

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 499, Disciplinary Docket
Petitioner	:	No. 3 - Supreme Court
	:	
	:	No. 51 DB 1999
v.	:	Disciplinary Board
	:	
[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

By Supreme Court Order of April 12, 1999, [ ], the Respondent in these proceedings, was placed on temporary suspension as a result of his convictions for retail theft and possession of drug paraphernalia. Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent on May 13, 1999 and charged Respondent with violation of Pa.R.D.E. 203(b)(1), R.P.C. 8.4(b), and R.P.C. 8.4(c). Respondent filed an Answer to Petition for Discipline on July 20, 1999.

A disciplinary hearing was held on October 26, 1999 before Hearing

Committee [ ] comprised of Chair [ ], Esquire, and Members [ ], Esquire, and [ ], Esquire. Respondent was represented by [ ], Esquire. Petitioner was represented by [ ], Esquire.

The Hearing Committee filed a Report on February 22, 2000 and recommended a three year suspension retroactive to April 12, 1999, the date of Respondent's temporary suspension.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of May 11, 2000.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is 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 in 1965 and was admitted to practice law in Pennsylvania in 1992. He assumed voluntary inactive status on July 1, 1997 and was temporarily suspended pursuant to Pa.R.D.E. 214(d)(2) by Order of Supreme Court of Pennsylvania dated April 12, 1999. He resides at [ ].

3. Respondent maintained a law office in [ ], Pennsylvania after his admission to practice.

4. As a licensed attorney he began using heroin in March of 1993.

5. In April 1993 Respondent entered a rehabilitation program at [A] Rehabilitation Center in [ ], Pennsylvania. He remained there for thirty days.

6. Respondent remained sober for two months.

7. In early 1994 Respondent went to a second rehabilitation at [B], the [C] Foundation, in [ ], Pennsylvania, for twenty-eight days.

8. Respondent began using drugs immediately upon his release from that program.

9. In the summer of 1994 Respondent spent 58 days in rehab at [D] in [ ], after which he stayed sober for three months. He participated in an outpatient methadone program.

**CHARGE I**

**(Docket No. [ ], [ ] County Magisterial District [ ])**

10. On November 15, 1994, Respondent shoplifted two cartons of cigarettes and a cassette tape with a value of \$41 from a [E] Department Store in [ ] County.

11. On March 2, 1995, Respondent pleaded guilty to the charge of Retail Theft docketed to No. [ ] and was sentenced to pay a fine of \$300 and the costs of prosecution. Since this was Respondent's first offense it was a summary offense pursuant to 18 Pa.C.S.A. § 3929(b)(1).

12. In November 1995, Respondent entered his fourth rehab at [F] in [ ], after which he remained sober for approximately six weeks.

13. In 1996, Respondent did not work much and was no longer operating his law office. His wife, an attorney, had taken over the practice and Respondent was essentially a paralegal.

#### CHARGE II

(Docket No. [ ], [ ] County)

14. On March 15, 1996 Respondent shoplifted three cassette tapes with a value of \$53.97 from a [G] Department store in [ ] County.

15. Even though this was a second offense and graded as a misdemeanor of the second degree under Pa.C.S.A. §3929(b)(1)(ii), on October 22, 1996 Respondent was accepted into the Accelerated Rehabilitative Disposition (ARD) program and placed on probation for twelve months.

16. On November 17, 1997, Respondent was removed from the ARD program.

17. On December 10, 1997, Respondent pleaded guilty to the charge of Retail Theft docketed to No. [ ] and was sentenced to twelve months of probation, with drug and alcohol counseling.

18. On December 14, 1998, Respondent was found guilty of a probation violation and sentenced to serve six to twelve months in the [ ] County Prison, concurrent to the sentence imposed in No. [ ], ante.

**CHARGE III**

**(Docket No. [ ], [ ] County)**

19. On June 12, 1997, Respondent shoplifted four cartons of cigarettes with a value of \$64.32 from a [H] in [ ] County.

20. On July 1, 1997, Respondent filed his attorney registration statement and assumed a voluntary inactive status.

21. In the summer of 1997, Respondent entered his fifth rehab center at [I] in [ ]. This rehab was required by the [ ] County Probation Department.

22. On December 10, 1997, Respondent pleaded guilty to the misdemeanor charge of Retail Theft docketed to No. [ ] and was sentenced to twelve months probation, with drug and alcohol counseling.

23. On December 14, 1998, Respondent was found guilty of a probation violation and sentenced to serve six to twelve months in the [ ] County Prison, concurrent to the sentence imposed on No. [ ], ante.

**CHARGE IV**

**(Docket No. [ ], [ ] County)**

24. On October 8, 1997, Respondent shoplifted two cartons of

cigarettes with a value of \$35.72 from a [H] in [ ] County.

25. Respondent was charged with misdemeanor Retail Theft as well as Defiant Trespass, a summary offense, because [H] had previously advised Respondent in writing that he was not welcome in any of its stores.

26. On April 15, 1998, Respondent pleaded guilty to the charges docketed to No. [ ] and was placed on 23 months probation on the Retail Theft charge and fined \$50 on the Defiant Trespass charge.

27. On December 13, 1998, Respondent's probation was revoked and he was sentenced to serve 9 to 23 months in the [ ] County Prison.

28. Respondent was sentenced to prison on May 26, 1998 and served a sentence in the [ ] County jail from May 26, 1998 through March 15, 1999. He remained on probation until mid-year 2000.

**CHARGE V**

**(Docket No. [ ], [ ] County)**

29. On May 26, 1998, Respondent was found in possession of a syringe and steel spoon and admitted to police that he used them to inject cocaine.

30. Respondent was charged with the misdemeanor of Unlawful Possession of Drug Paraphernalia, docketed to No. [ ], [ ] County.

31. On August 13, 1998, Respondent pleaded guilty and was placed on probation for six months and ordered to perform 20 hours of community

service.

**CHARGE VI**

**(Docket No. [ ], [ ] County)**

32. On October 30, 1997, Respondent shoplifted three packs of cigarettes with a value of \$5.67 from a [J] Market in [ ] County.

33. On October 15, 1998, Respondent pleaded guilty to a second degree misdemeanor charge of Retail Theft docketed to No. [ ] and was placed on probation for twelve months, with inpatient and alcohol treatment to be established by the Probation Department.

**CHARGE VII**

**(Docket No. [ ], [ ] County)**

34. On December 27, 1997, Respondent shoplifted four cartons of cigarettes worth \$63.40 from a [H] in [ ] County.

35. Because of his prior record, Respondent was charged with third degree felony Retail Theft and third degree misdemeanor Defiant Trespass docketed to No. [ ].

36. On April 28, 1998, Respondent pleaded guilty to the Retail Theft charge in full satisfaction of all charges.

37. On June 23, 1998, Respondent was sentenced to 23 months Intermediate Punishment and fined \$250.

**CHARGE VIII**

(Docket No. [ ], [ ] County)

38. On March 22, 1998, Respondent shoplifted VCR tapes, drill and router bits, and saber saw blades worth \$56.78 from a [H] in [ ] County.

39. He was charged with Retail Theft, third or subsequent offense, docketed to No. [ ].

40. On October 16, 1998, Respondent pleaded guilty and was placed on twelve months of supervised probation.

41. In March 1999, Respondent was released from prison into his sixth rehab center at [K] for five weeks.

42. Upon his release from [K] in April 1999, Respondent went to live with his sister in [ ]. Respondent currently lives in [ ] and works for his brother-in-law as a screen printer.

43. Respondent has a history of illegal drug use starting at thirteen years of age, when he began smoking marijuana. (N.T. 11)

44. By age fourteen Respondent used marijuana daily and experimented with LSD and cocaine by age fifteen. (N.T. 43)

45. Respondent first tried heroin at age twenty-four. (N.T. 44)

46. After Respondent's father died in early 1993, Respondent began using drugs more frequently, mostly heroin. (N.T. 14)



47. From 1993 through 1998 Respondent was severely dependent on heroin with a habit ranging from \$20 to \$150 per day. (N.T. 46)

48. To support his habit, Respondent shoplifted a minimum of one to two times per month. He would then sell the shoplifted items, generally cigarettes, to get money for heroin. (N.T. 32, 46)

49. During the time frame of Respondent's drug abuse, he lost his wife to a divorce, his infant son to a voluntary termination proceeding, and he lost his law practice.

50. Respondent had six inpatient drug rehab treatments from 1993 through 1999 as outlined in the above findings of fact.

51. Respondent has been sober since May 26, 1998, the date he went to prison.

52. Since May 1999, Respondent has treated weekly with [L], a psychotherapist.

53. [L] diagnosed Respondent with drug addiction and depression.  
(Ex. R-2)

54. Respondent attends regular AA meetings.

55. Respondent's psychiatrist is Dr. [M], who has been treating him for depression since September 1999.

56. Respondent takes Celexa, an antidepressant, prescribed by Dr. [M].

57. Respondent is ashamed and sorry for his misconduct and understands the magnitude of the wrong he committed.

58. Respondent cooperated with Office of Disciplinary Counsel.

59. Respondent has no prior record of discipline.

### III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rule of Disciplinary Enforcement:

1. Respondent's convictions for retail theft and possession of drug paraphernalia are punishable by up to a year imprisonment and are serious crimes pursuant to Pa.R.D.E. 214(i).
2. Pursuant to Pa.R.D.E. 203(b)(1), Respondent's conviction of a serious crime is an independent ground for discipline.

As a result of Respondent's criminal conduct Respondent also violated the following Rules of Professional Conduct:

3. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
4. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

### IV. DISCUSSION

This matter is before the Disciplinary Board upon a Petition for

Discipline charging Respondent with violations of the Rules of Disciplinary Enforcement and Rules of Professional Conduct based on his convictions for retail theft and possession of drug paraphernalia.

Pa.R.D.E. 203(b)(1) provides that conviction of a serious crime shall be grounds for discipline. A serious crime is defined by the Rules as a crime punishable by imprisonment of one year or more in this or any other jurisdiction. Rule 214(e), Pa.R.D.E., specifies that a certificate of conviction of an attorney for a serious crime shall be conclusive evidence of that crime. When a disciplinary action is commenced against an attorney based on a criminal conviction, the Board does not engage in a retrial of the underlying facts of the crime. The Board's responsibility is to determine the appropriate measure of discipline relative to the seriousness of the crime. The focal issue is whether the attorney's character is so damaged by the misconduct as to render him or her unfit to practice law. *Office of Disciplinary Counsel v. Casety*, 511 Pa. 177, 512 A.2d 607 (1986). This issue balances a concern for the public with a respect for the substantial interest of an attorney in maintaining his or her privilege to practice law. *Office of Disciplinary Counsel v. Lewis*, 492 Pa. 519, 426 A.2d 1138 (1981). It is appropriate for the Board to examine any aggravating or mitigating circumstances present in this matter.

Respondent received seven convictions for retail theft and one conviction for possession of drug paraphernalia. The underlying facts of the convictions evidence Respondent's destructive lifestyle between 1993 and 1998, which led him to commit the crimes. The record is clear that Respondent was severely addicted to heroin during this time frame. He spent up to \$150 per day to support his habit. In order to finance his drug purchases, he resorted

to shoplifting at least twice per month. Respondent shoplifted with the intent to resell the items and use the money for drugs. As evidenced by the record, Respondent was caught on seven occasions, but he admits that there were many times that he did not get caught. Respondent's abuse of drugs was punctuated by brief periods of sobriety. Respondent voluntarily entered three rehab centers prior to his first arrest for retail theft in 1994. These programs did not help him to stay sober, and he often began using drugs immediately upon his release from the centers. Respondent tried rehab two more times during his cycle of arrests, but these attempts also failed. Respondent continued his crime spree even after being given chances by the criminal justice system. At one point, Respondent entered an ARD program but it was revoked due to subsequent retail theft charges. At another point, Respondent was sentenced to probation, which was ultimately revoked due to subsequent charges. Respondent was unable to control his addiction until he was imprisoned in May of 1998. Respondent's law practice during this time was essentially non-existent. His wife, who was an attorney licensed in Pennsylvania, took over his practice and for a time he acted as a paralegal to her. Eventually, in July of 1997 Respondent assumed inactive status and did not practice law.

Respondent's conduct is extremely serious and reflects adversely on his fitness as a lawyer. However, the Board is persuaded that at the time of the misconduct Respondent was ill and addicted to drugs. While this addiction is not a defense to the charges against Respondent, it may be considered as a mitigating factor in determining the appropriate discipline. *Office of Disciplinary Counsel v. Braun*, 520 Pa. 157, 553 A.2d 894 (1989). Respondent submitted letters from his psychiatrist and therapist that demonstrate he has a drug addiction and suffers from depression. Respondent's therapist linked his addiction to the "tumult of Respondent's life". Respondent's candid testimony

of his history of drug use and the depths to which his fortunes fell during the time frame in question bolster the finding that he is an addict and this addiction caused him to commit criminal acts.

Respondent has been sober since May 26, 1998. He treats with his therapist weekly and attends AA regularly. He takes medication for his depression and is under the care of a psychiatrist who regulates this medication. Respondent lives in [ ] and works as a screen printer for his brother-in-law. Respondent sincerely regrets his actions and understands the magnitude of his misconduct. Respondent is daily reminded of the consequences of his actions, as evidenced by the break-up of his marriage, the loss of his son in a termination proceeding and the loss of his profession.

A lengthy suspension is required to address Respondent's multiple criminal convictions, which reflect negatively on his character and his fitness to practice law. Based on the totality of the record, the Board recommends a suspension for three years, retroactive to April 12, 1999, the date of Respondent's temporary suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [ ], be suspended from the practice of law in the Commonwealth of Pennsylvania for a period of three (3) years retroactive to April 12, 1999.

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: \_\_\_\_\_  
Duke George, Jr., Member

Date: September 20, 2000

PER CURIAM:

AND NOW, this 13th day of November, 2000, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 20, 2000, it is hereby

ORDERED that [Respondent] be and he is SUSPENDED from the Bar of this Commonwealth for a period of three (3) years retroactive to April 12, 1999, 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.