

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2907 Disciplinary Docket No.3
: :
Petitioner : No. 128 DB 2021
: :
v. : Attorney Registration No. 320408
: :
LON VANDUSEN HUGHES, : (Lancaster County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 25th day of October, 2022, upon consideration of the Report and Recommendations of the Disciplinary Board, Lon VanDusen Hughes is suspended from the Bar of this Commonwealth for a period of one year and one day. 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 Nicole Traini
As Of 10/25/2022

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 128 DB 2021
Petitioner	:	
	:	
v.	:	Attorney Registration No. 320408
	:	
LON VANDUSEN HUGHES,	:	
Respondent	:	(Lancaster 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 Petition for Discipline filed on September 17, 2021, Petitioner, Office of Disciplinary Counsel, charged Respondent, Lon VanDusen Hughes, with violations of the Rules of Professional Conduct (RPC) and Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E.) arising from his criminal conviction in the York County Court of Common Pleas of Driving Under the Influence (DUI). After filing the Petition, Petitioner attempted personal service on Respondent but was unsuccessful as despite repeated efforts to communicate with Respondent, he remained nonresponsive. Petitioner

effectuated substitute service by mail as provided for in Pa.R.D.E. 212. Respondent received the Petition for Discipline, as evidenced by a signed receipt received by Petitioner on October 15, 2021. Respondent failed to file an Answer to the Petition for Discipline or seek an extension of time in which to do so. Pursuant to Pa.R.D.E. 208(b)(3), “[a]ny factual allegation that is not timely answered shall be deemed admitted.”

A prehearing conference was held on January 5, 2022, at which Respondent appeared. By Order dated January 6, 2022, the Hearing Committee Chair set forth dates by which, *inter alia*, the parties were required to exchange exhibits and witness information. On February 2, 2022, Petitioner provided Respondent with its exhibit list, copies of exhibits, and a witness list. Respondent failed to object to any of the exhibits and failed to circulate any exhibits or a witness list to Petitioner in accordance with the dates set by the January 6, 2022 Order.

A District II Hearing Committee (“Committee”) held a disciplinary hearing on February 24, 2022. Respondent did not appear, despite having received notice of the date and time of the hearing. Petitioner did not present any witness testimony and offered exhibits, which were admitted into evidence.

On March 22, 2022, Petitioner filed a post-hearing brief and requested that the Committee recommend to the Board that Respondent be suspended for a period of one year and one day. Respondent did not file a post-hearing brief. By Report filed on June 9, 2022, the Committee concluded that Petitioner met its burden to establish that Respondent committed professional misconduct and recommended that he be suspended for a period of one year and one day. The parties did not take exception to the Committee’s Report and recommendation.

The Board adjudicated this matter at the meeting on July 21, 2022.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Lon VanDusen Hughes, born in 1971 and admitted to practice law in the Commonwealth of Pennsylvania in 2015. Respondent is on active status and maintains his address of record at 908 Columbia Ave., Suite #3, Lancaster, Lancaster County, Pennsylvania 17603.

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

4. On November 4, 2018, independent callers and witnesses viewed a vehicle in the area of Old Trail Road in York County and reported to the police that a man, later identified as Respondent was, among other things, intoxicated to the point that he was not able to walk or stand. Petition for Discipline ("Pet. for Disc.") ¶4.

5. The Newberry Township Police Department responded to the reports of a severely intoxicated driver driving a motor vehicle in the wrong lane of travel. Pet. for Disc. ¶5.

6. The Police took Respondent into custody and Respondent agreed to a blood test. Pet. for Disc. ¶6.

7. On November 13, 2018, the results of the blood test revealed that Respondent's blood alcohol level was .297, which, because of a prior arrest and conviction for DUI, resulted in a Tier III second offense charge under Pa C.S. 75 § 3802 C (M1) – DUI Highest Rate of Alcohol (BAC .16+) 2nd Offense. Pet for Disc. ¶7.

8. On April 18, 2019, Respondent entered a guilty plea to the above charge in the Court of Common Pleas of York County. Pet. for Disc. ¶8; ODC-1.

9. On that date, the Court sentenced Respondent to:

- An 18-month driver's license suspension;
- 2 - 5 years intermediate punishment, the first 90 days of which were house arrest with an alcohol monitor; with the agreement that if the Defendant completed the first 3 years of the intermediate punishment successfully, it may be closed after that time; a fine in the amount of \$1,500, and the costs of prosecution; and
- standard DUI conditions, fees, and assessments.

Pet. for Disc. ¶9; ODC-1.

10. Respondent's DUI conviction constitutes conviction of a crime pursuant to Pa. R.D.E. 214(e) & (h); specifically, Pa. R.D.E. 214(h) defines "crime" for the purpose of the rule as an offense that is punishable by imprisonment in the jurisdiction of

conviction, whether or not a sentence of imprisonment is actually imposed. Pet. for Disc. ¶10.

11. Respondent failed to report his conviction within 20 days to the Office of Disciplinary Counsel, as required pursuant to Pa.R.D.E. 214(a). Pet. for Disc. ¶11.

12. As a result, Petitioner did not file the Notice required by Pa.R.D.E. 214 with the Supreme Court of Pennsylvania until May 14, 2021. Pet. for Disc. ¶12; ODC-1 (Ex.A).

13. Since the time of sentencing, Respondent has pled guilty to three summary offenses related to alcohol:

- On February 7, 2020, Respondent was arrested and charged with Public Drunkenness and Similar Misconduct (Docket No. MJ-02203-NT-83-2020) and he pled guilty to that offense on April 6, 2020;
- On February 7, 2020, Respondent was charged with Retail Theft from Pa Wine and Spirits (Docket No. MJ-02203-NT- 53-2020) and he pled guilty to that offense on February 18, 2020; and
- On July 15, 2021, Respondent was arrested and charged with Public Drunkenness and Similar Misconduct (Docket No. MJ-02205-NT-0000074-2021) and he pled guilty to that offense on November 1, 2021.

Pet. for Disc. ¶¶13, 14; ODC-8; ODC-9; ODC-10.

14. On May 18, 2021, Petitioner sent to Respondent, via both first class and certified mail, return receipt requested, a DB-7 Request for Statement of Respondent's Position ("DB-7 letter"). Pet. for Disc. ¶15 ; ODC-1.

15. Petitioner sent the DB-7 letter to Respondent's preferred mailing address at 908 Columbia Ave., Ste. 3, Lancaster PA 17603-3186. Pet. for Disc. ¶16.

16. On June 15, 2021, the Post Office returned the certified mailing to Petitioner marked "Unclaimed." Pet. for Disc. ¶17.

17. The first-class mailing has not been returned to Petitioner. Pet. for Disc. ¶18.

18. On June 15, 2021, Petitioner resent the DB-7 letter to Respondent via the email address he listed on what was at that time his most recently filed form on record with the Disciplinary Board's Attorney Registration Office, a 2020-2021 Pennsylvania Administrative Change in Status Form changing his status from Administrative Suspension–CLE to Active, filed on or around August 25, 2020. Pet. for Disc. ¶19.

19. Respondent failed to file an answer to the DB-7 letter or respond to Petitioner's email. Pet. for Disc. ¶20; N.T. 22.

20. On September 17, 2021, Petitioner filed a Petition for Discipline against Respondent. ODC-4; ODC-5.

21. Thereafter, beginning on September 23, 2021, Petitioner made efforts to personally serve the Petition for Discipline on Respondent. ODC-2; ODC-4.

22. Petitioner's Auditor, Esther Thomas, sought to communicate with Respondent by both phone and email to arrange a time to effectuate personal service; Respondent did not respond to Ms. Thomas's communications. Thereafter, Ms. Thomas attempted, without success, to effectuate personal service on Respondent at his residence. ODC-2.

23. On October 8, 2021, Petitioner's staff sent the Petition for Discipline and Notice to Plead by certified mail, regular mail and email to Respondent's Registered Office address and Preferred Mailing address at 908 Columbia Avenue, Suite #3, Lancaster PA 17603-3168; an address Petitioner had confirmed to be Respondent's current residence. ODC-2.

24. On October 15, 2021, Petitioner received the Return Receipt from the certified mailing, demonstrating Respondent's receipt of the Petition for Discipline. ODC-3.

25. Respondent failed to answer the Petition for Discipline within 20 days or at any time thereafter.

26. Pursuant to Pa. R.D.E. 208(b)(3), all factual allegations in the Petition for Discipline are deemed admitted.

Additional Findings of Fact in Aggravation and Mitigation

27. Prior to his November 4, 2018 arrest and April 18, 2019 guilty plea in York County, on or about August 28, 2018, Respondent was charged with public Drunkenness and Similar Misconduct, docketed at MJ-02202-NT- 0000583-2018. On

November 28, 2018, Respondent was found guilty of the charges and assessed fines and penalties. ODC-11.

28. Respondent has a history of fiscal irresponsibility as demonstrated by three matters where he did not timely pay obligations:

- On May 22, 2019, a judgment was entered for the Commonwealth, County of York, against Respondent in York County, Pennsylvania, in the amount of \$3,148.00; the judgment was not satisfied until February 3, 2021. This judgment was related to Respondent's DUI. ODC-A; N.T. 20.
- On or about January 28, 2020, Respondent's current landlord initiated suit against Respondent for rent that was in arrears. On February 7, 2020, judgment for the plaintiff (landlord) was issued against Respondent. The docket does not reflect further action being taken against Respondent in connection with the landlord/tenant matter. ODC-B; N.T. 20.
- On March 24, 2021, a judgment was entered against Respondent in the County of Lancaster in the amount of \$4,418.07. The underlying documentation reveals this judgment arose from credit card debt. To date, the judgment has not been satisfied. ODC-C; N.T. 21.

29. Respondent appeared at the prehearing conference on January 5, 2022. The Committee found that Respondent was "very standoffish" and "rudely interrupt[ed]" others throughout the conference. Hearing Committee Report, p. 18.

30. During the prehearing conference, Respondent called the Board's Special Counsel, Kimberly Henderson, who was in attendance, a "jerk." PHC N.T. 28.

31. Respondent failed to appear at the disciplinary hearing, despite having participated in the prehearing conference and having received notice of the date of the hearing. See N.T. 37 (testimony by Systems Support Coordinator Teri Stoltenburg regarding email reminders sent to Respondent prior to the disciplinary hearing and statement by Special Counsel explaining that Respondent appeared at the prehearing conference where the dates for the hearing were discussed). N.T. 37-40.

31. At the conclusion of the hearing, with the Committee's agreement, Petitioner moved three additional exhibits into evidence (ODC-12, ODC-13 and ODC-14) consisting of Petitioner's letters to Respondent providing him with Petitioner's exhibits along with a final letter to the Hearing Committee providing status on these efforts. N.T. 40.

32. Respondent has no history of discipline. N.T. 22.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

1. RPC 8.4(b), which states that it is professional misconduct for lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
2. Pa.R.D.E.203(b)(1), which states that conviction of a crime shall be grounds for discipline;

3. Pa.R.D.E. 203(b)(7), which states that failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rule § 87.7(b) for a statement of the respondent-attorney's position, shall be grounds for discipline; and

4. Pa. R.D.E. 214(a), which states that an attorney convicted of a crime shall report the fact within 20 days to the Office of Disciplinary Counsel. The responsibility of the attorney to make such report shall not be abated because the conviction is under appeal, or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to subdivision (b) [of Rule 214].

IV. DISCUSSION

In this matter, the Board considers the Committee's recommendation to suspend Respondent for one year and one day for his violations of RPC 8.4(b) and Pa.R.D.E. 203(b)(1), 203(b)(7) and 214(a) arising from Respondent's criminal conviction of Driving Under the Influence, Highest Rate of Alcohol (BAC .16+) 2nd offense in the Court of Common Pleas of York County on April 18, 2019; his failure to report such conviction to Office of Disciplinary Counsel within 20 days of the conviction; and his failure to respond to Petitioner's inquiries during its investigation.

Pursuant to Pa.R.D.E. 214, Respondent's conviction constitutes conclusive evidence of his commission of a crime and is a ground for discipline under Pa.R.D.E. 203(b)(1). Petitioner filed a Petition for Discipline charging Respondent with

professional misconduct. Respondent failed to respond to the Petition; the factual allegations contained therein are deemed admitted, pursuant to Pa.R.D.E. 208(b)(3). These admissions, Petitioner's exhibits, and the reasonable inferences from all the foregoing, demonstrate that Petitioner met its burden of proof by clear and satisfactory evidence that Respondent violated the rules charged in the Petition for Discipline. **Office of Disciplinary Counsel v. John T. Grigsby, III**, 425 A.2d 730, 732 (Pa. 1981).

Having determined that Respondent committed professional misconduct, the Board's task is to determine the appropriate sanction, 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). The Board must also "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).

When evaluating professional discipline, the Board is cognizant that the primary purpose of the lawyer disciplinary system in Pennsylvania is to protect the public, preserve the integrity of the legal system and deter unethical conduct. **Office of Disciplinary Counsel v. Akim Czmus**, 889 A.2d 1197 (Pa. 2005). Upon review of the totality of the circumstances present in this matter, we conclude that a suspension of one year and one day is warranted.

The record established that Respondent entered a guilty plea in the York County Court of Common Pleas on April 18, 2019 to DUI, Highest Rate, second offense and was sentenced to 2-5 years intermediate punishment with the first 90 days on house arrest and an 18 month suspension of his driver's license. As a licensed lawyer, Respondent was required to report his conviction to Petitioner under Pa.R.D.E. 214(a) but failed to do so and as a consequence, Petitioner did not file the Notice of Conviction to the Supreme Court until May 14, 2021, more than two years later. Petitioner's efforts to investigate this matter were ignored by Respondent, as he failed to respond to the DB-7 Request for Statement of Respondent's Position.

The record further established that Respondent has a checkered history of alcohol-related criminal offenses. Prior to the April 2019 DUI conviction, on November 28, 2018, Respondent was found guilty of Public Drunkenness and Similar Misconduct. Subsequent to his April 2019 conviction, Respondent has pled guilty to several summary offenses related to alcohol. On February 7, 2020, Respondent pled guilty to Retail Theft from a Pa Wine and Spirits store; on April 6, 2020, Respondent pled guilty to Public Drunkenness and Similar Misconduct; and on November 1, 2021, Respondent pled guilty to Public Drunkenness and Similar Misconduct. These summary criminal convictions do not constitute a separate basis for discipline, as Pa.R.D.E. 214(h) defines "crime" as excluding summary offenses "unless a term of imprisonment is actually imposed." Here, no separate imprisonment was imposed for any of Respondent's summary offenses, nor was Respondent required to report these offenses to Office of Disciplinary Counsel. Nonetheless, these repeated charges involving alcohol-related criminal behavior must be considered in tandem with Respondent's April 2019 DUI conviction, as they reveal a

troubling pattern of conduct that is relevant to the question of Respondent's fitness to practice law.

In addition to his troubled history of criminal misconduct, the record established that Respondent has a history of fiscal irresponsibility, as evidenced by judgments entered against him in May 2019, January 2020 and March 2021. Respondent satisfied the 2019 judgment related to his DUI in 2021. The January 2020 judgment was for rental arrearages and the docket does not reflect further action being taken against Respondent. The March 2021 judgment in the amount of \$4,418.07 arose from credit card debt and to date has not been satisfied.

Relative to these disciplinary proceedings, Respondent further demonstrated his lack of fitness by failing to answer the Petition for Discipline and failing to appear at his own disciplinary hearing. Although he appeared at the prehearing conference, his intemperate behavior during the conference casts doubt upon his fitness to practice law, as he acted in a rude manner and had the audacity to call the Board's Special Counsel, who was in attendance, a "jerk." Although aware of the timetable for the disciplinary hearing and the dates by which to submit exhibits and witness lists, Respondent failed to comply with the prehearing order and, without explanation or good cause, failed to appear at the disciplinary hearing one month later.

Respondent's actions throughout these disciplinary proceedings demonstrated a complete lack of respect for his professional duties and for the disciplinary process in general. Respondent made no effort to acknowledge his disciplinary issues and by his nonappearance, forfeited any meaningful opportunity to accept responsibility and express remorse, show that he is addressing his alcohol-related problems, and convey to this Board and the Court that he values his privilege to practice

law. In our view, Respondent's nonappearance at his own disciplinary hearing signifies the ultimate act of disinterest in his professional license and weighs heavily in aggravation. See, **Office of Disciplinary Counsel v. John Joseph Ashton, III**, No. 67 DB 2019 (D. Bd. Rpt. 5/20/2020) (S. Ct. Order 7/27/2020); **Office of Disciplinary Counsel v. Frederick Seth Lowenberg**, No. 9 DB 2017 (D. Bd. Rpt. 11/1/2017) (S. Ct. Order 12/26/2017).

In mitigation, we observe that Respondent has practiced law in the Commonwealth since 2015 and has no history of professional discipline, but are compelled to find that on the whole, this factor should be accorded little weight, as Respondent engaged in the instant misconduct a mere four years after he was admitted to practice, and regrettably continued to engage in additional criminal conduct following his 2019 conviction.

As noted above, due to Respondent's pattern of criminal offenses, we view the facts of this matter and the appropriate discipline in the context of prior matters that involved multiple criminal convictions. While there is no *per se* discipline in Pennsylvania, the Court has suspended attorneys who were convicted of multiple DUIs and who failed to demonstrate fitness to practice law. In **Office of Disciplinary Counsel v. Randal E. McCamey**, 43 DB 2014 (D. Bd. Rpt. 11/23/2015) (S. Ct. Order 1/22/2016), McCamey pled guilty to DUI in two separate criminal cases and failed to report his convictions to Office of Disciplinary Counsel. As set forth in the Board's Report, the evidence showed that McCamey had not mitigated "the harmful effects of his drinking in any significant way." *Id.* at 10. The Board further noted that "[McCamey] has not shown at this time that he is capable of practicing law and must be required to petition for reinstatement and prove his fitness if he desire to practice law in the future." *Id.* at 11. The Board

recommended a one year and one day period of suspension, which the Court imposed. While McCamey appeared at his disciplinary hearing and participated in the process, he did not answer the Petition for Discipline, similar to Respondent. As in **McCamey**, Respondent failed to produce any evidence that he has addressed the harmful effects of his alcohol use, which continued to be a problem beyond the 2019 conviction that formed the basis of the disciplinary charges against him. Likewise, Respondent has not shown he is capable of practicing law and must undergo a reinstatement process to establish his fitness. The similarities in these matters support the imposition of a one year and one day suspension in the instant matter.

The Court imposed a suspension of one year and one day in **Office of Disciplinary Counsel v. Chrystyna M. Fenchen**, 9 DB 2014 (S. Ct. Order 5/23/2014)(Consent Petition). Therein, Fenchen consented to a one year and one day suspension of her license after her third DUI conviction. Similarly, in **Office of Disciplinary Counsel v. Kimberly Neeb**, 68 DB 20016 (S. Ct. Order 10/13/2006) Consent Petition), the Court granted the Joint Petition in Support of Discipline on Consent and suspended Neeb for one year and one day based on Neeb's two DUI convictions.

Cases that have resulted in more than a one year and one day suspension are distinguishable. For example, in **Office of Disciplinary Counsel v. Mark Eugene Johnston**, Nos. 160 DB 2002, 69 DB 2003 and 89 DB 2003 (D. Bd. Rpt. 12/15/2004) (S. Ct. Order 5/13/2005), Johnston was convicted of three separate DUI offenses over a three year time frame. Additionally, Johnston failed to report his conviction to disciplinary authorities, filed a false application for an ARD program, violated his parole and lied to his probation officer. Although Johnston attempted to link his misconduct to his

alcoholism, he was unable to produce clear and convincing evidence of such link. The Court imposed a three year suspension.

In *Office of Disciplinary Counsel v. Joseph Nicholas Sciulli*, No. 102 DB 2020 (S. Ct. Order 12/9/2020)(Consent Petition), the Court granted a Joint Petition in Support of Discipline on Consent and imposed a two year suspension on Sciulli for five criminal convictions involving DUI and controlled substances. Sciulli committed the crimes during a period of eleven months. Although the nature of the criminal misconduct was very serious, Sciulli cooperated with disciplinary authorities and voluntarily entered into a treatment program.

The gravity of Respondent's conduct, which reflects adversely on his character and fitness to practice law, can be addressed by a suspension for one year and day, which requires that Respondent apply for reinstatement and establish his fitness before he is permitted to resume practice. This term of suspension fulfills the goals of the disciplinary system to protect the public, the courts and the profession, and promotes deterrence. Upon this record, we conclude that a one year and one day suspension is appropriate and consistent with the decisional law and accounts for the serious aggravating factors present in this matter.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, Lon VanDusen Hughes, be Suspended for one year and one day from the practice of law in this Commonwealth.

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: _____

Hon. Robert L. Repard, Member

Date: 8/22/2022