

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 807, Disciplinary Docket
Petitioner	:	No. 3 – Supreme Court
	:	
v.	:	No. 19 DB 2003 – Disciplinary Board
	:	
ROLF R. LARSEN	:	Attorney Registration No. 00746
Respondent	:	(Allegheny 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 February 28, 2003, the Supreme Court entered an Order placing Rolf R. Larsen on temporary suspension arising out of his criminal conviction of criminal conspiracy to violate the Controlled Substance, Drug, Device and Cosmetic Act. On April 8, 2003, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent based on his criminal conviction.

On May 23, 2003, Respondent filed a Petition for Determination of Preliminary Legal Matters, essentially asserting that the Disciplinary Board had no jurisdiction as Respondent was a Supreme Court Justice, and not an attorney, at the time the crime was committed. Respondent also asserted numerous defenses. Petitioner filed an Answer thereto on June 10, 2003. By Order of July 11, 2003, the Board ordered that a pre-hearing conference be scheduled.

A pre-hearing conference was held on August 27, 2003 before Hearing Committee 4.06 Member Timothy J. Geary, Esquire. Respondent requested a continuance of the hearing to file briefs on preliminary issues. By Order of September 19, 2003, the Board Chair denied the continuance and directed the Hearing Committee to address any preliminary issues.

Respondent filed a Petition for Emergency Relief with the Supreme Court on September 25, 2003. Petitioner filed an Answer to Petition for Emergency Relief on September 26, 2003. By Order of the Supreme Court dated September 30, 2003, the Court denied the relief requested in the Emergency Petition.

A disciplinary hearing was held on October 1, 2003. At that time the Committee requested briefs from the parties on preliminary issues and a second date was scheduled for the hearing. The parties filed their respective briefs and the second hearing date was scheduled.

The continued disciplinary hearing was held on June 2, 2004 before Hearing Committee 4.06 comprised of Chair Blair V. Pawlowski, Esquire, and Members Craig E. Coleman, Esquire, and Timothy J. Geary, Esquire. Respondent was represented by

Robert A. Felkay, Esquire.

The Committee filed a Report on November 19, 2004, and recommended that Respondent be suspended for three years with credit for time served while disbarred and on temporary suspension.

Petitioner filed a Brief on Exceptions on December 9, 2004, contending that the Hearing Committee erred by not recommending disbarment.

Respondent filed a Brief on Exceptions on January 21, 2005, wherein he requested oral argument before the Disciplinary Board. Respondent further filed a Brief In Opposition to Petitioner's Brief on Exceptions on January 21, 2005. Respondent contends that no more punishment is required to address Respondent's conviction.

Petitioner filed a Brief Opposing Respondent's Exceptions on February 10, 2005.

Oral argument was scheduled for March 1, 2005. Respondent asked for a continuance of the argument due to inclement weather. The Board Chair denied the request for continuance. Respondent did not appear on March 1, 2005, and waived the opportunity to be heard. No argument was held on that date.

This matter was adjudicated by the Disciplinary Board at the meeting of March 16, 2005.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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, Rolf R. Larsen, was born in 1934 and was admitted to practice law in the Commonwealth in 1961. His registration address is 812 Grandview Avenue #3A, Pittsburgh PA 15211. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior record of discipline.

4. On December 31, 2002, the Supreme Court of Pennsylvania entered an Order directing that, as a result of Respondent having been convicted in the Court of Common Pleas of Allegheny County of two counts of the crime of conspiracy to violate the Controlled Substance, Drug, Device and Cosmetic Act, a Rule be entered pursuant to Rule 214(d)(1), Pa.R.D.E., directing him to show cause why he should not be placed on temporary suspension.

5. By Order dated February 28, 2003, the Supreme Court of Pennsylvania ordered that Respondent be placed on temporary suspension and referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E.

6. On October 28, 1993, a 16 count Information was filed against Respondent in the Court of Common Pleas of Allegheny County, charging Respondent

with two counts of criminal conspiracy to violate the Controlled Substance, Drug, Device and Cosmetic Act, in violation of 18 Pa.C.S. §903, and 14 counts of acquisition or obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge, in violation of 35 P.S. §780-113(a)(12).

7. On April 9, 1994, after jury trial, Respondent was found guilty of two counts of criminal conspiracy to violate the Controlled Substance, Drug, Device and Cosmetic Act, and was found not guilty of the remaining counts. In essence Respondent was found guilty of conspiracy with his physician to obtain medically necessary prescriptions issued in the names of other individuals.

8. On June 13, 1994, Respondent was sentenced at Count 1 to one year probation and at Count 2 to one year probation, consecutive to the sentence imposed at Count 1.

9. At the sentencing on June 13, 1994, the Court also found that Respondent, at that time a Justice of the Supreme Court of Pennsylvania, had been convicted of an “infamous crime”, and removed Respondent from his judicial office.

10. On August 5, 1996, pursuant to an appeal by Respondent, the Superior Court of Pennsylvania upheld the conviction but vacated the sentence and remanded the matter for resentencing.

11. On May 27, 1997, Respondent was resentenced and the Court sentenced him to a period of probation for two years.

12. At the May 27, 1997 resentencing, the Court reimposed all other aspects of the original sentence, including the removal of Respondent from his judicial office.

13. All direct appeals of Respondent's conviction have been exhausted.

14. Five witnesses testified on behalf of Respondent.

15. Louis J. Grippo is a Pennsylvania attorney and friend of Respondent. Mr. Grippo described Respondent's efforts as a Common Pleas Judge and his participation in charitable causes. Mr. Grippo testified that Respondent has an excellent reputation in the community as a truthful and law abiding citizen.

16. Joseph H. Mistick is an attorney and law professor at Duquesne University, as well as a friend of Respondent. He testified that Respondent made significant contributions to the profession by issuing several landmark Supreme Court opinions during his career on the Court. Mr. Mistick opined that Respondent's reputation in the community for being a truthful and law-abiding citizen is excellent.

17. Jennifer Kopar is the Director of Voluntary Services for Allegheny General Hospital. She testified to Respondent's work with patients as a volunteer at the Hospital. Respondent had a reputation as being a caring and dedicated service provider to patients.

18. Cathy Reck is the Behavioral Coordinator of Animal Friends. She testified to Respondent's work with her organization for approximately six years. Respondent accompanied his granddaughter on visits to the shelter and spent about ten

hours per week assisting at the shelter. Ms. Reck did not offer an opinion as to Respondent's reputation in the community for being truthful and law-abiding.

19. Robert Caplan has been Respondent's neighbor for eighteen years. He described how Respondent helped when the condominium complex had a water problem. He believes Respondent is a very good neighbor. Mr. Caplan was unaware of Respondent's reputation for being truthful and law-abiding.

20. Respondent testified on his own behalf. He described the facts giving rise to his criminal conviction. He explained that he resorted to the practice of obtaining drugs in the name of others due to his reputation as a jurist, and stated that at that time he had not been certain that such conduct constituted a crime.

III. CONCLUSIONS OF LAW

1. Respondent was convicted of two counts of conspiracy to violate the Controlled Substance, Drug, Device and Cosmetic Act. This crime is a serious crime pursuant to Pa.R.D.E. 214(i), and constitutes an independent basis for discipline pursuant to Pa.R.D.E. 203(b)(1).

2. The Disciplinary Board has jurisdiction over these proceedings.

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline filed against Respondent arising out of his conviction for criminal conspiracy to violate the Controlled Substance, Drug, Device and Cosmetic Act. Petitioner was placed on temporary

suspension by Order of the Supreme Court dated February 28, 2003. Therein, the Court referred this matter to the Disciplinary Board. Respondent raised various procedural matters, principally that the Board has no jurisdiction in this matter. We conclude that the Board has jurisdiction. The Supreme Court has exclusive jurisdiction over the practice of law. Office of Disciplinary Counsel v. Jepsen, 787 A.2d 420 (Pa. 2002). Further, Respondent raised this same issue in response to the Supreme Court's Rule to Show Cause why he should not be placed on temporary suspension pursuant to Pa.R.D.E. 214(d)(1). By Order of the Supreme Court dated December 31, 2002, suspending Respondent and referring the matter to the Disciplinary Board, the Court has determined that it and the Disciplinary Board have jurisdiction over Respondent with regard to this matter. The Board is bound to proceed and recommend the appropriate discipline for Respondent's criminal conduct.

The Respondent raised in his defense, among other matters, lack of jurisdiction, laches, estoppel, double jeopardy, selective prosecution and constitutional violations. These matters were raised by the Respondent in his response to the Supreme Court Rule to Show Cause why he should not be placed on temporary suspension dated December 31, 2002. The same matters were raised by the Respondent on several other occasions, including his Petition for Determination of Preliminary Legal Matters on May 23, 2003, Petition for Emergency Relief dated September 25, 2003 and Respondent's Brief on Exceptions filed January 21, 2005. The Disciplinary Board agrees with the conclusion of the Hearing Committee. The Order of the Supreme Court dated February 28, 2003 specifically disposed of these matters. The Order making the Rule absolute was

specifically predicated “upon consideration of the responses filed”. The Supreme Court Order is conclusive on the issues, which the Respondent raised on numerous occasions.

As with all matters predicated on an attorney’s conviction of a serious crime, the sole issue to be resolved is the extent of discipline to be imposed on Respondent. Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982). There is no question presented as to whether the misconduct occurred, as the certificate of conviction serves as conclusive evidence of the commission of a crime. Office of Disciplinary Counsel v. Costigan, 584 A.2d 296 (Pa. 1990). Consideration is to be given to any aggravating or mitigating factors. Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999).

Respondent, while a sitting Justice of the Supreme Court of Pennsylvania, was convicted of conspiring to violate the Controlled Substance, Drug, Device and Cosmetic Act by obtaining prescriptions placed in the name of others. Due to his status as a Justice, he faced proceedings in the Court of Judicial Discipline and impeachment proceedings before the Pennsylvania Senate. While the Board takes notice of these proceedings, their outcome does not have a bearing on the ultimate sanction in this matter.

In reaching a conclusion as to the appropriate disciplinary recommendation, the Board carefully considered the respective positions of the parties and the Hearing Committee’s recommendation. Petitioner urges disbarment, contending that Respondent used his position as a Justice of the Supreme Court of Pennsylvania to carry out the conspiracy. Petitioner points out that Respondent is the first sitting Justice of the Court to blemish the reputation of the Courts of this Commonwealth and that Respondent violated a

high public trust. As part of Respondent's criminal sentence he was removed as a Justice and was the subject of impeachment proceedings.

Respondent argues that his misconduct was nothing more than a mere technical violation of the law. He used drugs which his physician had prescribed, and involved others only to safeguard his privacy and avoid embarrassment due to his high position. Respondent believes that there is no authority for him to be punished more severely than other members of the bar, simply because he was a member of the judiciary when the misconduct occurred. Respondent emphasizes that he has already been out of the practice of law for many years and no more punishment is required.

The Hearing Committee, after considering the positions of the parties, recommended that Respondent be suspended for three years with credit for time already served on temporary suspension and while disbarred.¹ The Committee also noted what it called a de facto suspension from January 25, 1995 to April 28, 1998, when Respondent agreed not to practice law due to an unavoidably required continuance of his case pending before the Court of Judicial Discipline. The Committee noted that the nature of the misconduct deserves a three year suspension, but the misconduct was not so reprehensible as to demonstrate Respondent's inherent unfitness to practice law. The Committee essentially agreed with Respondent that no further discipline be imposed.

The Board's review of the record shows that the nature of the misconduct does warrant suspension. Respondent engaged in a conspiracy to violate the Controlled

¹ By Order of The Court of Judicial Discipline dated February 4, 2000, Respondent was disbarred. A Special Tribunal vacated this Order on October 24, 2002.

Substance, Drug, Device and Cosmetic Act by acting with his physician to obtain prescriptions written in the names of others. Previous cases considered by this Board involving drug offenses by attorneys have resulted in long suspensions. In the matter of In re Kevin John Walsh, 98 DB 2002, 756 Disciplinary Docket No. 3 (Pa. April 8, 2004), the respondent pleaded guilty to five counts of violating the Pharmacy Act. His criminal conduct was procuring for himself, or another, by fraud, deceit, misrepresentation or subterfuge, various drugs, none of which were controlled substances. This respondent was suspended by the Court for five years, retroactive to his temporary suspension. In the matter of In re Anonymous No. 88 DB 1992, 34 D. & C. 4th 198 (1994), the respondent was a law enforcement official who was convicted of possession with intent to deliver cocaine. The Board recommended and the Supreme Court imposed a four year suspension, retroactive to the respondent's temporary suspension.

In a 1994 case, an attorney who was a United States Government attorney with law enforcement responsibility was convicted of making false statements concerning his drug use, first on a federal security clearance form and later to an FBI agent. He was also convicted of possession and use of cocaine. Citing the "public prominence" of the respondent as an aggravating circumstance, but also citing in mitigation "impressive testimony from his colleagues", the Board recommended, and the Court imposed, a three year suspension, retroactive to the date of temporary suspension. In re Anonymous No. 76 DB 1992, 24 D. & C. 4th 169 (1994).

The specific crimes in the above cases are more egregious than the instant matter and the outcomes of the cases relied on the unique circumstances therein. So too must the outcome of the instant matter depend on its circumstances, and it is an inescapable fact that Respondent was a sitting Supreme Court Justice at the time of misconduct. In the cases cited above, two of the respondents were attorneys with law enforcement responsibility, and this fact was considered as an aggravating circumstance. In the more recent matter of In re Anonymous No. 114 DB 1995, 136 Disciplinary Docket No. 3 (Pa. June 23, 1999), the respondent's status as Attorney General of Pennsylvania was duly considered and cited as a reason for his five year suspension in a criminal conviction matter. Respondent's status as a Supreme Court Justice is an aggravating factor. Clearly Respondent violated the public trust by engaging in a criminal act while in office.

In mitigation, Respondent presented character testimony of five witnesses, two of whom are attorneys. The other three witnesses were either neighbors or connected with institutions where Respondent volunteered his time. While the testimony was positive as to Respondent's good reputation in the community, it was neither substantial nor persuasive. For instance, Robert Caplan testified he has been Respondent's neighbor for eighteen years and that Respondent helped the condominium when there was a water problem. Mr. Caplan offered no opinion on Respondent's reputation for being truthful and law-abiding. Another witness, Cathy Reck, testified how Respondent visited her animal shelter with his granddaughter for six years. She also did not offer an opinion as to

Respondent's reputation in the community. This character testimony may be contrasted with that noted in No. 76 DB 1992, which was described as impressive and carried its weight in mitigation.

Respondent testified on his own behalf. He explained that the facts which gave rise to the crime for which he was convicted did in fact occur. He further testified that the practice of obtaining drugs in the names of others from a physician was not uncommon, and he had not been certain that such conduct constituted a crime. Respondent did not show appreciable remorse for his misconduct.

Based on the totality of the facts and circumstances, as well as the case law in prior drug conviction matters, the Board is persuaded that a suspension of three years is warranted. In light of the negligible mitigating factors and Respondent's lack of sincere remorse, the Board declines to follow the Hearing Committee's recommendation of credit for all time served, and recommends that the suspension be made retroactive to February 28, 2003, the date of Respondent's temporary suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Rolf R. Larsen, be Suspended from the practice of law for a period of three years with credit for time since temporary suspension on February 28, 2003.

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: _____
Robert C. Saidis, Board Member

Date: June 23, 2005

Board Member Sheerer recused.

Board Members Rudnitsky, Wright and Gephart dissented and would recommend a three year suspension with credit for time since disbarment and since being placed on temporary suspension.

Board Member O'Connor dissented and would recommend a five year suspension.

Board Members McLaughlin, Brown, Pietragallo and Nordenberg did not participate in the March 16, 2005 adjudication.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 807, Disciplinary Docket
Petitioner : No. 3-Supreme Court
:
: No. 19 DB 2003-Disciplinary Board
:
: Attorney Registration No. 00746
ROLF R. LARSEN :
Respondent : (Allegheny County)

DISSENTING OPINION

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Having reviewed the report and recommendation of the majority in this matter, I must respectfully dissent from the recommendation.

The Court should be aware that this dissent is made with great difficulty as it recommends a more severe sanction for a former member of the Supreme Court; however, it is partly because of that position my recommendation is made.

As noted in the majority report, Justice Larsen claimed the Disciplinary Board had no jurisdiction since he was a justice and not an attorney. A review of case law makes it clear this is not a valid defense. The fact is that the former Justice must have joined with the Court in disciplinary rulings. It concerns me that such an objection was even made in light of the fact that he must have been knowledgeable of the Disciplinary Rules.

The Justice alleged his violation was only technical in nature. It may be technical to the Justice but it was criminal to the Court and under the laws of the Commonwealth, and hence it requires review.

Reviewing the finding of facts and following discussion of the majority, it is clear Justice Larsen violated a high public trust. He sat on the Commonwealth's highest court, and as such should have upheld the honesty, integrity and high standards of our legal system.

For whatever reasons, no matter how personal they might have been, this individual acted with his physician to knowingly violate the law. He had prescriptions written for himself in the names of others while a sitting Supreme Court Justice. This was a criminal act. To claim as a defense this type of behavior was not uncommon is ridiculous.

The majority found that Justice Larsen did not show any sincere remorse and no real mitigating factors were found.

There is a need to maintain the integrity of the legal system as noted in Office of Disciplinary Counsel vs. Keller, 509 Pa. 573, 506 A.2d 872 (1986).

This case is comparable with Office of Disciplinary Counsel vs. Preate, 731 A.2d 129 (Pa. 1999) wherein Justice Nigro found there to be serious misconduct.

As in Preate, no other case involved a member of the bar who had reached such a high level of public office.

Here was a man who, due to his very public position, bore a grave responsibility to maintain the highest standards of integrity. Despite his sworn oath, Justice Larsen violated the law, and as in Preate, damaged public confidence in the legal system. He deserves the same type of suspension as was handed down in Preate.

I would recommend a five-year suspension with credit for the time served while disbarred and under

the present suspension.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Francis X. O'Connor, Member

Date: June 23, 2005

O R D E R

PER CURIAM:

AND NOW, this 30th day of November, 2006, a Rule having been entered upon Respondent by this Court on October 14, 2005, to show cause why he should not be disbarred and upon consideration of the responses filed, it is hereby

ORDERED that the Rule is made absolute, Rolf R. Larsen is disbarred from the Bar of this Commonwealth, retroactive to February 28, 2003, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

Mr. Chief Justice Cappy did not participate in the consideration or decision of this matter.

Former Justice Nigro did not participate in the decision of this matter.