

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2620 Disciplinary Docket No. 3
: :
Petitioner : No. 103 DB 2019
: :
v. : Attorney Registration No. 60727
: :
: (Allegheny County)
IVAN STEWART DeVOREN, : :
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 1st day of April, 2021, upon consideration of the Report and Recommendations of the Disciplinary Board, Ivan Stewart DeVoren is suspended from the Bar of this Commonwealth for a period of two years, retroactive to July 3, 2019. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 04/01/2021


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 103 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Registration No. 60727
	:	
IVAN STEWART DeVOREN	:	
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

By Order dated July 3, 2019, after consideration of a Joint Petition for Temporary Suspension, the Supreme Court of Pennsylvania placed Respondent, Ivan Stewart DeVoren, on temporary suspension and directed that he comply with Rule 217, Pa.R.D.E. By Petition for Discipline filed on January 29, 2020, Petitioner, Office of Disciplinary Counsel, charged Respondent with violation of the Pennsylvania Rules of Disciplinary Enforcement arising out of Respondent’s criminal convictions in the

Allegheny County Court of Common Pleas. Respondent was personally served with the Petition for Discipline on February 3, 2020, but did not file an Answer to the Petition.

Following a prehearing conference on June 24, 2020, a District IV Hearing Committee (the "Committee") conducted a disciplinary hearing on July 29, 2020. Petitioner's Exhibits 1 through 5 and Administrative Exhibits 1 through 6 were admitted without objection. Petitioner called no witnesses. Respondent appeared pro se and testified on his own behalf. Respondent called no witnesses and provided no other evidence.

On September 11, 2020, Petitioner filed a Brief to the Committee and recommended that Respondent be suspended for two years retroactive to the effective date of the temporary suspension imposed by the Court on July 3, 2019. Respondent did not file a brief.

The Committee filed a Report on October 13, 2020, concluding that Respondent violated Rule 203(b)(1), Pa.R.D.E. and recommending that he be suspended for a period of two years, retroactive to the date of Respondent's administrative suspension on March 21, 2018.

Petitioner filed a Brief on Exceptions on October 30, 2020, concurring with the two year period of suspension, but objecting to the retroactive date of March 21, 2018. Petitioner contends that the appropriate discipline is a two year suspension retroactive to the date of Respondent's temporary suspension. Respondent did not file exceptions to the Committee's Report.

The Board adjudicated this matter at the meeting on January 21, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, 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 is Ivan Stewart DeVoren, born in 1956 and admitted to practice law in the Commonwealth of Pennsylvania in 1990. Respondent's current mailing address is 715 52nd St., Pittsburgh, PA 15201.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. Respondent was administratively suspended by Order of the Supreme Court of Pennsylvania dated March 21, 2018. This suspension was the result of Respondent's noncompliance with mandatory Pennsylvania Continuing Legal Education requirements.

5. Respondent has no prior disciplinary history in Pennsylvania.

6. On February 1, 2018, after conducting an investigation in response to a neighbor's complaint, City of Pittsburgh police obtained a search warrant for Respondent's residence at 18 Azimuth Court, Pittsburgh, Allegheny Court, PA, for evidence of animal abuse. Admin 2; PE 4.

7. While at Respondent's residence, the police observed a substance believed to be crack cocaine in plain view, which prompted a second search warrant to be obtained. Admin 2; PE 4.

8. Pursuant to the second warrant, the police found substances believed to be and later confirmed by the Allegheny County Crime Lab to be cocaine, heroin and marijuana, along with drug paraphernalia. Admin 2; PE 3 at pp. 6-7; PE 4.

9. On February 21, 2018, Respondent was arrested and charged in Allegheny County with ten counts of Aggravated Cruelty to Animals – Torture; ten counts of Sexual Intercourse with an Animal; and drug charges involving possession of controlled substances namely heroin, cocaine and marijuana and drug paraphernalia as detailed in the Criminal Information filed in the Allegheny County Court of Common Pleas on April 16, 2018 at CP-020CR-0004522-2018. (Admin 2 and 6; PE 4.

10. On March 14, 2018, while out on bond following his February 21, 2018 arrest, Respondent was again arrested at his home in the City of Pittsburgh when Pittsburgh police responded to a 911 call from a neighbor about shots fired inside 18 Azimuth Court. Admin 2; PE 5.

11. After removing Respondent from his residence, the police entered the residence to secure it and observed in plain view a pistol with a spent shell casing nearby. Admin 2; PE 5.

12. The police obtained a search warrant for the residence, pursuant to which the officers discovered two firearms, ammunition, holsters, and crack pipes. Admin 2; PE 5.

13. Respondent was charged with discharge of a firearm in the City of Pittsburgh, possession of drug paraphernalia, and recklessly endangering another person

as detailed in the Criminal Information filed in the Allegheny County Court of Common Pleas on April 16, 2018 at CP-02-CR-0004521-2018. Admin 2 and 6; PE 5.

14. After his second arrest, Respondent was incarcerated for 44 days then released and placed on home confinement pending trial for 266 days. Admin 6; PE 3 pp. 15-16.

15. On January 11, 2019, with the court's approval, the Commonwealth withdrew the charges of Aggravated Cruelty to Animals – Torture and Sexual Intercourse with an Animal. Admin 2; PE 1 and 6.

16. On January 11, 2019, before Allegheny County Court of Common Pleas Judge Jill Rangos, Respondent entered a counseled plea of guilty to charges in both Criminal Informations (as amended):

a. At CP-02-CR-0004521-2018 (Admin 2; PE 2): disorderly conduct, a summary offense; possession of drug paraphernalia, an ungraded misdemeanor; and discharging a firearm or air gun within the City of Pittsburgh while not under supervision, a summary offense.

b. At CP-02-0004522-2018 (Admin 2; PE 1): possession of a controlled substance (heroin), an ungraded misdemeanor; possession of a controlled substance (cocaine), an ungraded misdemeanor; possession of marijuana, an ungraded misdemeanor; and possession of drug paraphernalia, an ungraded misdemeanor.

17. Respondent was sentenced to the following:

a. At CR-0004521-2018 (Admin 2; PE 2, 3, 3A): disorderly conduct – 90 day term of probation with 14 days credit toward

probation; possession of drug paraphernalia – one year term of probation consecutive to the 90 days imposed at Count 1; discharging a firearm - pay a \$1,000 fine.

b. At CR-0004522-2018 (Admin 2; PE 1, 3, 3A): possession of a controlled substance (heroin) – one year term of probation; possession of controlled substance (cocaine) – one year term of probation; possession or distribution of marijuana - one year term of probation with 30 days credit for time served; possession of drug paraphernalia – one year term of probation.

18. Respondent is under the supervision of the Allegheny County Adult Probation Office until at least January 2023. PE 1, 2, 3.

19. None of Respondent's criminal conduct involved clients.

20. Respondent failed to report his convictions to Office of Disciplinary Counsel as required by Rule 214(a), Pa.R.D.E.

21. Respondent testified at the disciplinary hearing that he had been incarcerated prior to his house arrest and during that time frame he believed his counsel had notified the appropriate authorities, but subsequently realized that this had not been done. N.T. 23-24.

22. Following his arrest, Respondent was very ill and in September 2018 he was diagnosed with pancreatic cancer and underwent a Whipple procedure. Respondent contributes his lack of diligence in reporting his convictions in part to his illness. N.T. 25-26.

23. Respondent accepted full responsibility for his failure to report his convictions and specifically testified that he did not place responsibility on his counsel,

but explained the circumstances regarding his counsel and his illness in order to show his confusion concerning notification. N.T. 24.

24. On May 29, 2019, Petitioner filed a Certificate of Conviction with the Supreme Court of Pennsylvania. Admin 6.

25. Respondent agreed to be placed on temporary suspension by the Court and takes full responsibility for his violation of the ethical rules. Admin 1; N.T. 22, 26, 40.

26. While on house arrest, Respondent received court-ordered treatment for his drug problems and anxiety through the intensive outpatient program at Mercy Behavioral Health. PE 3, p. 15; N.T. 24-25, 29.

27. Respondent successfully completed the program in June 2018 and attended Alcoholics Anonymous or Narcotics Anonymous for approximately one year thereafter on a daily basis, and continues to attend meetings less frequently at the present time. N.T. 25.

28. Respondent testified that he has attended drug rehabilitation programs in the past. N.T. 37.

29. After completing the drug and alcohol program, and despite a recommendation that he continue with therapy, Respondent had no therapy sessions from approximately December 2018 until he spoke with a therapist through telehealth on July 28, 2020, the day prior to the disciplinary hearing. N.T. 27-29.

30. Although Respondent testified that he had been diagnosed with bipolar disorder and anxiety, Respondent offered no mitigation by way of expert testimony or documentation to support his testimony. N.T. 27-30.

31. Respondent withdrew his psychiatric disorders from consideration in mitigation. N.T. 30.

32. Respondent is admitted to the bar in Ohio where he is currently suspended for noncompliance with Ohio Continuing Legal Education requirements. N.T. 33-35.

33. Respondent is admitted to the bar in New Jersey, where he was previously on disability status. On July 16, 2020, as a result of his convictions in Allegheny County, Respondent was suspended by the New Jersey Supreme Court for a period of six months, with the condition that prior to any reinstatement proceeding, Respondent must be evaluated by a psychiatric professional to determine whether he has the capacity to return to the practice of law in New Jersey. N.T. 33-35.

34. In March 2019, Respondent was transferred to suspended/inactive status by the United State District Court for the Eastern District of Pennsylvania. N.T. 22.

35. Respondent is not employed and collects Social Security Disability. N.T. 36.

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) – Conviction of a crime shall be grounds for discipline.

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline charging Respondent with violation of Rule 203(b)(1), Pa.R.D.E., arising out of Respondent's criminal convictions in the Allegheny County Court of Common Pleas. The certified copies of the court records from Respondent's conviction (PE 1, 2, 3 and 3A) constitute conclusive evidence of Respondent's commission of a crime, and incontrovertible evidence of his professional misconduct. ***Office of Disciplinary Counsel v. Harold E. Casety, Jr.***, 512 A.2d 607, 609 (Pa. 1986). As a result of Respondent's failure to answer the averments contained in the Petition for Discipline alleging his misconduct, the factual averments are deemed admitted, pursuant to Rule 208(b)(3), Pa.R.D.E. Further, Respondent by his testimony at the disciplinary hearing acknowledged and admitted his misconduct.

The Board's task is to determine the degree of discipline, bearing in mind that the recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating, ***Office of Disciplinary Counsel v. Joshua Eilberg***, 441 A.2d 1193, 1195 (Pa. 1982), and to "examine the underlying facts involved in the criminal charge to weigh the impact of the conviction upon

the measure of discipline.” ***Office of Disciplinary Counsel v. Frank Troback***, 383 A.2d 952, 953 (Pa. 1978). Despite the fact-intensive nature of the endeavor, consistency is required so that similar misconduct “is not punished in radically different ways.” ***Office of Disciplinary Counsel v. Robert S. Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

The disciplinary system is designed to protect the public and to preserve the integrity of the profession. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872 (Pa. 1986). The Hearing Committee recommended a suspension of two years to address Respondent’s misconduct, retroactive to Respondent’s administrative suspension from the practice of law on March 21, 2018. Petitioner takes exception to the March 21, 2018 date of retroactivity and contends that the appropriate date is when the Supreme Court placed Respondent on temporary suspension from the practice of law in the instant matter.

Upon review of the severity of the misconduct, the aggravating and mitigating circumstances, and the decisional law, the Board recommends that Respondent be suspended for two years, retroactive to the date of his temporary suspension.

The record establishes that Respondent entered a guilty plea to criminal offenses involving the Crimes Code and violations of the Controlled Substance, Drug, Device and Cosmetics Act. The court accepted Respondent’s guilty plea and sentenced him to a term of probation which in total was slightly more than four years, along with applicable fines and costs. Respondent is under the supervision of the Allegheny County Adult Probation Office until at least January 2023.

The most serious of Respondent’s crimes are the drug offenses. Respondent was found in possession of controlled substances, namely heroin, cocaine

and marijuana, as well as drug paraphernalia. The drug offense are graded as misdemeanors, while the remaining offenses of which Respondent was convicted are summary offenses. Respondent's crimes did not involve sale or distribution of controlled substances, and none of his criminal conduct involved clients. Nevertheless, these are serious offenses. The Pittsburgh police were twice summoned to Respondent's residence in a span of approximately one month, with the second incident involving discharge of a firearm, disorderly conduct and possession of drug paraphernalia occurring when Respondent was on bond awaiting a preliminary hearing date on the initial set of charges. The serious nature of Respondent's criminal conduct exemplifies his disregard for the law and warrants suspension of his license to practice.

Respondent completed court-ordered drug and alcohol treatment at Mercy Behavioral Health. Thereafter, he attended meetings of Alcoholics Anonymous or Narcotics Anonymous on a daily basis for about one year, and currently attends meetings on a less frequent basis. Respondent indicated that he has attended drug rehabilitation programs in the past. Respondent discontinued treatment with a therapist in December 2018, approximately six months after completing the program at Mercy. He recommenced treatment on July 28, 2020, the day prior to his disciplinary hearing. Although Respondent revealed that he has been diagnosed with anxiety and bipolar disorder, he did not produce an expert report and did not offer these disorders in mitigation.

As an aggravating matter, Respondent failed to report his convictions to the Office of Disciplinary Counsel, which he was required to do pursuant to Rule 214(a). However, at the hearing Respondent communicated genuine acceptance of responsibility for his dereliction. In mitigation, we find that Respondent credibly acknowledged his

misconduct and cooperated with Petitioner by agreeing to the temporary suspension of his license to practice. Notwithstanding the current matter, Respondent has had an unblemished disciplinary record in the Commonwealth since his admission to the bar in 1990. Lastly, we note that Respondent has not contested the Committee's recommended discipline.

The Court has imposed discipline on attorneys in prior matters involving criminal convictions for drug offenses and firearms. While each matter is adjudicated on its unique factual circumstances, the consequences of these convictions have generally been a suspension of the attorney's license to practice law. These matters guide the Board in assessing appropriate discipline.

In the recent matter of ***Office of Disciplinary Counsel v. Joseph Nicholas Sciulli***, 102 DB 2020 (S. Ct. Order 12/9/2020), the Court suspended Sciulli on consent for two years, retroactive to the date of the temporary suspension, for his multiple criminal convictions involving DUI, violation of the Controlled Substance, Drug, Device and Cosmetic Act, disorderly conduct, and summary traffic offenses. Sciulli failed to report some of these convictions to Office of Disciplinary Counsel. Sciulli had a history of substance abuse and received treatment for these issues. Like Respondent, Sciulli cooperated with Office of Disciplinary Counsel by agreeing to a temporary suspension and had no history of prior discipline following his admission to the bar of the Commonwealth in 1990.

The Court in ***Office of Disciplinary Counsel v. John Anthony Costalas***, No 217 DB 2015 (S. Ct. Order 11/17/2016) imposed a two year suspension on consent following Costalas' conviction of two counts of possession of a controlled substance and his separate conviction of DUI. A two year suspension retroactive to the temporary

suspension was the discipline imposed in ***Office of Disciplinary Counsel v. Ashly Mae Wisher a/k/a Ashly Mae Guernaccini***, No. 118 DB 2005 (D. Bd. Rpt. 6/14/2006) (S. Ct. Order 9/28/2006), where Wisher was convicted of possession of heroin, a second or subsequent offense. Wisher, who had a prior Informal Admonition, demonstrated that she had successfully rehabilitated from her drug addiction, while expressing sincere remorse for her actions.

Similar to the instant matter, none of the above-cited matters that resulted in suspension for two years involved clients or the commission of crimes such as sale or distribution of a controlled substance that would warrant a longer suspension. See, ***Office of Disciplinary Counsel v. Guy N. Amatangelo***, 130 DB 2015 (B. Bd. Rpt. 12/19/2016 (S. Ct. Order 2/21/2017) (three year suspension retroactive to the temporary suspension for convictions of conspiracy to distribute and possession with intent to distribute crack cocaine and possession of a firearm by an unlawful user of a controlled substance); ***Office of Disciplinary Counsel v. William Floyd Conway***, 149 DB 2009 (D. Bd. Rpt. 4/15/2011) (S. Ct. Order 10/3/2011) (three year suspension retroactive to the temporary suspension for multiple criminal convictions including possession with intent to deliver controlled substance and controlled substance contraband to confined person); ***Office of Disciplinary Counsel v. Gregory V. Smith***, 14 Pa. D & C 4th 74 (1991) (three year suspension retroactive to the temporary suspension for conviction of possession and selling cocaine to a client).

In comparing the instant matter with the above-cited cases, we conclude as did the Committee, that the facts of Respondent's matter align with cases that have resulted in suspension for two years.

The remaining point for discussion is whether retroactivity of the suspension

is appropriate and if so, the date of retroactivity. Review of prior matters demonstrates that retroactivity is not automatic and is a matter within the Court's grace and sole discretion. **Office of Disciplinary Counsel v. Harris Roy Rosen**, 5 DB 2017 (D. Bd. Rpt. 4/7/2020) (S. Ct. Order 7/6/2020). Often times in the case of a criminal conviction, when the attorney has voluntarily agreed to be placed on temporary suspension pursuant to Rule 214(d)(5), Pa.R.D.E., the Court will impose a sanction retroactive to the date of the temporary suspension. The retroactivity recognizes that the attorney has already been removed from the practice of law for a length of time and accounts for the attorney's cooperation with Office of Disciplinary Counsel. In the **Sciulli, Wisher, Conway, Amatangelo** and **Smith** matters cited above, the Court granted retroactivity to the date of the temporary suspension; however, in the **Costalas** matter, the Court imposed a prospective suspension and did not grant retroactivity, because Costalas did not comply with the terms of his temporary suspension. In the instant matter, we conclude that retroactivity is appropriate due to Respondent's cooperation with Petitioner as demonstrated by his agreeing to be temporarily suspended from the practice of law.

Having concluded that retroactivity is warranted, we turn next to the question of when to apply the retroactive credit. The Committee recommended a retroactive date of March 21, 2018, the date Respondent was placed on administrative suspension for noncompliance with Continuing Legal Education requirements. Petitioner contends that the appropriate date for retroactivity flows from the date of Respondent's temporary suspension from the practice of law.

Petitioner's point is well-taken that the retroactive credit should only be applied to the date of the temporary suspension. Respondent's administrative suspension resulted from his failure to comply with the requirements necessary to maintain an active

law license in the Commonwealth of Pennsylvania. This administrative suspension did not address disciplinary misconduct and is irrelevant to the issue of how long Respondent should be suspended for the instant misconduct and the date to which his suspension should be retroactive.

A suspension of two years retroactive to the date of the temporary suspension complies with the decisional law and meets the goals of the disciplinary system by protecting the public from unfit attorneys and preserving confidence in the legal system. This sanction will require Respondent to petition for reinstatement if he desires to resume practice and to establish his fitness by clear and convincing evidence, in particular with regard to his rehabilitation from the mental health disorders and substance use raised in this record.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Ivan Stewart DeVoren, be Suspended for two years from the practice of law in this Commonwealth, retroactive to July 3, 2019.

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: 
Dion G. Rassias, Member

Date: 1-27-21