

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1418 Disciplinary Docket No. 3
Petitioner :
 : No. 151 DB 2007
v. :
 : Attorney Registration No. 10296
WILLIAM Z. WARREN, :
Respondent : (Berks County)

ORDER

PER CURIAM:

AND NOW, this 2nd day of February, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 15, 2008, and Respondent's Petition for Review, it is hereby


ORDERED that William Z. Warren is suspended from the Bar of this Commonwealth for a period of five years 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 McCaffery dissents.

A True Copy Patricia Nicola

As of: February 2, 2009

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 151 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 10296
	:	
WILLIAM Z. WARREN	:	
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 October 23, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against William Z. Warren, Respondent, charging him with violations of the Rules of Professional Conduct arising out of allegations that he filed pleadings which contained accusations of criminal conduct against a judge. Respondent did not file a

timely Answer to Petition for Discipline. He submitted an Answer to Petition dated February 15, 2008, nearly four months subsequent to the filing of the Petition.

A prehearing conference was held on January 16, 2008 and a disciplinary hearing was held on February 27, 2008, before Chair Andrew J. Reilly, Esquire, and Member Nelson J. Sack, Esquire. The third member of the panel was unable to attend and the hearing went forward with two Members. The relevant evidence in the case consisted of allegations contained in the Petition for Discipline; testimony of Judge Stephen B. Lieberman and Robert Reibstein, Esquire; and copies of pleadings filed by Respondent submitted to the Hearing Committee as Exhibit P-17. Respondent did not attend either the prehearing conference or the disciplinary hearing. The Notice of the prehearing conference and hearing were hand-delivered to Respondent at his office and residence.

The Hearing Committee filed a Report on June 13, 2008, finding that Respondent violated the Rules of Professional Conduct and recommending that Respondent be suspended for a period of three years.

Petitioner filed a Brief on Exceptions on June 25, 2008.

Respondent filed a Response to Report of Hearing Committee on July 15, 2008.

This matter was adjudicated by the Disciplinary Board at the meeting held on July 19, 2008.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, 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 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 said Rules.

2. Respondent is William Z. Warren, who was born in 1935 and was admitted to practice law in Pennsylvania in 1971. His office is located at 9350 Old 22, Bethel, Pennsylvania 19507. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

4. Robert M. Reibstein, Esquire, represented CACV of Colorado with reference to a claim against Respondent regarding an unpaid credit card account.

5. After a civil complaint had been filed at the district justice level, a default judgment was entered in Respondent's favor on November 9, 2006.

6. Mr. Reibstein, on behalf of plaintiff, appealed the decision to the Court of Common Pleas of Berks County.

7. On or about November 27, 2006, a civil complaint was filed by Mr. Reibstein in the Court of Common Pleas of Berks County on behalf of his client against Respondent.

8. A default judgment was entered on behalf of CACV of Colorado on January 23, 2007, and a Praecipe for Writ of Execution was filed on February 23, 2007.

9. On March 6, 2007, Respondent filed, pro se, a Praecipe for Stay of Proceedings Against Appellee.

10. On March 6, 2007, Judge Stephen B. Lieberman entered an order denying Respondent's Praecipe for Stay of Proceedings.

11. On or about March 14, 2007, Respondent filed a Notice of Appeal to the Commonwealth Court of Pennsylvania, and on March 28, 2007, Judge Lieberman filed a Statement in Lieu of Opinion.

12. On or about April 20, 2007, Respondent filed a Motion to Recuse Judge Lieberman, which motion was denied by Judge Jeffrey K. Sprecher of the Court of Common Pleas of Berks County on April 25, 2007.

13. In Respondent's Motion to Recuse, Respondent made the following false accusations against Judge Lieberman, including, but not limited to, false accusations of Judge Lieberman's involvement in criminal activity:

a. That Judge Lieberman "acted willfully, deliberately, maliciously, with reckless disregard or deliberate indifference to the Defendant's constitutional and statutory rights";

b. That Judge Lieberman's Statement in Lieu of Opinion "constitutes a written and signed admission by Judge Lieberman that he denied defendant his rights under the equal protection and due process clauses of U.S.C.A. Const. Amend. 14 [sic]";

c. That "the actions taken by Judge Lieberman, Atty. Reibstein and the plaintiffs were in concert and were part of a conspiracy to extort a settlement and to deprive Defendant of his constitutional and statutory rights, including his property rights";

d. That "Judge Lieberman's Statement [in Lieu of Opinion] contains numerous perjured statements, as enumerated in the Statement of Issues";

e. That "Judge Lieberman's Order and his Statement [in Lieu of Opinion] constitutes a written and signed admission by Judge Lieberman of his liability under 42 USC Sec. 1983 and of his guilt of committing the crimes enumerated in 18 USC Sec. 242 and related Sec. 241";

f. That "Judge Lieberman's actions strongly suggest that bribery may be involved"; and

g. That "appropriate authorities are being contacted for the purpose of bringing criminal indictments against...Judge Lieberman under 18 USC Sec. 242 and 241, and other related federal and state crimes, such as perjury, obstruction of justice, etc., and possibly bribery."

14. Respondent's accusations against Judge Lieberman were false.

15. Respondent's accusations against Judge Lieberman were either knowingly made by Respondent with knowledge of their falsity, or made with reckless ignorance of the truth or falsity thereof.

16. In October 2007, Respondent filed an appellate brief in the Superior Court of Pennsylvania, following his appeal of the lower court proceedings in Berks County.

17. In his brief, Respondent continued and repeated his accusations against Judge Lieberman as follows:

a. "His actions in this matter constitute evidence that Judge Lieberman acted willfully, deliberately, maliciously, with reckless disregard or deliberate indifference to the Defendant's constitutional and statutory rights."

b. "Clearly, Judge Lieberman's statement that "there were no proceedings before the Court to stay, 'constitutes perjury [sic]."

c. "In fact, his Order and Statement constitute a written and signed admission by Judge Lieberman of his liability...and of his guilt of committing the crimes..., in addition to perjury and obstruction of justice, as well as other federal and state crimes."

18. As a result of Judge Jeffrey K. Sprecher's denial of Respondent's Motion to Recuse against Judge Lieberman, Respondent made the following accusations against Judge Sprecher in his Superior Court brief:

a. "...Judge Sprecher deliberately and maliciously makes a false statement that Appellant made a threat in his pleadings to do bodily harm to ATTY. Reibstein [sic]."

b. "This statement which Judge Sprecher knowingly, and with malice, twisted, misquoted and lied bald-facedly about, thereby committing the felony of perjury appears on page 8 of the Statement of Issues, in the Reproduced Record [sic]."

c. "Without a doubt, Appellant had proved that Judge Sprecher has demonstrated great bias, prejudice, and hatred of and against Appellant, and is, thus, unfit to preside over any case involving Appellant."

d. "It is no exaggeration to state that Judge Sprecher (as well as Judge Lieberman) has failed miserably to meet the standards set forth by these Canons...this conduct has crossed the line into blatant lawlessness."

19. Respondent did not appear at the prehearing conference or at the disciplinary hearing.

20. Substituted service of the Petition for Discipline was made upon Respondent pursuant to Rule 212, Pa.R.D.E., and Respondent subsequently acknowledged his receipt of the Petition.

21. The Notice of Prehearing Conference and Hearing were mailed to Respondent by Office of the Secretary and hand-delivered to Respondent.

22. The record contains no expressions of remorse by Respondent for his actions.

23. The record contains no evidence that mitigates Respondent's misconduct or otherwise explains his actions.

III. CONCLUSIONS OF LAW

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

1. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

2. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

3. RPC 4.1(a) – In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

4. RPC 8.2(a) – A lawyer shall not make a statement that the lawyer knows to be false or with disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to a judicial or legal office.

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

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

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent contained in the Petition for Discipline. No timely Answer to the charges was filed by Respondent; thus, the allegations are deemed admitted by Respondent. Pa.R.D.E. 208(b)(3). It is alleged that in the course of civil litigation wherein Respondent represented himself, Respondent made false accusations against two Judges of the Court of Common Pleas of Berks County. The record shows that Respondent filed an appeal to the Commonwealth Court of Pennsylvania following the entry of a default judgment against him and the denial of a praecipe for stay of proceedings. Berks County Judge Stephen B. Lieberman filed a Statement in Lieu of Opinion. In response to the Judge's filing, Respondent filed a Motion to Recuse Judge Lieberman, which was denied by Berks County Judge Jeffrey K. Sprecher on April 23, 2007.

Respondent's Motion to Recuse contained numerous accusations, which are set forth above in Finding of Fact 13. In essence, Respondent accuses Judge Lieberman of acting maliciously with indifference to his rights, conspiring to extort a settlement and deprive him of his rights, and committing perjury, bribery, and obstruction of justice. These

accusations were repeated by Respondent against Judge Lieberman in an appellate brief Respondent filed with the Superior Court of Pennsylvania. Moreover, Respondent made the same accusations against Judge Sprecher.

Petitioner's case does not rest solely upon Respondent's failure to file an answer. Petitioner presented the testimony of Robert Reibstein, Esquire, the opposing counsel in the civil litigation, and the testimony of Judge Lieberman. The testimony of both witnesses was consistent with the allegations contained in the Petition for Discipline. As testified to by Mr. Reibstein and Judge Lieberman, none of the accusations that Respondent made against Judge Lieberman are true. Petitioner met its burden that the statements made by Respondent were false. Office of Disciplinary Counsel v. Price, 732 A.2d 559 (Pa. 1999). The burden then shifted to Respondent to establish that the allegations were true or that following a reasonable diligent inquiry, he had formed an objective reasonable belief that the statements were true. *Id.* at 604. The record contains neither evidence nor testimony by Respondent to support the truthfulness of his accusations. Respondent compounded his actions by repeating the accusations against Judge Lieberman in a different pleading and including Judge Sprecher as a target of the same accusations. There is little question that Respondent has engaged in egregious professional misconduct.

Past cases have dealt with the issue of false accusations against members of the judiciary. In the matters of Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000), Office of Disciplinary Counsel v. Price, 732 A.2d 559 (Pa. 1999), and Office of

Disciplinary Counsel v. Daniel C. Barrish, 130 DB 2004, 1103 Disciplinary Docket No. 3 (Pa. March 15, 2006), five year suspensions were deemed appropriate. The Court in Surrick discussed in detail Mr. Surrick's false accusations of case fixing against several judges, which Mr. Surrick defended under the guise of his personal views of judicial reform and his belief that the judicial system was subject to manipulation. The Court labeled Mr. Surrick's accusations as reckless and careless and his conduct as inexcusable and unprofessional, warranting a five year suspension. The Price matter involved accusations against district justices and a district attorney that were found to be false. The Court noted that Mr. Price continued at all stages of the proceedings against him to deny that he engaged any wrongdoing. The Court found Mr. Price's accusations to be scandalous and to erode public confidence in the judicial system, thus warranting a five year suspension. The matter of Barrish involved false accusations of case fixing against two judges made in pleadings and on the Internet.

The facts in the matter of Office of Disciplinary Counsel v. Wrona, 123 DB 2004, 1148 Disciplinary Docket No. 3 (Pa. June 29, 2006) arose out of Mr. Wrona's first court case as an attorney. Mr. Wrona not only made his untruthful statements in pleadings, but wrote a letter to the editor of the primary newspaper in the area, wrote a press release and posted it on the Internet, and breached confidentiality requirements regarding action before the Judicial Conduct Board. These were facts that the Court determined to be worthy of disbarment.

The Hearing Committee in the instant matter, after analyzing the above cited cases, recommended a three year period of suspension for Respondent. In arriving at this disposition, the Committee considered that Respondent had been practicing law since 1971 with no prior complaints of a disciplinary nature. As well, the Committee alluded to Respondent's mental health, giving weight to the testimony of Robert Reibstein, Esquire, that Respondent needed psychological help, and referencing Ex P-17, Respondent's late submitted Answer, as containing rambling and illogical statements.

Petitioner rejects the Hearing Committee's recommendation as inadequately reflecting Respondent's serious conduct and inappropriately mitigating the discipline. Petitioner contends that this matter is most similar to the facts of Wrona and warrants disbarment.

The Board's recommendation in this matter is guided by the particular facts of Respondent's actions and the Court's decisions in similar matters. After carefully reviewing the record the Board is persuaded that a five year suspension is appropriate. The three year period of suspension recommended by the Committee is not sufficient discipline to address Respondent's serious misconduct. While it is admirable that the Committee attempted to give credit for Respondent's past history in the legal profession, its conclusion that Respondent demonstrated a background of steady, competent legal work is not supported by the evidence, and cannot serve as mitigation. Likewise, the Committee's conclusion that Respondent has mental health issues has no support in the record. A long line of cases commencing with Office of Disciplinary Counsel v. Braun, 553

A.2d 894 (Pa. 1989) sets forth a respondent's burden to prove, by clear and convincing evidence, that a causal connection exists between a mental health disorder and the misconduct which forms the basis for discipline. This standard of proof cannot be established in a case where the Respondent neither appeared nor asserted Braun mitigation.

While Petitioner's contention that this is a disbarment case may have merit due to Respondent's failure to appear, the facts more readily suggest a five year suspension along the lines of Surrick, Price, and Barrish. Respondent's false accusations are akin to those made in the prior cases and warrant the same discipline.

For the above reasons the Board recommends that Respondent be suspended for five years.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, William Z. Warren, be suspended from the practice of law for a period of five years.

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 B. Gephart
Smith Barton Gephart, Board Chair

Date: August 15, 2008

Board Member Newmar: did not participate in the adjudication.