



Rules of Professional Conduct 1.3, 1.4(a), 1.4(b) and 1.16(d). Respondent did not file an Answer to the Petition for Discipline.

A disciplinary hearing was held on August 15, 2001 before Hearing Committee [ ] comprised of Chair [ ], Esquire and Members [ ], Esquire and [ ], Esquire. Petitioner was represented by [ ], Esquire; Respondent represented himself pro se. A Joint Stipulation of Facts was submitted. In addition, Respondent submitted exhibits, to which Petitioner stipulated.

The Hearing Committee filed a Report on March 25, 2002, recommending a Private Reprimand and a one-year period of Probation with specific conditions. No Briefs on Exceptions were filed by either party.

This matter was adjudicated by the Disciplinary Board at its meeting on May 14, 2002.

## II. FINDINGS OF FACT

The Board makes the following findings of facts:

1. Respondent was admitted to practice law in the Commonwealth of Pennsylvania on or about May 9, 1985.

2. Between 1985 and June 1998, Respondent worked for various legal entities and/or law firms, and in June 1998, he commenced a solo law practice.

3. On or about November 12, 1999, [A] (hereinafter "Complainant") asked Respondent to represent her in a DUI matter (hereinafter "the DUI matter"). Respondent agreed to undertake this representation.

4. Respondent requested and Complainant agreed to pay Respondent a "flat fee" of \$1,750.00 for Respondent's representation in the DUI matter.

5. On or about November 12, 1999, Complainant issued Respondent check No. 279 drawn on her [B] Bank account in the amount of \$875.00, made payable to Respondent.

6. Respondent acknowledged receipt of Complainant's \$875.00 check by receipt No. 261014, which was issued on November 12, 1999 and signed by Respondent.

7. On or about November 24, 1999, Respondent appeared at Complainant's preliminary hearing in the DUI matter.

8. After the preliminary hearing on November 24, 1999, Respondent provided Complainant with an ARD application, which she was to complete and return to Respondent.

9. By letter dated November 30, 1999, Elaine M. Bixler, Executive Director and Secretary of the Disciplinary Board of the Supreme Court of Pennsylvania (hereinafter

"Ms. Bixler"), advised Respondent that he would be transferred to inactive status, effective December 30, 1999, for failure to comply with Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E.").

10. Ms. Bixler's November 30, 1999 letter included the following items:
  - a. Standard Guidance of the Disciplinary Board to Lawyers who have been Transferred to Inactive Status;
  - b. Rules 217 and 219 of the PA.R.D.E.;
  - c. Subchapter E, Formerly Admitted Attorneys, of the Disciplinary Board Rules;
  - d. Form DB-23i, Nonlitigation Notice of Disbarment, Suspension or Transfer to Inactive Status;
  - e. Form DB-24i, Litigation Notice of Disbarment, Suspension or Transfer to Inactive Status; and
  - f. Form DB-25i, Statement of Compliance.

11. Ms. Bixler's November 30, 1999 letter also advised Respondent that he was required to comply with the Pa.R.D.E. and Disciplinary Board Rules. Ms. Bixler's letter enclosed these rules.

12. Respondent was placed on inactive status by Order of the Pennsylvania Supreme Court dated November 30, 1999.

13. On or about December 13, 1999, Respondent acknowledged receipt of Ms. Bixler's November 30, 1999 letter, by signing a domestic return receipt for article number

[ ].

14. Because Respondent received Ms. Bixler's November 30, 1999 letter, he knew that he was required to advise his clients that he was being placed on inactive status and that they would need to obtain the services of another attorney for their representation.

15. Because Respondent had received Ms. Bixler's November 30, 1999 letter, respondent knew that he was required to file a Statement of Compliance with the Pa.R.D.E. and the Disciplinary Board Rules.

16. Respondent failed to inform Complainant that he had been placed on inactive status and could no longer represent her in the DUI matter.

17. On or about January 3, 2000, Complainant issued check No. 335 drawn on her [B] Bank Account in the amount of \$875.00 and made payable to Respondent.

18. Complainant included, with the January 3, 2000 check, her completed ARD application to be filed with the District Attorney.

19. At some time between January 3, 2000 and January 11, 2000, Respondent negotiated check No. 335.

20. Respondent knew or should have known that the Complainant's ARD application was to be filed with the District Attorney at least ten (10) days prior to Complainant's arraignment date, which had been scheduled for February 4, 2000.

21. Respondent failed to advise Complainant that he had been placed on inactive status and was unable to continue her representation in the DUI matter.

22. Before February 1, 2000, Complainant made numerous attempts to contact Respondent by telephone regarding her upcoming DUI matter. Complainant was informed, on each occasion that Complainant called Respondent's office, that Respondent was unavailable. Complainant therefore left messages for Respondent.

23. Respondent failed to respond to Complainant's telephone calls or to communicate with Complainant.

24. On or about February 1, 2000, Complainant contacted the District Attorney's Office. At that time, Complainant discovered that Respondent had not filed an ARD application on Complainant's behalf.

25. On or about February 1, 2000, Complainant completed the ARD application and filed it *pro se*.

26. As of the date of the disciplinary hearing on August 15, 2001, Respondent had not informed Complainant that he had been placed on inactive status.

27. As of August 15, 2001, Respondent had failed to file a statement of compliance with Ms. Bixler's office.

28. In March 2000, Complainant filed a civil action against Respondent and obtained a money judgment against Respondent.

29. On November 1, 2000, Respondent entered into an agreement with Complainant to make monthly payments on this judgment as well as other costs incurred by Complainant. All payments due under this agreement have been paid.

30. Respondent has a history of suffering from dysthymia, a form of depression. He was first diagnosed with depression in 1987 and had some treatment for a period of time. (N.T. at pp. 25-26).

31. In 1999, Respondent's marriage was breaking up and his solo law practice was failing.

32. Respondent next sought mental health treatment in the Spring 1999 and continued until early 2000. It was during this period of treatment that Respondent was first diagnosed with dysthymia. (N.T. at pp. 27-28)

33. In May 2000, Respondent began treatment with another mental health provider, but discontinued after a few visits because he believed that the treatment was not effective. (N.T. at p.24)

34. Respondent came under the care of his current psychiatrist, Dr. [C], in December 2000.

35. At the hearing, Respondent submitted and Petitioner stipulated to the report of Dr. [C]. In this report, Dr. [C] opined that Respondent's depression was a causative factor in his misconduct.

36. Respondent is currently on medication and continues to treat with Dr. [C].

37. At his disciplinary hearing, Respondent testified that it is his intention not to return to the practice of law.

38. Nevertheless, Respondent recently complied with Pennsylvania Rule of Disciplinary Enforcement 219 and was transferred to active status in October 2001.

39. Respondent has no prior history of discipline.

### III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 217(a) – (e) and (i) which state that:



(a) A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status and shall advise said client to seek legal advice elsewhere.

(b) A formerly admitted attorney shall promptly notify, or cause to be notified by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension or transfer to status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney.

(c) A formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension or transfer to inactive status, by registered or certified mail, return receipt requested:

(1) all persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension or transfer to inactive status, and

(2) all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing.

The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended or on inactive status.

(d) Orders imposing suspension, disbarment or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal

matter of any nature. However, during the period from the entry date of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(e) Within ten days after the effective date of the disbarment, suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing:

(1) that the provisions of the order and these rules have been fully complied with; and

(2) all other state, federal and administrative jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

(i) A formerly admitted attorney shall keep and maintain records of the various steps taken by such person under these rules so that, upon any subsequent proceeding instituted by or against such person, proof of compliance with these rules and with the disbarment, suspension or transfer to inactive status order will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client;
3. 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;
4. 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; and
5. 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 giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee that has not been earned.

#### IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with: (a) the continued representation of a client, including the acceptance of a fee, while on inactive status; (b) the failure to provide his client with notification that he had been transferred to inactive status; and (c) the failure to promptly respond to the inquiries and requests of a client. Although Respondent did not file an Answer to the Petition for Discipline, he cooperated with Petitioner and entered into a Joint Stipulation of Facts admitting to professional misconduct and a violation of Pa.R.D.E. 217 and RPC 1.3, 1.4(a), 1.4(b) & 1.16(d).

The appropriateness of a disciplinary sanction is based on the nature and gravity of the misconduct and the aggravating and mitigating factors present. In re Anonymous No. 85 DB 97, 44 Pa. D. & C.4<sup>th</sup> 299 (1999). The question in the instant case is what is the appropriate sanction. The Pennsylvania Supreme Court has imposed public discipline for the unauthorized practice of law. In In re Anonymous No. 135 DB 94 and 38 DB 95, 33 Pa. D. & C.4<sup>th</sup> 481 (1996), an attorney was disbarred for the unauthorized practice of law where the attorney had an extensive history of prior discipline and where the unauthorized practice of law was marked by dishonesty. In In re Anonymous No. 123 DB 96, 41 Pa. D. & C.4<sup>th</sup> 290 (1998), an attorney was suspended for six months for the unauthorized practice of law where the attorney, with knowledge of his transfer to inactive status as well as a pending disciplinary hearing, continued handling a civil matter up to the day before that disciplinary hearing.

Comparing the facts of the above-cited cases with the facts of the instant case, the Board believes that a suspension is the appropriate sanction for Respondent because he has no

history of prior discipline and, while he was clearly non-responsive to his client, there is no evidence of direct dishonesty.

The type and length of suspension warranted is dependent upon the existence of any aggravating and mitigating factors. The Board finds that there are no aggravating circumstances in the instant case. There are, however, mitigating factors. Respondent cooperated by entering into a stipulation that includes an admission of misconduct. In addition, Respondent has made full restitution to his complaining client. Next, Respondent has now complied with Pa.R.D.E. 219, even though he has ceased practicing law (with the intention of not returning to the practice of law) and is currently working in a non-legal capacity. Finally, Respondent presented the report of his treating psychiatrist, Dr. [C], who opined that Respondent had a history of depression, that he was suffering from a form of depression at the time of his misconduct, and that his depression was a causative factor in his misconduct. Dr. [C] further stated that Respondent is currently on medication and is still under treatment. Petitioner stipulated to this report and the Board believes that Respondent has satisfied the Pennsylvania Supreme Court's standard for consideration of mental illness as a mitigating factor. See Office of Disciplinary Counsel v. Braun, 520 Pa. 157, 553 A.2d 894 (1989).

The Pennsylvania Supreme Court has imposed stayed suspensions and conditional probation under similar situations. In the matter at No. 18 DB 1999, (Pa. Dec. 14, 2000), an attorney with no history of prior discipline commingled and converted client funds over a two-year period of time. During the time of the misconduct, the attorney suffered from cocaine and alcohol addiction. The Court imposed a four-year stayed suspension and a four-year probation

with sobriety and practice monitors. In the matter at No. 28 DB 1993, (Pa. Sept. 9, 1996) an attorney with no history of prior discipline likewise commingled and converted client funds over a three-year period of time. During the time of the misconduct, the attorney suffered from major depression and pathological grieving over the death of a parent. The Court imposed a one-year stayed suspension and a two-year probation with financial and practice monitor.

Comparing the facts of the above-cited cases with the facts of the instant case, the Board believes that a stayed suspension and probation, with conditions, is warranted. Respondent's misconduct is not nearly as egregious and his mental health condition is not as severe as those of the attorneys in the above-cited cases.

For the above reasons, the Board recommends a one-year stayed suspension and a one-year period of probation with mental health and practice monitors.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Respondent be suspended for a period of one year, that the suspension be stayed in its entirety, and that Respondent be placed on probation for a period of one year with the following conditions:

- a. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel. Respondent shall cooperate fully with his practice monitor.
- b. The practice monitor shall do the following during the period of Respondent's probation:

1. Meet with the Respondent at least monthly and review all client files to ensure that proper and timely representation is being provided to all clients;
  2. Meet with the Respondent at least monthly and review all client files to ensure that proper and timely communication is being provided to all clients;
  3. File with the Executive Director & Secretary of the Board quarterly written reports that the above conditions have been met; and
  4. Immediately report to the Executive Director & Secretary of the Board any violation by the Respondent of the terms and conditions of probation.
- c. Respondent shall undergo any counseling or treatment, out-patient or in-patient, prescribed by a physician. Respondent shall select a mental health monitor subject to the approval of the Office of Disciplinary Counsel. Respondent shall provide physician's reports verifying the above counseling and treatment to the mental health monitor. Respondent shall furnish his mental health monitor with his treating physician's name, address, and telephone. Respondent shall cooperate fully with his mental health monitor.
- d. The mental health monitor shall do the following during the period of Respondent's probation:
1. Meet with the Respondent at least monthly and review all physician's reports to ensure that Respondent is meeting the counseling and treatment conditions referenced in (c) above;
  2. Meet with Respondent at least twice a month, and maintain weekly telephone contact with Respondent;
  3. Assist Respondent in arranging any necessary professional mental health treatment;
  4. File with the Executive Director & Secretary of the Board quarterly written reports that the conditions referenced in (c) above have been met; and

5. Immediately report to the Executive Director & 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 be paid by Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

By: \_\_\_\_\_  
John E. Iole, Board Chair

Date: October 11, 2002

Board Members Morris, Peck, and Sheerer recused themselves in this adjudication.

Board Members Curran and Wright did not participate in this adjudication.

PER CURIAM:

AND NOW, this 12<sup>th</sup> day of December, 2002, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 11, 2002, it is hereby

ORDERED that [Respondent] be and he is SUSPENDED from the practice of law in the Commonwealth of Pennsylvania for a period of one year, that the suspension be stayed in its entirety and Respondent be placed on probation for a period of one year subject to the following conditions:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel. Respondent shall cooperate fully with his practice monitor.
2. The practice monitor shall do the following during the period of Respondent's probation:
  - a. Meet with the Respondent at least monthly and review all client files to ensure that proper and timely representation is being provided to all clients;
  - b. Meet with the Respondent at least monthly and review all client files to ensure that proper and timely communication is being provided to all clients;
  - c. File with the Executive Director & Secretary of the Board quarterly written reports that the above conditions have been met; and
  - d. Immediately report to the Executive Director & Secretary of the Board any violation by the Respondent of the terms and conditions of probation.
3. Respondent shall undergo any counseling or treatment, out-patient or in-patient, prescribed by a physician. Respondent shall select a mental health monitor subject to the approval of the Office of Disciplinary Counsel. Respondent shall provide physician's reports verifying the above counseling and treatment to the mental health monitor. Respondent shall furnish his mental health monitor with his treating physician's name, address, and telephone. Respondent shall cooperate fully with his mental health monitor.
4. The mental health monitor shall do the following during the period of Respondent's probation:



- a. Meet with the Respondent at least monthly and review all physician's reports to ensure that Respondent is meeting the counseling and treatment conditions referenced in (c) above;
- b. Meet with the Respondent at least twice a month, and maintain weekly telephone contact with Respondent.
- c. Assist Respondent in arranging any necessary professional mental health treatment;
- d. File with the Executive Director & Secretary of the Board quarterly written reports that the conditions referenced in (c) above have been met; and
- e. Immediately report to the Executive Director & 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.