1. The March 11, 2005 Order issued by the Supreme Court of Pennsylvania held Respondent in contempt for having willfully violated Rule 217(j), Pa.R.D.E

2. The contempt is indirect criminal contempt, as it refers to obstructive behavior committed beyond the Court's presence.

3. The Supreme Court of Pennsylvania is the exclusive judge of contempt of its own process.

IV. DISCUSSION

Respondent was found in contempt by the Supreme Court for violating Rule 217(j), Pa.R.D.E. Respondent violated Rule 217(j) by engaging in law-related activities while employed by the same law firm for whom he worked when he engaged in the underlying misconduct of bank fraud and mailing a letter containing a threat to reputation. This contempt matter was referred to the Board for the recommendation of an appropriate sanction.

Respondent vigorously argues that the Court erred in holding him in contempt by not allowing him the chance to present witnesses and evidence.¹ As the Court is the exclusive judge of contempt against its process, the Board has no authority to override the Court's finding of contempt. The instant contempt matter is similar to several recent cases wherein the Court has found attorneys in contempt without a hearing and has referred the matter to the Board for sanction. In Office of Disciplinary Counsel v. James A. Hickey, 829 Disciplinary Docket No, 3, (Pa. Jan. 18, 2007), Office of Disciplinary Counsel filed a Petition for Adjudication of Contempt with the Court. Respondent was a suspended attorney and Office of Disciplinary Counsel alleged that he engaged in the practice of law while under suspension. The Petition further alleged that Respondent failed to comply with Rule 217 of the Enforcement Rules. The Court issued a Rule to Show Cause why Respondent should not be held in contempt for willful violation of the Court's Order. Respondent failed to respond and the Rule was made absolute. The Court held

¹ Respondent had notice and opportunity to be heard by submitting his position in two pleadings filed with the Supreme Court.

Respondent in contempt and referred the matter to the Board for sanction. The Board recommended disbarment, which the Court imposed

The Board's role in the instant matter is not to determine whether Respondent engaged in contemptuous behavior, but to make a recommendation of sanction. Perplexingly, when provided the opportunity to present witnesses at the sanction hearing, Respondent failed to do so. In his testimony he referenced some nine local attorneys he allegedly talked to regarding his status as a formerly admitted attorney, but presented none of these attorneys to bolster his defense that he did not believe he was a formerly admitted attorney, and therefore did not willfully violate Rule 217(j). The Committee found Respondent to be not credible. Nothing in the record persuades the Board to overturn this finding of credibility.

Respondent takes issue with what he views as the court's failure to state the type of contempt in its order. Criminal contempt has as a dominant purpose the vindication of the dignity and authority of the court and the protection of the interests of the general public. Indirect contempt refers to obstructive conduct committed beyond the court's presence. Com. v. Marcone, 410 A.2d 759 (Pa. 1980). It is clear that Respondent engaged in indirect criminal contempt.

Respondent takes exception to the Hearing Committee's recommendation that his right to petition for reinstatement be deferred until August 3, 2010. Respondent's position is that the Committee does not have the authority to make such a recommendation in a contempt proceeding, as delaying his right to apply for reinstatement unfairly impacts his privilege to practice law. Respondent emphasizes that he has been disbarred for over six years and would have been eligible to apply for reinstatement over a year ago.

In addition to the prohibition on applying for reinstatement until 2010, the Committee recommended a \$1,000 fine. A finding of indirect criminal contempt may be sanctioned by a fine and by private or public discipline. In the case of In re Anonymous No. 77 DB 85 37 Pa. D. & C 4th 292 (1996), an attorney who was found in indirect criminal contempt by the Court was fined \$500 and publicly censured. In the Hickey case cited above, the attorney, who was under suspension when found in contempt, was disbarred. In the instant matter, Respondent is already disbarred, which precludes the imposition of any harsher punishment. In order to adequately sanction Respondent for his contemptuous behavior, the reinstatement process may be impacted. The Committee has suggested a three year additional wait for the opportunity to seek reinstatement. While this is a long time, it is appropriate, as Respondent's contemptuous behavior occurred over a long period of time. Respondent actively violated Rule 217(j). Nothing of record indicates that he was unaware of his status as a formerly admitted attorney, or that he was unaware of his responsibilities inherent with such status.

For the above reasons, the Board recommends that Respondent be fined \$1,000 and be prohibited from seeking reinstatement until August 3, 2010.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Mark David Mazza, be fined \$1,000 and be prohibited from seeking reinstatement until August 3, 2010.

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: 
Robert E. J. Curran, Board Member

Date: September 19, 2007

Board Members Newman and Raspanti did not participate in the adjudication.