

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 501, Disciplinary Docket
Petitioner	:	No. 3 - Supreme Court
	:	
	:	No. 41 DB 1999
	:	Disciplinary Board
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

On March 24, 1999, a Petition for Discipline was filed by Petitioner, Office of Disciplinary Counsel, against Respondent, []. The Petition charged Respondent with violation of Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement arising

from Respondent's conviction of the crime of driving under the influence of alcohol or a controlled substance.

A disciplinary hearing was held on July 28, 1999 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Respondent appeared *pro se*. Petitioner was represented by [], Esquire.

The Hearing Committee filed a Report on November 4, 1999 and recommended a one year and one day period of suspension. This suspension was to run concurrent to any suspension imposed on Respondent at disciplinary matter No. 129 DB 1998.¹

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting held on February 2, 2000.

By Order of the Supreme Court of Pennsylvania dated November 13, 1998, Respondent was held in contempt for willful violation of the Court's Order of July 10, 1997, transferring him to inactive status for failure to comply with the Continuing Legal Education requirements. The matter was referred to the Disciplinary Board for a hearing and a recommendation was pending before the Court at the time this matter was adjudicated.

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 1947 and was admitted to practice law in Pennsylvania in 1980. His registration address is []. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. On March 4, 1999, the Supreme Court entered an Order directing that, as a result of Respondent having been convicted in the Court of Common Pleas of [] County of the crime of driving under the influence of alcohol or a controlled substance, the matter be referred to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E.

4. On June 7, 1997, Respondent was arrested by officers of the []

Township Police Department for the offense of driving under the influence of alcohol or controlled substance.

5. Chemical tests at that time revealed that Respondent's blood alcohol level was .25 percent.

6. A criminal information was filed against Respondent in which he was charged with violations of 75 Pa.C.S. §§3731(a)(1) and 3731(a)(4), driving under the influence of alcohol or a controlled substance, as well as the summary offense of Maximum Speed Limit, 75 Pa.C.S. 3362(a)(1), (2), (3) and (6).

7. On November 23, 1998 Respondent entered a plea of guilty to the charges filed.

8. That same day, Respondent was sentenced to 90 days intermediate punishment by electronic monitoring, and a consecutive period of probation of one year. This sentence was effective on January 8, 1999.

9. This was Respondent's third conviction for the crime of driving under the influence of alcohol. He received ARD for his first DUI in 1991 and was still on his probation when he incurred a second DUI in 1992. The ARD was revoked and

Respondent was sentenced to 48 hours with alternate housing. For the second DUI he was sentenced to thirty days with alternate housing at [] House.

10. By Order of the Supreme Court of Pennsylvania dated July 10, 1997, effective August 9, 1997, Respondent was transferred to inactive status pursuant to Rule 111(b), Pa.R.C.L.E. for failure to comply with the Continuing Legal Education requirements.

11. Respondent has a history of prior discipline. He received three separate Informal Admonitions on May 7, 1996. He received two more Informal Admonitions on October 30, 1997 and August 10, 1999.

12. By Order of the Supreme Court entered November 13, 1998, Respondent was held in contempt for willful violation of the Supreme Court Order of July 10, 1997, which transferred him to inactive status for failure to comply with his CLE requirements. Respondent was found to have practiced law while on inactive status. This matter was referred to the Disciplinary Board for hearing to recommend an appropriate sanction. At the time this matter was adjudicated it was still pending before the Court.

13. Respondent testified at the disciplinary hearing that he attended Lawyers Concerned for Lawyers and Alcoholics Anonymous subsequent to his conviction

and at the time of the hearing he was planning to meet with a psychiatrist. He testified that he has not had a drink since the commencement of his intermediate punishment in January 1999.

14. Respondent testified to his remorse and understands the problems he caused. (N.T. 26)

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) – Respondent's conviction of driving under the influence of alcohol is a conviction of a serious crime and is an independent basis for the imposition of discipline.

IV. DISCUSSION

This matter is before the Disciplinary Board upon a Petition for Discipline charging Respondent with violation of Rule 203(b)(1), Pa.R.D.E., as a result of his criminal conviction of driving under the influence of alcohol.

Rule 203(b)(1) provides that conviction of a serious crime shall be grounds for discipline. 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 proceeding is commenced against an attorney based upon 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, as shown by his or her conduct makes the attorney unfit to practice law. *Office of Disciplinary Counsel v. Casety*, 511 Pa. 177, 512 A.2d 607 (1986). This test 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 the events surrounding the criminal charge as well as any aggravating or mitigating circumstances when determining an appropriate measure of discipline. *Office of Disciplinary Counsel v. Eilberg*, 497 Pa. 388, 441 A.2d 1193 (1982).

Respondent was convicted of driving under the influence on November 23, 1998. This was his third conviction for that crime. He was sentenced to ninety days intermediate punishment by electronic monitoring and a consecutive period of probation of one year. The sentence was effective on January 8, 1999. Respondent completed his ninety days and at the time of the hearing was on probation.

Respondent presented evidence at the disciplinary hearing that he is involved in Alcoholics Anonymous and Lawyers Concerned for Lawyers and is seeking

treatment with a psychiatrist. However, Respondent did not clearly establish that he is an alcoholic and such condition caused his criminal conduct, so the Board is unable to consider this testimony in mitigation of the disciplinary sanction.

Review of the record indicates that in addition to Respondent's criminal conviction, other factors that should be considered in weighing the sanction are his record of prior discipline and the finding by the Supreme Court that Respondent was in contempt of its Order of July 10, 1997. These facts serve to aggravate the circumstances of Respondent's case.

Respondent has received five Informal Admonitions since 1996. Four of these involved practice violations such as failure to communicate and neglect of client matters. The other Admonition, administered in October 1997, was based on Respondent's two prior convictions of driving under the influence in 1992.

More seriously, on November 13, 1998, by Order of the Supreme Court, Respondent was held in contempt for willful violation of the Supreme Court's Order of July 10, 1997, transferring him to inactive status for failure to comply with CLE requirements. The contemptuous action involved Respondent's practice of law while on inactive status. This matter was referred to the Disciplinary Board for a hearing to recommend an appropriate sanction. That matter, at No. 129 DB 1998, was still pending before the

Court for disposition at the time this case was adjudicated.²

There is no *per se* discipline in Pennsylvania for an attorney convicted of driving under the influence. Discipline in the past has ranged from a private reprimand to a suspension in recognition of the different facts and circumstances. In the instant matter, the Board is persuaded that a one year and one day period of suspension is appropriate to address Respondent's criminal conviction, as well as the aggravating circumstances of his extensive prior record and his contemptuous conduct before the Supreme Court. The Board further recommends that the period of suspension run concurrent with any suspension imposed by the Supreme Court in the matter of No. 129 DB 1998.

By Order of the Supreme Court dated March 13, 2000, Respondent was Suspended from the practice of law for a period of three years, retroactive to July 10, 1997 at No. 129 DB 1998.

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 one (1) year and one (1) day to run concurrent with the suspension imposed at No. 129 DB 1998.

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: May 2, 2000

Board Member Scaricamazza did not participate in the February 2, 2000 adjudication.

Board Member Sheerer recused himself.

PER CURIAM:

AND NOW, this 26th day of June, 2000, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 2, 2000, it is hereby

ORDERED that [Respondent] be and he is suspended from the Bar of this Commonwealth for a period of two years to run consecutive to the suspension previously imposed by this Court on March 13, 2000, at No. 460 Disciplinary Docket No. 3, 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.