

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 681, Disciplinary Docket No.
Petitioner	:	3 - Supreme Court
	:	
	:	No. 101 DB 2001
	:	Disciplinary Board
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

By Order of the Supreme Court of Pennsylvania dated July 23, 2001, [ ], Respondent in these proceedings, was placed on temporary suspension from the practice of law in Pennsylvania based on his conviction in the [ ] County Court of Common Pleas of one count of recklessly endangering another person. The Supreme Court referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E. On July 26, 2001, Respondent filed with the Disciplinary Board a Request for Accelerated Disposition.

Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent on August 20, 2001. Respondent filed an Answer to Petition for Discipline on August 27, 2001, admitting all eleven paragraphs of the Petition for Discipline.

A disciplinary hearing was held on October 15, 2001 before Hearing Committee [ ] comprised of Chair [ ], Esquire, Member [ ], Esquire, and Alternate Member [ ], Esquire. Respondent appeared pro se. Following the hearing, at which time the record was closed, Respondent filed three affidavits with the Hearing Committee on November 26, 2001. Petitioner filed a Motion to Strike Three Affidavits on November 30, 2001. Respondent filed an Answer to Motion to Strike on December 3, 2001. On January 9, 2002, the Hearing Committee Chair ordered that the Motion to Strike Three Affidavits be Granted.

Following briefing by the parties, the Hearing Committee filed a Report on January 24, 2002 and recommended that Respondent be suspended for a period of six months.

Respondent filed a Petition to Dissolve Temporary Suspension on January 18, 2002. Following the filing of a Reply to Petition to Dissolve Temporary Suspension by Petitioner, a hearing was held in front of Disciplinary Board Member Thomas J. Elliott, Esquire. The Board Member recommended to the Supreme Court that the temporary suspension not be dissolved. On February 8, 2002, Respondent filed a Praecipe to Withdraw Petition to Dissolve Suspension.

Petitioner filed a Brief on Exceptions to the Hearing Committee Report on February 1, 2002. Respondent filed a Brief on Exceptions on February 4, 2002, and a Brief Opposing Exceptions on February 6, 2002. Petitioner filed a Motion to Strike both of Respondent's Briefs on February 11, 2002. Respondent filed an Answer on February 12, 2002. By Order of the Disciplinary Board of February 15, 2002, the Board denied the Motion to Strike Briefs but ordered that attached Affidavits be stricken.

Respondent filed a Motion for Reconsideration and a brief in support on February 19, 2002. Petitioner filed a Letter-Response on February 22, 2002. By Order of the Disciplinary Board dated March 6, 2002, the Motion for Reconsideration was denied.

This matter was adjudicated by the Disciplinary Board at the special meeting held on March 20, 2002.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner 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 of Disciplinary Enforcement.

2. Respondent was born in 1964 and was admitted to practice law in Pennsylvania in 1990. He currently resides at [ ].

3. Respondent was placed on temporary suspension from the practice of law on July 23, 2001, effective August 22, 2001, following his conviction on March 7, 2001 in the [ ] County Court of Common Pleas of one count of recklessly endangering another person.

4. Respondent was sentenced to two years of probation under the supervision of the [ ] County Probation Office, with conditions that he refrain from consuming alcohol and illegal drugs, maintain a satisfactory residence and suitable employment, undergo alcohol and drug evaluation, counseling and treatment as recommended by the probation officer, and refrain from possessing or owning a firearm.

5. The events leading to Respondent's conviction are as follows:

- a. On March 7, 2000, Respondent had worked a long day and was in his home preparing dinner. As he did this he smoked a marijuana cigarette.
- b. Respondent went to check his gun collection and decided to switch guns between his den and a lockbox in his bedroom. Respondent had a collection of 19 guns in his home.
- c. Respondent had an old 9-mm model 1911 handgun that did not have a safety on it.
- d. Respondent put the 9-mm handgun down by his side and thought that it was uncocked.
- e. When Respondent picked the gun up to see how many bullets were in the clip, the clip slid out.
- f. Respondent slid the clip back in and the gun went off.
- g. The bullet went through the wall of his residence into the adjoining residence, coming within five feet of a six year old girl living there. The blast of plaster from the wall hit the girl's mother.

6. Respondent was very cooperative with the police during their investigation of the underlying criminal matter.

7. Respondent admitted to police that he discharged the weapon and that he had used drugs that evening.

8. Respondent has addressed his problems with marijuana use and relinquished possession of his firearms to his father but still remains the registered owner of the weapons. This arrangement has been found acceptable by his probation officer.

9. In August of 2001 Respondent began employment as a paralegal with Attorney [A]. This employment was terminated by Attorney [A] effective October 8, 2001.

10. The reason for the termination, according to Attorney [A], was that Respondent was working on former client files, in contradiction to Attorney [A's] instructions to Respondent when he was hired.

11. At the time of the disciplinary hearing, Respondent was unemployed, having had his employment terminated just a week prior to the hearing.

12. Respondent has thus far complied with the conditions of his probation.

13. Respondent admits that he used poor judgment the evening in question and he has no excuse for his conduct. He has shown remorse for his actions.

14. Respondent has no prior record of discipline.

### III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) – Respondent’s conviction of recklessly endangering another person constitutes a conviction of a serious crime and is an independent basis 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

This matter is before the Disciplinary Board upon a Petition for Discipline charging Respondent with violation of the Rules of Disciplinary Enforcement and the Rules of Professional Conduct based on his conviction of one count of recklessly endangering another person.

Respondent has admitted all allegations contained in the Petition for Discipline. The purpose of the instant proceeding is not to engage in a retrial of the underlying facts of the crime, but to determine the appropriate measure of discipline relative to the seriousness of the crime. Office of Disciplinary Counsel v. Eilberg, 497 Pa. 388, 441 A.2d 1193 (1982). The focal issue is the attorney’s fitness to practice law. Office of Disciplinary Counsel v.

Casety, 511 Pa. 177, 512 A.2d 607 (1986). It is appropriate for the Board to consider any aggravating or mitigating circumstances. Office of Disciplinary Counsel v. Lucarini, 504 Pa. 271, 472 A.2d 186 (1983). The Board has de novo review of this matter.

Respondent's criminal conduct consists of accidentally firing a gun into the wall of an adjoining residence, nearly striking a young child. Respondent cooperated fully with the police investigation and pleaded guilty to one count of recklessly endangering another person. He received two years of probation and has complied with all conditions attached thereto, including counseling for drug use and relinquishing possession of his firearms. Respondent cooperated with Petitioner in that he fully admitted all allegations contained in the Petition for Discipline. Although Petitioner attempted to show as aggravating factors that Respondent shirked his duty to notify clients as to his temporary suspension, and that Respondent violated the terms of his employment with Attorney [A], the evidence is inconclusive on these points, and he has not been charged pursuant to the Rules of Disciplinary Enforcement with any breaches. The Hearing Committee did not make findings on these issues, and the Board is of the opinion that they are not integral to the specific issue of Respondent's fitness to practice law as it relates to his criminal activity. Respondent admits that he used poor judgment in handling his guns and also in smoking marijuana the evening of the incident, although his conviction does not involve any drug



charges. Respondent engaged in a course of activity that placed other persons at risk of harm.

The Hearing Committee recommended a suspension of six months, reasoning that Respondent's lapse of judgment was severe enough to require that he take a step back from the practice of law to examine the harm he caused. Petitioner takes exception to this recommendation and contends that a suspension of one year and one day is necessary to address Respondent's misconduct. Petitioner argues that Respondent gave no reasonable explanation for his behavior and must endure a more lengthy suspension to protect the public. Petitioner was unable to cite any precedent in support its recommendation for this matter. Respondent contends that the Board should either accept the recommendation of the Hearing Committee or impose a lesser discipline.

Review of the case law supports a suspension of less than one year and one day. In the matter of In re Anonymous No. 76 DB 94, 26 Pa. D. & C. 4<sup>th</sup> 350 (1995), an attorney was convicted of terroristic threats. This attorney stood outside of his house and shouted that he was going to kill someone. The police arrived and he advised them he was going to his basement to get a gun and kill them. He then appeared in his foyer with a four-foot spear and again stated that he would do harm to the officers. This attorney was suspended for one year. Clearly, the facts of the instant matter are less egregious. Respondent accidentally discharged a lawfully owned firearm. His behavior was deemed reckless as

the bullet came within feet of a young girl in the next residence. As opposed to the attorney in the above cited case, Respondent cooperated with the police and was forthcoming about the events in question.

In the matter of In re Anonymous No. 62 DB 87, 5 Pa. D. & C. 4<sup>th</sup> 459 (1989), an attorney was convicted of one count of recklessly endangering another person after he reconnected the gas pipes of his rental property. The attorney expressed remorse and complied with the terms of his probation. He received a suspension of three months. The Board specifically noted that the conduct did not warrant the necessity of applying for readmission to the bar.

Review of the totality of the circumstances persuades the Board that a suspension of six months retroactive to the effective date of the temporary suspension is appropriate. Respondent did demonstrate a certain elemental lack of fitness by employing extremely poor judgment in smoking marijuana and subsequently handling his gun collection, but the fact remains that the underlying criminal behavior is not egregious enough to necessitate a suspension requiring him to petition for reinstatement to the bar.

#### V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [ ], be Suspended from the practice of law for a period of six (6) months

retroactive to August 22, 2001, the effective date of his temporary suspension ordered on July 23, 2001.

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: \_\_\_\_\_  
Lisa A. Watkins, Member

Date: April 1, 2002

Board Member Schultz dissented and would recommend a Public Censure. Board Member Cunningham dissented and would impose a Private Reprimand.

Board Member Sheerer did not participate in the March 20, 2002 adjudication.

PER CURIAM:

AND NOW, this 19<sup>th</sup> day of April, 2002, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 1, 2002, it is hereby

ORDERED that [Respondent], be and he is SUSPENDED from the Bar of this Commonwealth for a period of six (6) months retroactive to August 22, 2001, 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.

Mr. Justice Castille dissents and would impose a suspension of one year and one day, as requested by the Office of Disciplinary Counsel.