

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1267 Disciplinary Docket No. 3
Petitioner :
v. : No. 99 DB 2005
: Attorney Registration No. 55490
RUBINA ARORA WADHWA, :
Respondent : (Out of State)

ORDER

PER CURIAM:

AND NOW, this 30th day of August, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 22, 2007, it is hereby

ORDERED that Rubina Arora Wadhwa is suspended from the Bar of this Commonwealth for a period of nine months, and she 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.

A True Copy Patricia Nicola

As of: August 30, 2007

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 99 DB 2005
Petitioner	:	
	:	
v.	:	Attorney Registration No. 55490
	:	
RUBINA ARORA WADHWA	:	
Respondent	:	(Out of State)

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 29, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against Rubina Arora Wadhwa, Respondent. The Petition charged Respondent with professional misconduct arising from her representation of a client in a matter before the Immigration Court. Petitioner filed an Amended Petition for Discipline on August 10, 2005. Respondent filed an Answer to Petition for Discipline on August 26, 2005.

A disciplinary hearing was held on February 10 and March 22, 2006, before a District III Hearing Committee comprised of Chair William A. Fetterhoff, Esquire, and Members Mark J. Powell, Esquire, and Larry B. Selkowitz, Esquire. Respondent was represented by Robert H. Davis, Jr., Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 10, 2006, finding that Respondent engaged in professional misconduct and recommending that she be suspended for a period of one year and one day.

Respondent filed a Brief on Exceptions and request for oral argument before the Board on October 30, 2006.

Petitioner filed a Brief Opposing Exceptions on November 20, 2006.

Oral argument was held on March 12, 2007, before a three-member panel of the Disciplinary Board comprised of Chair Smith Barton Gephart, Esquire, and Members Robert C. Saidis, Esquire, and Sal Cognetti, Jr., Esquire.

This matter was adjudicated by the Disciplinary Board at the meeting on March 20, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, 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 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, Rubina Arora Wadhwa, was born in 1962 and admitted to practice law in Pennsylvania in 1989. She maintains an office at 44201 Bristow Circle, Ashburn VA 20147. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a prior record of discipline. By Order of the Supreme Court of Pennsylvania dated March 3, 2000, Respondent was suspended from the practice of law in Pennsylvania for an indefinite period of time, retroactive to December 1, 1996, with leave to petition for reinstatement after the expiration of two years from the effective date of the Order. This was reciprocal discipline based on an Order of the Assistant Chief Immigration Judge of the United States Department of Justice, dated September 12, 1996, which suspended Respondent from the practice of law before the Immigration and Naturalization Service and the Executive Office of Immigration Review for that same length of time.

4. The basis for Respondent's suspension was her submission of fraudulent medical records in support of an application for a travel document in connection with an immigration case.

5. In 1999 Respondent was reinstated to practice before the Immigration and Naturalization Service and Executive Office of Immigration Review. Respondent was reinstated in Pennsylvania by Supreme Court Order dated July 29, 2003.

6. Atif Sultan, the complainant herein, appeared in Arlington, Virginia for Special Registration on February 25, 2003. Special Registration was a program initiated by the Department of Justice to identify and interview males from certain Muslim countries who were admitted to the United States on a non-immigrant visa.

7. Prior to the time that Mr. Sultan was required to appear for Special Registration, he had already filed an application for adjustment of status to permanent residence.

8. Mr. Sultan went to Special Registration without his attorney. He was briefly arrested and charged with being removable from this country and was told that he would have to appear in Immigration Court because he had overstayed his initial visa.

9. Respondent, who was representing another client at the Special Registration, offered to represent Mr. Sultan and get him released from prison.

10. Despite the initiation of removal proceedings, Mr. Sultan remained eligible for permanent residence, but his application for adjustment of status had to be considered by the Immigration Court.

11. Respondent entered her appearance in the proceedings on Mr. Sultan's application for adjustment of status on October 28, 2003.

12. Mr. Sultan retained Respondent to represent him in removal proceedings in Arlington, Virginia. Respondent entered her appearance on or about July 9, 2004.

13. The deportation hearing was originally scheduled for July 13, 2004, but was rescheduled for September 24, 2004, because Mr. Sultan's employer failed to appear. At the hearing on September 24, 2004, Judge Joan V. Churchill asked Mr. Sultan if he had changed his residence. Mr. Sultan answered affirmatively, and gave the court his new address located at 9113 Town & Country Boulevard, Apt. B Ellicott MD 21043. Respondent advised the court that a change of venue was necessary.

14. By Order dated September 24, 2004, Judge Churchill granted the Motion for a Change of Venue to Baltimore, Maryland. The Order included Respondent's new address in Ellicott, Maryland.

15. By letter dated October 6, 2004, Respondent received notice from the Baltimore court that Mr. Sultan's hearing in removal proceedings would take place before the Immigration Court on December 1, 2004 at 8:00 a.m. The Notice to Appear was served by mail on Respondent and the INS, but no notice was sent to Mr. Sultan.

16. Respondent did not give Mr. Sultan written notice of his December 1, 2004 hearing date. The main form of communication between Respondent and her client was by telephone or through a mutual acquaintance named Faisal Khan. This type of communication was common between Respondent and her immigrant clients.

17. On October 18, 2004, Mr. Sultan called Respondent's office and spoke to Respondent.

18. Mr. Sultan testified that during the October 18, 2004 telephone call, Respondent told him that the date of his immigration hearing was December 23, 2004.

19. Respondent testified that during that same telephone call she gave Mr. Sultan the correct hearing date of December 1, 2004.

20. Mr. Sultan believed that his hearing date was December 23, 2004; he informed his family and friends of the date and put notices all over his apartment as reminders.

21. On November 19, 2004, Faisal Khan took a friend to Respondent's office for a consultation. At that meeting, Respondent asked Mr. Khan to advise Mr. Sultan that he owed Respondent money, and that there was a hearing coming up on December 1, 2004.

22. Mr. Khan could not remember the exact hearing date that Respondent told him, but it was a date certain in early December. Mr. Khan gave Mr. Sultan the hearing date message from Respondent about a week later.

23. Mr. Sultan admitted that Mr. Khan gave him the message from Respondent about the fees owing and further admitted that Mr. Khan told him the date of the hearing was in early December.

24. Mr. Sultan did not contact Respondent to verify the date of the hearing, as he believed that the date was December 23, 2004.

25. On December 1, 2004, a hearing was held on Mr. Sultan's case. Neither Respondent nor Mr. Sultan appeared at the hearing. Respondent did not call the court to

advise that she would not be able to appear, nor did Respondent call her client to advise him that she would not be able to appear.

26. The Judge issued an Order that required Mr. Sultan to be removed and deported to Pakistan as a result of his failure to appear.

27. Notice of the Order dated December 1, 2004 was sent to Respondent by the Immigration Court via mail.

28. Respondent failed to promptly advise her client of the Order that had been entered on December 1, 2004.

29. On or about December 12, 2004, Mr. Sultan telephoned Respondent because he had received a message from Mr. Khan that Respondent wanted to talk to him. Respondent advised Mr. Sultan that he had been ordered deported because he failed to appear at the December 1, 2004 hearing on the removal proceeding.

30. Respondent told Mr. Sultan that she did not appear at the hearing because she had been sick.

31. Respondent told Mr. Sultan that she would file a Motion to Reopen.

32. In the Motion to Reopen, Respondent made the following statements:

“[Mr. Sultan] was informed by the counsel regarding his December 1, 2004 hearing but due to some misunderstanding by [him], he wrote the wrong date in the daily planner.” PE 5-6 p. 12.

“The counsel was hospitalized with Namonia at the time of the hearing, and was unable to make it to the hearing.” PE 5-6, p. 13.

33. Respondent was not hospitalized on December 1, 2004, the date of the hearing. She was hospitalized with pneumonia from December 5 to December 11, 2004.

34. Respondent's eight-year old son was hospitalized with pneumonia from November 26 to November 27, 2004. Respondent herself became very ill during the same period.

35. Respondent called her physician on December 1, 2004, had an appointment with the physician on December 3 and was subsequently hospitalized on December 5, 2004.

36. Respondent's husband was out of state during the time frame of the son's hospitalization and did not return home until December 3 or 4, 2004.

37. On or about December 26, 2004, Respondent called Mr. Sultan to advise him that the Motion to Reopen was completed. Respondent then left for a trip to India. Mr. Sultan filed the Motion on December 28, 2004.

38. By Order dated January 12, 2005, Immigration Judge Bruce M. Barrett denied the Motion to Reopen and found that there was no attempt to notify the Court of any incapacity of counsel. The Court found no exceptional circumstances regarding non-appearance.

39. As a result of the denial of the Motion to Reopen, Mr. Sultan was subject to arrest and deportation to Pakistan. As of the disciplinary hearing dates in the instant matter, Mr. Sultan had secured new counsel and had his case reopened.

40. Respondent presented two witnesses who testified to her good character and high standing in the community. Suman Mehra, a development economist at the World Bank for 35 years, testified as to the high regard for Respondent's legal skills in her community and Respondent's good reputation for honesty. Kulsom Choudhry, a present client and friend of Respondent, testified as to Respondent's volunteer work in the mosque and her reputation for good character.

41. Eleven character letters were also marked and presented to the Hearing Committee. The letters attested to the same high qualities of Respondent as attested to by the live witnesses. Two members of the Embassy of Pakistan referred to Respondent as dedicated, honest and upright, and expressed their feelings of gratitude for Respondent's pro-bono work to assist Pakistani-Americans.

42. Respondent testified on her own behalf. In her practice Respondent seeks to provide legal service to those persons needing pro bono or low-fee legal assistance.

III. CONCLUSIONS OF LAW

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

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 1.4(a) - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

4. RPC 3.3(a) (1) - A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.

5. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of a Petition for Discipline charging Respondent with professional misconduct arising out of her representation of a client on a matter before the Immigration Court. This representation lasted from July 2004 through late January 2005. The crux of the charges against Respondent is that she failed to appear for a scheduled hearing before the Immigration Court on December 1, 2004, and in her attempt to remedy the situation she caused by her non-appearance, she knowingly made a false statement of material fact in the Motion to Reopen which was filed with the Immigration Court on December 28, 2004. Petitioner also charged Respondent with failing to notify her client of the December 1, 2004 hearing;

however, taken as a whole the evidence is not clear and satisfactory that Respondent failed to inform Mr. Sultan of the date of the hearing. The Board will not consider these charges in the discipline imposed on Respondent.

Respondent admits that she failed to appear for the hearing and failed to notify her client and the court that she was ill and could not appear. Respondent further admits that she made a false statement in her Motion to Reopen. The false statement was that she was in the hospital at the time of the hearing, when in fact she was not hospitalized on that date.

Respondent presented evidence that her young son was ill and hospitalized with pneumonia on November 26 and 27, 2004. During the time of the son's illness, Respondent's husband was out of state. Respondent herself became very ill. Respondent called her doctor on December 1, had an appointment on December 3, and was hospitalized from December 5 through December 11, 2004. The record is clear that Respondent was under stress from her son's illness, her husband's absence, and her own illness, which stressful period lasted some two weeks. However, while these unfortunate circumstances provide insight into Respondent's state of mind, they do not excuse her conduct in making a false statement to a court.

There are several case precedents which are relevant to the question of appropriate discipline in the instant matter. In the recent case of Office of Disciplinary Counsel v. John M. Larason, 1 DB 2002, 939 Disciplinary Docket No. 3 (Pa. Aug. 19, 2004), the attorney represented a client in a bankruptcy proceeding. A month after the

discharge the client advised the attorney that she had been sued by a creditor on a pre-existing debt which had not been listed in the bankruptcy. The attorney altered the Schedule of Creditors which had been filed so it appeared that the creditor had been listed and the debt accordingly discharged. The attorney then provided a copy of that falsified record to the District Justice Court. This attorney had no prior history of discipline. The Board recommended a suspension of three months and the Court adopted the recommendation.

In the matter of In re Anonymous No. 85 DB 97, 44 D. & C. 4th 299 (1999), a public censure resulted when the attorney made a deliberate misrepresentation to a court concerning the availability of the client to appear at a hearing. The misrepresentation was made in order to delay the proceeding and secure an advantage in the case. In In re Anonymous No. 68 DB 97, 41 D. & C. 4th 38 (1998), an attorney made intentional false statements in order to conceal the identity of his client from a trial court. The attorney made false factual statements in a judicial pleading, and then submitted a brief and delivered oral argument to the court in which the misrepresentations were repeated. The attorney was subject to a public censure.

In contrast to the above cases, disbarment has been meted out by the Court in certain severe cases of intentional misrepresentations to tribunals. The matter of Office of Disciplinary Counsel v. Holston, 619 A.2d 1054 (Pa. 1993) stands as a benchmark case. Therein, the attorney forged a divorce decree, complete with a forged signature of a judge in the Court of Common Pleas. When questioned about the decree in open court,

the attorney lied and said he did not know how the decree originated or who signed it. See also Office of Disciplinary Counsel v. Antoinette M.J. Bentivegna, 88 DB 2005, 12118 Disciplinary Docket No. 3 (Pa. Jan. 26, 2007).

The precedents above demonstrate the wide range of sanctions imposed in misrepresentation cases. While it is true that every misrepresentation to a tribunal is a serious breach of professional conduct, it is also true that such situations are distinguishable. Herein, the single misrepresentation was made by Respondent during a period of anxiety, stress, and illness. The Board finds that a degree of mitigation exists.

The testimony of Respondent's character witnesses and the letters admitted into evidence concerning her good character and good works also constitute mitigation. In contrast the Board must consider aggravating factors, which in this case goes directly to Respondent's prior record of discipline. Respondent was ordered suspended indefinitely by the Supreme Court in 2000, as reciprocal discipline from the Immigration Court. Respondent was reinstated to the Immigration Court in 1999 and in the Commonwealth in 2003. The acts which led to the discipline occurred approximately 13 years ago.

The totality of the record indicates that a suspension for a period of nine months is appropriate. Respondent's misrepresentation to the Immigration Court, while

admittedly false, is not of the same degree of planned severity or intent as has been previously found by the Supreme Court, and which resulted in sanctions more severe than a nine month suspension. The mitigating circumstances in this matter are sufficiently compelling to persuade the Board that a longer suspension is not necessary.

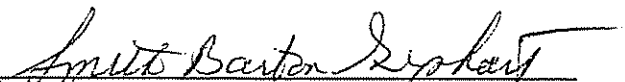
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Rubina Arora Wadhwa, be suspended from the practice of law for a period of nine (9) months.

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: 
Smith Barton Gephart, Board Vice-Chair

Date: May 22, 2007