

IN THE SUPREME COURT OF PENNSYLVANIA

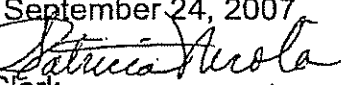
OFFICE OF DISCIPLINARY COUNSEL, : No. 1273 Disciplinary Docket No. 3
Petitioner :
 : No. 25 DB 2006
v. :
 : Attorney Registration No. 10373
JAMES W. HARRIS, :
Respondent : (York County)

ORDER

PER CURIAM:

AND NOW, this 24th day of September, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated June 14, 2007, it is hereby

ORDERED that James W. Harris is suspended from the Bar of this Commonwealth for a period of nine months 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.

A True Copy Patricia Nicola
As of: September 24, 2007
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 25 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 10373
	:	
JAMES W. HARRIS	:	
Respondent	:	(York 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 February 13, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against James W. Harris, Respondent. The Petition charged Respondent with professional misconduct arising out of allegations in two separate matters: Respondent

practiced law while on inactive status; and he charged an excessive fee and/or improperly failed to make a fee refund at the conclusion of representation. Respondent filed an Answer to Petition for Discipline on April 3, 2006.

A disciplinary hearing was held before a District III Hearing Committee comprised of Chair Ronald M. Katzman, Esquire, and Members Lindsay Dare Baird, Esquire, and Howard A. Rothenberg, Esquire. Respondent appeared pro se. Petitioner offered 33 documents into evidence and called three witnesses: Brian Dietz, George Dietz, and Patricia Dietz.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 18, 2006, finding that Respondent violated the Rules of Professional Conduct as to the charge of unauthorized practice of law, but did not engage in unethical conduct as to the second matter involving the criminal representation. The Committee recommended that Respondent be suspended for one year and one day.

No Briefs on Exceptions were filed by the parties.

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 200 North Third Street, Suite 1400, Harrisburg PA 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 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 the aforesaid Rules.

2. Respondent, James W. Harris, was born in 1938 and was admitted to practice law in 1972. He maintains his office at 48 East Princess St., York PA 17403. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline consisting of a private reprimand administered on November 16, 2004.

4. By Order of the Supreme Court dated June 29, 2006, Respondent was placed on temporary suspension pursuant to Rule 208(f)(2), after a Petition for Emergency Temporary Suspension and Related Relief was filed with the Court by Office of Disciplinary Counsel in a separate unrelated matter. That matter is still pending.

Charge I - Office of Disciplinary Counsel Matter

5. On December 13, 2004, Respondent was transferred to inactive status by Order of the Supreme Court of Pennsylvania, effective January 12, 2005.

6. Respondent was notified of this Order by letter sent by certified mail from Elaine M. Bixler, Secretary of the Disciplinary Board, dated December 13, 2004. Tamara Banks of Respondent's office received and signed for this letter on December 15, 2004.

7. On January 14, 2005, Respondent submitted check number 400 drawn on his MECU account in the amount of \$375.00 as payment of his outstanding assessment and was reinstated to active status.

8. Four days later, on January 18, 2005, the Pennsylvania Lawyer's Fund for Client Security notified the attorney registration office that Respondent had an outstanding balance of \$5,401.37 from an award that had been made, and thus the Fund objected to Respondent's reinstatement.

9. On January 18, 2005, Suzanne Price, Attorney Registrar, wrote to Respondent notifying him that his reinstatement to active status had been rescinded, based on the objections of the Pennsylvania Lawyer's Fund for Client Security.

10. At this point in the chronology, Respondent was on inactive status for two days (January 13 and 14, 2005), reinstated to active status for four days (January 14, 15, 16, 17, 2005) and then placed back on inactive status commencing January 18, 2005.

11. By letter dated March 15, 2006, Kathryn J. Peifer of the Lawyer's Fund for Client Security confirmed that Respondent had satisfied his obligations to the Fund and by letter dated the same day, Suzanne E. Price confirmed that Respondent had been restored to active status.

12. Respondent remained on inactive status from January 18, 2005 until March 15, 2005 and was notified and was aware of same.

13. During this period of inactive status, on February 17, 2005, Respondent, representing clients, filed documents in the Court of Common Pleas of York County. These documents were as follows:

a. Respondent filed a second Amended Counterclaim in the matter of Washington Savings Bank v. Jerome McNeill, Sr., et.al., and;

b. Respondent filed a Praecipe for Writ of Summons in the matter of Carol Ann Stambaugh v. York Area Transportation Authority.

Charge II - Dietz Matter

14. Respondent first met Brian Dietz in March 2004 when Mr. Dietz called Respondent's law office concerning Mr. Dietz's present attorney who had represented him on some criminal charges to which Mr. Dietz had entered a guilty plea.

15. Respondent suggested to Mr. Dietz that he re-contact his present attorney and try to work out the situation and let his present attorney know that Mr. Dietz wanted to withdraw the guilty plea.

16. Mr. Dietz was not able to contact his present attorney and contacted Respondent at which time Respondent gave him an appointment.

17. By the time that the appointment occurred, it was too late to withdraw the guilty plea. Respondent suggested that an appeal be taken and Mr. Dietz agreed to retain Respondent to take the appeal.

18. At the time of the meeting Respondent discussed with Mr. Dietz that a \$5,000 retainer would be required for the appeal. During that meeting Respondent specifically told his client how he would handle the case and discussed with his client the fee agreement and how it worked.

19. Mr. Dietz paid Respondent \$2,500 and further agreed that he would pay the additional \$2,500 retainer within 30 days. Mr. Dietz signed a Promissory Note for the balance of the retainer which he promised would be paid in 30 days.

20. During the review of the fee agreement, Mr. Dietz indicated to Respondent that he had some reading problems and he wanted to take the agreement home and review it with his girlfriend.

21. Mr. Dietz said that he would return the agreement when he brought in the additional \$2,500.

22. Respondent filed a Notice of Appeal on March 5, 2004 and a Statement of Matters Complained of on Appeal on March 18, 2004.

23. After 30 days went by and Respondent did not hear from Mr. Dietz, he called his client's home telephone number and spoke to Mr. Dietz's father, George Dietz.

23. Mr. Dietz's father informed Respondent that Brian Dietz was in jail.

24. Respondent contacted the jail and spoke to Mr. Dietz about the \$2,500 balance.

25. Mr. Dietz informed Respondent that he would contact his father and have him bring in the \$2,500 balance, which the father eventually did.

26. Brian Dietz asked Respondent to consider handling the new criminal charges against him, which consisted of theft by unlawful taking, receiving stolen property and unauthorized use of a motor vehicle.

27. Respondent agreed to handle the new charges, especially in light of the fact that Mr. Dietz told Respondent that he had an alibi. Respondent quoted Mr. Dietz a \$3,500 non-refundable retainer, which was paid.

28. Respondent informed Mr. Dietz that the first thing he would do was try and obtain a continuance so that Respondent would have more time to investigate the case.

29. Respondent attempted to locate the alibi witness. He checked around in the area where these charges allegedly occurred, talked to different people, but did not find any information.

30. When the case was called for trial, Respondent explained to Judge Chronister his client's position and told him that there might be a defense in that his client might have an alibi and he needed more time to investigate.

31. Judge Chronister did not continue the case.

32. Respondent, faced with going to trial without an alibi and looking at substantial jail time for his client, worked out a plea agreement which he discussed with his client in the holding area and again in the courtroom before Mr. Dietz entered his guilty plea.

33. A colloquy was entered on the record before Judge Chronister in which Brian Dietz entered a guilty plea and received a fifteen month sentence in the York County Prison.

34. Thereafter, Respondent received a telephone call from Patricia Dietz, the mother of Brian Dietz, in which she indicated that her son was demanding a partial refund of the retainer paid.

35. Respondent took the position that the fee agreement for the appeal made clear that the retainer was a non-refundable retainer and he would not issue any refund.

36. As to the additional criminal charges, Respondent had given Mr. Dietz a fee agreement for his prior case and believed him to be familiar with the terms of representation.

III. CONCLUSIONS OF LAW

By his conduct as set forth above in Charge I, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

1. RPC 5.5(a) - A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal professional in that jurisdiction, or assist another in doing so.

2. RPC 5.5(b) - A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules, Pa.B.A.R. 302 or other law, establish an office or other systematic and continuous presence in the jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in the jurisdiction.

3. Pa.R.D.E. 217(d) - Orders imposing...transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the...transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature.

4. Pa.R.D.E. 217(j) - A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth.

In Charge II, Office of Disciplinary Counsel did not meet its burden of proof by clear and satisfactory evidence that Respondent violated Rules of Professional Conduct 1.5(a), 1.5(b), 1.15(b), or 1.16(d). Charge II is dismissed.

IV. DISCUSSION

This matter is before the Board for consideration of a two-charge Petition for Discipline against James W. Harris. The facts surrounding Charge I are not disputed and were stipulated to by Respondent. He practiced law on two occasions while on inactive status for two months. Respondent had no defense nor presented any extenuating circumstances.

Charge II concerns Respondent's representation of Brian Dietz. Based upon the evidence of record, Respondent did deliver to Brian Dietz a valid fee agreement. While Brian Dietz denied receiving the agreement, Respondent specifically identified it at the hearing as the agreement which was given to Brian Dietz on the date Respondent met with him. Respondent credibly testified that he went over the fee agreement with Brian Dietz in detail and Mr. Dietz understood his obligations and the work that would be provided for the fee. The fee agreement itself clearly states that the retainer is "non-refundable".

Brian Dietz identified a Promissory Note containing Mr. Dietz's signature and testified that he signed the note agreeing to pay \$2,500 up front and the remaining \$2,500 within 30 days. As Brian Dietz acknowledged receipt and signature of the Promissory Note and since the Note contains the exact amount as does the fee agreement, the Hearing Committee found Mr. Dietz's testimony that he never received the fee agreement to be non-credible. The Committee further found Respondent's testimony that he provided a copy of the fee agreement to Brian Dietz to be credible. The Board gives great deference to credibility findings of the Hearing Committee, and nothing in the record persuades the Board that the Committee erred in its findings.

The record supports the conclusion that Petitioner did not meet its burden of proof by clear and satisfactory evidence that Respondent violated RPC 1.5(a), 1.15(b), 1.15(d), and 1.16(d). The retainer paid by Brian Dietz was not illegal or excessive. Mr. Dietz was provided with a copy of the fee agreement to take home. Respondent took action to protect the interests of Brian Dietz and did not fail to refund any monies since the retainer was clearly non-refundable. The fees charged to Mr. Dietz and the work performed by Respondent were fair, reasonable and necessary under the circumstances. Therefore, the charges against Respondent in the Dietz matter are dismissed.

The Hearing Committee recommended a suspension of one year and one day to address Respondent's misconduct involving the unauthorized practice of law. Respondent admitted to his misconduct, which took place over a period of two months, and involved filing pleadings in two matters. Respondent was aware at all times that he was on inactive status. A range of discipline has been imposed on attorneys who engage in the unauthorized practice of law. The facts of this matter indicate that Respondent's conduct was on the lower end of this range, and he should not be required to petition for reinstatement. Office of Disciplinary Counsel v. Buffington, 45 DB 2004, 1050 Disciplinary Docket No. 3 (Pa. Sep. 20, 2006). The Board's review of this matter persuades us that a nine month period of suspension is sufficient to address the misconduct.

V. RECOMMENDATION

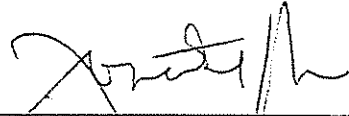
The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, James W. Harris, be suspended from the practice of law for a period of nine months.

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:


Jonathan H. Newman, Board Chair

Date: June 14, 2007

Board Member O'Connor dissented.

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OFFICE OF DISCIPLINARY COUNSEL : No. 25 DB 2006
Petitioner :
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: Attorney Registration No. 10373
JAMES W. HARRIS :
Respondent : (York County)

DISSENTING OPINION

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

In this case the majority of the Board takes the position that the hearing committee did everything right except concluding as to the proper recommendation.

I have reviewed the full record of this case and disagree with the majority.

Attorney Harris has a prior record of a private reprimand for co-mingling funds in 2004 and was put on temporary suspension in June of 2006 for a pending but unrelated matter.

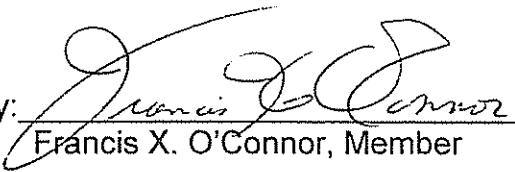
Here Mr. Harris admittedly appears in cases while inactive. In addition, he pays the Lawyer Fund for Client Security with a check returned for insufficient funds. He continues to represent parties without signed fee agreements and threatens a client to not file a claim against him. He apparently still has poor office record keeping.

Considering the Respondent's age, his prior record, his check for insufficient funds and the other matters, I agree with the hearing committee.

Therefore I respectfully dissent and recommend a year and a day suspension.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Francis X. O'Connor, Member

Date: June 14, 2007