

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 127 DB 1996  
Petitioner :  
 :  
v. :  
 : Attorney Registration No. []  
[ANONYMOUS], :  
Respondent : ([] County)

OPINION

I. HISTORY OF PROCEEDINGS

On March 18, 1996, the Respondent pled guilty to one count of Driving Under Influence of Alcohol or Controlled Substance and one count of Driving Vehicle at Safe Speed.

On October 9, 1996, by Order of the Supreme Court of Pennsylvania, Respondent's conviction was referred to the Disciplinary Board.

A hearing was held on March 5, 1997, before Hearing Committee [] comprised of Chairperson [], Esquire and Members [], Esquire and [], Esquire.

This matter was adjudicated by the Disciplinary Board at the August 13, 1997 meeting.

II. FINDINGS OF FACT

1. Petitioner, whose principal office is now 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, [], Esquire, was born in 1963, was admitted to practice law in the Commonwealth of Pennsylvania in 1992, and his attorney registration address is []. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By Order of the Supreme Court of Pennsylvania, dated October 9, 1996, it was ordered that as Respondent had been convicted in the Court of Common Pleas of [] County of the crime of

driving under the influence of alcohol or controlled substance in violation of 75 Pa.C.S. ' 3731(a)(1), the matter

was referred to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E.

4. In the Court of Common Pleas of [] County at Criminal Action No. [], Respondent was charged with:

- a. One Count of Driving Under Influence of Alcohol or Controlled Substance, in violation of 75 Pa.C.S. 3731(a)(1);, and,
- b. One Count of Driving Vehicle at Safe Speed, a summary offense, in violation of 3361 of the Pennsylvania Vehicle Code.

5. Driving Under Influence of Alcohol or Controlled Substance is a misdemeanor of the second degree, which may result in a term of imprisonment, the maximum of which is not more than two years.

6. On March 18, 1996, Respondent entered a plea of guilty to both Counts.

7. On March 18, 1996, Respondent was sentenced. He was ordered to:

- a. Pay a fine of \$500.00 to the Commonwealth;
- b. Pay the costs of prosecution;

- c. Undergo an imprisonment of not less than thirty days or more than two years less one day in the [ ] County Jail;
- d. Pay a fine and costs at a rate of \$30.00;
- e. Pay the Catastrophic Loss Benefit Continuation Fund \$100.00; and
- f. Pay \$35.00 and costs regarding the summary offense conviction.

8. Rule 214(a), Pa.R.D.E., requires that an attorney convicted of a serious crime must report the fact of his conviction to the Secretary of the Disciplinary Board within twenty (20) days after the date of sentencing.

9. Driving Under Influence of Alcohol or Controlled Substance is a serious crime pursuant to Rule 214(i), Pa.R.D.E.

10. Respondent did not report his conviction to the Secretary of the Disciplinary Board.

11. The conviction of Respondent constitutes an independent basis for discipline, pursuant to Rule 203(b)(1), Pa.R.D.E.

12. Respondent's failure to report his conviction to the Secretary of the Disciplinary Board constitutes an independent basis for discipline, pursuant to Rule 203(b)(3), Pa.R.D.E.

13. Respondent has not been subject to any prior disciplinary action.

14. Respondent served his thirty (30) day sentence in alternative housing at [] Correction Center in []. Respondent reported to the facility on a nightly basis and slept there, while continuing to work during the day. In addition to staying at the facility for thirty (30) days, he completed a program consisting of counseling and Alcoholic Anonymous meetings. Respondent underwent random drug testing at the facility on a weekly basis and was not found to be in violation of any of the conditions of the program.

15. After release from the [A] Corrections Center, Respondent was subject to probation for a period of two years, and required to pay various fines totaling approximately \$1,000 which he is paying at the rate of \$30.00 per month.

16. Prior to Respondent's arrest on the conviction upon which the Petition for Discipline is premised, Respondent had been arrested twice previously and charged with driving under the influence of alcohol. His first arrest occurred in 1991 while Respondent was attending law school, and resulted in his entry into the Accelerated Rehabilitative Disposition ("ARD") program, under which his conviction was expunged upon his successful completion of the terms of that program.

17. Approximately six months later, during Respondent's final year of law school, he was again arrested for driving under the influence, but was acquitted of the charges at trial.

18. None of the three incidents which resulted in Respondent's arrest involved a motor vehicle accident or injury to any person.

19. Until the date of Respondent's arrest resulting in the conviction upon which the Petition for Discipline is premised, Respondent's social life primarily involved drinking with friends at bars and clubs in the evenings after work and on weekends.

20. Respondent has not consumed any alcohol since the date of his arrest on February 22, 1995. He has joined two gyms, where he works out five or six days a week, and has disassociated himself from many of the friends with whom he previously socialized and consumed alcohol.

21. After his release from the [ ] Correction Center, Respondent has occasionally, but inconsistently, attended AA meetings. Respondent feels somewhat uncomfortable with certain religious concepts involved in the AA programs, although he recognizes that he has an alcohol abuse problem.

22. Respondent's drinking problem does not appear to have adversely affected his professional responsibilities to his clients. Respondent's drinking was confined to socializing in the evening and on weekends, and he did not drink during the day.

23. Respondent has shown remorse for his misconduct.

24. Respondent did not report his conviction to the Secretary of the Disciplinary Board because he was unaware of the requirement that he do so. However, he recognizes that his



ignorance of the requirement does not excuse his failure to report the condition.

III. CONCLUSIONS OF LAW

Respondent's conviction of driving under the influence of alcohol or a controlled substance in violation of 75 Pa.C.S. '3731(a)(1) constitutes the conviction of a serious crime pursuant to rule 214(i), Pa.R.D.E., which conviction serves as a basis for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

Respondents failure to report his conviction to the Secretary of the Disciplinary Board within twenty (20) days after the date of sentencing in accordance with Rule 214(a), Pa.R.D.E., constitutes an independent basis for discipline pursuant to Rule 203(b)(3), Pa.R.D.E.

IV. DISCUSSION

On February 22, 1995, the Respondent was charged with One Count of Driving Under Influence of Alcohol or Controlled Substance and One Count of Driving a Vehicle at an Unsafe Speed which counts are considered a "serious" crime under Rule 214(b), Pa.R.D.E. In

addition, the Respondent failed to report the fact of his conviction to the Secretary of the Disciplinary Board within twenty (20) days after the date of sentencing. This failure is a violation of Rule 214(a), Pa.R.D.E.

These violation of the Rules of Disciplinary Enforcement were stipulated to at the formal hearing before the Hearing Committee and as a result, the only decision before this Board is the appropriate discipline in this matter.

Clearly, conviction of a crime on its face is grounds for discipline. Office of Disciplinary Counsel v. Costigan, 526 Pa. 16 584 A. 2d 296 (1990). Further, as is our well established policy in determining appropriate discipline, it is necessary to consider not only the conviction, but the circumstances surrounding the conviction, as well. Office of Disciplinary Counsel v. Troback, 477 Pa. 318, 383 A. 2d 952 (1978).

Office of Disciplinary Counsel ("ODC") set forth a number of precedents setting forth convictions for driving under the influence. These cases have resulted in a range of discipline.

In In Re Anonymous No. 117 DB 90, 19 Pa. D. & C. 4th 197 (1993), the attorney pled guilty to two separate charges of driving under the influence of alcohol or a controlled substance. His sentence was similar to that which the Respondent received, however, this was the attorney's fifth conviction of a DUI offense. In addition, the attorney had been convicted in 1985 of possessing cocaine and in 1986 of disorderly conduct. This attorney received a three-year stayed suspension with probation. This attorney has, however, been sober for three (3) years and frequently attended Alcoholic Anonymous meetings. ("AA").

In In Re Anonymous No. 79 DB 94, decided by Order of the Supreme Court of Pennsylvania dated December 18, 1995, but not yet published, an attorney entered a plea of guilty to driving under the influence of alcohol or controlled substance and received a sentence consistent with the Respondent's sentence. This attorney received a three (3) year stayed suspension with probation subject to numerous conditions. This attorney had also been convicted of two other offenses since law school. In addition, one of the previous offenses had resulted in a three (3) month suspension for the unlawful possession of a weapon. This attorney also presented

testimony that he suffered from alcoholism and regularly attended AA.

Under certain circumstances, attorney's have received private reprimands for convictions of driving under the influence of alcohol. In In Re Anonymous No. 72 DB 93, determined by Order of the Disciplinary Board, dated January 17, 1995, but not yet published, an attorney had been convicted of four offenses of driving under the influence of alcohol or a controlled substance. In addition, this attorney had been convicted of three offenses of driving while his license was suspended. He received a private reprimand with a two year probationary period, subject to numerous conditions.

In In Re anonymous No. 62 DB 91, 22 Pa. D. & C. 4th 187 (1993), an attorney received a private reprimand for a single conviction of driving under the influence of alcohol for which the attorney received a harsher sentence than the Respondent. In its Report, the Disciplinary Board stated the attorney's misconduct was personal in nature and did not harm a client. This Board stated that in view of the attorney's unblemished record and the fact that

he only harmed himself, a private reprimand was the appropriate sanction.

In the instant case, the Respondent's offense is personal in nature, in that no injury to a client exists. Further, this Board has steadfastly held that although any conviction is bound to bring into question the integrity of the legal profession, but for the exceptional case, publicity alone should not be viewed as an aggravating factor.

The Respondent testified that he had a serious problem with alcohol for which he received thirty (30) days of treatment. Further, he has testified that he has not had a drink since his arrest and to this end, he submitted a letter from his counselor as to his treatment program and progress. Given the mitigation presented by Respondent, a private reprimand is the appropriate discipline.

The final issue is whether probation with conditions is necessary. In reviewing the Hearing Committee's recommended conditions, it is this Board's opinion that the Respondent's restraint from drinking and efforts to get treatment are sufficient

to eliminate the necessity for probation with conditions. In addition, this Board believes that Respondent's religious objections to AA would essentially eliminate the likelihood of a successful probationary period with conditions.

V. DETERMINATION

The Disciplinary Board of the Supreme Court of Pennsylvania determines that the Respondent, [], shall receive a Private Reprimand without probation.

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 N. C. Nix, III, Member

Date: September 5, 1997

Board Members Elliott and Aronchick did not participate in the August 13, 1997 Adjudication.

ORDER

AND NOW, this 5th day of September, 1997, upon consideration of the Report and Recommendation of Hearing Committee [] filed May 30, 1997; it is hereby

ORDERED that [RESPONDENT] of [] County be subjected to PRIVATE REPRIMAND without probation by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) of the Pennsylvania Rules of Disciplinary Enforcement. Costs shall be paid by the Respondent.