

[J-120-2005]
IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1020 DD 3
	:	
Petitioner	:	Disciplinary Board No. 189 DB 2003
	:	
	:	Attorney Registration No. 15492
v.	:	(Delaware County)
	:	
	:	
LAWRENCE J. DIANGELUS,	:	
	:	ARGUED: October 19, 2005
Respondent	:	

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY

DECIDED: SEPTEMBER 27, 2006

I respectfully dissent from the Majority’s recommendation of a five-year suspension and would dismiss the disciplinary charges filed against Respondent Lawrence J. DiAngelus. Upon *de novo* review of the record before us, it is clear that the Office of Disciplinary Counsel (ODC) has failed to demonstrate by clear and satisfactory evidence that Mr. DiAngelus violated the alleged Rules of Professional Conduct.¹

Black’s Law Dictionary defines “de novo” as “anew; afresh, a second time.” Black’s Law Dictionary 435 (6th ed. 1990). The *sine qua non* of *de novo* review is that the reviewing body possess and exercise the authority to arrive at an independent judgment on the matter in dispute. West Chester Area School District v. Collegium Charter School, 812 A.2d 1172, 1178 n.9 (Pa. 2002).

¹ ODC has the burden of proving, by a preponderance of the evidence, that an attorney’s actions constitute professional misconduct. ODC v. Kieseewetter, 889 A.2d 47, 54 n.5 (Pa. 2005). This burden must be established by clear and satisfactory evidence. Id.

Based on this standard, a review of the transcript of the January 31, 2001 hearing, which was held on Dubolino's motor vehicle violations, as well as the transcript of Respondent's disciplinary hearing, leads my independent judgment to stray from that of the Majority and the lower tribunals.²

The transcript of the January 31, 2001 hearing reveals that ADA Stollsteimer informed the court that Mr. DiAngelus would be presenting evidence as to why the Commonwealth was withdrawing the charge of a violation of Section 1786, which requires a motor vehicle's "owner" or "registrant" to maintain financial responsibility of the vehicle. N.T., 1/31/01, at 3.³ Mr. DiAngelus presented to the court a certificate of title registration, which demonstrated that the vehicle was registered to Joseph Dubolino and not Patricia Dubolino. Id. at 3-4. The trial court examined the document and certified that the vehicle was not registered to Patricia. Id. at 4. Further, prior to entering the hearing on January 31, 2004, Mr. DiAngelus maintained that he showed ADA Stollsteimer the owner's card for the motor vehicle, which noted that the car was owned by Joseph and not Patricia

² The Disciplinary Board did not reference the transcript of the January 31, 2001 hearing in its report.

³ Section 1786(d) provides:

(d) Suspension of Registration and Operating Privilege. --

(1) The Department of Transportation shall suspend the registration of a vehicle for a period of three months if it determines the required financial responsibility was not secured as required by this chapter and shall suspend the operating privilege *of the owner or registrant* for a period of three months if the department determines that the owner or registrant has operated or permitted the operation of the vehicle without the required financial responsibility. . . .

75 Pa.C.S. § 1786(d) (emphasis added).

Dubolino. N.T. of Disciplinary Hearing of 4/22/04 at 13, 14. Thus, as Patricia Dubolino was neither the registrant nor the owner of the motor vehicle, there seems to have been no basis for prosecuting her for a violation of Section 1786 and little motivation for Mr. DiAngelus to have misrepresented to ADA Stollsteimer that he entered into a plea agreement with the arresting officer to exonerate her.⁴ The transcript of the January 31, 2001 hearing supports this position. After examining the certificate of title registration, the trial court proceeded to find Patricia Dubolino not guilty of violating Section 1786 and accepted her plea of guilt to violating 75 Pa.C.S. § 1301, which applies to the person driving or moving the vehicle with an expired registration.⁵

Additionally, I disagree with the Majority that if a misrepresentation was made, such statement was “material” and “prejudicial to the administration of justice” pursuant to RPC 4.1(a) and 8.4(d). Under the unusual facts of this case, a misrepresentation regarding a plea agreement would not alter the outcome of the proceeding because Mr. DiAngelus’ client was not culpable of the underlying offense.

Under these circumstances, I find that the evidence in support of the violations of the alleged Rules of Professional Conduct falls somewhere short of clear and satisfactory. The Hearing Committee and Disciplinary Board dismissed for lack of proof in this very

⁴ The matter was before the trial court because Patricia Dubolino had erroneously pled guilty to the offense and later sought to appeal her conviction *nunc pro tunc* when she was notified that her license would be suspended for three months.

⁵ Section 1301, entitled “Registration and Certificate of title required,” provides as follows:

(a) Driving unregistered vehicle prohibited. -- No *person* shall *drive* or *move* and no owner or motor carrier shall knowingly permit to be driven or moved upon any highway any vehicle which is not registered in this Commonwealth unless the vehicle is exempt from registration.

75 Pa.C.S. § 1301(a) (emphasis added).

disciplinary matter the charges of misconduct relating to Robert Closs.⁶ I would reach that same conclusion as to the charges of misconduct relating to Patricia Dubolino.

Accordingly, I cannot join in the Majority's imposition of discipline.

Mr. Justice Castille joins this dissenting opinion.

⁶ In the Robert Closs matter, ODC alleged that Mr. DiAngelus lied to a magisterial district judge with regard to a plea agreement with a police officer regarding Closs's motor vehicle violations. The Hearing Committee found that the testimony of ODC's witnesses were either inconsistent or incredible and that ODC therefore did not meet its burden of proof.