

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 138, Disciplinary Docket
Petitioner	:	No. 3
	:	
V.	:	No. 135 DB 1995
	:	
[ANONYMOUS]	:	Atty. Registration No. []
	:	
Respondent	:	([])

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**

A Petition for Discipline was filed against Respondent on May 28, 1996, after he failed to appear for a private reprimand scheduled for February 1, 1996. A hearing was held on October 24, 1996 before Hearing Committee [] comprised of Chairperson [], Esquire and, Esquire and Members [], Esquire and [], Esquire. Although Respondent was sent proper notice of this

hearing, he failed to appear. The Committee filed a Report on January 6, 1997 and recommended that Respondent be suspended for a period of one year and one day. No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting held on March 5, 1997.

II. FINDINGS OF FACT

1. Respondent, [], was born in 1962 and was admitted to practice law in Pennsylvania in 1987. His address as listed in his attorney registration statement is []. His current mailing address is [].

2. The events leading to the current allegation of misconduct against Respondent begin with an Order issued by the 1995 . That Order determined that Respondent should receive a Private Reprimand as a sanction for an earlier act of misconduct.

3. By letter also dated September 19, 1995, the Board, through its Executive Secretary, Elaine Bixler, forwarded copy of the Order to Respondent and informed him that he had twenty (20) days to demand institution of formal proceedings in lieu of proceeding by Private Reprimand.

4. Respondent did not opt for a formal proceeding, and thereafter the Board scheduled his Private Reprimand to be administered on February 1, 1996 at 10:00 A.M. Respondent was notified of the requirement that he appear before the Board on that date and time

by Notice to Appear dated January 5, 1996.

5. Respondent failed to appear before the Board on February 1, 1996 at the time designated.

6. In light of his failure to appear, Board Chairman James Powell directed a letter to the Respondent dated February 8, 1996. Chairman Powell's letter afforded the Respondent an opportunity to establish good cause for his failure to appear as scheduled for Private Reprimand on February 1, 1996. Respondent was given until March 8, 1996 to show cause.

7. No response to the February 8, 1996 letter was ever received by the Board.

8. These events led to the filing of the Petition for Discipline dated May 28, 1996 which is now before the Board for consideration.

9. Because of Respondent's repeated failure to respond and/or appear not only in the current proceedings but also in other disciplinary proceedings in the past, the Petitioner has in all instances undertaken every reasonable effort to see that the Respondent has been notified of each and every important development in the proceedings and that he has received all documents and pleadings. For instance, efforts to serve the Respondent with the various notices and pleadings related to this matter have included service by means of certified mail and regular mail using best known addresses for Respondent and also by means of personal service in Florida by [A], an investigator for the Florida State Bar.

10. Much of the evidence received at the hearing in this matter was intended to document these many efforts at service and to provide proof of the efforts of the Petitioner and the Board to insure that the Respondent has received each and every document related to this proceeding.

11. The efforts to serve the Respondent are detailed in the Petition for Discipline and in affidavits from Ms. Bixler, from Suzanne E. Sipes, the Attorney Registrar for the Disciplinary Board, and from [A], the investigator in Florida who has personally served several documents.

12. Petitioner has made every reasonable effort to effect service on the Respondent. We are satisfied that the Respondent has nonetheless received or should be deemed to have received every document that is important to our decision in this case, including but not limited to the following:

(a) The September 19, 1995 Order of the Disciplinary Board advising of its determination that a Private Reprimand should be administered to the Respondent;

(b) The January 5, 1996 Notice directing the Respondent to appear for the Private Reprimand on February 1, 1996;

(c) Chairman Powell's letter of February 8, 1996 which afforded the Respondent an opportunity to show good cause for his failure to appear before the Board; and

(d) The Petition for Discipline filed on May 28, 1996 and all of the Subsequent Notices relating to the proceedings in this matter, No. 135 DB 95.

13. Respondent is currently serving a suspension of one year and one day by order of the Supreme Court dated December 4, 1996. This suspension was imposed as the result of the Respondent's failure to appear for two informal admonitions.

III. CONCLUSIONS OF LAW

Based upon the uncontroverted evidence put forth by Petitioner, Respondent's unexplained failure to appear before the Disciplinary Board for a Private Reprimand on February

1, 1996 constitutes a violation of Pennsylvania Rule of Disciplinary Enforcement 203(b)(2), Pa.R.D.E., Pennsylvania Disciplinary Board Rule 87.53 and Rule of Professional Conduct 8.4(d).

IV. DISCUSSION

This matter is before the Board for consideration of the charge against Respondent. He failed to appear for a Private Reprimand in violation of Rule 203(b)(2). Pa.R.D.E., Pennsylvania Disciplinary Board Rule 87.53 and Rule of Professional Conduct 8.4(d). When Petitioner alleges that an attorney has violated applicable Rules of Conduct, it bears the burden of proving the misconduct by clear and convincing evidence. Office of Disciplinary Counsel v. Jackson, 536 Pa. 26, 637 A.2d 615 (1994).

Petitioner presented uncontroverted documentary evidence that Respondent was properly served in [], Florida with the documents advising Respondent that he was to be subject to a Private Reprimand. Respondent did not attend the hearing which took place on October 24, 1996 to contest any of the allegations against him, although he was properly notified and was aware of the status of this matter. Respondent did not request a continuance nor did he make any attempts to respond to any of the correspondence sent and hand delivered to him. The hearing was held in Respondent's absence and based upon the evidence, Hearing Committee [] found that Petitioner met its burden of proving that Respondent violated Rule 203(b)(2) Pa.R.D.E., Pennsylvania Disciplinary Board Rule 87.53 and Rule of Professional Conduct 8.4(d), by failing to appear for the Private Reprimand scheduled for February 1, 1996.

Having found that Respondent engaged in misconduct in violation of the Rules, the Board must resolve the issue of the appropriate discipline to be imposed as a consequence of

Respondent's actions. When considering the appropriate discipline, the Board is allowed to consider any aggravating or mitigating circumstances present.

Based on the evidence presented, it is clear to the Board that Respondent's behavior here is part of a pattern of neglect, and of failure to take his responsibilities as a member of the bar seriously. Such conduct warrants appropriate discipline.

In addition to his repeated failures to respond in this matter, Petitioner has offered evidence which establishes that Respondent has violated the Rules in the recent past by similar failures to appear for scheduled disciplinary proceedings. Despite ample notice from Petitioner and many opportunities to explain his absence, Respondent has simply chosen to ignore these disciplinary matters.

Respondent's nonchalant attitude has continued in this matter. He failed to appear at the disciplinary hearing on October 24, 1996 or otherwise participate in this process. The record is devoid of any evidence to explain Respondent's persistent failures to participate in the disciplinary process. Accordingly, the Board believes and recommends that Respondent's consistent and repeated refusals to adhere to the disciplinary rules should lead to imposition of a sanction.

Based on the evidence adduced, it is the recommendation of the Board that this case be disposed of by imposing a suspension of one year and one day, concurrent with the suspension currently being served. The Board has determined that no purpose would be served by adding a consecutive suspension. Respondent must now take affirmative steps to participate in the reinstatement process if he wants to practice in the future. The underlying violations were not of sufficient severity to warrant a more severe sanction, and the Board does not wish to impose one

in situations where the underlying violations do not warrant public discipline.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania respectfully recommends the imposition of discipline in the form of a suspension of Respondent from the practice of law for a period of one year and one day. It is further recommended this discipline be imposed concurrently with any other discipline the Respondent may be serving. It is also recommended that Respondent be ordered to pay the costs incurred in the investigation and prosecution of this matter.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

BY:

Mark C. Schultz, Esquire, Member

Date May 16, 1997

Messrs. Elliott and Kerns dissented and would recommend a one year and one day consecutive suspension.

Mr. Saltz dissented and would issue a Rule to Show Cause why Respondent should not be placed on temporary suspension.

Messrs. Leonard, Miller and Halpern recused themselves.

Dean Carson and Mr. Caroselli did not participate in the March 5, 1997 adjudication.

ORDER

PER CURIAM:

AND NOW, this 2nd day of July, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 16, 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 (1) day, to run concurrently with the one (1) year and one (1) day Suspension imposed by Order of this Court on December 4, 1996, at No. [] Disciplinary Docket No. 3, and he shall comply with all the provisions of Rule 217 Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

Mr. Justice Zappala dissents and would impose a consecutive suspension.