

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2423 Disciplinary Docket No. 3
: :
Petitioner : No. 9 DB 2017
: :
v. : Attorney Registration No. 307526
: :
FREDERICK SETH LOWENBERG, : (Philadelphia)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 26th day of December, 2017, upon consideration of the Report and Recommendations of the Disciplinary Board, Frederick Seth Lowenberg is suspended from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy, John A. Vaskov, Esquire
As Of 12/26/2017

Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 9 DB 2017
Petitioner	:	
	:	
v.	:	Attorney Registration No. 307526
	:	
FREDERICK SETH LOWENBERG	:	
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 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 Petition for Discipline (“Petition”) filed on January 23, 2017, Office of Disciplinary Counsel, Petitioner, charged Frederick Seth Lowenberg, Respondent, with violations of the Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) arising out of Respondent’s failure to appear for the imposition of an informal admonition. Respondent failed to file an Answer to Petition.

A prehearing conference was held on March 21, 2017. Respondent failed to appear. A disciplinary hearing was held on April 21, 2017, before a District I Hearing

Committee comprised of Chair Gregory F. Cirillo, Esquire, and Members Stephanie J. Sprengle, Esquire, and Charles J. Schleifer, Esquire. Petitioner introduced into evidence Exhibits ODC-1 through ODC-46 and P-1 through P-7. Petitioner did not present any witnesses. Respondent failed to appear.

Following the submission of Petitioner's brief, the Hearing Committee filed a Report on July 17, 2017, concluding that Respondent violated the rules as charged in the Petition, and recommending that he be suspended for a period of one year and one day.

The parties did not file briefs on exception.

The Board adjudicated this matter at the meeting on October 19, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, Harrisburg, PA 17106-2625, is invested pursuant to Pa.R.D.E. 207, with the power and 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 said Rules of Disciplinary Enforcement.

2. Respondent, Frederick Seth Lowenberg, was admitted to practice law in the Commonwealth in 2009. He maintains an office for the practice of law at 1518 Walnut Street, Suite 1100, Philadelphia, PA 19102. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior record of professional discipline in Pennsylvania.

4. On September 7, 2016, Office of Disciplinary Counsel hand-delivered to Respondent a DB-7 Request for Statement of Respondent's Position concerning a complaint filed against Respondent by William H. Bowens. ODC-2.

5. Respondent represented Mr. Bowens in an appeal of a matter before the Pennsylvania Department of Human Services. The conduct complained of was Respondent's failure to file a timely appeal and request a hearing in the matter and his failure to refund \$500 after Respondent failed to provide legal services to Mr. Bowens. ODC-2.

6. Respondent failed to timely answer the DB-7 Request, as required by Pa.R.D.E. 203(b)(7), and ignored Office of Disciplinary Counsel's October 7, 2016 reminder letter. ODC-3.

7. In accordance with Pa.R.D.E. 208(a)(2) and (3), a reviewing Hearing Committee Member determined that Respondent's misconduct warranted an Informal Admonition with the condition that Respondent refund \$500 to Mr. Bowens within thirty days of Respondent's receipt of the Informal Admonition. ODC-4.

8. By certified letter dated November 17, 2016, Chief Disciplinary Counsel Paul J. Killion informed Respondent that:

a. A reviewing Member of a Hearing Committee had determined that Respondent should receive an Informal Admonition for Respondent's violation of RPC 1.1, RPC 1.3, RPC 1.16(d), RPC 8.4(d), and Pa.R.D.E. 203(b)(7);

b. As a condition of the Informal Admonition, Respondent must refund the \$500 fee to Mr. Bowens and provide written proof to Office of Disciplinary Counsel of having made the \$500 refund;

c. Pursuant to Pa.R.D.E. 208(a)(6) and D. Bd. Rule §87.54, Respondent had the right to demand in writing, within 20 days, that a formal proceeding be instituted against him before a Hearing Committee, and in the event of such demand, Respondent need not appear for the administration of the Informal Admonition and the matter would be disposed of in the same manner as any other formal hearing; and

d. Pursuant to D. Bd. Rule §87.52, Respondent's neglect or refusal to appear for an informal admonition without good cause would constitute an independent act of professional misconduct and automatically result in formal proceedings relating to such act of misconduct and the grievance upon which such informal admonition was to relate.

ODC – 4.

9. Respondent received Chief Disciplinary Counsel's certified letter.

ODC-5.

10. Respondent did not demand that a formal proceeding be instituted against him with regard to the allegations giving rise to the imposition of the Informal Admonition. ODC-5.

11. As a result of Respondent's failure to demand the institution of formal proceedings against him, Respondent is conclusively deemed to have violated the Rules

of Professional Conduct and Rules of Disciplinary Enforcement set forth in Chief Disciplinary Counsel's November 17, 2016 letter.

12. By letter dated December 2, 2016, Chief Disciplinary Counsel informed Respondent that:

a. Respondent had previously been advised of a complaint against him alleging violations of the Rules of Professional Conduct in which it was determined that Respondent should receive an Informal Admonition; and

b. Chief Disciplinary Counsel had scheduled Respondent's Informal Admonition for Tuesday, December 13, 2016, at 9:45 a.m., at the District I Office of Disciplinary Counsel.

ODC-5.

13. Respondent received Chief Disciplinary Counsel's letter by hand-delivery. N.T. 9.

14. Respondent failed to appear for his Informal Admonition on December 13, 2016, or satisfy the condition of the Informal Admonition.

15. By letter dated December 15, 2016, from Chief Disciplinary Counsel to Respondent, which was hand-delivered to Respondent on December 20, 2016, Chief Disciplinary Counsel requested that Respondent advise him, within ten days of Respondent's receipt of the letter, whether Respondent had "good cause" for his failure to appear for his Informal Admonition on December 13, 2016. ODC-6.

16. Respondent signed a copy of Chief Disciplinary Counsel's December 15, 2016 letter, thereby acknowledging receipt of the letter. ODC-7.

17. Respondent did not answer Chief Disciplinary Counsel's letter or provide good cause for his failure to appear for his Informal Admonition.

18. On January 25, 2017, Petitioner personally served the Petition, Notice to Plead, and cover letter on Respondent. Both the cover letter and Notice to Plead stated that pursuant to Pa.R.D.E. 203(b)(3), Respondent had twenty days to file an Answer with the Disciplinary Board and warned Respondent that any factual allegation that was not timely answered was deemed admitted. ODC-9.

19. Respondent failed to answer the Petition.

20. By notice to Respondent dated March 1, 2017, sent via email and first class mail, the Disciplinary Board advised Respondent of the dates of his prehearing conference and disciplinary hearing. ODC-45.

21. By letter to Respondent dated March 15, 2017, sent to Respondent's attorney registration office address, Disciplinary Counsel enclosed a copy of Petitioner's exhibits for the disciplinary hearing, and requested that Respondent provide Disciplinary Counsel with a copy of his exhibits and witness list prior to the scheduled March 21, 2017 prehearing conference. ODC-46.

22. Respondent failed to respond to the March 15, 2017 letter.

23. Respondent failed to appear at the March 21, 2017 prehearing conference. N.T. PHC 3-5.

24. Respondent failed to appear at the April 21, 2017 disciplinary hearing. N.T. 5-12.

25. Respondent did not submit a post-hearing brief to the Hearing Committee or file exceptions to the Hearing Committee's Report and recommendation.

III. CONCLUSIONS OF LAW

As a result of Respondent's failure to demand the institution of a formal proceeding concerning the determination that he receive an Informal Admonition for his misconduct in the Bowens matter, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

3. 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 advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

4. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

5. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules, §87.7(b) for a statement of the respondent- attorney's position, shall be grounds for discipline.

As a result of his failure to appear for the Informal Admonition, Respondent

violated the following Rule of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement:

1. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

2. Pa.R.D.E. 203(b)(2) – Willful failure to appear before the Supreme Court, the Board or Disciplinary Counsel for censure, public or private reprimand or informal admonition, shall be grounds for discipline.

IV. DISCUSSION

Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. ***Office of Disciplinary Counsel v. Robert Surrick***, 749 A.2d 441, 444 (Pa. 2000). Petitioner met its burden by virtue of the facts pled in the Petition for Discipline, which are deemed admitted pursuant to Pa.R.D.E. 208(b)(3), due to Respondent's failure to file an Answer to Petition. The related exhibits fully support the conclusion that Respondent committed ethical misconduct.

In connection with the disciplinary complaint filed against Respondent by William Bowens, Petitioner advised Respondent by personal delivery of a DB-7 Request for Statement of Respondent's Position dated September 7, 2016, that Petitioner had received a complaint. The DB-7 letter detailed the nature of the complaint involving allegations of neglect, referenced potential rule violations, and requested a response within 30 days.

Respondent ignored Petitioner's efforts to investigate this matter. Despite being served with the DB-7 letter and receiving Petitioner's supplemental letter of October

7, 2016, which advised Respondent that his failure to respond to the allegations or provide good cause by October 17, 2016, would constitute an independent basis for discipline, Respondent did not respond, in violation of Pa.R.D.E. 203(b)(7).

Thereafter, Respondent continued to mishandle his involvement in the disciplinary process. On November 17, 2016, Respondent received a letter from Chief Disciplinary Counsel, informing him that it was determined that Respondent receive an informal admonition for his misconduct in the Bowens matter. The misconduct resulted from Respondent's failure to file a timely appeal on behalf of his client in a case involving the Department of Human Services. The November 17, 2016 letter informed Respondent that his misconduct violated Rules of Professional Conduct 1.1, 1.3, 1.16(d), 8.4(d) and Pa.R.D.E. 203(b)(7). Further, Chief Disciplinary Counsel informed Respondent that as a condition of the informal admonition, he must provide proof to Office of Disciplinary Counsel that he refunded \$500.00 to Mr. Bowens. Chief Disciplinary Counsel explicitly stated that Respondent had the right to request formal charges in lieu of receiving the informal admonition, and if Respondent wanted to proceed to a formal hearing, he must contact the Secretary of the Disciplinary Board within twenty days. The November 17, 2016 letter was sent by certified and first class mail. Respondent did not request formal proceedings.

By Notice to Appear dated December 2, 2016, served personally on Respondent, Chief Disciplinary Counsel advised Respondent that his Informal Admonition was scheduled for December 13, 2016, at 9:45 a.m. in Office of Disciplinary Counsel's District I office. Respondent failed to appear for the informal admonition, failed to provide proof of compliance with the condition attached thereto and failed to show good cause for his nonappearance.

Respondent's failure to appear and failure to communicate with Office of Disciplinary Counsel caused Petitioner to file the Petition against him. Consistent with his earlier lack of response and despite notice, Respondent failed to answer the Petition and failed to attend the prehearing conference and the disciplinary hearing.

On many occasions, the Board and the Supreme Court have considered the question of an attorney's neglect of a client matter followed by failure to appear at the informal admonition and failure to appear at the subsequent disciplinary hearing. After considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, ***Office of Disciplinary Counsel v. Gwendolyn Harmon***, 72 Pa. D. & C. 4th 115 (2004), the Board concludes that a suspension for one year and one day is appropriate discipline.

When evaluating professional discipline, each case must be decided on its own unique facts and circumstance, bearing in mind that the primary purpose of the lawyer disciplinary system in Pennsylvania is to protect the public, preserve the integrity of the legal system and deter unethical conduct. ***Office of Disciplinary Counsel v. Robert Lucarini***, 427 A.2d 186 (Pa. 1983); ***Office of Disciplinary Counsel v. Akim Czmus***, 889 A.2d 117 (Pa. 2005).

The evidence of record leaves no doubt that Respondent was aware of the disciplinary proceedings and Petitioner's efforts to contact him. He received notice at each stage of the proceedings by either personal delivery or certified and/or first class mail to his registered attorney address. Respondent had the opportunity to resolve his misconduct by appearing for an informal admonition and reimbursing his client for unearned fees. Instead, Respondent ignored the harm he inflicted on his client and ignored the disciplinary process. In so doing, Respondent seriously aggravated the

gravity of his situation, causing Petitioner to file formal charges against him. Respondent's failure to respond to the Petition and participate in the formal hearing process exhibited a complete lack of respect for his professional duties and for the disciplinary process in general. Respondent made no effort to address his disciplinary issues, either at the informal stage or the formal stage, and provided no evidence that he values his privilege to practice law. Respondent forfeited any meaningful opportunity to make his client whole and to accept responsibility and express remorse. While the evidence of record concerning mitigation is sparse because Respondent never mounted a defense to the charges, we observe that he has no history of professional discipline. On the whole, we do not find this factor particularly persuasive, as Respondent was admitted to the bar in 2009 and by 2015 had engaged in misconduct, a mere six years later.

Prior similar cases have resulted in suspensions for one year and one day where attorneys who had no history of discipline, failed to appear for an informal admonition and subsequently failed to respond to the Petition and participate in the disciplinary process. See, **Office of Disciplinary Counsel v. John Klinger Mort**, 110 DB 2015 (D. Bd. Rpt. 5/10/2016) (S. Ct. Order 6/30/2016); **Office of Disciplinary Counsel v. Michael E. Groulx**, 206 DB 2014 (D. Bd. Rpt. 9/25/2015) (S. Ct. Order 11/19/2015); **Office of Disciplinary Counsel v. Anne Michelle Campbell**, 81 DB 2009 (D. Bd. Rpt. 5/10/2010) (S. Ct. Order 7/28/2010).

A recent case of an attorney who failed to appear for an informal admonition and failed to participate in the disciplinary process resulted in a suspension for two years. **Office of Disciplinary Counsel v. Matthew I. Cohen**. No. 165 DB 2015 (D. Bd. Rpt. 8/22/2016) (S. Ct. Order 10/20/2016). Therein, the Supreme Court, after considering the

Board's recommendation for disbarment, imposed a suspension on Cohen, who failed to appear for his twice-scheduled Informal Admonition, answer the Petition, and attend the prehearing conference and disciplinary hearing.

We also note the matter of *Office of Disciplinary Counsel v. Joseph A. Rizzo*, No. 85 DB 2014 (D. Bd. Rpt. 7/20/2015) (S. Ct. Order 9/21/2015), wherein the Supreme Court disbarred Rizzo after he violated the Rules of Professional Conduct while on administrative suspension, failed to appear for an informal admonition, failed to answer the Petition, failed to participate in the disciplinary process, and failed to provide a current attorney registration address, leaving his whereabouts unknown.

The attorneys in the foregoing cases engaged in a very similar core pattern of misconduct, whereby the attorney escalated a minor disciplinary infraction for which the attorney was to receive a low level of private discipline, to a substantial disciplinary violation as a result of the attorney's failure to participate in the disciplinary process. The discipline imposed by the Supreme Court in these cases was not identical, however, and ranged from a one year and one day suspension to disbarment. We conclude from our analysis of the cases that the Court reserved the more severe discipline for those attorneys who engaged in aggravating conduct in addition to the basic pattern of non-participation, such as in *Cohen*, where the attorney failed to appear on two occasions for his informal admonition, and in *Rizzo*, where the attorney represented his client while on administrative suspension for failure to comply with Continuing Legal Education requirements and failed to provide his current address to the disciplinary authorities.

Upon this record, the Board concludes that the misconduct in the instant matter is most similar to the attorneys in the *Mort*, *Groulx*, and *Campbell* matters, and we recommend a suspension for one year and one day. This sanction will require

Respondent to request reinstatement and prove his fitness to practice law, thereby protecting the public, the courts and the profession.


V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Frederick Seth Lowenberg, be Suspended from the practice of law in this Commonwealth for a period of one year and one day.

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: 
David E. Schwager, Chair

Date: 11/1/2017