

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 279, Disciplinary Docket
Petitioner : No. 3
:
: No. 107 DB 1995
:
v. : Attorney Registration No. []
:
[ANONYMOUS], :
Respondent : ([] 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

A Petition for Discipline was filed against Respondent on August 11, 1995, after he failed to appear for two Informal Admonitions scheduled for June 19, 1995. A hearing was held on November 20, 1995 before Hearing Committee [] comprised of Chairperson [], Esquire, and Members [], Esquire, and [], Esquire. Although

Respondent was sent proper notice of this hearing, he failed to appear. He contacted Petitioner on November 13, 1995 and stated that he would not appear. He contacted Hearing Planner [] on November 17, 1995 and informed her that he would not appear due to financial difficulties. Respondent never requested a continuance nor did he explore other avenues of communication with Petitioner.

The Committee filed a Report on May 20, 1996 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 June 28, 1996.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 400, Union Trust Building, 501 Grant Street, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), 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, [], 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 []. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. On August 11, 1995, Petitioner filed a Petition for Discipline against Respondent regarding his failure to appear for two Informal Admonitions before Chief Disciplinary Counsel.

4. After advising Respondent of complaints filed by two different clients ([A] - File No. [] and [B] - File No. []) alleging violations of the Rules of Professional Conduct and after completing Petitioner's investigation into such allegations, Petitioner determined that Respondent would receive an Informal Admonition on March 6, 1995 by Chief Disciplinary Counsel at Petitioner's office. In Petitioner's letter of February 9, 1995, Petitioner informed Respondent of such determination and that Petitioner required Respondent to fulfill certain conditions for each client. Moreover, Petitioner advised Respondent that his failure to appear for the Informal Admonition would constitute an independent act of professional misconduct pursuant to Rule 203(b)(2), Pa.R.D.E. and §87.52 D.Bd. Rules.

5. Respondent appeared on March 6, 1995, to receive the Informal Admonition. However, no Admonition took place at that time. Instead, Respondent and Chief Disciplinary Counsel engaged in a discussion of the issues and Respondent was asked to comply with the conditions.

6. By letter dated April 11, 1995, Petitioner rescheduled the Informal Admonition for May 10, 1995. Subsequently, Respondent supplied proof that he had fulfilled Petitioner's conditions with respect to the [A] file and that matter was ultimately dismissed. However, Respondent did not comply with the conditions in connection with the [B] file.

7. The April 11, 1995, letter directed to Respondent was sent by certified mail to Respondent's registration address in []. That letter was returned unclaimed.

8. It was learned, thereafter, that Respondent had relocated to [].

9. Respondent had not advised Petitioner of his change of address despite the fact that he knew that the resolution of these matters was outstanding.

10. By certified letter sent to the [] address, dated May 23, 1995, Petitioner wrote again to Respondent rescheduling the Informal Admonition with respect to the [B] file for June 19, 1995, and informing Respondent that his failure to appear without good cause would constitute an independent act of professional misconduct.

11. The return receipt reflected a delivery date of May 25, 1995 and a signature of "[RESPONDENT]".

12. Respondent did not appear for his scheduled Informal Admonition in the [B] matter on June 19, 1995.

13. Petitioner sent a letter dated June 19, 1995, to Respondent stating that he had the opportunity to show good cause for his failure to appear, and if he did not, formal proceedings would be initiated. No response to this letter was received.

14. After advising Respondent of complaints filed by a third client ([C] - File No. []), alleging violations of the Rules of Professional Conduct and after completing Petitioner's investigation into such complaints, Petitioner determined that Respondent would receive an Informal Admonition on May 10, 1995. In Petitioner's letter dated April 11, 1995, Petitioner informed Respondent of such determinations and that Petitioner required that

Respondent fulfill certain conditions for such client. Moreover, Petitioner advised Respondent that his failure to appear for the Informal Admonition would constitute an independent act of professional misconduct.

15. From Respondent's subsequent response it was determined that Respondent had complied with the conditions set forth in the [C] file.

16. However, Petitioner determined that there was still sufficient evidence to support violations of the charged Rules. Accordingly, by certified letter dated May 23, 1995, Petitioner scheduled an Informal Admonition for June 19, 1995.

17. Respondent did not appear for such scheduled Informal Admonition in the [C] matter.

18. By certified letter dated June 19, 1995, Petitioner gave Respondent an opportunity to present good cause for his absence.

19. Petitioner received no response.

20. A Petition for Discipline was served on Respondent on September 7, 1995.

21. No Answer was filed by Respondent.

22. On November 9, 1995, Respondent was served with Notice of Hearing to be held on November 20, 1995.

23. The disciplinary hearing took place as scheduled; however, Respondent did not appear nor did he seek a continuance.

At that hearing, Petitioner offered the testimony of two witnesses and offered ten exhibits into evidence, which were accepted.

24. Respondent has no prior record of discipline.

III. CONCLUSIONS OF LAW

Respondent's willful failure to appear before Chief Disciplinary Counsel for the two scheduled Informal Admonitions violated Pennsylvania Rule of Disciplinary Enforcement 203(b)(2).

IV. DISCUSSION

This matter is before the Board for consideration of the charge against Respondent that he failed to appear for two Informal Admonitions in violation of Rule 203(b)(2), Pa.R.D.E. When Petitioner alleges that an attorney has violated a Rule of Disciplinary Enforcement, 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 the uncontroverted testimony of Chief Disciplinary

Counsel and his secretary, who testified that Respondent appeared for the March 6, 1995, Informal Admonition. This Admonition was not given at that time in order to give Respondent the opportunity to satisfy several conditions. Respondent satisfied conditions as to the [A] complaint but not as to the [B] matter. When his failure to satisfy the condition occurred, another Informal Admonition was scheduled for June 19, 1995. In the interim investigation was made in the [C] matter and it was determined that an informal admonition was appropriate. The admonition in this matter was also scheduled for June 19, 1995, the same day and time as the [B] matter. Respondent did not appear nor did he provide explanation for his failure to appear. Petitioner presented documentary evidence that Respondent was properly served at his registration address in [] and in [], where he moved without notifying Petitioner shortly after the March meeting.

Respondent did not attend the disciplinary hearing on November 20, 1995, although he contacted Petitioner one week prior and stated that he would not appear due to financial problems. He did not request a continuance. The hearing was held in Respondent's absence, and the Committee found that Petitioner met its burden of proving that Respondent violated Rule 203(b)(2), Pa.R.D.E. After review of the record the Board finds that Respondent violated Rule 203(b)(2), Pa.R.D.E., by failing to appear for the two Informal Admonitions scheduled for June 19, 1995.

After determining that Respondent engaged in misconduct in violation of the Rules, the Board must resolve the issue of the appropriate sanction to be imposed as a consequence of Respondent's actions. When determining the applicable sanction, the Board must consider not only the misconduct but any aggravating or mitigating circumstances present. As always, the Board is mindful of its obligation to protect the interest of the public and preserve the integrity of the bar. Office of Disciplinary Counsel v. Duffield, 537 Pa. 485, 644 A.2d 1186 (1994).

Respondent's disdain for the disciplinary system leads the Board to the conclusion that some form of public discipline is warranted. The instant matter would have been concluded in June 1995 had Respondent appeared for the administration of his two Informal Admonitions. Yet despite notice from Petitioner and the availability of an opportunity to explain his absence, Respondent chose not to contact Petitioner. The chain of events leading to the instant proceeding started in March 1995, when Respondent appeared for an Informal Admonition, and was given a chance to satisfy conditions in lieu of receiving the Admonition. Respondent did not fully comply with the conditions and Petitioner had no choice but to schedule an Informal Admonition, as it appeared that Respondent was not willing to cooperate and satisfy the conditions. Any willingness on Respondent's part to resolve this matter

deteriorated, as he moved to [] without a forwarding address, forcing Petitioner to track him down. Respondent subsequently failed to communicate with Petitioner or appear at the Admonitions on June 19, 1995.

Respondent's cavalier attitude continued, as he failed to appear at the disciplinary hearing on November 20, 1995. His appearance at such hearing, while not repairing his initial failure to appear, would have at least demonstrated that he viewed the proceedings against him as serious in nature.

Prior cases have addressed the issue of nonappearance at an Informal Admonition. In the case of In re Anonymous No. 8 DB 91, 21 Pa. D. & C. 4th 333 (1993), an attorney failed to appear for the administration of two informal admonitions. The attorney appeared at the disciplinary hearing. The Board determined that the attorney's failure to appear showed his disrespect for the disciplinary system. The Board recommended and the Supreme Court imposed a suspension for one year and one day. This sanction was imposed specifically in order that the attorney would be required to petition for reinstatement and demonstrate his fitness.

In the case of In re Anonymous No. 43 DB 93, 23 Pa. D. & C. 4th 468 (1994), an attorney was scheduled to receive an informal admonition; however, he failed to appear. A disciplinary hearing was scheduled and the attorney again failed to appear. The Board

was troubled by the attorney's original misconduct but more concerned with his failure to appear or participate in the proceedings. The Board decided that such a flagrant and contemptuous disregard for the disciplinary system, combined with the underlying misconduct, was a basis for suspension. The Board recommended and the Court imposed a thirteen month suspension. In the case of In re Anonymous No. 127 DB 89, 12 Pa. D. & C. 4th 106 (1991), an attorney was scheduled to receive an informal admonition, and he failed to appear. After formal proceedings were initiated, the attorney continued to abstain from participation. The Board determined that a stringent sanction was warranted in response to the attorney's cavalier attitude. The attorney ultimately received a thirteen month suspension.

The facts of the instant case are very similar to the cited cases. The Board is of the opinion that a suspension of one year and one day is appropriate and within the perimeters of the case law. It is not likely that Respondent will return to Pennsylvania to receive any further discipline that would require his appearance, as his past failures to attend indicate his inability to deal with the consequences of his actions. The benefit of a one year and one day suspension is that Respondent will be required to take affirmative steps to participate in the reinstatement process, if he wishes to practice in Pennsylvania in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be suspended from the practice of law for a period of one (1) year and one (1) 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: _____
William R. Caroselli, Member

Date: October 16, 1996

Board Members Kerns and Carson did not participate in the June 28, 1996 adjudication.

O R D E R

PER CURIAM:

AND NOW, this 4th day of December, 1996, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 16, 1996, 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, 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.