

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1534 Disciplinary Docket No. 3  
Petitioner :  
 : No. 158 DB 2009  
v. :  
 : Attorney Registration No. 40625  
JOSEPH JAMES D'ALBA, :  
Respondent : (Erie County)

ORDER

**PER CURIAM:**

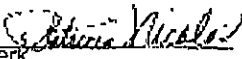
**AND NOW**, this 3<sup>rd</sup> day of October, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 29, 2011, it is hereby

ORDERED that Joseph James D'Alba is suspended from the Bar of this Commonwealth for a period of one year 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 10/3/2011

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

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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 November 13, 2009, the Supreme Court of Pennsylvania entered an Order referring the matter of Joseph James D'Alba's conviction of indirect criminal contempt to the Disciplinary Board. On December 22, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent charging him with violation of Pennsylvania Rule of Disciplinary Enforcement 203(b)(1) arising out of the conviction of indirect criminal contempt. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on July 23, 2010 before a District IV Hearing Committee comprised of Chair Mark Gordon, Esquire, and Members William P. Bresnahan, Esquire, and Susan Mondik Key, Esquire. Respondent did not appear.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on November 19, 2010, concluding that Respondent violated the Rule as contained in the Petition for Discipline, and recommending that he be suspended for a period of one year and one day.

This matter was adjudicated by the Disciplinary Board at the meeting on January 19, 2011.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave., Harrisburg PA 17106-2485, 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 Joseph James D'Alba. He was born in 1956 and was admitted to practice law in Pennsylvania in 1984. His attorney registration mailing address is 518 Stafford Avenue, Apt. 1, Erie PA 16508. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a history of professional discipline. He was suspended for a period of three months on April 29, 2002. The suspension was based on his criminal convictions of simple assault, defiant trespass, and indirect criminal contempt. In 1993 Respondent received a Private Reprimand.

4. Respondent has not sought reinstatement and his current status remains "suspended."

5. On December 31, 2008, in the Erie County Court of Common Pleas, Respondent was found guilty of indirect criminal contempt pursuant to 23 Pa. C.S. Section 6114 and was sentenced by Judge Stephanie Domitrovich to incarceration with a term of ten days to six months, and with additional conditions which included drug, alcohol, and mental health evaluations, attendance at domestic violence or anger management classes, and prohibition against contacting the victim of his conduct.

6. By order of court dated January 14, 2009, Judge Domitrovich granted Respondent parole since he had met the minimum period of his incarceration and the eligibility requirements for his release.

7. Respondent breached his court-induced obligations to participate in the domestic violence and anger management classes when, on January 26, 2009, it was determined that Respondent had been discharged unsuccessfully on that date because of inappropriate behavior.

8. Respondent missed various appointments with his probation officer and with the psychiatrist who was to conduct a psychiatric evaluation as part of the terms of Respondent's release.

9. While Respondent did eventually undergo a psychiatric evaluation and reported to his probation officer, Respondent was discharged from his domestic violence classes, once more due to inappropriate behavior.

10. Due to the parole/probation violations referenced above, Respondent was imprisoned in the Erie County Prison on April 20, 2009, where he remained pending a May 11, 2009 revocation hearing before Judge Domitrovich.

11. On May 11, 2009, Respondent had his parole revoked by Judge Domitrovich.

12. Judge Domitrovich re-paroled Respondent effective May 19, 2009.

13. By Order of the Supreme Court of November 13, 2009, it was ordered that Respondent's indirect criminal contempt conviction be referred to the Disciplinary Board pursuant to Rule 214(g).

14. Respondent failed to respond to the Petition for Discipline filed by Office of Disciplinary Counsel.

15. On March 3, 2010, Respondent participated in the pre-hearing conference by telephone, at which time he requested a continuance of the hearing until sometime after July 1, 2010.

16. The proceedings were continued until July 23, 2010.

17. Respondent failed to appear at the hearing on the scheduled date.

### III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Disciplinary Enforcement:

1. The crime for which Respondent was convicted is punishable by a maximum of six months imprisonment, pursuant to 23 Pa.C.S. Section 6114(b)(1)(i)(A).
2. This crime is not categorized as a “serious crime” as defined by Rule 214(i), Pa.R.D.E.
3. Nevertheless, Respondent’s conviction of the crime of indirect criminal contempt is an independent basis for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

IV. DISCUSSION

This matter is before the Board for consideration of the appropriate discipline to address Respondent’s conviction of indirect criminal contempt in the Erie County Court of Common Pleas. That offense is punishable by imprisonment for a maximum of six months, and therefore does not constitute a “serious crime”. However, Respondent’s conviction is a violation of Rule of Disciplinary Enforcement 203(b)(1). Respondent did not formally deny the allegations against him.

Respondent has a history of professional discipline in Pennsylvania. The three month suspension imposed upon Respondent in 2002 was based, in part, upon his conviction of the crime of indirect criminal contempt, which charge arose from his violation of a Protection From Abuse order. This is similar misconduct to that in the instant matter. Respondent did not petition for reinstatement from the suspension and remains a suspended attorney.<sup>1</sup>

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<sup>1</sup> Typically, a suspension for three months does not require that the attorney petition for reinstatement. However, at the time of the suspension, Respondent had been on inactive status since September 9, 1996 and would have been required to petition for reinstatement to resume the practice of law.

Respondent's record of recidivist behavior and ongoing violation of professional conduct rules establish that he is not fit to practice law. His refusal to participate in these proceedings constitutes a further aggravating factor.

For these reasons, the Board recommends that Respondent be suspended for a period of three months retroactive to November 13, 2009.

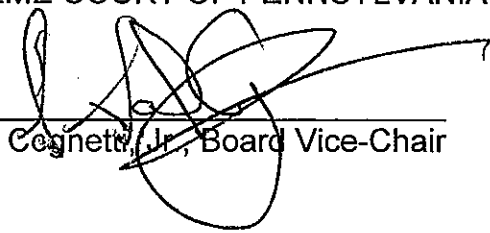
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Joseph James D'Alba be Suspended from the practice of law for a period of three months retroactive to November 13, 2009.

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:   
Sal Cognetti, Jr., Board Vice-Chair

Date: April 29, 2011

Board Member Todd did not participate in the adjudication.