

Respondent with professional misconduct arising from his conviction in the Superior Court of the District of Columbia of simple assault.

A disciplinary hearing was held on September 16, 1999 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Respondent appeared pro se. Petitioner was represented by [], Esquire.

The Committee filed a Report on May 19, 2000 and found that Respondent violated the Rules as charged in the Petition for Discipline. The Committee recommended a suspension of one year and one day.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of August 2, 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 1957 and was admitted to practice law in Pennsylvania in 1994. His latest registered office address for the practice of law is []. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On May 11, 1994, Respondent was found guilty of simple assault in the Superior Court of the District of Columbia. The underlying facts evidenced that Respondent acted menacingly toward his ex-fiancee and threw a beer on her while they were at an entertainment establishment.

4. On July 20, 1994, Respondent was sentenced to a term of one hundred and eighty (180) days in jail, suspended as to all but forty-five (45) days. In addition, Respondent received a sentence of two years supervised probation. As a condition of probation, within thirty days of his release, Respondent was required to enter and complete a Domestic Intervention Program. Respondent was required to receive counseling and contact the Probation Department and the Court with the name of his

therapist.

5. Respondent appealed his conviction to the District of Columbia Court of Appeals in August 1994.

6. Respondent's appeal was dismissed by Order dated January 13, 1997 based on Respondent's failure to file a brief.

7. Respondent did not notify the Disciplinary Board that his appeal had been dismissed.

8. Respondent has a prior record of discipline consisting of an Informal Admonition in 1997.

9. In July of 1997 Respondent was found in contempt of court on two counts for failure to appear before the [] district magistrate on behalf of a client. He was fined \$500 per count.

10. In May of 1998 Respondent was found in contempt of court and sentenced to 100 hours of community service.

11. By Order of the Supreme Court dated July 22, 1999, and effective

August 21, 1999, Respondent was placed on inactive status for his failure to comply with the Continuing Legal Education requirements.

12. After being placed on inactive status, Respondent had a duty pursuant to Pa.R.D.E. 217 to withdraw from any active case that he was named counsel of record. As of September 10, 1999, Respondent was listed as counsel of record in ten criminal matters and two civil matters.

13. Respondent admitted that he was aware that he had to withdraw from his cases.

14. Respondent had a duty to notify his clients of his inactive status. Respondent admitted that he verbally informed his clients that he was placed on inactive status, but he did not send them written notification as required by Pa.R.D.E. 217.

15. At the time of the hearing on September 16, 1999, Respondent had not withdrawn his appearance from several of his cases. The Committee requested that he send letters to President Judge [A] withdrawing his appearance and send copies of such letters to the Hearing Committee. Respondent said he would do that.

16. As of May 19, 2000, the date of the filing of the Committee Report, Respondent had not submitted evidence that he withdrew his appearance from those

cases.

III. CONCLUSIONS OF LAW

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

1. Respondent's conviction for simple assault constitutes a per se ground for discipline pursuant to Pa.R.D.E. 203(b)(1).

IV. DISCUSSION

This matter comes before the Disciplinary Board upon a Petition for Discipline charging Respondent with violation of Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement arising out of his conviction for simple assault. As with all disciplinary matters that come before this Board predicated on a criminal conviction, the sole issue to be resolved is the extent of discipline to be imposed on Respondent. *Office of Disciplinary Counsel v. Eilberg*, 497 Pa. 388, 441 A.2d 1193 (1982). Consideration is to be given to any aggravating or mitigating factors. Id.

Respondent was convicted of simple assault after acting in a menacing manner and throwing a beer on his ex-fiancee. The transcript of the jury trial evidences that Respondent's conduct was part of a course of destructive and harassing behavior toward the ex-fiancee which lasted for approximately fourteen months. Respondent's conduct was deemed serious enough to require court-ordered counseling and

involvement in a domestic intervention program.

While case law indicates that private discipline has been imposed in situations involving similar criminal convictions, as in *In re Anonymous No. 39 DB 85*, 47 Pa. D. & C. 3d 376 (1987), the surrounding circumstances of the instant conviction and other aggravating factors position it outside of the realm of private discipline. Respondent is currently on inactive status for failure to comply with CLE. Upon receiving notice of his transfer to inactive, Respondent failed to properly notify his clients and withdraw from his current cases. Respondent stated that he did not bother reading the entire letter from the CLE Board as to his obligations. At the time of the disciplinary hearing, Respondent was still counsel of record in twelve matters. The Committee specifically requested that he withdraw by writing a letter to Judge [A], the president judge for [] County. Respondent agreed to do so and to send copies to the Committee. Respondent failed to follow through on this request, leaving the Board to wonder if he is still counsel of record in these matters.

Other factors that aggravate this case are that Respondent was found in contempt of court on two counts in July of 1997 and fined \$500 for each count. In May of 1998 he was found in contempt of court and sentenced to 100 hours of community service. Respondent has a record of discipline consisting of an Informal Admonition in 1997.

Respondent's criminal conviction and his subsequent activities related to his manner of practicing law demonstrate that he is not fit to practice law at this time. A suspension of one year and one day will require Respondent to petition for reinstatement and prove his fitness and ability to practice in a manner that will not damage the integrity of the profession nor pose a danger to the public.

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.

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: _____
Christine L. Donohue, Member

Date: February 7, 2001

PER CURIAM:

AND NOW, this 2nd day of April, 2001, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 7, 2001, it is hereby

ORDERED that [Respondent], be and he is SUSPENDED from the Bar of this Commonwealth for a period of one (1) year and one (1) day, 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.