

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 518, Disciplinary Docket No. 3
Petitioner :
 : No. 106 DB 1997
 :
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

Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent, [], on February 10, 1998. The Petition alleges Respondent violated Rules

of Professional Conduct and Rules of Disciplinary Enforcement by failing to appear before the Board for a private reprimand scheduled for November 13, 1997. Respondent did not file an Answer to the Petition.

A disciplinary hearing was held on June 15, 1998 before a two-member panel of Hearing Committee [] comprised of Members [], Esquire, and Member [], Esquire. Respondent agreed to proceed with a panel of two, as Chair [], Esquire, was unable to attend. Chair [] did participate in the decision in this matter. Respondent represented himself. Petitioner was represented by [], Esquire.

The Hearing Committee filed a Report on November 19, 1998 and found that Respondent violated the charged Rules. They recommended a public censure. No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Board at the meeting of January 13, 1999.

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 May, 1949 and was admitted to practice law in the Commonwealth of Pennsylvania in October, 1983. His home address at the time of hearing was []. His current address is [].

3. In accordance with Rules 208(a)(2),(3) and (5), Pa.R.D.E., it was determined that Respondent should receive a Private Reprimand with Conditions as a result of misconduct involving his clients, [A] and [B].

4. By Order of the Disciplinary Board dated August 20, 1997, Respondent was ordered to be subjected to a Private Reprimand with Conditions.

5. The Conditions relate only to [A] and are as follows:

At least ten (10) days prior to the scheduled Private Reprimand, Respondent shall submit to the Secretary of the Board and Disciplinary Counsel proof that he has:

1. Returned [A's] file to her or her counsel;
2. Accounted to [A] for the \$1,100 fee paid in advance and refund any portion of the unearned fee to [A].

6. By letter dated August 20, 1997 from Elaine M. Bixler, Secretary of the Board, Respondent was advised of the decision of the Disciplinary Board that he was to receive a private reprimand with conditions and of his right to demand the institution of a formal proceeding pursuant to Rule 208(a)(6), Pa.R.D.E. and §87.54 of the Disciplinary Board Rules within twenty (20) days from the date of the August 20, 1997 letter.

7. Respondent did not demand the institution of a formal proceeding in regard to the allegations giving rise to the imposition of the private reprimand with conditions.

8. As a result of Respondent's failure to demand the institution of formal proceedings against him, Respondent is conclusively deemed to have violated the Rules of Professional Conduct set forth in Ms. Bixler's letter of August 20, 1997.

9. By Notice dated October 2, 1997, Respondent was directed to appear before the Disciplinary Board on November 13, 1997 to receive the private reprimand.

10. The Notice to Appear, which was sent certified mail, return receipt requested to Respondent's home address, was received on October 18, 1997. The green card reflected a signature of "[Respondent]".

11. Respondent failed to appear on November 13, 1997 and failed to provide proof of his compliance with the conditions.

12. By letter dated November 25, 1997, Respondent was directed by Board Chair Stephen T. Saltz to provide good cause for his failure to appear and failure to comply with the Conditions.

13. The letter, which was sent certified mail, return receipt requested, was received on November 28, 1997. The green card reflected a signature of "[Respondent]".

14. Respondent was to reply to the November 25, 1997 letter on or before December 30, 1997.

15. Respondent did not respond to the letter.

16. Respondent testified at the hearing that at the time of the private reprimand, he was involved in a marriage with an alcoholic wife and his focus on his practice was almost non-existent. (N.T. 18)

17. Respondent has a prior record of discipline consisting of one informal admonition in 1997.

III. CONCLUSIONS OF LAW

Respondent violated the following Rules of Professional Conduct as a result of his misconduct in the [A] and [B] matters:

1. RPC 1.3 - Failing to act with reasonable diligence and promptness in representing a client;
2. RPC 1.4(a) - Failing to keep a client informed about the status of a matter and failing to promptly comply with reasonable requests for information;
3. RPC 1.5(b) - Failing to communicate to a client, in writing, the basis or rate of an attorney's fee, before or within a reasonable time after commencing the representation;
4. RPC 1.15(a) - Failing to hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property;
5. RPC 1.16(d) - Failing to take steps to the extent reasonably practicable to protect a client's interests upon termination of the representation.

Respondent violated the following Rules of Disciplinary Enforcement and Rules of Professional Conduct as a result of his failure to appear before the Board for a private reprimand:

1. Pa.R.D.E. 203(b)(2) - Willful failure to appear before the Board for a private reprimand constitutes an independent ground for discipline.

2. Pa.R.D.E. 204(b) - Conditions may be attached to a private reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.
3. RPC 8.4(d) - Engaging in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

This matter is before the Board upon a Petition for Discipline charging Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement as a result of his failure to appear before the Board for a private reprimand scheduled for November 13, 1997.

The imposition of a private reprimand was determined as a result of conduct Respondent engaged in with respect to two clients, [A] and [B]. By letter of August 20, 1997, Respondent was informed of the Rules he violated and the decision that he was to receive a private reprimand with conditions. In the letter he was advised that he had the right to demand the institution of a formal proceeding pursuant to Pa.R.D.E. 208(a)(6) and § 87.54 of the Disciplinary Board Rules within twenty days from the date of the letter. Respondent did not demand formal proceedings. In the letter of August 20, 1997, Respondent was ordered to submit to the Secretary of the Board and Office of Disciplinary Counsel at least ten days prior to the scheduled private reprimand, proof that he returned [A's] file and accounted for her money. Respondent did not comply with the conditions. Respondent failed to appear before the Board on November 13, 1997.

Due to Respondent's failure to demand formal proceedings, he is conclusively deemed to have violated the Rules as set forth in the letter of August 20, 1997. With respect to [A], Respondent violated Rules 1.3, 1.4(a), 1.4(b), 1.15(a), and 1.16(d). In [B's] matter, Respondent violated Rules 1.3, 1.4(a) and 1.15(a).

In addition to these Rule violations, Respondent's failure to appear before the Board and comply with the conditions constitutes an independent basis for discipline pursuant to Pa.R.D.E. 203(b)(2) and 204(b). The failure to appear is also a violation of RPC 8.4(d).

After concluding that Respondent violated the Rules charged in the Petition for Discipline, the Board must determine the appropriate discipline. Respondent testified on his own behalf and explained that during the time frame of the misconduct, he was married to an alcoholic wife and his attention to his practice was virtually non-existent. Respondent admitted that he received notice of the violations and was aware of his obligation to appear for the imposition of the private reprimand and to comply with certain conditions.¹

Respondent has a prior history of one informal admonition imposed in 1997. This admonition was for two separate matters. The Rules violated therein were 1.3, 1.4(a), 1.5(b),

¹ The issue of compliance with the conditions was never addressed at the disciplinary hearing. Therefore there is no record of whether Respondent returned the client's file, accounted for the advance fee, and refunded the unearned portion of the fee.

1.16(d), and 7.3(a). These are some of the same Rules Respondent violated in the instant case.

Prior case law provides guidance for the Board in this situation. In the case of In re Anonymous No. 64 DB 92, 32 Pa. D. & C. 4th 117 (1995), an attorney who failed to appear for a private reprimand before the Board was given a public censure. The attorney testified that his life was in turmoil and he did not often open his mail. Despite this testimony, the Board found that the attorney offered no justifiable reason as to why he neglected to appear. The attorney in In re Anonymous No. 67 DB 87, 9 Pa. D. & C. 4th 467 (1990), also failed to appear for a private reprimand. He proffered the excuse that he received the certified mail but failed to open it due to a depression he suffered from. The Board declined to accept this reason and recommended a public censure, which the Supreme Court imposed.

The instant case is analogous to the cited cases. In the case at bar, Respondent failed to appear for the private reprimand and failed to comply with conditions. While the Board is sympathetic to Respondent's personal problems, they do not provide a legitimate reason as to why he ignored the Board's directive to appear. The imposition of a public censure will impress on Respondent the seriousness of his misconduct.

The Board recommends that Respondent receive a public censure.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be subjected to a Public Censure by the Supreme Court of Pennsylvania.

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: _____
Gregory P. Miller, Member

Date: March 26, 1999

Board Member Marroletti did not participate in the January 13, 1999 adjudication.

Board Chair Rudnitsky and Members Nix and Elliott recused themselves.

PER CURIAM:

AND NOW, this 20th day of May, 1999, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 26, 1999, it is hereby

ORDERED that [Respondent] be subjected to PUBLIC CENSURE by the Supreme Court.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.