

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1448 Disciplinary Docket No. 3
Petitioner :
 : No. 146 DB 2007
v. :
 : Attorney Registration No. 62691
STEPHEN R. GREENBERG, :
Respondent : (Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 25th day of February, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board dated November 25, 2008, it is hereby

ORDERED that Stephen R. Greenberg is suspended from the Bar of this Commonwealth for a period of two years, the suspension is stayed in its entirety and respondent is placed on probation for a period of four years, with the condition that he continue to make monthly restitution payments of \$5,000.00 to Eileen Masley.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola

As of February 25, 2009

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 146 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 62691
	:	
STEPHEN R. GREENBERG	:	
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 October 15, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against Stephen R. Greenberg. The Petition alleged that Respondent violated the Rules of Professional Conduct relative to his representation of John and Eileen Masley.

Respondent filed an Answer to Petition for Discipline on November 13, 2007. In his response he admitted that he violated the Rules of Professional Conduct as alleged by Petitioner.

A disciplinary hearing was held on February 11, 2008, before a District IV Hearing Committee comprised of Chair Martin T. Durkin, Jr., Esquire, and Members Anthony R. Himes, Esquire, and Thelma C. Spells, Esquire. Respondent appeared pro se. The record was held open at the request of Petitioner so that a Court Order issued in an underlying civil action between Respondent and Eileen Masley could be made part of the record.

The Hearing Committee filed a Report on July 11, 2008, finding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of six months followed by probation of six months.

Respondent filed a Brief on Exceptions on July 31, 2008, and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on August 18, 2008.

Oral argument was held on September 10, 2008, before a three member panel of the Board.

This matter was adjudicated by the Disciplinary Board at the meeting on September 15, 2008.

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, 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 Stephen R. Greenberg. He was born in 1966 and was admitted to practice law in Pennsylvania in 1991. His attorney registration address is 564 Forbes Avenue, Suite 1110, Pittsburgh PA 15219. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of attorney discipline.

4. In September 1996, John and Eileen Masley met with Respondent and Respondent agreed to represent John Masley in connection with the pension benefits Mr. Masley was to receive as a retired police officer of the Borough of West Homestead in Allegheny County. Respondent did not enter into a written fee agreement with his clients.

5. At that time Respondent told the Masleys that he would contact the Borough of West Homestead to pursue a claim for Mr. Masley's pension benefits. Specifically, he would initiate correspondence to the Borough of West Homestead and the pension company.

6. Respondent sent a letter dated September 18, 1996, to John H. Alexander, II, of Pension Concepts indicating that Respondent was representing Mr. Masley relative to a perceived error in the benefits.

7. Subsequently, by letter of October 2, 1996, Mr. Alexander informed Respondent that he had reviewed the letter and was unable to address Respondent's request and the matter was referred to the Borough of West Homestead Solicitor.

8. There is no record of Respondent communicating with or placing the Borough of West Homestead on notice of a formal legal claim relative to the pursuit of pension benefits on behalf of Mr. Masley.

9. In the Spring of 1999, Mr. Masley was diagnosed with scleroderma, a terminal illness. Respondent was aware of the diagnosis and prognosis for the future.

10. Shortly before calendar year 2000, Respondent contacted the Masleys by telephone to inform them it was necessary to meet with an Allegheny County Court of Common Pleas judge relative to whether Mr. Masley was estopped from making a claim for additional pension benefits.

11. The Masleys came from their home in Crawford County, approximately 95 miles distance, to the City County Building in Pittsburgh and waited in the hallway, but never met with a judge. Respondent advised the Masleys that they had prevailed as the Borough Solicitor conceded that no witnesses had appeared. This was a patently false statement.

12. After the episode at the City County Building, Respondent discussed case strategy and the future handling of the case with the Masleys. Mrs. Masley believed that the lawsuit was going forward.

13. At this time Respondent had never filed a lawsuit or scheduled a meeting with an Allegheny County judge or with opposing counsel.

14. On January 10, 2002, Respondent filed a Complaint in Mandamus against the Borough of West Homestead in the Civil Division of the Court of Common Pleas of Allegheny County.

15. The Complaint was filed after the statute of limitations had expired. Respondent never served the Complaint on the Borough of West Homestead prior to the Writ of Service expiring on February 13, 2002.

16. In October of 2003, Respondent contacted the Masleys and requested they come to Pittsburgh for the purpose of meeting with an Allegheny County judge and insurance representatives relative to the pension claim.

17. Similar to the first fraudulent meeting, the Masleys, with Mr. Masley physically ill and significantly limited in his ambulatory capabilities, came to the courthouse, sat on a bench and watched as Respondent walked into an office with two other individuals.

18. On two occasions, Respondent conveyed imaginary settlement offers to the Masleys and, ultimately, informed the Masleys that the Court issued a briefing schedule to resolve the issue of Mr. Masley's entitlement to increased pension benefits.

19. The Masleys never met a judge or party opponents at the alleged October 2003 proceeding.

20. After the second contrived meeting in October 2003, Respondent initiated communication with Mr. Masley shortly before Christmas 2003, informing him that Mr. Masley would have a "green" Christmas.

21. Mr. Masley died on January 21, 2004.

22. After her husband's death, for the remainder of the year 2004, Mrs. Masley contacted Respondent's office by telephone leaving several messages requesting return calls. Respondent returned very few calls and didn't initiate communication with Mrs. Masley.

23. On the rare occasion Respondent returned Mrs. Masley's telephone calls, he falsely claimed that a brief that he filed was still being considered by the judge.

24. At some point in September 2005 Mrs. Masley went to Respondent's office in Pittsburgh to discuss the settlement of Mr. Masley's case.

25. Respondent discussed the settlement demand and informed Mrs. Masley that a settlement could not be reached. At this point Mrs. Masley ordered him to proceed with the matter.

26. After the September 2005 meeting, Mrs. Masley had no further communication with Respondent until she hand delivered a letter to Respondent informing

him of her attempts to contact him. She further requested pertinent case information, such as the judge assigned to the case, the amount of back pay owed to Mr. Masley, and other information.

27. Respondent failed to respond to Mrs. Masley's September 25, 2005 letter.

28. On November 16, 2006, January 4, 2007 and March 15, 2007, Mrs. Masley sent two certified letters and a fax to Respondent reiterating all of her efforts to communicate with him by telephone, letter and/or personal appearance; requesting her file and summarizing Respondent's lack of responsive actions.

29. The file that Mrs. Masley finally retrieved from Response contained a copy of the brief Respondent purportedly filed in October 2003; some of John Masley's pay stubs; the letter from Respondent to Mr. Alexander; and an ordinance from the West Homestead Borough.

30. A review of the file indicated there were no notes of meetings between the Masleys and Respondent; no notes of any telephone calls; and no information indicating that the complaint filed on behalf of Mr. Masley was actually served.

31. Mrs. Masley eventually met with Attorney Jay Silberblatt, who informed her that a timely lawsuit was not filed on her late husband's behalf.

32. Mrs. Masley chose to pursue a legal malpractice action against Respondent.

33. On April 2, 2008, a judgment was entered in favor of Mrs. Masley and against Respondent in the sum of \$240,000. Respondent was directed to pay off the judgment in 48 monthly payments of \$5,000.00, beginning in April 2008 and continuing until a final payment on March 1, 2012.

34. Prior to the hearing before the Committee, Respondent never apologized or made attempts to apologize to Mrs. Masley.

35. Respondent acknowledged that he never formally apologized, but believes that his acceptance of a default judgment conveyed his apology to Mrs. Masley.

36. Although Respondent reviewed the applicable case law for Mr. Masley's matter and drew the conclusion that Mr. Masley had little or no chance for success concerning his pension claim, Respondent never communicated his conclusions or concerns to Mr. Masley and cannot explain his failure to do so.

37. Respondent admitted that he filed a Complaint in the Allegheny Court of Common Pleas knowing that it was meritless.

38. Respondent cannot explain why he continued to allow his client to believe that a case was ongoing.

39. Respondent is ashamed of his actions.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a)(3)- A lawyer shall keep a client reasonably informed about the status of the matter.

3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

4. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. RPC 1.5(b) – When the lawyer has not regularly represented the client the basis or rate of the fee shall be communicated to the client in writing, before or within a reasonable time after commencing the representation.

6. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

7. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

8. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges filed against Respondent alleging that he engaged in professional misconduct in his representation of John and Eileen Masley. Respondent's Answer contained admissions to the factual allegations set forth in the Petition for Discipline and he reiterated his admissions during his testimony at the disciplinary hearing on February 11, 2008. Based upon the pleadings, Respondent's admissions, the testimony adduced at the hearing, and the exhibits of record, the Board finds that Petitioner met its burden of proving by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. The Board must impose discipline appropriate to the particular facts of this matter.

The most troubling aspect of Respondent's misconduct is his dishonesty. Consistent with his repeated misrepresentations of the status of the Masleys' case, Respondent created the illusion that the case was going forward, with court hearings and settlement conferences being held. In actuality the case was not moving forward and there were no court hearings, meetings with parties or settlement offers of any kind. There simply was no case. Respondent was well aware that the applicable statute of limitations had expired. Knowing this, Respondent continued the charade of twice requiring his clients to

drive 95 miles one way from Crawford County to Pittsburgh, while Mr. Masley was physically suffering from the illness that would eventually take his life. Respondent engaged in other, less egregious conduct over the 11 year time frame of the disciplinary matter, such as failing to provide a fee agreement letter, failing to keep his clients informed, and failing to communicate with Mrs. Masley despite her many requests for information.

Respondent testified at the disciplinary hearing. He was unable to explain his actions in continuing the charade of a lawsuit. He offered no apology to Mrs. Masley. His reason for not apologizing prior to this time was that he thought she would not accept it, due to how he mishandled her legal matter. He believed that his agreeing to the settlement was evidence of his willingness to make right the wrong he perpetrated.

The Hearing Committee found mitigating circumstances in Respondent's lack of a prior history of discipline and his sincere expressions of remorse to Mrs. Masley at the disciplinary hearing. Nevertheless, the Committee determined that a suspension was necessary to address the seriousness of the misconduct. The Committee recommended a six month period of suspension followed by a six month period of probation. Petitioner concurs with this recommendation.

Respondent took exception to the Hearing Committee's recommendation. He contends that a period of probation is warranted as his lack of prior discipline shows he is unlikely to engage in such conduct in the future, and his settlement agreement with Mrs. Masley demonstrates his acceptance of responsibility.

The Board has carefully reviewed the record and considered the arguments presented by the parties. This is a serious matter. Respondent's conduct towards his clients was inexplicably callous and insensitive, besides being downright dishonest. The initial reaction is to suspend Respondent; however, this case is made more complicated by the settlement agreement entered into by Respondent and Mrs. Masley, the terms of which require Respondent to pay Mrs. Masley \$5,000 per month for 48 months. This agreement gives the Board pause, as Mrs. Masley is entitled to this money and needs it to maintain her living expenses. The only way Respondent can make the payments is to be gainfully employed, which is difficult to do as a suspended attorney. The reality of a straight suspension in this particular matter is that Mrs. Masley would suffer harm for a second time, as her ability to receive the monies would be compromised by Respondent's inability to earn sufficient income. This would be a difficult blow for an individual who has already been grievously harmed by the professional misconduct of a person whom she and her late husband retained in good faith to pursue their legal claim.

In light of the circumstances of this matter and with recognition of the injustice to Mrs. Masley if she were unable to receive her monthly payments, the Board recommends a two year period of suspension, to be stayed, with four years of probation. This sanction allows Respondent to continue practicing law and honoring his obligation to Mrs. Masley, with the safeguard to the public that a violation of the probation terms would result in further disciplinary action against Respondent.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Stephen R. Greenberg, be suspended from the practice of law for a period of two years, to be stayed in its entirety and that he be placed on probation for a period of four years, with the condition that he continue to make monthly restitution payments of \$5,000. to Eileen Masley.

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: *Charlotte S. Jefferies*
Charlotte S. Jefferies, Board Member

Date: November 25, 2008

Board Members Baer and Buchholtz did not participate in the adjudication.