BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 521, Disciplinary Docket No. 3 Supreme Court
v.	:	No. 155 DB 1997 Disciplinary Board
	:	Attorney Registration No. [ ]
[ANONYMOUS] Respondent	:	([ ])

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

A Petition for Discipline was filed by Petitioner, Office of Disciplinary Counsel, against Respondent, [ ], on December 11, 1997. Respondent was charged with violations of Rules of Professional Conduct 3.5(c), 8.4(b), and 8.4(d) for striking his opposing counsel during a recess to discuss an evidentiary ruling. Respondent filed an Answer on December 30, 1997.

Disciplinary hearings were held on March 23, 1998 and June 9, 1998 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 October 13, 1998 and found that Respondent violated Rule 3.5(c), but did not violate Rules 8.4(b) and (d). The Committee recommended a Private Reprimand. Petitioner filed a Brief on Exceptions on November 2, 1998 and requested that the Board recommend a period of suspension for one year and one day. Respondent filed a Brief in Response and Opposition to Petitioner's Brief on December 1, 1998 and requested oral argument before the Board. Respondent requested the Board conclude that the appropriate discipline is a private reprimand.

Oral argument was held before a three member panel of the Board on December 28, 1998, consisting of Thomas J. Elliott, Esquire, Gregory P. Miller, Esquire and Angelo L. Scaricamazza, Jr., Esquire.

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 1968 and was admitted to practice law in 1994. His current office address is [ ]. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On May 19, 1997, Respondent represented the Commonwealth of Pennsylvania in the Court of Common Pleas of [ ] County before the Honorable [A], in the matter of *Commonwealth v. [B]*, October Term, 1996, No. [ ], a simple assault case.

4. At the conclusion of Respondent?s opening argument, opposing counsel, [C], Esquire, requested permission to approach the bench. Judge [A] recessed the trial.

5. Judge [A], Respondent, Attorney [C], the Judge's law clerk, and the court reporter entered the Judge's robing room,

which is a small room.

6. Attorney [C] requested that a certain photograph of the victim's neck be precluded from evidence because it had not been provided in discovery and had not been introduced into evidence at the defendant's previous trial in Municipal Court.

7. Respondent argued that the motion should be denied. The Court granted the motion.

8. In response to the Court's ruling, Respondent became very upset and told the Judge that he could not do that. (N.T. 3/23/98 p. 47)

9. Respondent requested permission to take an interlocutory appeal, which the Court denied.

10. In response to the denial of the motion for interlocutory appeal, Respondent's demeanor changed and he became outraged.

11. Respondent started yelling and accused the Judge of committing judicial misconduct. (N.T. 3/23/98 p. 49, 90, 123)

12. Judge [A] told Respondent he was being disrespectful to the Court and that he might wind up in jail. (N.T.

3/23/98 p. 49)

13. Respondent continued screaming at Judge [A] that he was substantially prejudiced by the Court's ruling to exclude the photograph from evidence. (N.T. 3/23/98 p. 51)

14. Judge [A] stood up, pointed his finger at Respondent and instructed him to keep quiet because Respondent "was yelling, screaming, shouting and not really acting as a lawyer." (N.T. 3/23/98 p. 51, 90) The Judge was approximately three feet from Respondent. (N.T. 51)

15. At that point, Respondent stood up and came over to the Judge and told Judge [A] that he should not put his finger in Respondent's face. (N.T. 3/23/98 p. 51) Judge [A] testified that Respondent was within inches of his face. (N.T. 51-52)

16. Respondent is approximately 6'4" and weighs between 220 and 225 pounds. Judge [A] is much smaller in physical stature.

17. Attorney [C] then stood up and walked toward Respondent with his hands up and open. As he walked toward Respondent, Attorney [C] said "yo, yo" in the hope that Respondent would stop. (N.T. 3/23/98 p. 52, 159)

18. Attorney [C] testified that he intervened at this point because he was concerned for the Judge's safety. (N.T. 3/23/98 p. 188, 189) He had no intention of hitting Respondent. (N.T. 3/23/98 p. 190)

19. Respondent's attention shifted to Attorney [C]. Attorney [C] testified he came between the Judge and Respondent and put his hands on Respondent's chest. (N.T. 3/23/98 p. 52, 96, 191,192)

20. Respondent told Attorney [C] never to put his hands on him again, and a struggle broke out between the attorneys. (N.T. 6/9/98 p. 78)

21. Respondent punched Attorney [C] with a closed fist in the face. (N.T. 3/23/98 p. 192-193) Attorney [C] punched back and both Respondent's and Attorney [C's] suit jackets were ripped at some point during the struggle.

22. Respondent put Attorney [C] in a headlock and punched him at least two more times. (3/23/98 N.T. 193)

23. Attorney [C] is approximately 5'10" and weighs 160 pounds.

24. Judge [A] tried to pull Respondent off Attorney

[C] but was unable to do so. (N.T. 3/23/98 p. 54, 107)

25. While Respondent had Attorney [C] in a headlock, Attorney [C's] head was "banging into the wall" (N.T. 3/23/98 p. 107)

26. This physical altercation lasted approximately 30 seconds.

27. The law clerk left the robing room to find a sheriff.

28. The jurors overheard the turmoil and one juror approached the robing room to see if help was needed.

29. [D], a court officer who was in the courtroom across the hall from the robing room, ?heard loud noises like thumping sounds, like somebody was being hit against the wall?. (N.T. 3/23/98 p. 137-138)

30. [D] entered the robing room and saw that Respondent had Attorney [C] against the wall. (N.T. 3/23/98 p. 140)

31. [D] put her hand on Respondent's shoulder, in response to which Respondent turned, causing [D] to step back

because of the anger in Respondent's face. (N.T. 3/23/98 p. 139-142)

32. After the altercation was over, Respondent left the robing room. While he was in the hallway between the room and the courtroom, Judge [A] announced that he was fining Respondent $2,500. (N.T. 144)

33. Upon hearing the amount of the fine, Respondent appeared irritated and started to go back in the robing room. [D] testified that she told him to go back in the courtroom, which Respondent did. (N.T. 3/23/98 p. 145, 151, 156)

34. Subsequent to the altercation, Attorney [C] made a motion for mistrial, which was granted by the Court.

35. Judge [A] held Respondent in contempt and fined him $2,500.

36. Judge [A] did not take any action against Attorney [C] and believes that Attorney [C] probably saved him from getting hit by Respondent. (N.T. 3/23/98 p.58)

37. The day after the altercation Respondent went to Judge [A's] chambers and apologized.

38. Respondent also wrote a letter to the Judge and apologized.

39. Judge [A] testified that although Respondent apologized to him in person and by letter, he expressed doubts regarding Respondent's sincerity. (N.T. 3/23/98 p. 57, 111) Judge [A] testified that during Respondent's oral apology he said that he was defending himself from Attorney [C]. Judge [A] believes Respondent is out of touch with reality, as that was not what happened.

40. Respondent telephoned Attorney [C] the next day and apologized.

41. Attorney [C] received medical treatment for the injuries he sustained as a result of Respondent's actions.

42. As a result of the altercation, Respondent was suspended without pay for thirty days by the District Attorney's Office. His employment status became probationary for one year commencing June 16, 1997. He was not permitted to return to a trial courtroom for a minimum of six months commencing June 16, 1997.

43. Respondent was also required by his employer to receive professional counseling for the purpose of learning to

control his temper and conduct toward others. He was ordered to undergo alcohol screening to determine whether treatment for alcoholism was appropriate.

44. Respondent was transferred from the Major Felony Trial Divisions to the Appellate Division and later the Juvenile Charging Division.

45. Respondent went to anger management therapy with [E], a licensed psychologist.

46. [E] saw Respondent for individual therapy sessions on nine occasions. [E] testified that Respondent successfully completed the therapy course and did not need additional treatment. (N.T. 3/23/98 p. 257, 260-261) [E] further stated his opinion that he would be surprised if Respondent repeated the conduct in the future. (N.T. 261)

47. As part of his therapy, Respondent was made aware of when he was getting angry so he could use behavioral intervention techniques. He also became aware that his size can intimidate others. (N.T. 112)

48. Respondent also was evaluated for alcohol problems, as required by the District Attorney's Office, and was found to have no problems.

49. Respondent paid the contempt fine in full.

50. Respondent testified that it was inappropriate behavior on his part to argue and raise his voice to Judge [A]. (N.T.6/9/98 p. 118-120)

51. Respondent testified that his argument with Judge [A] got out of hand. He notes he became upset when he perceived negative comments were made by the Judge concerning the District Attorney's Office (N.T. 6/9/98 p. 71-73)

52. Respondent testified that he had no intention of striking or touching Judge [A]. (N.T. 6/9/98 p. 81-82)

53. Respondent agrees that Judge [A] was correct in finding him in contempt. (N.T. 6/9/98 p. 83-84)

54. Respondent resigned from the District Attorney's Office and began working for the law firm of [F] in [ ] in April 1998. Respondent handles medical malpractice defense litigation.

55. Numerous character witnesses testified for Respondent. These witnesses described Respondent as a competent, responsible attorney who was not prone to disruptive conduct.

56. Respondent has no prior record of discipline.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rule of Professional Conduct:

1. RPC. 3.5(c) - A lawyer shall not engage in conduct disruptive to a tribunal.

IV. DISCUSSION

This matter was initiated by a Petition for Discipline filed against Respondent on December 11, 1997. The Petition charged Respondent with violations of Rules of Professional Conduct 3.5(c), 8.4(b), and 8.4(d) based on an incident where he struck opposing counsel during an evidentiary argument in a judge's robing room. A Joint Stipulation of Law and Fact was entered into evidence at the disciplinary hearing on March 23, 1998. Respondent stipulated that he violated Rule 3.5(c) by his actions. Respondent did not admit to further violations as charged by Petitioner.

The Hearing Committee determined that Respondent violated Rule 3.5(c), but did not violate 8.4(b) or 8.4(d). The Committee found that Respondent's misconduct was aberrational in nature, arose out of an impetuous fit of anger, and was not part of a pattern of unprofessional behavior. There was no evidence of other physical confrontations by Respondent as an attorney. The Committee determined that this misconduct did not rise to the

level of adversely reflecting on his overall fitness to practice law, and did not violate Rule 8.4(b).

As to Rule 8.4(d), the Committee found that although Respondent's fight did cause a mistrial, and was prejudicial to the resolution of the criminal case, this fact alone is not prejudicial to the administration of justice.

The Hearing Committee recommended a private reprimand. In addition to the factors noted above, the Committee relied on the result in *In re Anonymous No. 39 DB 85*, 47 Pa. D. &. C. 3d 376 (1987). In that case, an attorney who represented management during a heated union election assaulted a union organizer. The Disciplinary Board recommended a private reprimand because of the heated nature of the election and the fact that the union organizer called the attorney a racial epithet. While the attorney's actions were unprofessional, the Board determined that they were also understandable. The Committee further notes that in the instant matter, the sanctions received by Respondent from his employer and the anger management therapy conveyed a forceful message to Respondent.

Petitioner took exceptions to some of the Hearing Committee's findings of fact and conclusions of law, as well as to the Committee's recommendation of a private reprimand. The Board will examine each exception.

Petitioner contends the Hearing Committee erred in concluding that Respondent did not violate Rules of Professional Conduct 8.4(b) and 8.4(d). RPC 8.4(b) states that 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. Petitioner claims that Respondent violated these Rules as he engaged in such outrageous behavior that he was held in criminal contempt for his conduct. The Board does not agree that Respondent violated this Rule. A lawyer should be professionally answerable for a violation of Rule 8.4(b) for offenses that indicate a lack of those characteristics relevant to law practice. There is no evidence that Respondent has engaged in a pattern of aggressive or assaultive behavior. The record indicates that prior to this incident Respondent performed his job professionally. Petitioner presented two rebuttal witnesses who testified that Respondent had, on two prior occasions, acted with anger, but he was not involved in any sort of physical altercation. This incident by itself does not prove that Respondent's conduct evidences a lack of honesty, trustworthiness or fitness to practice.

Rule 8.4(d) states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Petitioner claims that as Respondent was held in criminal contempt, this demonstrates an obstruction of

justice. Furthermore, Petitioner argues that Respondent's conduct resulted in a mistrial and additional court proceedings regarding his contempt, which also indicates prejudice to the administration of justice. The Committee found that this charge was not definitively proven. The Board agrees with the Committee's assessment. An example of conduct violative of 8.4(d) is if an attorney violated an applicable court order, such as a gag order prohibiting the attorney from talking about a case to the media. Another example is if an attorney had an ex parte conversation with an opposing party's expert witness and offered the witness compensation for information regarding the opposing party's case preparation. These examples illustrate attorneys who seek to influence the outcome of a case and undermine the authority of the court. Respondent did not intend to influence the outcome of the case by engaging in a fist fight, nor did he undermine the authority Of the court.

Petitioner took exception to the Hearing Committee's finding that Respondent accepted full responsibility for what occurred. The Board finds that while Respondent did apologize in person and in writing to Judge [A], the Judge testified that he did not find Respondent's apology sincere, as Respondent said that he was defending himself from Attorney [C]. Respondent seems to equivocate and in a subtle way shift blame by saying that Judge [A] was provocative in his remarks. He also states that Attorney [C] started the physical part of the confrontation by swinging at

him. Rather than acknowledge that no amount of provocation justified his conduct toward the judge or his opposing counsel, the Respondent still fails to understand the damage his conduct has done to the reputation of the District Attorney's Office and the public's perception of attorneys. This is not simply a barroom fight where the combatants "shake hands and make-up." The Respondent has done irreparable harm to the profession and to his reputation.

Petitioner took exception to the Hearing Committee's finding that Respondent was entitled to mitigation because of his youth and inexperience. The Board does consider youth and inexperience in certain situations, such as a young practitioner who is overwhelmed and makes practice errors. The Board certainly understands that young attorneys make mistakes. This case, however, has nothing to do with practice errors. From all accounts, Respondent was a good and competent assistant district attorney, versed in trial practice. Yet even the newest-minted attorney realizes that screaming at a judge and punching opposing counsel is wrong. This is a matter of common sense and self-control, not something learned after years of practice. Respondent s age and inexperience are irrelevant in this matter.

Petitioner took exception to the Hearing Committee's finding that the notoriety of the conduct is not an aggravating

circumstance. The Board agrees with the Committee that notoriety does not aggravate a case. This incident was newsworthy because of its unique nature. Simply because the press covered the story does not mean Respondent must get more severe discipline than the facts warrant. Notoriety of a matter is not a very good gauge of the egregiousness of misconduct.

The Hearing Committee found Respondent's conduct to be aberrational in nature. Petitioner argues that this is not so. Petitioner presented two rebuttal witnesses who each described a different incident wherein Respondent acted in an angry manner. This did not include any physical fight or confrontation. The specific conduct of May 19, 1997 appears to be aberrational.

Finally, the Hearing Committee recommended a private reprimand, which Petitioner contends is inadequate to address the misconduct of Respondent. Petitioner recommends a suspension for a period of one year and one day. In support of this sanction, Petitioner argues that Respondent's conduct was outrageous, he did not accept full responsibility, and his conduct reflects negatively on the integrity of the judicial process and the legal system. Petitioner believes Respondent must be required to petition for reinstatement under Pa.R.D.E. 218(a) to prove he is fit.

Respondent's position is that a private reprimand is

appropriate. The factors Respondent cites as compelling are his youth (28 at the time of the misconduct), his admission of remorse, the disciplinary measures imposed by the District Attorney's Office, his successful completion of anger management therapy, his insight into his misconduct, the testimony of the therapist that the chances of reoccurrence are minimal, and the strong testimony of character witnesses.

Respondent believes his misconduct was due to overzealous attempts to change Judge [A's] ruling and his subsequent loss of control. He understands his conduct was inappropriate. He contends that a private reprimand would serve as a deterrent to remind him that such behavior is not tolerable. It would also allow Respondent, as a young attorney, to continue practicing law.

The Board has carefully considered the record in this matter, the Hearing Committee's Report and recommendation, and the arguments of Respondent and Petitioner. There is no doubt that Respondent's misconduct was serious, albeit aberrational in nature. The Board is not persuaded that merely because the behavior was aberrational in nature, it follows that a private reprimand will suffice. The record shows that Respondent lost all control, screamed at the Judge, punched opposing counsel with a closed fist several times, got opposing counsel in a headlock and pounded his head against a wall. Witnesses were extremely

frightened by Respondent's demeanor.

The Board is not influenced by Respondent's argument that he has been duly punished by sanctions imposed through his former employer. The District Attorney's Office took what it perceived to be appropriate measures. Respondent's actions must now be addressed by the disciplinary system of this Commonwealth. Furthermore, while a positive aspect of this matter is that Respondent received anger management counseling, this does not excuse or justify his misconduct.

This is a matter concerning Respondent's total loss of self-control in his professional capacity. All attorneys are aware that a certain civil demeanor is expected in the courtroom. Despite the lack of professional courtesy that appears to be rampant in this profession outside the courtroom doors, inside the courtroom attorneys are required to drop these rude mannerisms and comport themselves accordingly. Refraining from abusive or obstreperous conduct is part of an attorney's responsibility in the courtroom, even if the attorney has strong differences with the opposing counsel or the judge. Respondent went beyond rudeness and incivility and became physically abusive. Compounding this behavior is the fact that Respondent's acknowledgment of his wrongdoing was a less than wholehearted endorsement of his accountability.

Private discipline is inadequate to address Respondent's behavior. The case cited by the Hearing Committee and Respondent in support of a private reprimand, *In re Anonymous No. 39 DB 85*, 47 Pa. D. & C. 3d 376 (1987), is not on point. In that matter, the attorney punched a union official during heated negotiations after the official called the attorney a racial epithet. The facts of the instant case are much more egregious. Public discipline will send the appropriate message that such outrageous conduct is not condoned by the profession. Petitioner suggests that a suspension of one year and one day is warranted. This would require Respondent to petition for reinstatement after his suspension and prove he is morally qualified, competent and learned in the law. The Board believes that suspension is appropriate, but one year and one day is too harsh. The facts of the record do not justify such a long suspension. Respondent appears to have moved forward in his professional life and has assured the Hearing Committee and the Board that his behavior will not be repeated in the future. A six month period of suspension will relay the message to Respondent that his conduct was intolerable, while still enabling Respondent to return to practice without the extra burden of seeking reinstatement.

For these reasons, the Board recommends a period of suspension for six months.

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 six (6) months.

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: April 5, 1999

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

Board Members Nix, Elliott, Scaricamazza, Halpern and Donohue dissented and would recommend a Public Censure.

Board Member Peck dissented and would recommend a one (1) year and one (1) day suspension.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 155 DB 1997
v.	:	Attorney Registration No. [ ]
[ANONYMOUS] Respondent	:	([ ])

DISSENTING OPINION

I agree with the Findings of Fact and Conclusions of Law of the majority and with its reasoning that a private reprimand is too lenient and a suspension of a year and one day too severe. However, I disagree with the conclusion that a six month suspension is the appropriate discipline.

There is nothing in this record to support the conclusion that the public needs protection from the Respondent or that a six month suspension is required for the Respondent to seek further counseling or otherwise rehabilitate himself.

The record and the Respondent's manifest unprofessional conduct support a public censure. The Respondent should stand before the Supreme Court of Pennsylvania, the public and other members of the Bar and receive the sharp public condemnation that his conduct deserves. His misconduct was public, the discipline

should be literally public.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By:______________________________
Christine L. Donohue, Member

Date: April 5, 1999

Board Members Scaricamazza and Halpern join in this Dissenting Opinion.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 155 DB 1997
v.	:	Attorney Registration No. [ ]
[ANONYMOUS] Respondent	:	([ ])

DISSENTING OPINION

The Hearing Committee found that Respondent violated Rule 3.5(c), but did not violate 8.4(b) or (d). The Hearing Committee went on to find that Respondent?s misconduct was aberrational in nature and did not amount to a pattern of unprofessional behavior, nor did it rise to a level of adversely affecting the administration of justice. As a result of these findings, the Hearing Committee determined that a Private Reprimand would be the appropriate discipline.

I agree with the majority's finding that a Private Reprimand is not sufficient discipline, given the misconduct exhibited in this matter. The record clearly indicates that Respondent lost all control of his temper, screamed at the judge, punched opposing counsel, held him in a headlock and pounded his

head against the wall. Clearly, this type of misconduct should not be condoned and requires public discipline, particularly when one considers that the misconduct was carried out inside the courtroom.

Given this conduct, absent any mitigating factors, I would agree with Board Member Peck who in her dissent recommends that the Respondent be suspended from the practice of law for a period of a year and a day. However, the Respondent has proven mitigating factors that should be considered prior to imposing discipline.

The majority is not influenced by the sanctions imposed by the Respondent's former employer, the District Attorney's Office. These sanctions included the following:

1. a suspension without pay for thirty days,
2. internal probation for one year,
3. not permitted to return to a trial courtroom for a minimum of six months,
4. required receiving professional counseling,
5. required to undergo alcohol screening, and
6. transferred from the Major Felony Trial Divisions to the Appellate Division and later to the

Juvenile Charging Division.

These sanctions although not imposed by this Board are severe and should be seen as mitigating factors in determining the appropriate recommendation for discipline. Having been subjected to the above-listed sanctions, together with the Respondent's treating psychologist's opinion that the Respondent was capable of controlling his anger and not likely to repeat this type of conduct and his clear expression of remorse, a suspension of any length of time serves no purpose and is not appropriate.

The majority in the instant matter takes issue with the sincerity of the Respondent's apology to the judge. I do not disagree with the majority's determination that this matter involves the Respondent's total loss of self-control in his professional capacity. However, I cannot agree with the majority's finding that the Respondent's acknowledgment of his wrongdoing was less than wholehearted. Everyone exhibits remorse in his own way and any judgment as to one's sincerity in the expression of remorse is most difficult. We have in this case, a Respondent who admittedly had difficulty

in controlling his anger. This same attorney prior to seeking treatment for his problem apologized for his conduct. The mere fact that he believed that others may have prompted his misconduct, should not be construed to mean that he was any less remorseful. Respondent had taken responsibility for the misconduct, did not try to justify it and although it could not have been easy for the Respondent to go the Judge's Chambers and apologize, he did just that and in so doing, showed that he recognized that his prior conduct was not appropriate.

Absent the sanctions imposed by the Respondent's former employer, I would have been more than willing to suggest a lengthy suspension. However, the Respondent was subjected to stringent discipline by his former employer and underwent treatment from a licensed psychologist to control his anger and the psychologist opined that it was unlikely that Respondent would exhibit this type of behavior in the future. Given the steps already taken by the Respondent, I do not feel that a suspension is warranted. It is this Board's responsibility to weigh any risk an attorney might be to the public, against that attorney's right to practice law. In the instant

matter, I believe it would be inappropriate given the hurdles already crossed by the Respondent to subject him to an additional suspension.

For these reasons, I would respectfully dissent from the majority's recommendation of a six (6) month suspension and recommend that Respondent be subjected to a Public Censure.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

By:________________________________
Robert N. C. Nix, III, Member

Date April 5, 1999

Board Member Elliott joins in this Dissenting Opinion.

PER CURIAM:

AND NOW, this 15th day of July, 1999, upon consideration of the Report and Recommendations of the Disciplinary Board and the Dissenting Opinions dated April 5, 1999, the Petition for Review and responses thereto, respondent's request for oral argument is denied, and it is hereby

ORDERED that [Respondent] be and he is suspended from the Bar of this Commonwealth for a period of six months, 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.

Mr. Justice Cappy dissents and would grant oral argument.