

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 370, Disciplinary Docket  
Petitioner : No. 3  
:  
:  
v. : No. 111 DB 1996  
:  
:  
[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

Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, [], on August 22, 1996. The Petition alleged that Respondent violated Rules of Professional

Conduct 8.4(c) and (d) and Rule of Disciplinary Enforcement 219 as a result of his failure to comply with a support order, failure to appear before the court for contempt proceedings, and his failure to file his current address and name change with the Administrative Office of Pennsylvania Courts. Respondent did not file an Answer to the Petition; however, he sent a letter to the Hearing Committee Chair on November 18, 1996 setting forth his position. On December 11, 1996 Petitioner filed a Petition with the Committee requesting that the admissibility of the letter be limited. The Committee denied the Petition.

A hearing was held on January 15, 1997 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Petitioner was represented by [], Esquire. Respondent did not appear. The Committee filed a Report on April 2, 1997 and found that Respondent violated the Rules as set forth in the Petition for Discipline. The Committee recommended a two year period of suspension. No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting held on June 25, 1997.

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, [], is an attorney admitted to practice law in the Commonwealth of Pennsylvania, having been admitted to practice in October 1975 and voluntarily assumed inactive status on July 1, 1995. Respondent's last registered address was []. By letter of November 18, 1996 to Chair [] of Hearing Committee [], Respondent advised that he changed his name to [] and his address is [].

3. On or about May 9, 1994, the Honorable [A] of the Court of Common Pleas of [] County issued an Order of Support

obligating Respondent for the support of Respondent's spouse, [B], and Respondent's two minor children.

4. On or about June 29, 1994, a Notice of Contempt and Order of Court was issued, notifying Respondent that legal proceedings had been brought against him and alleging his willful disobedience of an Order of Court for support. Respondent was ordered to report to the [] County Domestic Relations Section on July 27, 1994. Respondent was further notified that his failure to appear could result in a warrant for his arrest.

5. On or about July 27, 1994, after Respondent failed to appear before the Court as directed, a bench warrant was issued for Respondent's arrest.

6. By letter dated August 5, 1994, Respondent's attorney, [C], requested that the bench warrant be vacated and the hearing rescheduled. [C] represented that Respondent's failure to appear was a mistake and that Respondent wished to be heard on the issue of his accumulation of arrearages.

7. By Order dated August 10, 1994, Judge [A] dissolved the bench warrant.

8. By letter dated August 11, 1994, Respondent was notified to appear at the [ ] County Domestic Relations Section on September 29, 1994, to address Respondent's non-compliance with the May 9, 1994 Support Order.

9. On or about September 29, 1994, Respondent failed to appear before the Court as previously directed and a bench warrant was issued for Respondent's arrest.

10. By notice dated April 25, 1995, the Honorable [D] notified Respondent inter alia, of the following;

- a) Pursuant to 23 Pa.C.S.A. '4355, if a support obligor owes support in an amount equal to or greater than three months of the monthly support obligation, and the Domestic Relations Section has been unable to attach the income of the support obligor, the Court shall issue an Order directing any licensing authority to prohibit issuance or renewal of a license of the obligor.
- b) Prior to issuing such an Order, the Court is required to send written notice to the support obligor.

- c) Respondent's account was in arrears in his support case in the amount of \$12,810.37. This amount was equal to or greater than three months of Respondent's monthly support obligation.
- d) Respondent could contest this notice by filing a written appeal within ten days of the date of this notice with the Domestic Relations Section of [] County.

11. Respondent did not respond in any manner to the April 25, 1995 notice.

12. By letter dated September 11, 1995, Judge [D] notified the Office of Disciplinary Counsel that Respondent was delinquent in the payment of support in an amount equal to or greater than three months of his monthly support obligation.

13. Respondent remains delinquent in the payment of support in an amount greater than three months of the support obligation.

14. On or about October 14, 1994, Respondent changed his mailing address with the post office to []. Respondent did not inform the Administrative Office of Pennsylvania Courts of this change.

15. On or about May 25, 1995, Respondent filed with the Administrative Office of Pennsylvania Courts an annual statement that listed his residence address and office address as [].

16. On or about September 23, September 28, and October 8, 1995, the post office attempted to deliver a letter by certified mail from the Office of Disciplinary Counsel addressed to Respondent at the [] address. The letter was returned as "Unclaimed" along with a notation indicating a change of Respondent's address to [].

17. Petitioner filed a Petition for Discipline against Respondent on August 22, 1996.

18. Respondent did not file an Answer to the Petition but sent a letter to the Hearing Committee as a statement in lieu of appearance at the hearing.

19. Respondent indicated that he did not respond to the Petition for Discipline because he had been out of work since

October 1994 and could not afford an attorney to represent him nor was he able to travel to Pennsylvania to represent himself.

20. Petitioner filed a Petition to limit the admissibility of the letter, which was denied by the Hearing Committee.

21. Respondent has no record of prior discipline.

22. Respondent failed to appear for the disciplinary hearing held on January 15, 1997.

### III. CONCLUSIONS OF LAW

Respondent, by his conduct as set forth above, has violated the following Rules of Professional Conduct and Rule of Disciplinary Enforcement:

1. RPC 8.4(c) - Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;
2. RPC 8.4(d) - Engaging in conduct that is prejudicial to the administration of justice; and
3. Pa.R.D.E. 219 - Failing to file a change of address with the Administrative Office of Pennsylvania Courts within thirty days of moving.



IV. DISCUSSION

This matter is before the Board on a Petition for Discipline charging violations of Rules 8.4(c) and (d) of the Rules of Professional Conduct and Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement. The alleged misconduct supporting these violations is Respondent's failure to comply with a support order, failure to appear at a contempt hearing, and failure to file an address and name change with the Administrative Office of Pennsylvania Courts. Respondent did not appear before the Hearing Committee to answer these charges. The record is clear that Respondent did receive notice of these proceedings and was aware of the hearing, as he forwarded a letter setting forth his position to the Chair. The Committee heard the case and considered the evidence of record, including Respondent's letter of November 18, 1996. The Committee determined that Respondent failed for several years to face the gravity of his situation and compounded his problems by failing to appear for the contempt hearing and failing to appear before the Committee. The Committee did not believe that Respondent is truly interested in maintaining his license to practice in Pennsylvania, as he will not enter the Commonwealth, due to the outstanding bench warrant against him in [ ] County. The Committee opined that Respondent has shown disrespect for the court

system, which reflects adversely on his fitness to practice, therefore a two year suspension is appropriate.

The record evidences that a support order was entered by the Court of Common Pleas of [] County in May 1994 obligating Respondent to pay support for his wife and two minor children. A Notice of Contempt and Order of Court was issued in June 1994 notifying Respondent of his willful disobedience of an Order of Court. Respondent was ordered to report to Domestic Relations in [] County on July 27, 1994. Respondent did not appear on that date and a bench warrant was issued; however, it was later vacated by the Court as Respondent's attorney alleged that the failure to appear was a mistake. The Court then ordered that Respondent appear on September 29, 1994 to address his non-compliance with the support order. Respondent failed again to appear. A bench warrant was issued and remains outstanding.

Subsequent to Respondent's failure to appear the Court notified Respondent by notice of April 25, 1995 that the Court had the authority pursuant to 23 Pa.C.S.A. '4355 to report Respondent to the Disciplinary Board for his failure to pay support, the arrearage of which was equal or greater than three months of the

monthly obligation. The notice further informed Respondent that he could contest the notice by filing a written appeal within ten days. Respondent did not respond to this notice. By letter of September 11, 1995, the Court notified the Office of Disciplinary Counsel in September 1995 that Respondent was delinquent in the payment of support in an amount equal to or greater than three months of the monthly support obligation.

Petitioner filed a Petition for Discipline on August 22, 1996. Respondent did not file an Answer, but sent a letter dated November 18, 1996 to Chair [] of the Hearing Committee. The letter stated that Respondent had not responded to any of the counts against him because since October 1994 he has been out of work and unable to find employment. Respondent contended that he had no means by which to travel to Pennsylvania from [], his new home. Respondent also informed the Committee that his name is now [], as he remarried and took his wife's name. Respondent explained that he paid support for four years, but when he was terminated from his employment in [] County there was no income. He then moved to [] County and worked for a law firm and was again terminated. He moved to [] without filing a change of address or name with the Administrative Office of Pennsylvania Courts. Respondent states

that he has no job and no income to pay support, which now totals over \$80,000. Petitioner filed a Petition to limit the admissibility of this letter, but the Committee decided to consider the letter in order to get a fair picture of the case.

While the underlying facts of this matter concerning Respondent's failure to pay support are unusual in this forum, the resultant misconduct is not. Respondent failed to adhere to a court order and failed to appear before the court on a Notice of Contempt. Unfortunately the Board has addressed this type of behavior in the past. In the case of In re Anonymous No. 31 DB 88, 5 Pa. D. & C. 4th 308 (1989), a support order was entered obligating respondent to pay support for his wife and children. The respondent failed to pay and his wife filed a petition for contempt. The court subsequently found that the respondent had the ability to pay and held him in contempt. In a related issue in the case, the respondent violated a court order requiring that certain farm equipment be returned. As a result of this violation, the respondent was found in contempt for failing to comply with the order and incarcerated. These issues were two of several charged against the respondent in disciplinary proceedings. The other charges involved misconduct pertaining to the acrimonious divorce

between the respondent and his wife. The Board found that respondent's refusal to acknowledge the court orders against him to pay spousal support and to return farm equipment was an abuse of the legal system which reflected adversely on his fitness to practice law. The respondent was suspended for four years. This suspension was based on the above misconduct as well as misrepresentations and false allegations made by the attorney.

Respondent's willful failure to pay support pursuant to an order and his ignorance of his duty to appear before the court pursuant to an order in the instant case raises legitimate questions as to Respondent's ability and fitness to practice law in this Commonwealth. Compounding this misconduct is Respondent's failure to file his address and name change within thirty days as required by Rule 219, Pa.R.D.E. The facts of record indicate that Respondent filed his change of address to [] with the post office in October 1994, but in May 1995 he filed his annual statement with the Administrative Office that still listed his address in []. Respondent made a knowing misstatement on the form. Since Respondent did not appear at the hearing to explain the circumstances, it may be concluded from the facts that Respondent was attempting to conceal his whereabouts.

As a licensed attorney in this Commonwealth, Respondent acts as an officer of the court. Respondent cannot expect the Board to minimize his behavior merely because the initial misconduct springs from Respondent's unfortunate personal circumstances.

Respondent was given many opportunities to appear before the [] County Court of Common Pleas to explain his situation. He could have tried to work with the Court and Domestic Relations to reach some feasible solution but declined to do so. He instead chose to ignore court orders and allowed himself to be held in contempt and a bench warrant issued against him. Respondent than attempted to ignore disciplinary proceedings brought against him. Respondent's failure to appear at the disciplinary hearing aggravates this matter. Although Respondent professes to attach great importance to his professional license in his letter to the Committee, this failure to appear indicates otherwise. It may be inferred from the facts that Respondent is more concerned about being arrested on the outstanding bench warrant than in keeping his license to practice in a state he is not willing to enter.

The additional misconduct of failure to file a name and address change and making a misstatement on his annual statement,

as well as failing to appear at the hearing heighten the egregiousness of Respondent's behavior to a more serious level than merely nonpayment of support. For these reasons, the Board recommends that Respondent be suspended for a period of one year and one day.

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: \_\_\_\_\_  
Carolyn Raven Rudnitsky,  
Vice-Chair

Date: August 27, 1997

Board Chair Saltz dissented and would recommend a Private Reprimand.



ORDER

PER CURIAM:

AND NOW, this 17th day of October, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 27, 1997, 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.

Messrs. Justice Zappala and Nigro dissent and would enter an order suspending respondent for a period of two years.