

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1283 Disciplinary Docket No. 3
Petitioner :
v. : No. 114 DB 2006
: Attorney Registration No. 47974
KATHLEEN D. DAUTRICH, :
Respondent : (Berks County)

ORDER

PER CURIAM:

AND NOW, this 30th day of October, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 11, 2007, it is hereby

ORDERED that Kathleen D. Dautrich is suspended from the Bar of this Commonwealth for a period of ninety days; she shall refund \$500.00 to Gerald L. Reider; 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: ~~October 30, 2007~~

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 114 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 47974
	:	
KATHLEEN D. DAUTRICH	:	
Respondent	:	(Berks 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 June 26, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Kathleen D. Dautrich, Respondent. The Petition charged Respondent with violations of the Rules of Disciplinary Enforcement and Rules of Professional Conduct

based on her failure to appear for an informal admonition and failure to comply with a condition attached to the admonition. Respondent filed an Answer to Petition for Discipline on August 8, 2006.

A disciplinary hearing was held on October 12, 2006, before a District II Hearing Committee comprised of Chair Robert F. Morris, Esquire, and Members Michael A. Cognetti, Esquire, and Stewart J. Greenleaf, Jr., Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on February 23, 2007, finding that Respondent committed ethical misconduct and recommending that she be suspended for a period of 90 days with the condition that she refund to her client \$500.

This matter was adjudicated by the Disciplinary Board at the meeting on May 10, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is situated 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 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 in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Kathleen D. Dautrich, was born in 1949 and was admitted to practice law in the Commonwealth in 1986. Respondent maintains an office for the practice of law at 526 Court Street, 2nd Floor, Reading PA 19601. 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 in 1997 and a private reprimand in 2003.

4. Petitioner sent an October 13, 2005 DB-7 Letter Request for Statement of Respondent's Position to Respondent by certified mail, return receipt requested, regarding the complaint of Gerald L. Reider. Delivery was made to Respondent on October 14, 2005. Respondent represented Mr. Reider in a bankruptcy matter.

5. Respondent sent a facsimile transmission dated November 1, 2005 to Petitioner, in which she acknowledged receipt of the DB-7 Letter and advised, among other things, that she needed to consult with counsel and requested an extension of time to respond.

6. Petitioner granted an extension of time until December 16, 2005 for Respondent to submit a statement of position.

7. By December 16, 2005 facsimile transmission to Petitioner, Respondent basically reiterated her requests from her earlier contact with Petitioner and explained that her delay in responding was due to illness. She again requested additional time to respond.

8. By letter dated December 27, 2005, Petitioner directed Respondent to submit a statement of position on the outstanding allegations of misconduct by January 13, 2006.

9. Respondent failed to submit to Petitioner a statement of position to the outstanding allegations of misconduct.

10. By letter dated February 3, 2006, Paul J. Killion, Chief Disciplinary Counsel, informed Respondent that the reviewing authorities had directed that Respondent should receive an informal admonition with a condition as the disciplinary action to be taken in disposition of the complaint filed against Respondent by Gerald L. Reider.

11. The letter of February 3, 2006 advised Respondent that she was in violation of Rules of Professional Conduct 1.3; former 1.4(a) (for conduct prior to January 1, 2005) and 1.4(a)(3) and (4) (for conduct subsequent to January 1, 2005); former 1.4(b); 1.5(b); 1.15(b); and 1.16(d).

12. The condition attached to the informal admonition required Respondent was required to refund \$500.00 to Gerald Reider and provide proof of such compliance to Disciplinary Counsel within 20 days after Respondent's receipt of the February 3, 2006 letter.

13. The February 3, 2006 letter advised Respondent that failure to comply with the condition would result in reconsideration of the matter with the possibility of more serious discipline.

14. The February 3, 2006 letter also advised Respondent that she had 20 days to give written notification to Elaine M. Bixler, Secretary of the Disciplinary Board, that she did not wish to accept the informal admonition and that she desired formal proceedings to be initiated.

15. The February 3, 2006 letter was sent to Respondent by certified mail, return receipt requested. The U.S. Postal Service returned the domestic return receipt noting delivery to Respondent on February 6, 2006.

16. Respondent's only response to the February 3, 2006 letter was by a February 17, 2006 facsimile transmission to Disciplinary Counsel Suzy S. Moore wherein Respondent:

a. Asked for reconsideration of the proposed sanction in the letter of February 3, 2006;

b. Referred to a letter she previously sent concerning Mr. Reider's complaint;

c. Requested an extension of time to respond;

d. Failed to provide evidence to support her statement; and

e. failed to state that she did not wish to accept the informal admonition or that she desired formal proceedings be initiated.

17. Respondent never provided written notification to the Secretary of the Disciplinary Board that she did not wish to accept the informal admonition and that she desired formal proceedings be initiated.

18. By Notice to Appear dated March 16, 2006, Chief Disciplinary Counsel advised Respondent that an Informal Admonition with condition had been scheduled for March 29, 2006.

19. The March 16, 2006 Notice to Appear was sent by certified mail, return receipt requested, to Respondent's registered address. The U.S. Postal Service returned the domestic return receipt noting delivery to Respondent on March 20, 2006.

20. Respondent did not call or write to the Office of Disciplinary Counsel regarding the scheduled informal admonition prior to March 29, 2006.

21. Respondent failed to appear on March 29, 2006 for the informal admonition.

22. Respondent failed to provide to the Office of Disciplinary Counsel before or after March 29, 2006, proof of her compliance with the required condition.

23. By letter dated April 24, 2006, Chief Disciplinary Counsel advised Respondent that she had failed to appear for the informal admonition on March 29, 2006; she should advise Chief Disciplinary Counsel within 20 days of the date of the letter of any explanation she had for not appearing; more serious disciplinary action would be initiated in the absence of receiving an explanation for not appearing.

24. The only response Respondent gave to Chief Disciplinary Counsel's letter was a short message indicating that she had requested reconsideration of the matter. At the disciplinary hearing, the explanation Respondent offered for failing to appear was that she "didn't want to also go in and have to admit things that weren't true." (N.T. 26)

25. Respondent testified that she did not want to deal with the informal admonition and felt uncomfortable as a professional. (N.T. 45)

26. By letter dated May 25, 2006, and sent to Respondent by certified mail, return receipt requested, Chief Disciplinary Counsel advised Respondent that he would administer an informal admonition on June 6, 2006 and if Respondent failed to appear or did not respond to the May 25, 2006 letter, the Office of Disciplinary Counsel would file a Petition for Discipline.

27. Respondent received the May 25, 2006 letter, at the latest, on June 5, 2006.

28. Respondent failed to appear for the June 6, 2006 informal admonition because "it was short notice," but acknowledged that she "probably should have just dropped everything and gone down." (N.T. 60, 61)

29. As of the October 12, 2006 disciplinary hearing, Respondent had not complied with the condition to refund her client's money.

30. Respondent apologized for the inconvenience her actions caused to everyone involved in the process.

III. CONCLUSIONS OF LAW

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

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

2. Pa.R.D.E. 203(b)(2) - Willful failure to appear before Disciplinary Counsel for informal admonition shall constitute misconduct and shall be grounds for discipline.

3. Pa.R.D.E. 204(b) - Conditions may be attached to an informal admonition and failure to comply with such conditions, shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.

In addition to the foregoing violations resulting from Respondent's failure to appear for the informal admonition, Respondent is conclusively deemed to have violated the following Rules of Professional Conduct as a result of her failure to demand the institution of formal proceedings:

1. RPC 1.3 - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

2. Former RPC 1.4(a) (conduct prior to January 1, 2005) and RPC 1.4(a)(3) and (4) (conduct subsequent to January 1, 2005) - A lawyer shall keep a client informed about the status of matter and promptly comply with reasonable requests for information.

3. Former RPC 1.4(b) - A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

4. RPC 1.5(b) - A lawyer shall communicate to the client, in writing, the basis or rate of the lawyer's fee before or within a reasonable time after commencing the representation when the lawyer has not regularly represented the client.

5. RPC 1.15(b) - Upon termination of representation a lawyer shall take steps to protect a client's interests, including refunding to the client any unearned advance payment of fee and returning the client's file.

6. RPC 1.16(d) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

Petitioner charged Respondent with violating the Rules of Professional Conduct and Rules of Disciplinary Enforcement due to her failure to appear for two informal admonitions and her failure to comply with the condition attached to the informal admonition. The determination that Respondent should receive an informal admonition for her misconduct in the Gerald Reider matter was made by reviewing authorities and not through formal proceedings initiated by a Petition for Discipline. Under Pa.R.D.E. 208(a)(6), a respondent is not entitled to appeal an informal admonition determination where no formal proceeding has been conducted; however, a respondent has the right to demand a formal proceeding in response to notice of the informal admonition determination if the respondent does not agree with the findings. After receiving proper notice of the informal admonition from Chief Disciplinary Counsel, Respondent did not request the initiation of formal proceedings. She is conclusively deemed to have violated the rules relating to the underlying representation of Gerald L. Reider which formed the basis of the informal admonition. The Disciplinary Board has consistently held that when a

lawyer fails to request formal charges in response to a determination for private discipline, the facts and violations as found in the order imposing private discipline are conclusively established for the purposes of further disciplinary proceedings. In re Anonymous 90 DB 99, 60 D. & C. 4th 439 (2000).

Respondent has not challenged the procedures involved in the informal admonition determination, or the notification and scheduling procedures. She admits receiving notice and admits that she did not request formal proceedings in response to the notice of informal admonition. Respondent admits receiving notice of the March 29, 2006 informal admonition and the June 6, 2006 informal admonition. Respondent admits that she did not appear for either admonition and did not fulfill the condition to refund monies to her client.

Respondent's explanations for her non-appearance do not offer any reasonable justification for her absence. She believed that the March 29, 2006 admonition was a mistake and she felt uncomfortable with the proceeding. She stated that "she didn't want to also go in and have to admit things that weren't true." She further stated that "part of [her] didn't want to deal with it." Respondent's testimony suggests that she simply did not want to acknowledge her misconduct or Petitioner's prosecution of the same. Respondent thought that the June 6, 2006, admonition was scheduled on short notice and she may have had something else scheduled that day. She acknowledged she should have "just dropped everything and gone down".

Respondent's misconduct is aggravated by her history of discipline. Respondent has received two private reprimands; one in 1997 and one in 2003. Her conduct is mitigated by her expression of remorse at the hearing.

The hearing committee recommended a 90 day suspension and the refunding of \$500.00 to Gerald L. Reider. The Board concurs with this recommendation. Respondent's lackadaisical actions concerning her disciplinary matter turned an informal admonition into a situation of real consequence to Respondent's professional endeavors. Petitioner gave Respondent a second chance to receive her admonition and bring closure to the episode. Instead, Respondent avoided her professional obligations. A 90 day suspension will protect the integrity of the public and the disciplinary system, as well as impress on Respondent the seriousness of her obligations to the disciplinary system. Before Respondent is able to certify for reinstatement to practice law, she must refund \$500.00 to Gerald L. Reider.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Kathleen D. Dautrich, be suspended from the practice of law for a period of 90 days with the condition that she refund \$500.00 to Gerald L. Reider.

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 C. Saldis, Board Member

Date: July 11, 2007

Board Member Cohen did not participate in the adjudication.