

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1078, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 1 DB 2005
v.	:	
	:	Attorney Registration No. 60204
JEFFREY S. SMITH	:	
Respondent	:	(Northampton 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 January 11, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, Jeffrey S. Smith. The Petition charged Respondent with the unauthorized practice of law while on inactive status. Respondent filed an Answer to Petition on February 10, 2005.

A disciplinary hearing was held on April 11, 2005, before a District II Hearing Committee comprised of Chair Robert F. Morris, Esquire, and Members Mark A. Kearney, Esquire, and Denis Aloysius Gray, Esquire. Respondent failed to appear.

The Hearing Committee filed a Report on May 26, 2005, finding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline, and recommending that Respondent be suspended for two years.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 16, 2005.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg Pa 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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, Jeffrey S. Smith, was born in 1964 and was admitted to practice law in the Commonwealth in 1990. Respondent's registered address is 2650

Anthony Court, Easton PA 18045.

3. Respondent is a formerly admitted attorney, having been transferred to inactive status by the Supreme Court of Pennsylvania by Order dated March 17, 2000, pursuant to Rule 111(b), Pa.R.C.L.E.

4. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

5. Respondent has no prior history of discipline.

6. By letter to Respondent dated March 17, 2000, Elaine M. Bixler, Secretary to the Disciplinary Board of the Supreme Court of Pennsylvania:

a. provided Respondent with a copy of a certified copy of the March 17, 2000 Order of the Supreme Court;

b. provided Respondent with a letter prepared by the Continuing Legal Education Board;

c. advised Respondent that he was required to comply with Rule 217, Pa.R.D.E. and §§91.91-91.99 of the Disciplinary Rules, and provided him Forms DB-23(i) and DB-24(i) (Litigation and Non-Litigation Notice of Disbarment, Suspension or Transfer to Inactive Status), along with Form DB-25(i), Statement of Compliance; and

d. advised Respondent that in order to resume active status he would be required to comply with Pa.R.C.L.E. before a request for reinstatement of the Disciplinary Board would be considered.

7. Ms. Bixler's letter was received by Respondent.

8. On July 28, 2003, Respondent filed or caused to be filed an Answer, New Matter and Counterclaim in the matter of Chase Manhattan Mortgage Corporation v. Suzanne M. Smith, in the Court of Common Pleas of Northampton County.

9. Respondent was not a party to the matter. The only named defendant was Suzanne Smith.

10. Respondent signed and endorsed the Answer, New Matter and Counterclaim as Jeffrey S. Smith, Esquire, 2650 Anthony Court, Easton PA 18045.

11. On September 8, 2003, Respondent filed or caused to be filed an Amended Counterclaim in the Chase v. Smith matter.

12. Respondent signed and endorsed the Amended Counterclaim as Jeffrey S. Smith, Esquire.

13. On October 30, 2003, Judge William F. Moran granted the preliminary objections filed by Chase and dismissed the defendant's counterclaim.

14. By letter to Respondent dated November 6, 2003, Mary D. Grenen, Esquire, counsel for Chase, inter alia;

a. advised that she had been informed that Respondent was no longer licensed to practice law in the Commonwealth of Pennsylvania; and

b. demanded Respondent immediately withdraw all pleadings filed in the matter on behalf of Suzanne Smith.

15. In an undated response to Ms. Grenen's letter, Respondent advised Ms.

Grenen that:

- a. he had no intention of withdrawing from the case;
- b. he intended to challenge the status of his license; and
- c. a party is always entitled to represent his/her own interests.

16. On November 18, 2003:

- a. Respondent caused a Notice of Appeal from the Order dated October 30, 2003 to be filed in the Superior Court; and
- b. Respondent signed the Notice as Jeffrey S. Smith, Esquire.

17. On November 28, 2003, Ms. Grenen:

- a. filed with the Court of Common Pleas of Northampton County a Motion to Strike Defendant's Answer, New Matter and Counterclaim;
- b. apprised the Court that subsequent to the filing of defendant's pleading she had discovered that Respondent was on inactive status; and
- c. requested Respondent's Answer, New Matter and Counterclaim filed on behalf of Suzanne Smith be stricken as invalid based upon the fact that Respondent had engaged in the unauthorized practice of law.

18. By letter dated December 9, 2003, Ms. Grenen informed the Prothonotary of the Superior Court of Pennsylvania that counsel for appellant Suzanne Smith did not have a current license to practice law in the Commonwealth of Pennsylvania.

19. By DB-7 letter dated December 11, 2003, Office of Disciplinary Counsel notified Respondent that his conduct in the Chase v. Smith matter may have violated the

Rules of Professional Conduct.

20. On December 15, 2003, the Superior Court entered a per curiam order removing Respondent as counsel for appellant in the appeal based on Respondent's inactive status.

21. On December 17, 2003, Respondent:

- a. caused to be filed an Answer to the Motion to Strike;
- b. signed the pleading as Jeffrey S. Smith, Esquire; and
- c. filed with the Court Respondent's Brief in Opposition to Petitioner's

Motion to Strike.

22. Despite having been removed as counsel by the Superior Court due to his inactive status, Respondent continued to file pleadings and other documents in the Chase v. Smith matter.

23. On January 5, 2004, Respondent caused to be filed Preliminary Objections in the Chase v. Smith matter.

24. By Order dated April 6, 2004, Judge Moran granted Chase's Motion to Strike and decreed that defendant Suzanne Smith's Answer, New Matter and Counterclaim was stricken from the record as invalid.

25. By letter dated April 14, 2004, Respondent advised Office of Disciplinary Counsel, inter alia, that he had "no intention to cooperate in any investigation that is being conducted to demonstrate [his] guilt."

26. On April 23, 2004, Respondent caused another Answer, New Matter and Amended Counterclaim to be filed and signed the pleading as Jeffrey S. Smith, Esquire, and Suzanne Smith.

27. By Order dated August 31, 2004, Judge Moran again sustained Chase's preliminary objections and ordered Respondent's April 23, 2004 pleading to be stricken.

28. On September 21, 2004, Respondent filed a Notice of Appeal with the Superior Court on behalf of Suzanne Smith from the Order entered August 31, 2004 and signed the Notice as Jeffrey S. Smith.

29. To date, Respondent has not been reinstated to active status in the Commonwealth of Pennsylvania.

30. Respondent was provided notice that a prehearing conference and disciplinary hearing in this matter had been scheduled for March 10, 2005, and April 11, 2005, respectively.

31. Respondent did not attend the pre-hearing conference or the disciplinary hearing.

### III. CONCLUSIONS OF LAW

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

1. RPC 1.16(a)(1) – A lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if the

representation will result in violation of the rules of professional conduct or other law.

2. RPC 5.5(b) – A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

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

4. Pa.R.D.E. 217(d) – A formerly admitted attorney transferred to inactive status shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature.

5. Pa.R.D.E. 217(j) – A formerly admitted attorney is precluded from engaging in law-related activities except in accordance with the detailed requirements of the rules, and is further precluded from representing himself or herself as a lawyer or person of similar status.

#### IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of his unauthorized practice of law while on inactive status in violation of an Order of the Supreme Court of Pennsylvania. The Petition for Discipline was served on Respondent on January 21, 2005. Respondent did not file an Answer to the Petition. Instead, Respondent submitted correspondence received by the Office of the Secretary of the Disciplinary Board on February 10, 2005, stating, inter alia, “I



have absolutely no interest in voluntarily granting jurisdiction to your body. As such, until jurisdiction or standing is established, I have no intention or obligation to respond.” The allegations of the Petition for Discipline are deemed admitted. Pa.R.D.E. 208(b).

The unchallenged allegations in the Petition for Discipline as well as the exhibits admitted at the disciplinary hearing by Petitioner establish by clear and satisfactory evidence that Respondent engaged in the unauthorized practice of law after he had been placed on inactive status. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000).

Respondent, by virtue of being involuntarily transferred to inactive status for failure to comply with his CLE requirements, was not authorized to practice law in the Commonwealth after April 16, 2000. Notwithstanding, Respondent held himself out as an attorney in good standing by representing and filing pleadings on behalf of the defendant in the Chase v. Smith matter. The record is clear that Respondent received notice of his transfer to inactive status and his inability to practice law by letter from the Secretary to the Disciplinary Board dated March 17, 2000. Respondent continued to represent the defendant despite notification by opposing counsel, Office of Disciplinary Counsel and the Superior Court of Pennsylvania that his actions were improper.

By letter of November 6, 2003, Mary Grenen, Esquire, opposing counsel, demanded that Respondent immediately withdraw from representation because he was not currently licensed in Pennsylvania. By letter of December 11, 2003, Office of Disciplinary Counsel notified Respondent that his representation of Ms. Smith might be in violation of

the Rules of Professional Conduct. On December 15, 2003, the Superior Court of Pennsylvania ordered that Respondent be removed as counsel for Ms. Smith based on his inactive status. Each time after receiving such notification, Respondent defiantly and contemptuously continued to represent Ms. Smith. Within a week of the Superior Court order, Respondent filed two additional documents of record in the Court of Common Pleas.

Respondent's misconduct demonstrates a knowing defiance of a Supreme Court order and warrants a suspension of two years. In the case of In re Kenneth Charles Jones, 62 Pa. D. & C. 4<sup>th</sup> 547 (2001), the respondent was on inactive status for failure to pay his annual attorney registration fee. For a period of close to a year and a half, he continued to practice law by representing numerous clients. Respondent was also charged with lack of communication and lack of competence regarding his representation in a personal injury matter. He had a history of prior discipline. The Court ordered a suspension of two years. In a more recent matter, In re John D. Enright, 890 Disciplinary Docket No. 3 (Pa. March 15, 2004), the Court imposed a one year and one day suspension on an attorney who continued to practice law following his transfer to inactive status. This attorney failed to appear at his disciplinary hearing or otherwise participate in the process. This case is very similar to the instant matter; however, the Board is persuaded that Respondent's continued insistence on defending the Chase v. Smith matter despite his knowledge that he was prohibited from practicing law and despite notification from the Superior Court to desist and withdraw from the legal matter renders this case more

egregious than the above cited case. Respondent demonstrated complete disdain for the judicial and disciplinary systems.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Jeffrey S. Smith, be suspended from the practice of law for a period of two years.

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: \_\_\_\_\_  
Donald E. Wright, Jr., Board Member

Date: September 30, 2005

Board Member Nordenberg did not participate.

PER CURIAM:

AND NOW, this 29<sup>th</sup> day of December, 2005, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 30, 2005, it is hereby

ORDERED that Jeffrey S. Smith be and he is suspended from the Bar of this Commonwealth for a period of two years, 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.