

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1396 Disciplinary Docket No. 3
Petitioner :
: No. 147 DB 2007
v. :
: Attorney Registration No. 56717
ALLAN G. GALLIMORE, :
Respondent : (Allegheny County)

ORDER

PER CURIAM:


AND NOW, this 16th day of October, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 4, 2008, it is hereby

ORDERED that Allan G. Gallimore is suspended from the Bar of this Commonwealth for a period of one 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.

A True Copy Patricia Nicola

As of: October 16, 2008

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 147 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 56717
	:	
ALLAN G. GALLIMORE	:	
Respondent	:	(Allegheny 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 October 15, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against Allan G. Gallimore, Respondent. The Petition charged Respondent with professional misconduct arising out of his actions in two separate client matters. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on January 15, 2008, before a District IV Hearing Committee comprised of Chair Timothy J. Geary, Esquire, and Members Gary K. Schonhaler, Esquire, and Robert G. Dwyer, Esquire. Respondent appeared pro se.

The Hearing Committee filed a Report on April 14, 2008, finding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline and recommending that he be suspended for one year and one day.

This matter was adjudicated by the Disciplinary Board at the meeting on May 21, 2008.

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 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 is Allan G. Gallimore. He was born in 1954 and was admitted to practice law in the Commonwealth of Pennsylvania in 1989. His registration mailing address is Delerme & Gallimore, 401 Wood Street, Pittsburgh PA 15222.

Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline. On January 13, 2004, Respondent received an Informal Admonition for violations of Rules of Professional Conduct 1.3, 1.5(b) and 1.16(d). Respondent failed to appear at a citizenship interview with his client, for which he had accepted an advance payment of fee. He failed to refund the unearned fees.

4. On December 17, 2004, Respondent received a Private Reprimand for violations of Rules of Professional Conduct 1.3, 1.4(a) and 1.16(d). Respondent's clients paid him his fee and he failed to take any action in the matter, despite the fact that his clients called him frequently between September 1998 and July 2003. The clients hired a new attorney and requested a refund of the fee, but Respondent failed to do so.

5. By Order of the Supreme Court of Pennsylvania dated November 30, 2007, the Court suspended Respondent from the practice of law for three months, to be followed by probation for a period of six months. Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(a), 1.4(b) and 1.16(d) as a result of his failure to take action for his clients and failure to refund any portion of the fee to his clients.

6. Respondent remains on suspension at this time.

Chuong Matter

7. On or about March 8, 2002, Pal-Sun Chuong consulted with Respondent regarding Keystone Health Plan West's refusal to pay a bill for the surgical procedure performed on her at Allegheny General Hospital and also for allegations of negligence for Mercy Hospital's failure to properly diagnose her medical condition.

8. Mrs. Chuong entered into a written contingent fee agreement with Respondent on March 8, 2002.

9. On August 5, 2002, Respondent filed a Praecipe for Writ of Summons on behalf of his client and her husband, in the matter captioned Pal-Sun Chuong and Kwi Bok Chuong v. Mercy Hospital of Pittsburgh and Keystone Health Plan West, in the Court of Common Pleas of Allegheny County.

10. On November 26, 2002, Respondent filed on behalf of his clients a Complaint in Civil Action, which was served upon the defendants.

11. On March 26, 2003, Respondent filed an amended complaint on behalf of the plaintiffs.

12. On April 14, 2003, Preliminary Objections were filed on behalf of Keystone Health Plan West.

13. By letter to Respondent, which was originally dated April 3, 2003, and re-dated May 7, 2003, sent by fax and regular mail, Anita B. Folino, counsel for Mercy Hospital, confirmed a telephone conference she had had with Respondent. Ms. Folino reiterated her request for records of the admission of Mrs. Chuong at Allegheny General

Hospital and confirmed Respondent's agreement to provide the defendants with a second amended complaint.

14. Respondent failed to reply to Attorney Folino's correspondence.

15. By letter to Respondent dated November 13, 2003, Attorney Folino:

a. sent him follow-up correspondence to her letter dated May 7, 2003, to inform Respondent that she had not yet received the requested medical records;

b. noted she had not been served with a second amended complaint; and

c. requested that Respondent contact her to discuss the issues.

16. Respondent failed to reply to Attorney Folino's correspondence.

17. By letter to Respondent dated May 11, 2004, Attorney Folino:

a. reiterated her previous request for medical records;

b. enclosed authorizations that would permit her to obtain Mrs. Chuong's medical records directly;

c. stated she had not been served with a second amended complaint; and

d. requested he contact her upon receipt of the letter.

18. Respondent failed to reply to Attorney Folino's correspondence.

19. On June 2, 2004, a Motion to Compel the Production of Mrs. Chuong's Medical Records and/or Executed Medical Records Authorization for Allegheny General Hospital was filed on behalf of defendant Mercy Hospital.

20. Since that date there has been no activity of record in the Chuong case.

21. By letter to Respondent dated October 13, 2005, William F. Goodrich, Esquire, informed Respondent that Mrs. Chuong had contacted him and asked him to contact Respondent regarding the status of the case.

22. Respondent did not respond to Attorney Goodrich's letter of October 13, 2005, nor to any of the numerous letters that followed.

Battle Matter

23. Joanne Battle retained Respondent to represent her in regard to a personal injury action on her behalf.

24. Respondent orally agreed to represent Ms. Battle on a contingent fee basis of 20 percent of any recovery.

25. Respondent failed to place the terms of the contingent fee agreement in writing setting forth the method by which the fee was to be determined.

26. On September 10, 1999, Respondent filed a Praecipe for Writ of Summons against Promart One, Pittsburgh Marriott City Center, the Urban Redevelopment Authority of Pittsburgh (URA), and Hosts/Interstate, in the Court of Common Pleas of Allegheny County.

27. Respondent filed a Complaint in Civil Action on December 20, 1999, and the complaint was served upon the defendants.

28. Preliminary objections were filed, resulting in Respondent filing an Amended Complaint on April 7, 2000 and a second Amended Complaint on July 27, 2000.

29. A deposition was scheduled for November 2, 2001, but Ms. Battle failed to appear as Respondent had not notified her of the need to appear.

30. By Order of Court dated June 29, 2004, summary judgment was entered for two of the defendants and the court dismissed Ms. Battle's case with prejudice as it pertained to those defendants.

31. By Order of Court dated July 30, 2004 summary judgment was granted on behalf of two more of the defendants and Ms. Battle's claims were dismissed with prejudice.

32. Respondent failed to inform Ms. Battle that judgment had been entered against her in regard to each of the defendants named in her civil action.

33. From January 2004 through January 2007, Ms. Battle communicated with Respondent approximately once per month to inquire about the status of her civil action.

34. From September 2005 until January 2007 Respondent replied to Ms. Battle's inquiries by stating that he expected to get a court date shortly, or words to that effect.

35. In February 2007 Ms. Battle consulted with the law firm of Balzerini & Watson about her claims.

36. By telephone conversation on March 19, 2007, and by letter to Ms. Battle dated March 21, 2007, she was informed by Attorney David Watson what had happened in her case.

37. Ms. Battle learned for the first time the reasons for the dismissal and she was provided with documentation of the docket activity in her case.

38. Respondent appeared at the disciplinary hearing but did not testify on his own behalf.

III. CONCLUSIONS OF LAW

By his 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.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a) (for conduct occurring before January 1, 2005) – A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

4. RPC 1.4(a)(3) – (for conduct occurring on or after January 1, 2005) – A lawyer shall keep the client reasonably informed about the status of the matter.

5. RPC 1.5(c) - A fee may be contingent on the outcome of the matter for which the service is rendered, except in matters in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

6. RPC 1.16(d) – Upon termination of representation a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

7. 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 filed against Respondent charging him with professional misconduct in two separate client matters. Respondent did not file an Answer to Petition. Rule 208(b)(3) of the Pennsylvania Rules of Disciplinary Enforcement provides that any factual allegation that is not timely answered shall be deemed admitted. Respondent indicated at the disciplinary hearing that he understood that by not filing an Answer to the Petition he effectively admitted the averments set forth in the Petition.

Respondent failed to properly represent two clients. In the matter of Pal-Sun Chuong, Respondent failed to act with reasonable diligence and promptness, he failed to keep his client informed about the status of her matter and, upon termination of representation, failed to take steps to protect his client's interests. In the matter of Joanne Battle, Respondent failed to provide competent representation, failed to keep his client informed about the status of her matter and failed to promptly comply with reasonable requests for information, he failed to comply with the requirements applicable to a contingent fee arrangement and, upon termination of representation, he failed to take steps to protect his client's interests. Finally, Respondent misrepresented the status of her case to his client on numerous occasions, leading her to believe she had an active case, when in fact her claims were dismissed with prejudice.

The degree of discipline warranted in this matter hinges on the nature and gravity of the misconduct and the aggravating and mitigating factors. The fact that

Respondent has three prior instances of discipline is clearly an aggravating factor. The instant misconduct in the Chuong and Battle matters can be classified as a continuation of the pattern set by Respondent which resulted in an informal admonition imposed in January 2004. Respondent subsequently received a private reprimand in December 2004 and a three month suspension ordered by the Supreme Court on November 30, 2007. The acts of misconduct in all of these matters involve failing to complete work and failing to refund fees and return client files. This pattern and practice gives cause for concern when considering whether and what Respondent has learned from his past experiences. The record is silent as to any efforts made by Respondent to remedy the manner in which he handles his clients' legal matters. An additional one year and one day period of suspension is warranted in order to protect the public from Respondent's repeated acts of misconduct. Respondent will be required to petition for reinstatement and prove his fitness in the event he desires to practice law in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Allan G. Gallimore, be suspended from the practice of law for a period of one year and one 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: 
Smith Barton Gephart, Chair

Date: June 4, 2008

Board Member Baer did not participate in the adjudication.