

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 657, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 113 DB 1999
v.	:	
	:	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 August 31, 1999, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against [], Respondent. The Petition alleges that Respondent violated the Rules of Disciplinary Enforcement and Rules of Professional Conduct by his failure to appear for an

Informal Admonition. Respondent did not file an Answer.

A disciplinary hearing was held on January 4, 2000 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. [], Esquire, represented petitioner. Respondent did not appear.

The Hearing Committee filed a Report on March 20, 2000. The Committee concluded that Respondent violated the Rules as charged in the Petition for Discipline and recommended that Respondent be disbarred.

The parties filed no Briefs on Exception.

The Disciplinary Board at the meeting of May 11, 2000 adjudicated this matter.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 3710, One Oxford Centre, 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 born in 1952 and was admitted to practice law in the Commonwealth of Pennsylvania in 1982. His attorney registration address is []. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. At the time of the filing of this Petition for Discipline, Respondent was under suspension pursuant to an Order of the Supreme Court of Pennsylvania suspending Respondent effective April 3, 1999 for a period of one year and one day.

4. By Notice dated April 22, 1999 and hand delivered to Respondent by Office of Disciplinary Counsel Investigator [A] on April 23, 1999, Respondent was scheduled to receive an Informal Admonition on May 17, 1999.

5. The basis for the Informal Admonition stems from Respondent's representation of [B] in a civil action filed in [] County. In November of 1995, Respondent was ordered by Judge [C] to provide responses to Interrogatories.

6. Respondent failed to comply with the Order, and a similar Order was entered in April of 1996, with which he again failed to comply.

7. In July of 1996, Respondent requested an additional 30 days to answer the Interrogatories. Counsel for the defendant refused and advised that she was filing a Motion for Sanctions.

8. Respondent did not advise his client of the Motion for Sanctions nor did he appear to contest it.

9. Judge [C] entered an Order dismissing the action with prejudice.

10. Respondent failed to notify his client of the dismissal.

11. Despite the advisement in the Notice of April 22, 1999 that Respondent had twenty days in which to demand as of right that a formal proceeding be instituted against him, Respondent made no such demand.

12. On May 17, 1999 Respondent hand delivered a letter to the Office of Chief Disciplinary Counsel.

13. The letter stated that Respondent intended to “terminate” his relationship with the bar and he accordingly saw no need to appear and receive the Informal Admonition. He requested information on the appropriate procedures “to formalize the end of my legal career.”

14. By letter dated May 21, 1999 Respondent was advised by Deputy Chief Disciplinary Counsel that he was still under the jurisdiction of the disciplinary system and that unless he submitted an appropriate resignation he had to submit to the Informal Admonition.

15. The Informal Admonition was rescheduled for August 10, 1999 and notice by letter of July 8, 1999 was sent to Respondent by regular and certified mail.

16. On July 30, 1999 the certified mail green card was returned "unclaimed" but as of August 10, 1999 the notice sent regular mail was not returned as undeliverable and has not thereafter been returned.

17. Respondent received notice of the Informal Admonition and did not appear on August 10, 1999.

18. The Petition for Discipline in this matter was personally served on Respondent on September 9, 1999.

19. The notices of the pre-hearing conference and disciplinary hearing were personally served upon Respondent.

20. Respondent failed to appear at the pre-hearing conference and the hearing.

21. Respondent has an extensive prior history of discipline consisting of an Informal Admonition in 1994, a Private Reprimand in 1998, an Informal Admonition in 1998, and a Suspension of one year and one day effective on April 3, 1999.

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.
2. RPC 1.4(a) - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.
3. RPC 1.4(b) - A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.
4. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
5. Pa.R.D.E. 203(b)(2) - Willful failure to appear before Chief Disciplinary Counsel for an Informal Admonition shall be grounds for discipline.

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline filed against Respondent based on his failure to appear for an Informal Admonition. Respondent was scheduled to receive an Informal Admonition on May 17, 1999 for his misconduct while representing a client in a civil matter. In that matter, Respondent twice failed to comply with a judge's order and failed to appear to argue a Motion for Sanctions filed against his client. These actions resulted in the dismissal with prejudice of the action.

On May 17, 1999, Respondent hand delivered a letter to Office of Chief Disciplinary Counsel stating that he was currently suspended from the practice of law and had no intention of returning to the practice of law. He further stated that he wished to terminate his relationship with the bar. Respondent concluded that there was no reason for him to receive the Admonition. After delivering the letter, Respondent left Chief Counsel's office.

Respondent was informed by letter of May 21, 1999 from Deputy Chief Disciplinary Counsel of the steps he must take to resign from the practice of law. Respondent was further informed that unless he submitted his resignation, he must accept the Informal Admonition, as he was still under the jurisdiction of the disciplinary system. Respondent took no steps to resign and the Informal Admonition was rescheduled for August 10, 1999. Respondent received notice but failed to appear. Respondent failed to appear at the subsequent disciplinary hearing held in this matter.

The responsibility of the Board is to assess the fitness of the attorney and recommend a disciplinary sanction that will protect the public and preserve the public confidence in the legal profession and the judicial system. Matter of Leopold, 469 Pa. 382, 366 A.2d 227 (1976), Office of Disciplinary Counsel v. Lucarini, 504 Pa. 271, 472 A.2d 186 (1983).

The Hearing Committee recommended disbarment. On its face, the underlying misconduct in this case is not egregious enough to warrant the severe sanction of disbarment. In re Anonymous No. 127 DB 1989, 12 Pa. D. & C. 4th 106 (1991), In re Anonymous No. 43 DB 1993, 23 Pa. D. & C. 4th 468 (1994). However, the Board must consider any aggravating and mitigating factors present. This case contains many aggravating factors. Respondent has an extensive history of discipline. This discipline consists of two Informal Admonitions, a Private Reprimand, and a Suspension of one year and one day. Board Opinions were written in the Private Reprimand matter and the Suspension matter. (Pet's Exhibits 12 and 19) These Opinions reveal that Respondent's prior misconduct is very similar to the instant misconduct. The absence of attention to procedure, detail, and communication with clients is the hallmark of Respondent's practice of law. These Opinions also reveal Respondent's cavalier attitude toward the disciplinary system, as evidenced by his failure to appear, failure to respond to letters, and demeanor when testifying.

The fact that the Board is again adjudicating a matter involving Respondent is a clear sign that none of the prior discipline has made an impression on him. He continues to act in

violation of the Rules of Professional Conduct and the Rules of Disciplinary Enforcement. He continues to be uncooperative with Office of Disciplinary Counsel.

Respondent has opened the door to disbarment by his letter to Chief Disciplinary Counsel seeking resignation from the bar. By his words and actions Respondent has evidenced his lack of desire to practice law. The Board can find no reason in this record to prolong Respondent's contact with the legal profession. The purpose of the disciplinary system is well served by a recommendation of disbarment.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be disbarred from the practice of law in the Commonwealth of Pennsylvania.

It is further recommended that the Respondent be required to pay the expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Charles J. Cunningham, III, Member

Date: February 2, 2001

PER CURIAM:

AND NOW, this 23rd day of March, 2001, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 2, 2001, it is hereby

ORDERED that [Respondent] be and he is SUSPENDED from the Bar of this Commonwealth, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

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