

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1161, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 92 DB 2005
v.	:	
	:	Attorney Registration No. 03892
ALLEN L. FEINGOLD	:	
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

On June 15, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against Allen L. Feingold, Respondent. The Petition charged Respondent with violations of Rules of Professional Conduct 8.4(b) and 8.4(d) arising out of allegations that Respondent assaulted a judge pro tem. Respondent filed an Answer on July 1, 2005.

A disciplinary hearing was held on September 13, 2005, before a District I Hearing Committee comprised of Chair Dennis T. Kelly, Esquire, and Members Douglas Evan Ress, Esquire, and Jerry M. Lehocky, Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 5, 2006, finding that Respondent engaged in professional misconduct and recommending that he be suspended for nine months with the condition that he successfully complete a court-approved anger management class.

Respondent filed a Brief on Exceptions and request for oral argument on January 25, 2006.

Petitioner filed a Brief Opposing Exceptions on February 7, 2006.

Oral argument was held on March 24, 2006 before a three member panel of the Disciplinary Board chaired by Francis X. O'Connor, Esquire, with Robert E.J. Curran, Esquire and Marc S. Raspanti, Esquire.

This matter was adjudicated by the Disciplinary Board at the meeting on March 29, 2006.

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, Pennsylvania, 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, Allen L. Feingold, was born in 1941 and was admitted to practice law in the Commonwealth in 1966. His office is located at 1515 Market Street, Suite 801, Philadelphia PA 19102. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a prior history of discipline. He was suspended for three years by Order of the Supreme Court dated March 3, 2006.

4. Respondent's suspension resulted from his violation of the Rules of Professional Conduct in three separate matters, and included assisting his client in conduct that he knew to be fraudulent and filing frivolous lawsuits.

5. In the instant matter, on August 3, 2004, Respondent appeared before Judge Pro Tem Herman P. Weinberg at the Dispute Resolution Center for a conference on behalf of the plaintiff in the case of Antonopoulos v. Johnson.

6. At the time of the incident, Mr. Weinberg was 74 years old and had been practicing law for 50 years.

7. Prior to the conference, defense counsel had provided a required pre-trial statement to the Court.

8. Respondent did not submit the required pre-trial statement to Mr. Weinberg prior to the conference.

9. Respondent submitted his pre-trial statement to Mr. Weinberg when the conference convened.

10. At the conclusion of the conference Mr. Weinberg recommended remanding the matter to arbitration.

11. When Mr. Weinberg issued his recommendation, Respondent became visibly upset.

12. Respondent raised his voice and indicated that he was not happy with the ruling.

13. Respondent stated that Mr. Weinberg was stupid and did not know what he was doing.

14. As testified to by Mr. Weinberg on this point, "Mr. Feingold got red in the face, very angry, started to call me names, you're stupid, how the hell can you send that to arbitration, my client has \$50,000 of lost earnings, you're an asshole, why the hell are you doing that and so forth and so on." (N.T. p. 30)

15. Respondent told Mr. Weinberg that "he was an idiot and a moron and just because he didn't have his own practice, why was he ruining my practice.." (N.T. p. 139)

16. Mr. Weinberg picked up his file and left the settlement room in order to walk to the front desk and turn the file over to Frank Checkovage, Manager of the Center. Once Mr. Weinberg left the settlement room he refused to discuss the matter any further with Respondent.

17. According to Respondent, as he and Mr. Weinberg were walking up to the desk, the verbal battle continued.

18. A first physical scuffle then ensued between Respondent and Mr. Weinberg, about which there is disputed testimony.

19. Defense counsel in the underlying matter, Lee Eckell, Esquire, testified that voices were raised and Respondent got up close to Mr. Weinberg, at which point Mr. Weinberg turned to Mr. Checkovage and made a statement, "Frank, should I [Mr. Weinberg] wipe up the floor with him [Respondent]". (N.T. 112)

20. Mr. Eckell stated that after Respondent got close to Mr. Weinberg (so close that they were chest to chest) and continued the verbal barrage, Mr. Weinberg then pushed Respondent, after which Respondent went back at Mr. Weinberg.

21. Respondent's testimony is that at the point Mr. Weinberg pushed Respondent, Respondent came back at Mr. Weinberg. (N.T. 142)

22. Mr. Weinberg's testimony is that:

I then turned to leave with my briefcase in hand, and I got oh, about seven eight feet maybe from the door and Mr. Feingold came around in my face like two inches from me with his chest against mine cursing and

calling me names and whatever to the point where his spittle was almost in my face, although he's a little shorter than I am. I put my briefcase down and turned around and he bumped me, and I pushed him away...and I turned to pick up my briefcase and go out the door, and as I turned around, he [Respondent] jumped on my back and grabbed me. (N.T. 32-33)

23. Mr. Checkovage came from behind the desk and broke up the initial scuffle.

24. Respondent was then escorted out of the Center by Mr. Eckell, who tried to calm Respondent .

25. After being escorted out of the Center, Respondent reentered and, without provocation, attacked Mr. Weinberg and started choking him.

26. Mr. Checkovage testified that after he broke up the first fight, "Allen [Respondent] left, Herman [Mr. Weinberg] sat down, and within five minutes or less than that, Allen came back and attacked Herman and started choking him." (N.T. p. 74) "He [Respondent] went right to Herman and started choking him." (N.T. p. 77)

27. According to Mr. Eckell, as soon as he and Respondent left the room, Respondent turned around and reentered.

28. When Respondent came back into the Center, Mr. Weinberg did not raise a hand or make any movements that would have intimidated Respondent.

29. Respondent claims that when he re-entered the Center, Mr. Weinberg turned around and said "you pushed me, you started, you caused the fight." (N.T. 144)

30. None of the other witnesses heard Mr. Weinberg make any statements to Respondent.

31. Respondent admitted that he tried to hit Mr. Weinberg during the second altercation, but Mr. Checkovage grabbed Respondent and prevented that from occurring.

32. Respondent stated "...I [Respondent] knew that I was going to have a problem, and I knew I was going to catch grief even though I hadn't touched him, so I figured hell, if I'm going to lose my license, at least let me get my one punch in" (N.T. pp145-146)

33. Mr. Checkovage physically lifted Respondent off of his feet and carried him out in order to break up the fight.

34. As a result of Respondent's assaults on Mr. Weinberg, Mr. Weinberg received a scratch on his neck, his eyeglass frames were bent, and the glasses cut into his nose on the right side, causing an injury to his nose alongside his eye.

35. As a result of the incident at the Center on August 3, 2004, President Judge Frederica Messiah-Jackson contacted Mr. Weinberg, Respondent and Mr. Checkovage, and requested written statements from each.

36. Respondent informed Judge Massiah-Jackson that after consulting with counsel he was advised not to put anything in writing.

37. Respondent did not offer any apology to the Court or Mr. Weinberg regarding the incident.

38. Respondent stated that what he did was unacceptable and wrong and never should have happened, but ..”myself and others shouldn’t be put in the positions we’ve been put in lately, and that goes in a lot of circumstances where there is nobody to write to, nobody to do anything with, no place to go for redress and nobody gives a d-a-m-n, etc.” (N.T. p. 147)

39. Respondent’s expression of remorse was not sincere or credible. He demonstrated a lack of willingness to take responsibility for his behavior and demonstrated a continuing frustration with the judicial system.

III. CONCLUSIONS OF LAW

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

1. RPC 8.4(b) – A lawyer shall not commit a criminal act that reflects adversely on the lawyer’s fitness as a lawyer.
2. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of a Petition for Discipline filed against Respondent charging him with professional misconduct arising out of his assault on a judge pro tem which occurred after Respondent received an unfavorable ruling.

The facts of record show that Respondent engaged in verbal name-calling and abuse to Mr. Weinberg, a judge pro tem, after Mr. Weinberg ruled that Respondent's case should go to arbitration. This was not the result Respondent wanted. The name-calling escalated into a physical altercation involving chest to chest contact and pushing, although there is some dispute as to who physically touched whom first in the face of the verbal barrage. After the first altercation was broken up by a third party, Respondent left the room, but almost immediately turned around and reentered the room. It is undisputed that Respondent came directly over to Mr. Weinberg and attacked him by choking him. Respondent admits he intended to punch Mr. Weinberg, as he knew he was already in trouble and wanted to get a punch in. Respondent's actions caused facial injuries to Mr. Weinberg.

Respondent's actions violate Rules of Professional Conduct 8.4(b) and 8.4(d). Neither a criminal prosecution nor a conviction is a prerequisite to a finding of a violation of 8.4(b), which prohibits an attorney from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as lawyer. In re Anonymous No. 116 DB 93, 31 Pa. D. & C. 4th 199 (1995). Respondent assaulted Mr. Weinberg by

choking him. This act of violence most certainly reflects adversely on Respondent's fitness to practice law. Rule 8.4(d) prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice. Respondent contends that he could not have violated this rule as the settlement conference was concluded and there was no evidence that the case was delayed by his actions. This position takes a simplistic view of the scope of Rule 8.4(d). Lawyers are officers of the court and need to be particularly mindful of their conduct in court. Respondent's actions took place in a judicial setting, and ultimately resulted in an investigation conducted by the President Judge. Justice cannot be effectively served if a judge is concerned that a lawyer will verbally and physically attack the judge when an adverse ruling is handed down. Respondent's conduct impeded the efficiency of the judicial system and prejudiced the administration of justice.

The Hearing Committee recommended a nine month period of suspension and an anger management course. Respondent contends that discipline of a private nature or public censure with probation is appropriate discipline, based on Respondent's 40 years of legal practice. The Board has carefully reviewed the record in this matter and considered the Hearing Committee recommendation and the arguments of the parties on this issue. We are persuaded that a suspension of two years is warranted. Simply put, Respondent's conduct was outrageous. He was aware of the consequences of his actions, and disregarding them, he went ahead and attacked Mr. Weinberg. Respondent's argument that his 40 years of practice should be considered as mitigation is equally outrageous; if anything, his years of practice should have taught him to temper his

reactions and act professionally. A similar matter involving an assistant district attorney who attempted to strike a judge and was physically abusive to opposing counsel resulted in a suspension of six months with anger management. Office of Disciplinary Counsel v. Brian J. Grady, 155 DB 1997, 521 Disciplinary Docket No. 3 (Pa. March 10, 2000). The differences between the cases are that Mr. Grady was young and inexperienced, and did not actually strike the judge. Herein, Respondent grabbed the judge pro tem and started choking him, and had to be physically lifted up and carried away. Another important difference is that Mr. Grady had no prior discipline. Herein, Respondent was suspended for three years by Order of the Court dated March 3, 2006.¹ Respondent's misconduct involved filing frivolous lawsuits, and assisting his client in conduct he knew to be fraudulent and criminal; namely, perjury at the client's deposition in a personal injury case. Respondent's demeanor in that matter was found by the Board to be contemptuous and lacking in remorse.

Respondent's actions and demeanor will not be cured by a nine month suspension, and the Board suspects anger management classes will be ineffective as well. Respondent is a danger to the public and the judicial system because of his short temper and unreasonable, erratic behavior. He is largely unrepentant and either does not care

¹ At the time the record was closed before the Hearing Committee in 2005, Respondent had no record of prior discipline, and the Committee specifically noted Respondent's clean history of discipline as a reason for recommending a nine month period of suspension.

how he acts, or is unaware of the professionally unacceptable nature of his actions. For these reasons the Board recommends that Respondent be suspended for a period of two years.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Allen L. Feingold , be suspended from the practice of law for a period of two years consecutive to the suspension imposed by the Supreme Court on March 3, 2006.

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: _____
Francis X. O'Connor, Member

Date: May 4, 2006

ORDER

PER CURIAM:

AND NOW, this 22nd day of August, 2006, upon consideration of the Report and recommendations of the Disciplinary Board dated May 4, 2006, the Petition for Review and Exceptions and Objections and response thereto, the request for oral argument is denied pursuant to Rule 208(e)(4), Pa.R.D.E., and it is hereby

ORDERED that Allen L. Feingold be and he is suspended from the Bar of this Commonwealth for a period of two years, to run consecutive to the suspension imposed by this Court on March 3, 2006, at No. 1093 Disciplinary Docket No. 3, 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 disbar respondent.