

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 126, Disciplinary Docket
Petitioner : No. 3 - Supreme Court
:
:
v. : No. 104 DB 1995 - Disciplinary
:
:
:
[ANONYMOUS], : Attorney Registration No. []
:
Respondent : ([] 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

The Supreme Court of Pennsylvania entered a Rule to Show Cause on June 19, 1995, directing Respondent, [], to show cause why he should not be placed on temporary suspension as a result of his conviction for recklessly endangering another person, terroristic

threats, and criminal mischief. On August 7, 1995, the Rule was discharged and the Court referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E. A Petition for Discipline was filed against Respondent by Petitioner on September 21, 1995. Petitioner alleged that Respondent's criminal conviction subjected him to disciplinary action. Respondent filed an Answer on November 9, 1995 and admitted the allegations in the Petition and alleged, by way of New Matter, that substantial mitigation existed involving Respondent's mental condition at the time of the incidents.

A hearing was held on February 29, 1996 before Hearing Committee [] comprised of Chairperson [] and Members [] and []. The Committee filed its Report on July 15, 1996 and recommended that Respondent be suspended for a period of one year and one day. No Briefs on Exception to the Report were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of August 14, 1996. By Order of February 21, 1997, the record was reopened for the purpose of including a Consent Order of

Discipline from North Carolina. This Order was then considered by the Disciplinary Board at the meeting of March 5, 1997.

II. FINDINGS OF FACT

The Board makes the following 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, [], was born in 1956, admitted to practice law in Pennsylvania on May 25, 1993, has resided at [], since January 1995, and is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent was admitted to practice law in New York in 1983 and in North Carolina in 1989. In 1993 Respondent moved to Pennsylvania and began employment with the [] law firm of [A].

4. On January 3, 1994, at approximately 12:45 a.m., Respondent fired seventeen bullets from a .22 caliber rifle into

the residence of [B], a partner in the firm of [A]. The residence was then occupied by [B] and his wife

[C]. Some of the bullets penetrated the exterior of the house and entered the living areas, including the area then occupied by the [B]. The bullets caused extensive damage to the interior and exterior walls of the residence, to numerous windows, interior furniture and other personal property.

5. On January 16 or 17, 1994, Respondent threw a brick with a note attached through a window of the offices of [A]. The note demanded that [D], the managing partner of the firm, terminate the employment of [B]. The note made reference to the shooting incident and threatened violence to [D] and [B] if the demand was not met.

6. In February 1994, Respondent was arrested relative to the shooting incident and charged with Aggravated Assault with a Weapon, Recklessly Endangering Another Person, and Criminal Mischief.

7. In February 1994, Respondent was arrested relative to the brick throwing incident and charged with Terroristic Threats and Criminal Mischief.

8. On April 14, 1994, Respondent, pursuant to a plea agreement, entered a plea of guilty to two counts of Recklessly Endangering Another Person and to one count of Criminal Mischief relative to the shooting incident.

9. By Order of April 14, 1994, the Court of Common Pleas of [] County found that Respondent appeared to be suffering from a mental illness, and he was committed to the [E] State Hospital for up to 90 days for a psychiatric evaluation, the results of which were directed to be submitted to the Court for use in determination of the sentence to be imposed.

10. On August 1, 1994, Respondent appeared before the Court and entered guilty pleas to Terroristic Threats and Criminal Mischief relative to the brick throwing incident.

11. Respondent was sentenced to 5 to 23 months and a fine. He was given credit for time served and paroled with conditions. He moved to North Carolina after he was sentenced.

12. Respondent presented evidence at the disciplinary hearing that he suffered from a psychiatric disability.

13. During Respondent's first year of law school in 1979, he experienced his first major depression. (N.T. 17) This was the first noted symptom of a psychiatric disorder and the diagnosis was major depression. (N.T. 17)

14. Respondent suffered from recurrent depression for more than seventeen years. (N.T. 17-18)

15. Throughout the period 1979 to 1992, Respondent was continuously employed in the legal profession or financial industry and performed his responsibilities in an exemplary fashion. (N.T. 20-21)

16. Respondent was under regular psychiatric care for his depression and was treated with anti-depressants. (N.T. 19, 20)

17. Respondent's first recognizable manic episode was in 1992 and was fueled by the pressures he encountered relative to handling litigation. (N.T. 18)

18. Respondent's manic episode in 1992 resulted in his being diagnosed as having bi-polar disorder. This was the first time he had been so diagnosed. (N.T. 18)

19. Respondent presently suffers from bi-polar disorder. (N.T. 15)

20. Bi-polar disorder is a major psychiatric disorder which has as a major characteristic periodic mood swings between depression, which may manifest itself as feelings of hopelessness, helplessness, poor concentration, and lack of motivation, and being manic or hypomanic, with delusions of grandeur. (N.T. 15-17)

21. Bi-polar disorder is a disease caused by a chemical imbalance. (N.T. 49) The etiology of this disease is unknown. (N.T. 23)

22. The drug Lithium had been the only drug used for the treatment of bi-polar disorder, but in recent years the drugs Tegretol and Depakote have been used individually or in conjunction with Lithium. (N.T. 22-23)

23. The use of Lithium must be carefully monitored with blood tests, as excessive levels can be toxic and too little is ineffective. (N.T. 23-24)

24. When Respondent was diagnosed in 1992 with bi-polar disorder he was treated with carefully monitored doses of Lithium. (N.T. 24) Respondent was fully compliant with his medications. (N.T. 25)

25. By January 1994, Respondent's condition decompensated to the point where he began to act in grossly inappropriate ways. (N.T. 26)

26. At the times of Respondent's criminal conduct in January 1994, his medication for bi-polar disorder was not adequately controlling the disorder, even though Respondent was taking his prescribed doses. (N.T. 26)

27. Lithium is an effective treatment in 80% of people with bi-polar disorder, but 20% of people with the disorder do not respond to lithium alone. (N.T. 26)

28. Respondent is in the 20% of non-responsive people.

(N.T. 26)

29. At the times of his criminal conduct Respondent's bi-polar condition diminished his judgment and his ability to control his impulses. (N.T. 50-51)

30. After his arrest on February 18, 1994, and his resulting hospitalization, Respondent's treatment for bi-polar disorder was modified to include the drugs Tegretol and Haldol, both taken in addition to Lithium. (N.T. 27)

31. Haldol is an anti-psychotic taken to control the paranoia and voices heard by Respondent during the acute phases of his bi-polar disorder. (N.T. 45)

32. Respondent will have an indefinite need for at least the combination of Lithium and Tegretol. (N.T. 33)

33. Dr. [F], a board certified psychiatrist, testified that Respondent's medication regimen as modified since his 1994 hospitalization had controlled the bi-polar disorder. (N.T. 29)

34. Since his 1994 hospitalization, Respondent has not suffered from mood swings as manifested by depressive or manic episodes, and he has functioned normally. (N.T. 30-31)

35. The medical prognosis is favorable for Respondent's ability to avoid mood swings caused by his bi-polar disorder as long as he remains faithful to his medication regimen and his psychiatric treatment continues. (N.T. 46)

36. Respondent's past history indicates that he has the ability to remain compliant to his medications.

37. After his release from the Hospital, Respondent sustained personal setbacks, including separation from his wife and children and loss of employment. He endured these crises without any effect on his mental stability. (N.T. 61-62)

38. On August 29, 1996, Respondent was suspended from the practice of law in North Carolina for five years. He received credit for one year already served, with the remaining four years

of the suspension stayed as long as Respondent complies with certain conditions.

39. These conditions state that a psychiatrist licensed in North Carolina assess Respondent's condition on a quarterly basis and conduct blood tests to determine whether Respondent is taking his medication, and Respondent has to submit a blood sample to an independent laboratory within twenty-four hours notice by the State Bar. A copy of the Consent Order of Discipline is attached hereto as Exhibit "A".

III. CONCLUSIONS OF LAW

Respondent's conviction for Recklessly Endangering Another Person, Criminal Mischief, and Terroristic Threats is a conviction under Rule 214(d), Pa.R.D.E.

Respondent's conviction constitutes a per se individual basis for discipline under Rule 203(b)(1), Pa.R.D.E.

IV. DISCUSSION

As a result of Respondent's conviction, there is no question presented as to whether misconduct occurred. Rule 214(e),

Pa.R.D.E., states that a certificate of conviction serves as conclusive evidence of the commission of a crime in any disciplinary proceedings commenced against an attorney based upon the conviction. Office of Disciplinary Counsel v. Costigan, 526 Pa. 16, 584 A.2d 296 (1990). Furthermore, Respondent's conviction of the serious crimes of recklessly endangering another person, terroristic threats, and criminal mischief establishes a per se basis for discipline pursuant to Rule 203(b)(1), Pa.R.D.E. Consequently, having established misconduct and the basis for the imposition of discipline, the dispositive issue before the Board is the measure of discipline to be imposed.

The primary purpose of the lawyer discipline system in Pennsylvania is the determination of the fitness of an attorney to continue the practice of law. Office of Disciplinary Counsel v. Stern, 515 Pa. 68, 526 1180 (1987). In this capacity, the system is designed to preserve the integrity of the courts and to protect the public. Office of Disciplinary Counsel v. Duffield, 537 Pa. 485, 644 A.2d 1186 (1994).

When a disciplinary proceeding is predicated on an attorney's conviction of a serious crime, the issue becomes whether

the attorney's character, as shown by his conduct, makes the attorney unfit to practice law from the standpoint of protecting the public and the courts. Office of Disciplinary Counsel v. Casety, 511 Pa. 177, 512 A.2d 607 (1986). Accordingly, it is necessary to scrutinize the events surrounding the conviction in order to ascertain the impact of the conviction on the measure of discipline.

Respondent's conduct was very serious. He went to the home of a partner in his law firm and indiscriminately fired seventeen rifle shots into the occupied residence. Respondent is extremely fortunate that no one was injured or killed. Respondent subsequently threw a brick through the window of his law firm. Once again, Respondent is lucky no injuries arose from his actions.

Respondent was sentenced to five to twenty-three months and given credit for time served. He was paroled with conditions.

Respondent presented evidence at the disciplinary hearing that he suffers from bi-polar disorder, which caused him to commit the crimes that led to his conviction. Respondent presented the expert testimony of Dr. [F], a certified psychiatrist. Dr. [F] examined Respondent in February 1996 for the purpose of testifying

at the hearing. Dr. [F] received records of Respondent's past psychiatric treatment prior to the evaluation. These records included the assessments from his admission to [E] State Hospital and medical records from [G] Medical Center, as well as medical records from Dr. [H], Respondent's current treating physician, and Dr. [I], a past treating physician. Dr. [F] testified that Respondent currently suffers from bi-polar disorder and suffered from this disease at the time of his criminal conduct. Dr. [F] described bi-polar disorder as a major psychiatric disorder whereby people suffer mood swings. At the one end of the "pole" is depression, and the person can experience all of the symptoms associated with depression, such as lack of motivation and energy, poor concentration, feelings of hopelessness and helplessness. At the other end of the "pole" is the manic or hypomanic state, whereby the person experiences delusions of grandeur and euphoria, which affects the person's judgment. When in this state, the person's thoughts race and he or she can become paranoid, as Respondent did. Dr. [F] explained that the disorder is cyclical and each cycle is unique to the person with the disorder. Some people experience monthly mood swings, while others experience daily or hourly swings.

Respondent's disorder first presented itself as a major depression when he was in law school. He went until 1992, some seventeen years, with the disorder manifesting itself as a recurrent major depression. The manic side of the pole was not recognized during this time frame. Respondent received regular psychiatric treatment for his depression in the form of a variety of anti-depressants. Respondent was compliant with his medications throughout this period and was able to function adequately in his professional and personal lives. Respondent experienced his first full manic episode when he was practicing law in North Carolina in 1992. He became grandiose, worked inordinate hours, spent his own money in a lawsuit he was litigating, and became increasingly paranoid. It was at this time that his bi-polar disorder was diagnosed by his treating physician.

Dr. [F] testified that the preferred method of treatment for bi-polar disorder is lithium; however, other medications have recently been found to be effective in combatting the mood swings.

Lithium was prescribed for Respondent, and he submitted to routine blood tests to confirm the fact that the lithium was within the therapeutic range necessary. Respondent was compliant with the medication regimen and the blood testing. Unfortunately,

Respondent is in a category of persons who do not respond to lithium alone. Dr. [F] testified that approximately 20% of persons with the disorder do not respond to lithium alone. This factor was not realized until Respondent was admitted to [E] State Hospital after the incidents in question. Respondent was then placed on a combination of medicines, including Tegretol and Haldol, to break the cycles of the mood swings. Respondent is currently taking lithium and Tegretol and is compliant with his medication schedule. There has been no indication of any return of Respondent's bipolar symptoms.

Dr. [F] testified that Respondent's future prognosis is favorable. Respondent can function as a normal human being and practice law without difficulty as long as he remains in psychiatric treatment and is compliant to that treatment. Dr. [F] recommended that Respondent remain in treatment, continue to see his psychiatrist at least monthly, remain compliant to his medications, and get his blood tested regularly to assure that the proper levels of drugs are being taken. Dr. [F] testified that there is no reason to believe that Respondent will not be compliant, as his past history bears out that he has been compliant, and he clearly recognizes and accepts the fact that he has an illness

and the illness led to his problems. (N.T. 32) Dr. [F] testified that Respondent is determined to stay in treatment and keep his illness under control, and if he has any indication that things are not going as they should, he would tell his doctor and receive some answer to his concern. (N.T. 33) Dr. [F] testified that bi-polar disorder is one of the most treatable of psychiatric conditions and people who respond well to their treatment, as Respondent has, go on to have a normal life. (N.T. 34)

Review of the evidence indicates that Respondent has met the standard for mitigation due to psychiatric illness as set forth in Office of Disciplinary Counsel v. Braun, 520 Pa. 157, 553 A.2d 894 (1989). This standard states that in order for a psychiatric condition to be considered in a disciplinary proceeding, the existence of a causal connection between the condition and the misconduct must be established. Respondent has the burden of proof in establishing such a connection and to meet this burden the testimony of an expert witness is necessary. The language of Braun does not clarify what type of information must be put forth by an expert to establish the connection. As case law developed since Braun was published, it became clear that the expert needed to state more than his or her mere opinion that a causal connection

existed. Information as to the specific nature of the disorder and how it related to the type of misconduct is important. The Board also needs a clear idea of the treatment received by Respondent and the effectiveness of such treatment. Respondent's case history pertaining to the disorder is invaluable as well. Finally, the Board looks to the expert's prognosis for Respondent's future. This includes testimony concerning the effect of Respondent's illness, on his ability to practice law and the likelihood that Respondent's treatment program will enable him or her to live a normal professional lifestyle. As well, the probability that the misconduct may occur again needs to be addressed.

In the instant case, the testimony of Dr. [F] unequivocally establishes that Respondent's bi-polar disorder was a causal factor in inducing his criminal behavior. Dr. [F] testified that Respondent was under the care of a psychiatrist and was taking his prescribed dosage of lithium and having regular blood tests; however, unbeknownst to the doctor, Respondent was in a percentile of people who do not respond to treatment with just lithium. Therefore, Respondent had no control over his behavior, as the medication was not properly combatting the symptoms of the disease. Respondent was in a full-blown manic stage when he fired the rifle

and threw the brick. This type of behavior is typical of a manic stage, as Respondent was experiencing delusions of grandeur and paranoia relative to his employment at his firm and his actions were taken against members of his firm and the firm itself. It was not until after this episode that it was discovered that Respondent did not respond to lithium alone. Respondent was then put on a combination of medications which have worked to break his manic-depressive cycles.

An important element in the Braun analysis is the expert's testimony relative to future actions. Dr. [F] was very clear that a bi-polar person can lead a perfectly normal life as long as that person sticks with his or her medication, blood tests, and psychiatric treatment. Dr. [F] stated that Respondent has demonstrated his willingness to do these things, and, furthermore, Respondent's past history demonstrates that he has always been compliant with his medicines. Respondent has suffered from psychiatric illness since law school, but has led a normal existence both professionally and personally during this time frame, but for the incidents of 1994. Dr. [F] believes there is nothing in Respondent's case history that suggests either his inability to follow the prescribed treatment or his lack of

cooperation relative to following the treatment plan. The testimony as to Respondent's favorable prognosis strengthens Respondent's case and persuades the Board that Respondent has met his burden of proving that he has a psychiatric disorder which caused his misconduct. Based on this testimony, as well as the testimony of the expert witness concerning the nature of Respondent's psychiatric condition and treatment, and the fact that the behavior exhibited by Respondent during the time frame of the misconduct is consistent with and a result of his bi-polar disorder, the Board concludes that the Braun standard has been satisfied. Respondent's bi-polar disorder is a mitigating factor to be considered in determining the appropriate disciplinary sanction.

It is the Board's recommendation that Respondent's conduct, in consideration of his psychiatric disorder, warrants a suspension from practice for one year and one day. The Board is duly cognizant that Respondent's disorder caused him to commit criminal acts; however, Respondent's disorder cannot serve to shield him from disciplinary sanction. Respondent's crimes were serious, and the potentially dangerous nature of his actions cannot be ignored. It is the position of the Board that Respondent must

be required to petition for reinstatement in order to prove that he has been compliant with his medications and blood testing and that his medication regimen has broken the cycles of his bi-polar disorder in that he has not experienced any new episodes of depression or mania. This particular sanction will help protect the public as well as Respondent. It is clear that Respondent himself does not want the circumstances of his conduct to occur in the future. This sanction will allow Respondent the time he needs to assure himself that his medication is working and he can lead a normal lifestyle. In addition, due to the strict conditions imposed by the North Carolina State Bar, Respondent's compliance with those conditions will be a factor to be considered in any subsequent reinstatement proceeding.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be Suspended from the practice of law for a period of one (1) year and one (1) 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: _____
Robert J. Kerns, Member

Date: April 1, 1997

Board Member Elliott dissented and would recommend Disbarment.

Board Members Sloane and Marroletti dissented and would recommend
six (6) month Suspension and two (2) years Probation.

Board Member Rudnitsky recused herself.

EXHIBIT AA@

BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA
STATE BAR

THE NORTH CAROLINA STATE BAR,)

Plaintiff,

vs.

[ANONYMOUS] , ATTORNEY

Defendant

CONSENT ORDER OF DISCIPLINE

This matter came on before the hearing committee of the Disciplinary Hearing Commission composed of [] Chair, [] and [] pursuant to Section .0114(h) of the Discipline and Disability Rules of the North Carolina State Bar. [DEFENDANT] has agreed to waive a formal hearing in the above referenced matter. All parties stipulate that these matters may be resolved by the undersigned Hearing Committee, and that Defendant further hereby waives his right to appeal this consent order or challenge in any way the sufficiency of the findings. The hearing committee therefore enters the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceedings under the authority granted it in Chapter 84 of the General Statutes of North Carolina and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. The Defendant, [], was admitted to the North Carolina State Bar in 1989, and was at all times referred to herein, an attorney at law licensed to practice law in North Carolina, subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During all of the periods referred to herein, the Defendant, who was also licensed in Pennsylvania, was actively engaged in the practice of law in [] Pennsylvania with the firm of [A] ("the [A] firm@).

4. Defendant was hired by the [A] firm in February 1993 as an associate. Early in the morning of January 3, 1994, Defendant drove to the home of [B], a partner in the [A] firm. At 12:46 a.m., Defendant removed a .22 caliber rifle from his car and fired 17 rounds of ammunition into the [B] home shattering several windows on the first floor and causing approximately \$5,000.00 in damages. At the time, [B] and his wife were asleep in their home but were not harmed.

5. On February 22, 1994, Defendant was charged with 2 counts of aggravated assault with a weapon (felony), two counts of recklessly endangering another person (misdemeanor) and one count of criminal mischief (misdemeanor).

6. On April 14, 1994, Defendant entered a plea agreement whereby the charges of aggravated assault with a weapon were dismissed in exchange for his plea of guilty to two misdemeanor counts of recklessly endangering another and one misdemeanor count of mischief. Sentencing was postponed so that Defendant could undergo a psychiatric evaluation to be used by the Court in sentencing.

7. On August 1, 1994, Defendant was sentenced as follows: for the first count of recklessly endangering another person, \$50.00 fine and not less than five months nor more than 23 months in prison; for the second count of recklessly endangering, another person, \$50.00 fine and not less than five months nor more than 23 months to run concurrent with the first count; and for the charge of criminal mischief, \$25.00 fine and not less than five months nor more than 23 months to run concurrent with the first count. In addition, Defendant was given credit for the 160 days served from February 22, 1994 to August 1, 1994 and was granted immediate parole.

8. Between 7:00 p.m. on January 16, 1994 and 6:30 a.m. on January 17, 1994, Defendant attached an anonymous note to a brick and threw it through the window of the offices of the [A] firm. The brick broke a window valued at approximately \$500.00.

9. The note demanded that [D], one of the [A] Firm partners, terminate [B-s] employment with the firm. The note also said that if [D] did not obey this demand, violence would come to both [D] and [B] similar to the January 3 incident in which shots were fired into [B-s] home.

10. On February 22, 1994, Defendant was charged with one count of making terroristic threats (misdemeanor) and one count of criminal mischief (misdemeanor) arising out of this incident.

11. On August 1, 1994, Defendant entered a plea of guilty to the terroristic threats charge and was sentenced to 23 months proration and a fine of \$100.00 plus costs. On the same

day, Defendant entered a plea of guilty to the criminal mischief charge and was sentenced to 90 days probation and costs.

12. On July 24, 1995, the Defendant's law license was suspended on an interim basis by the Chairman of the Disciplinary Hearing Commission pending the disposition of this disciplinary proceeding pursuant to .0115 of the Discipline and Disability Rules of the North Carolina State Bar. The Defendant's interim suspension became effective August 24, 1995 and he is presently suspended from the practice of law.

13. The Defendant was diagnosed as having a bi-polar disorder for the first time in 1994. The Respondent presently suffers from bi-polar disorder, which disorder is also referred to as manic-depressive illness or disorder.

14. There was uncontradicted psychiatric opinion evidence presented to the Committee in support of the proposed consent order by counsel for the North Carolina State Bar and counsel for the Defendant that, at the time of Defendant's criminal conduct in January of 1994, Defendant was following his treatment plan and was taking the medication as prescribed by his treating psychiatrist; however, the Defendant's medication for his disorder was not adequately controlling the disorder.

15. There was uncontradicted psychiatric opinion evidence presented to the Committee in support of the proposed consent order by counsel for the North Carolina State Bar and counsel for the Defendant that, the inadequacy of the medication taken by Defendant in 1994 to control his bi-polar disorder contributed to Defendant's criminal conduct.

16. After his arrest on February 18, 1994, and his resulting hospitalization, the Defendant's treatment for his bi-polar disorder was modified to include the drug Tegretol and the anti-psychotic Haldol, both taken in addition to Lithium.

17. The Haldol medication is taken to control the paranoia and voices the Defendant heard during the acute phases of his bi-polar disorder.

18. The Defendant will have an indefinite need for at least the Lithium and the Tegretol.

19. According to [F], M.D., a psychiatrist who recently treated the Defendant, the Defendant's medication regimen, as modified, has controlled his bi-polar disorder.

20. According to Dr. [F], the Defendant, since his 1994 hospitalizations, has not suffered from mood swings as manifested by depressive and/or manic episodes and he has functioned normally.

21. The medical prognosis is "favorable" for the Defendant's ability to avoid mood swings caused by his bi-polar condition as long as he remains on medication and in psychiatric

treatment for the disorder.

BASED UPON the foregoing Findings of Fact, the Committee enters the following:

CONCLUSION OF LAW

1. Defendant's convictions of the offenses of Reckless Endangerment, Criminal Mischief, and Terroristic Threats reflect adversely on his fitness to practice law in violation of Rule 1.2(b) of the North Carolina Rules of Professional Conduct.

Based on the foregoing FINDINGS OF FACT and CONCLUSION OF LAW and upon the consent of the parties, the Hearing Committee enters the following:

ORDER OF DISCIPLINE

1. The license of [Defendant] to practice law in the State of North Carolina is hereby suspended for five years. The Defendant shall receive credit for the one year his license was suspended pursuant to the Order of Interim Suspension. The remaining four years of suspension shall be stayed so long as the Defendant strictly complies with the following conditions:

(a) During the period of the stay, a board certified psychiatrist licensed to practice medicine in North Carolina who is approved by and continues to be approved by the North Carolina State Bar shall advise the Office of Counsel of the North Carolina State Bar, on at least a quarterly basis, whether: (1) the Defendant is complying with his prescribed course of treatment, and (2) the treatment plan is controlling the bi-polar disorder. The report shall be based upon a psychiatric assessment conducted by the psychiatrist within the past three months and a blood test to determine whether the Defendant is taking the prescribed medicine. All costs associated with this report will be paid by the Defendant. The first report shall be due no later than October 1, 1996 with the other reports being due no later than January 1, 1997, April 1, 1997, July 1, 1997, October 1, 1997, January 1, 1998, April 1, 1998, July 1, 1998, October 1, 1998, January 1, 1999, April 1, 1999, July 1, 1999, October 1, 1999, January 1, 2000, April 1, 2000, July 1, 2000, and October 1, 2000 respectively. If at any time the

psychiatrist has reason to believe that Defendant is not complying with his prescribed course of treatment or that the treatment plan is proving to be inadequate to control Defendant's disorder, he/she shall immediately notify the State Bar. In the event that the Defendant moves out of state, a board certified psychiatrist licensed to practice medicine in the state in which Defendant resides and subject to the State Bar's approval shall submit the reports referred to herein. By his signature consenting to this order, the Defendant authorizes any physician, hospital, or other medical provider to furnish the State Bar with all information which may be requested with respect to the Defendant's physical and/or mental condition provided the treating psychiatrist has reason to believe the Defendant is not complying with his prescribed course of treatment.

- (b) During the period of the stay, the Defendant agrees to submit a blood sample to an independent lab designated by the State Bar within 24 hours of notice by the State Bar. Defendant shall direct the lab to send the report to the State Bar. The purpose of the blood analysis will be to determine whether the Defendant is taking the prescribed medicine on a regular basis. The cost of the analysis will be paid by the Defendant.

(c) Defendant shall violate no provisions of the Rules of Professional Conduct during the stay period.

(d) Defendant shall violate no laws of the State of North Carolina during the stay period.

(e) Defendant shall be assessed with the cost of this proceeding as determined by the Secretary of the North Carolina State Bar.

Signed by the undersigned chairperson with the full knowledge and consent of the other members of the hearing committee.

This the 29th of August, 1996.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 126, Disciplinary Docket
Petitioner : No. 3 - Supreme Court
:
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v. : No. 104 DB 95 - Disciplinary
:
:
:
:
[ANONYMOUS], : Attorney Registration No. []
:
Respondent : ([] County)

DISSENTING OPINION

The primary purpose of our disciplinary system is to protect the public from unfit attorneys and to maintain the integrity of the legal system. Office of Disciplinary Counsel v. Christy, 536 Pa. 394, 639 A.2d 782 (1994).

On January 3, 1994 at 12:45 a.m. Respondent fired 17 rounds of 22 caliber ammunition into a house occupied by a partner in Respondent's employer law firm. Through no fault of Respondent neither that partner nor his wife were struck by any of these bullets. Two weeks later Respondent threw a brick through a window of that same employer law firm. Respondent pleaded guilty to recklessly endangering another person, criminal mischief, and terroristic threats. After the Court ordered an

updated psychological and psychiatric evaluation Respondent was incarcerated.

Expert medical testimony established:

- * Since 1979 Respondent has suffered from a psychiatric disorder initially diagnosed as major depression.
- * In 1992 the 1979 diagnosis of major depression was found improper, and Respondent was diagnosed as having bipolar disorder.
- * The lithium prescribed in 1992 for the treatment of Respondent's bipolar disorder was alone inadequate to control its manic phase.
- * Respondent's January, 1994 bullet and brick assaults were the result of the lithium's failure to control Respondent's chemical imbalance.

Respondent's seriously dangerous misconduct is tied to the successful precise balancing of the prescription drugs he must take daily. The delicacy of that balance is something which this Board has neither the capacity nor obligation to monitor or insure. At the very least the public, the courts and our profession are entitled to be protected from a continuing risk of physical violence. Conduct which impugns public trust and

compromises the integrity of the legal system requires disbarment. Respondent's conduct meets that standard.

This Board cannot become the surety to the public that Respondent's current diagnosis is accurate, that his medications are being taken and that these medications will remain effective to successfully control Respondent's manic behavior. Our focus must be the impact of Respondent's behavior on the system and "its effect on the perception of that system by the society it serves." Office of Disciplinary Counsel v. Keller, 506 A.2d 872, 878 (Pa. 1986) at 878.

Disbarment of Respondent is consistent with Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), which held psychiatric disorders to be appropriate mitigating factors in disciplinary proceedings. The expert testimony in this case can not mitigate Respondent's discipline below that most serious sanction of disbarment. The physical safety of the public, the courts, and members of our profession must be this Board's paramount concern, and I recommend Respondent be disbarred, thereby removing him from contact with clients, the courts and counsel.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE

SUPREME COURT OF PENNSYLVANIA

By: _____
Thomas J. Elliott, Member

Date: April 1, 1997

O R D E R

PER CURIAM:

AND NOW, this 21st day of May, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 1, 1997, it is hereby

ORDERED that [RESPONDENT] be and he is SUSPENDED from the Bar of this Commonwealth for a period of one (1) year and one day, 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.