

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 331 Disciplinary Docket
Petitioner : No. 3
:
:
v. : No. 151 DB 1995
:
[ANONYMOUS] : Attorney Registration No. []
:
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

On November 8, 1995, a Petition for Discipline was filed against the Respondent. On January 4, 1996, the matter was referred to Hearing Committee [], consisting of [], Esquire,

Chairperson, [], Esquire, and [], Esquire, Members.

On March 12, 1996, a Disciplinary Hearing was held.

On December 20, 1996, a Hearing Committee Report was filed recommending a three (3) year suspension.

This matter was adjudicated at the March 5, 1997 meeting of the Disciplinary Board.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now located at Suite 3710, One Oxford Centre, 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 November 2, 1938, was admitted to practice law in the Commonwealth on October 6, 1978, maintains his office at [], and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On October 8, 1983, [A] was injured in an automobile accident in []. She suffered a fractured humerus,

which necessitated placement of a metal plate in her right arm.

4. Respondent, who had previously represented [A's] husband in an unrelated matter, represented the [A] in obtaining a settlement arising out of the automobile accident. The [A] were satisfied with Respondent's services in this matter.

5. In August 1984, [A] underwent an operation for removal of the metal plate from her fractured humerus at [B] Hospital. The surgeon was Dr. [C].

6. On or about August 17, 1984, [A] began experiencing complications with her arm. Over the following five days, she underwent five operations resulting in the partial amputation of her right arm on August 22, 1984.

7. In August or September 1984, [A] and her husband, [], met with Respondent at their home, and retained Respondent to pursue a medical malpractice action against Dr. [C] and the hospital arising out of the operation which resulted in the loss of [A's] arm. No agreement was signed, but both parties understood that Respondent would represent the [A] in the malpractice matter.

8. Over the next several years, Respondent informed the [A] that he was proceeding with the legal action on their behalf. This was false and in fact, he had done nothing to pursue

[A's] legal remedies.

9. The statute of limitations for this medical malpractice action lapsed in August 1986. Respondent had not filed any legal action on [A's] behalf at that point.

10. In 1987, Respondent came to the realization that his inaction had put [A's] chances of a legal recovery at risk. Respondent consulted an attorney specializing in medical malpractice matters with the intent of making a referral but was informed that it was too late and that the statute of limitations had already run.

11. On May 11, 1987, Respondent submitted a Contingent Fee Agreement to the [A], which they signed. At this time Respondent did not inform the [A] that the statute of limitations had already run on their claims.

12. Although Respondent knew in 1987 that he had caused the loss of [A's] cause of action, he did not disclose this fact to [A] or advise her to get other counsel. Rather, Respondent continued to mislead and deceive her into thinking that he was representing her in an ongoing legal proceeding.

13. Specifically, Respondent made the following misrepresentations to Mr. & Ms. [A]:

- a) In March 1989, Respondent told them they would be going to Federal Court and gave

them five (5) different court dates.

- b) In July 1992, Respondent told them they would be in court in August 1992.
- c) In January 1994, Respondent told them they would have a June 6 trial date and that there would be numerous witnesses, so that a week of trial would be required.
- d) In June 1994, Respondent told them that they would likely have a July 25 or August 1 trial date.

14. In October and November 1994, Respondent failed to return 11 telephone calls to the [A]. Respondent testified that he did not return the calls because "I knew it was time. I could not continue to live the lie, and I could not continue to inflict the hurt on them."

15. The [A] became alarmed and consulted the law offices of [D], where they spoke to Attorney [E].

16. Attorney [E] checked the dockets and learned that no action had ever been filed on [A's] behalf, and so informed the [A]. This was the first indication the [A] received that no action had been taken on [A's] behalf.

17. Subsequently, Attorney [E], by Writ of Summons, brought a malpractice action against Respondent. On November 28, 1994, Respondent gave [E] a written statement which admitted most

of the conduct described above and stated that he was "frozen" by alcoholism and fear of the magnitude of the case. Respondent stated that he would cooperate with all efforts to compensate [A] for her loss.

18. Attorney [E] testified that his investigation indicated that the [A] had a valid claim in either medical malpractice against the doctor or the hospital or products liability against the manufacturer of equipment used in the operation. He estimated the original value of the [A's] claim as being "well in excess of \$2 million."

19. [E's] investigation also revealed that while Respondent had carried malpractice insurance in the past, his policy had expired in June 1986 and contained no "tail coverage" for claims asserted after the expiration date, such as that of the [A].

20. [E's] investigation also revealed there were no assets held by Respondent against which any judgment could be enforced.

21. Respondent has made no payments to [A] in compensation for the loss caused by his inaction, and [A] is essentially without a legal remedy for her loss.

22. Respondent has a prior disciplinary record

consisting of an informal admonition administered May 29, 1985 and a one year suspension stayed with a one year probationary period ordered April 14, 1992.

23. Respondent was an active alcoholic between 1984 and 1988, and his alcoholism was a factor in his misconduct in both instances of prior discipline as well as the original failure to pursue the [A's] case.

24. Respondent stopped drinking alcohol on June 10, 1988 and has remained alcohol free since then except for a relapse between December 1994 and March 1995.

25. Respondent has been an active participant in Alcoholics Anonymous, for which he served as Public Information Officer of the [] County Chapter, and in Lawyers Concerned for Lawyers, of which he was Chairperson of the [] County Chapter for three years.

III. CONCLUSIONS OF LAW

As a result of Respondent's conduct in failing to take any action on behalf of the [A] between August 1984 and March 1988, he violated the following Disciplinary Rules:

1. DR 1-102(A)(4);
2. DR 1-102(A)(6);
3. DR 6-101(A)(3);

4. DR 7-101(A)(1);
5. DR 7-101(A)(2); and
6. DR 7-101(A)(3);

As a result of Respondent's conduct after April 1, 1985, Respondent violated Rule 8.4(c) of the Rules of Professional Conduct.

IV. DISCUSSION

In the present case, the Respondent agreed that he engaged in the following misconduct:

Engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

Engaged in conduct that adversely reflects on his fitness to practice law.

Neglected a legal matter entrusted to him.

Intentionally failed to seek the lawful objects of his client.

Failed to carry out a contract of employment for professional services.

Therefore, the sole issue before this Board is the appropriate discipline for the Respondent's admitted misconduct.

In the instant matter, the Respondent had satisfactorily represented Mr. [A] in a motor vehicle accident. Due to Mr. [A's] previous experience with the Respondent, the [A] hired the Respondent to represent the [A] in obtaining a settlement arising

out of the motor vehicle accident in 1983 in which his wife was injured. The [A] were satisfied with the Respondent's handling of this matter.

In the 1983 motor vehicle accident, Ms. [A] suffered a fractured humerus which necessitated the placement of a metal plate in her right arm. In August of 1984, Ms. [A] underwent an operation for the removal of the metal plate from her fractured humerus at [B] Hospital. Ms. [A] suffered complications with her arm after the removal of the metal plate. Over a five day period within three weeks of the removal of the metal plate, Ms. [A] underwent five operations resulting in the partial amputation of her right arm.

As a result of [A's] medical difficulties, she and her husband retained the Respondent to pursue a medical malpractice action. Although no fee agreement was signed at this time, the parties understood that the Respondent would handle the malpractice representation. Over the next several years, the Respondent misled the [A's] by advising them that he was proceeding with their legal action. In August of 1986, the statute of limitations passed on the malpractice action without any filing being made by the Respondent.

Sometime after the statute had run, the Respondent,

when consulting with a medical malpractice specialist in an effort to refer the matter, learned that the statute of limitations had run. Armed with this knowledge, the Respondent submitted a contingent fee agreement to the [A] which they signed without advising them of his failure to take any action in this matter. Respondent then aggravated his misconduct by advising the [A] that he was proceeding with the action.

Specifically, the Respondent made the following misrepresentations to Mr. and Ms. [A]:

In March 1989, Respondent told them they would be going to Federal Court and gave them five different court dates. (N.T. 14-15)

In July 1992, Respondent told them they would be in court in August 1992. (N.T. 15)

In January 1994, Respondent told them they would have a June 6 trial date and that there would be nine witnesses on their behalf and that a week of trial would be required. (N.T. 16)

In June 1994, Respondent told them that they would likely have a July 25 or August 2 trial date. (N.T. 16-17)

After Respondent failed to return numerous telephone calls, the [A] consulted another lawyer. This attorney determined that no action had ever been filed on [A's] behalf. Subsequently, the [A's] new counsel filed a malpractice action against the Respondent whose malpractice policy had expired. Further

investigation revealed that the Respondent was judgment proof.

Clearly, Respondent's conduct warrants public discipline. Given Respondent's prior disciplinary record, a suspension requiring the Respondent to petition for reinstatement is also warranted.

In In Re Anonymous No. 12 D B 79, 14 Pa. D. & C. 3d 388 (1980), the Respondent neglected nine different matters involving five clients about the estates, personal injury and property damage cases. He also lied to clients about the status of the matters and represented that settlements had been obtained when they had not. He paid nearly \$50,000 to clients in the course of covering up his failures. He also lied to a Disciplinary Board Investigator and provided a false report of the status of cases to the Office of Disciplinary Counsel. His prior record consisted of an Informal Admonition and Public Censure. The Disciplinary Board recommended that Respondent be disbarred, and that sanction was imposed by the Supreme Court.

In In Re Anonymous No. 81 DB 82, 28 Pa. D & C 3rd 729 (1984), Respondent neglected a claim against an insurance company for payment of a medical bill for 6 years. He filed for a writ of summons but never arranged for service of the summons. He made no misrepresentations to the clients but failed to respond to

their communications. When confronted by a collection agency seeking payment of the bill, he paid it from his own funds. Respondent was still serving a prior one-year suspension consecutive to the suspension he was serving. Two Justices dissented in favor of a suspension concurrent with the prior suspension.

In In Re Anonymous No. 40 DB 88, 4 Pa. D & C 4th 275 (1989), the Respondent neglected a single personal injury matter for approximately six years through the date of the hearing, permitting the statute to run. He also misrepresented to the client that the case had been filed and was coming up for trial, and failed to turn over the file when the clients tried to discharge him. He had four Informal Admonitions and a Private Reprimand, all prior to the conduct in question. The Disciplinary Board recommended a six month suspension. The Supreme Court suspended Respondent for two years.

In In Re Anonymous No. 52 DB 88, 3 Pa. D & C 4th 397 (1989), Respondent neglected a property damage claim of approximately \$2,000 in value, allowing a one-year limitation on the insurance contract to expire. When he did file an action and the limitation defense was raised, Respondent discontinued the suit and, without revealing his failure to his clients, paid them the full value of the claim from his own funds. There was evidence

that Respondent had a problem with alcohol, which was under control at the time of the hearing. Respondent's prior record included three Informal Admonitions, a Private Reprimand, and a three-month suspension, which occurred after the period of neglect. The Disciplinary Board recommended a six-month suspension, which was imposed by the Supreme Court.

It is this Board's opinion that a lengthy suspension is warranted. After reviewing the precedents and taking into consideration Respondents prior discipline, this Board agrees with the recommendation of the Hearing Committee that a three (3) year suspension is appropriate.

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 three (3) 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: _____

Robert N.C. Nix, III, Member

Date: April 22, 1997

Board Members Carson and Caroselli did not participate in the March 5, 1997 adjudication.

PER CURIAM:

AND NOW, this 13th day of June, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 22, 1997, it is hereby

ORDERED that [Respondent] be and he is SUSPENDED from the Bar of this Commonwealth for a period of three (3) 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.