

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1905 Disciplinary Docket No. 3
Petitioner :
v. : No. 147 DB 2011
: Attorney Registration No. 43910
JOHN M. KASABACK, :
Respondent : (Cambria County)

ORDER

PER CURIAM:

AND NOW, this 28th day of March, 2013, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 13, 2012, it is hereby

ORDERED that John M. Kasaback is suspended from the Bar of this Commonwealth for a period of three years 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.

Messrs. Justice Baer and McCaffery dissent and would adopt the recommendation of the Hearing Committee and suspend respondent for five years.

A True Copy Patricia Nicola
As Of 3/28/2013

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 147 DB 2011
Petitioner	:	
	:	
v.	:	Attorney Registration No. 43910
	:	
JOHN M. KASABACK	:	
Respondent	:	(Cambria 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 September 15, 2011, Office of Disciplinary Counsel filed a Petition for Discipline against John M. Kasaback. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that he neglected legal matters, failed to communicate properly with clients, failed to return an unearned fee, and engaged in the unauthorized practice of law. Respondent failed to file a response to the Petition for Discipline.

A disciplinary hearing was held on February 23, 2012, before a District IV Hearing Committee comprised of Chair Mark Gordon, Esquire, and Members John E. Hall, Esquire, and Philip K. Kontul, Esquire. Respondent was represented by David A. Raho, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on July 12, 2012, concluding that Respondent violated the Rules as contained in the Petition for Discipline, and recommending that he be suspended for a period of five years.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on October 18, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and 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 Rules of Disciplinary Enforcement.

2. Respondent is John M. Kasaback. He was born in 1959 and was admitted to the practice of law in 1985. His attorney registration mailing address is 215

Wood Street, #2, Lilly, Cambria County, PA 15938-5308. His is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of discipline. He received two Informal Admonitions in 2002, a Private Reprimand in 2003, and a stayed suspension for three months with one year of probation ordered on December 6, 2010.

The Rice Matter

4. On or about June 17, 2009, Joni E. Rice retained Respondent to represent her son, James Rice, concerning criminal charges filed against him in the Court of Common Pleas of Cambria County.

5. Respondent previously represented Mr. Rice as court-appointed counsel in the same matter. Specifically, Respondent represented Mr. Rice in entering a guilty plea to criminal charges on June 25, 2007 and for sentencing, which occurred the same day.

6. Respondent was retained to represent Mr. Rice regarding possible modification of the sentence entered on June 25, 2007.

7. When he was retained, Respondent informed Ms. Rice that he required payment of \$500 for his services in the matter.

8. Ms. Rice immediately forwarded to Respondent a postal money order in the amount of \$500.

9. Respondent did not communicate to Mr. Rice, or anyone else on behalf of Mr. Rice, the basis or rate of the fee he was charging for his services, either before he was retained or within a reasonable time thereafter.

10. After his retention as counsel for Mr. Rice, both Mr. Rice and Ms. Rice made numerous telephone calls to Respondent concerning the matter.

11. Except for one telephone call about two weeks after he was retained, Respondent did not return any telephone calls from either Mr. Rice or Ms. Rice.

12. Both Mr. Rice and Ms. Rice sent letters to Respondent requesting information concerning the matter, but Respondent did not respond to any letters.

13. Respondent took no action of record on behalf of Mr. Rice.

14. By certified letter dated October 23, 2009, Ms. Rice requested that Respondent return the unearned portion of the fee she paid to him. The certified mail was returned to Ms. Rice as unclaimed.

15. Respondent did not return the unearned fee.

16. By Order of the Supreme Court of Pennsylvania dated December 1, 2009, effective December 31, 2009, Respondent was administratively suspended from the practice of law for failure to comply with the Pennsylvania Rules of Continuing Legal Education.

17. By letter dated December 1, 2009, from Suzanne Price, Attorney Registrar, Respondent was informed of his administrative suspension.

18. Respondent did not inform Mr. Rice or Ms. Rice of his administrative suspension.

19. By March 15, 2010, Respondent had taken the required Continuing Legal Education credits, but because Respondent had not reimbursed the Pennsylvania Lawyers Fund for Client Security for an award by the fund concerning his representation of another individual, he was not reinstated.

20. Respondent paid the Fund on April 9, 2010 and was reinstated on April 28, 2010.

Charge II - The Smith Matter

21. On October 29, 2009, Respondent was appointed to represent Rukiya Ren Smith concerning criminal charges filed against her in the Court of Common Pleas of Cambria County.

22. On November 30, 2009, Respondent was again appointed to represent Ms. Smith on separate criminal charges filed in Cambria County.

23. By Order of the Supreme Court dated December 1, 2009, Respondent was administratively suspended from the practice of law for failure to obtain sufficient mandatory continuing legal education credits, and was not reinstated to the practice of law until April 28, 2010.

24. By letter dated December 1, 2009, from Suzanne E. Price, Attorney Registrar, Respondent was notified of his administrative suspension.

25. On January 5, 2010, while Respondent was administratively suspended, Respondent appeared for a scheduled preliminary hearing on behalf of Ms. Smith. At that time, Ms. Smith waived her right to a preliminary hearing.

26. Respondent did not inform Ms. Smith, the attorney for the Commonwealth, or the Magisterial District Judge of the fact that he was administratively suspended and unable to practice law.

27. By Order of February 15, 2010, because he was still administratively suspended from the practice of law, Respondent was removed as counsel for Ms. Smith.

Charge III - Madalura Matter

28. On January 19, 2011, in the Court of Common Pleas of Cambria County, Edelyn Madalura entered a plea of guilty to one count of conspiracy to manufacture and deliver a controlled substance.

29. That same day, Ms. Madalura was sentenced to a period of incarceration of two to six years, with credit for time served.

30. Within seven days of her plea and sentencing, Ms. Madalura contacted Respondent, who agreed to represent her in seeking a reconsideration or modification of her sentence.

31. Respondent orally agreed to represent Ms. Madalura for a fee of \$500, pursuant to which Ms. Madalura was to pay \$300 to Respondent immediately, and to pay the balance of \$200 on the day of a hearing concerning a motion for reconsideration or modification of her sentence.

32. Shortly thereafter, Ms. Madalura paid Respondent \$300 towards the fee.

33. On February 9, 2011, Ms. Madalura telephoned Respondent, and he told her that he was doing what he needed to do in order to represent her, that she should not worry and he agreed to visit Ms. Madalura on February 11, 2011.

34. Respondent did not visit Ms. Madalura, and has not responded to numerous requests by her and her family members for information concerning the matter.

35. Respondent took no action of record on behalf of Ms. Madalura, and the time for her to file a motion for modification or reconsideration of her sentence has expired.

Respondent's Prior Discipline

36. On February 27, 2002, Respondent received an Informal Admonition from the Office of Disciplinary Counsel.

37. Respondent violated RPC 1.3, 1.4(a), and 8.4(d). He failed to enter his appearance or withdraw as counsel before the Superior Court of Pennsylvania on behalf of a client, resulting in the dismissal of an appeal for failure to file a brief. He failed to communicate with his client regarding the appeal. He failed to comply with an Order of the Superior Court to enter an appearance and failed to file a brief.

38. Respondent received a second Informal Admonition from the Office of Disciplinary Counsel on December 16, 2002.

39. Respondent violated RPC 1.3, 1.5(b), and 1.16(d). He failed to attend an arraignment and appear on behalf of his client. He failed to provide a written fee agreement to a client he had not represented in the past. He failed to return a retainer fee of \$400.

40. The December 16, 2002 Informal Admonition also required Respondent to return \$400 in unearned fees to his client and to provide proof of the same.

41. Respondent next received a Private Reprimand on December 10, 2003.

42. Respondent was reprimanded in part because he did not fulfill the terms of his December 16, 2002 Admonition in that he failed to provide proof to Chief Disciplinary Counsel that he had refunded \$400 in unearned fees.

43. The December 10, 2003 Reprimand also found that Respondent violated RPC 1.3 and 1.4(a). Respondent failed to enter an appearance or undertake any actions on behalf of his client in an appeal. He failed to keep his client informed regarding

the status of the appeal and failed to promptly respond to reasonable requests for information.

44. On December 6, 2010, the Supreme Court of Pennsylvania entered an Order suspending Respondent for a period of three months, with the suspension stayed in its entirety, and Respondent was placed on probation for one year with conditions. The basis for the discipline was Respondent's misconduct in four client matters involving failure to communicate with clients, failure to communicate fee agreements in writing, and failing to refund unearned fees.

45. The conditions were as follows:

(a) Within the first ninety days of the probation, Respondent shall return \$500 in unearned fees to Donald Conrad and \$300 in unearned fees to Barbara DaBella;

(b) Prior to the expiration of the probation, Respondent shall complete a minimum of eight credit hours of CLE in the area of law practice management;

(c) At least ten days prior to the expiration of the period of probation, Respondent shall provide to the Disciplinary Board his Certificates of Attendance for the courses taken; and

(d) Respondent shall not commit any violations of the Rules of Professional Conduct in Pennsylvania or any other jurisdiction, shall not commit any criminal violations and shall make quarterly sworn certificates to the Board that he is in compliance with his condition.

46. The Supreme Court of Pennsylvania also ordered that Respondent reimburse the Board for the expenses incurred in the investigation and prosecution of the proceeding in the amount of \$1,393.

47. With regard to the first condition, Respondent repaid Ms. DaBella, but not Mr. Conrad.

48. Respondent could not offer any evidence that he had complied with the second condition of probation and had completed a minimum of eight credit hours of CLE in law practice management.

49. Respondent did not provide to the Board his Certificates of Attendance for any CLE courses.

50. Respondent did not comply with the fourth condition of his probation in that he failed to provide quarterly sworn certificates to the Board that he is in compliance with conditions of his probation.

51. Respondent has not paid any of the \$1,393 owed to the Disciplinary Board nor has he made any arrangements for a payment plan.

52. Respondent claims to suffer from injuries sustained in the form of a broken back and leg, which occurred approximately 20 years ago. Respondent claims that currently, and for the last five years, he has suffered from arthritis due to these injuries. Respondent claims this has impaired his ability to maintain his practice and to "stay on top of his paperwork."

53. Respondent presented no evidence in support of these medical conditions.

54. Respondent claims to have a prescription for Oxycodone, and allegedly takes five pills per day to address his claimed medical conditions.

55. Respondent claims to have difficulty getting out of bed and/or leaving his house due to the effects of Oxycodone.

56. Respondent claims that his physical problems have made it difficult for him to fulfill his Continuing Legal Education requirements.

57. Respondent previously utilized his prior two wives to perform secretarial work and paperwork, but after divorcing, Respondent got behind on his paperwork.

58. Currently, the Court Administrator for Cambria County has assisted Respondent in scheduling matters, but it is not Respondent's expectation that such help will continue.

III. CONCLUSIONS OF LAW

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

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 the 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 1.5(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.
5. RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a 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. The lawyer may retain papers relating to the client to the extent permitted by other law.

6. RPC 5.5(a) - A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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

8. Pa.R.D.E. 217(c)(2) - A formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status, by registered or certified mail, return receipt requested all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges of professional misconduct filed against Respondent. By and through his failure to respond to the Petition for Discipline, Respondent has admitted violations of all of the Rules of Professional Conduct and Rule of Disciplinary Enforcement referenced in the Petition for Discipline, pursuant to Pa.R.D.E. 208(b)(3).

Respondent, who has an extensive history of discipline, has continued to engage in a pattern of misconduct. In the instant matter, beginning in June of 2009, Respondent, among other things, neglected legal matters, failed to communicate properly with his clients, failed to return an unearned fee, and engaged in the unauthorized practice of law.

With regard to James Rice and Edelyn Madalura, Respondent failed to seek possible modification of their criminal sentences, for which he had been retained and paid. After he was retained, he took no action on behalf of these clients, and failed to refund unearned fees to the Rices. His conduct violated RPC 1.3, 1.4(a)(3), 1.4(a), 1.16(d), and 8.4(d). With regard to Mr. Rice, Respondent failed to provide his client with a written agreement stating the basis or the rate of the fee which he was charging him, in violation of RPC 1.5(b).

With regard to Ms. Smith, Respondent appeared on her behalf at a preliminary hearing. This was at a time when Respondent knew he was administratively suspended from the practice of law and prohibited from making such an appearance. Respondent violated RPC 5.5(a) and 8.4(d). His failure to notify his client, the district justice and opposing counsel of his administrative suspension was a violation of Rule 217(c)(2), Pa.R.D.E.

In considering the appropriate sanction in this case, it is necessary to begin with a review of Respondent's disciplinary history. This proceeding represents the fifth disciplinary proceeding for Respondent in the past ten years. Respondent received Informal Admonitions on February 27, 2002 and December 16, 2002. He then received a Private Reprimand one year later, on December 10, 2003. He was reprimanded in part for not fulfilling the terms of his December 16, 2002 Informal Admonition requiring him to provide proof that he refunded unearned fees to his client.

By Order of the Supreme Court of Pennsylvania dated December 6, 2010, Respondent was suspended for three months, with the suspension stayed and one year of probation and conditions. Respondent committed misconduct in four matters involving failure to communicate and failure to refund unearned fees. The instant record

demonstrates that Respondent failed to fulfill conditions attached to the stayed suspension. Respondent failed to refund monies to a client; he failed to provide proof to the Board that he attended law practice management CLE courses; and he failed to provide quarterly sworn statements to the Board that he complied with the conditions of his probation. Lastly, Respondent has not paid any of the \$1,393 owed to the Board for costs from the past proceeding in 2010.

A review of these prior proceedings reveals that Respondent is being disciplined in the instant case for the same type of misconduct for which he was initially disciplined ten years ago and in subsequent proceedings. He has again failed to respond to conditions imposed as part of his prior discipline. Respondent is a repeat violator of the Rules. He has failed to grasp the severity of his actions and has failed to take appropriate steps to avoid this repetitive misconduct. Respondent merely refers to his misconduct as issues with "paperwork." The record of this proceeding and past proceedings tells a starkly different story. Respondent's actions have, over a period of years, prejudiced various clients and prejudiced the administration of justice. Respondent did not show remorse for his actions.

Respondent testified on his own behalf as to medical issues he has experienced over the past years. He claims that injuries from a broken back and leg, suffered some 20 years ago, have impaired his ability to conduct his practice. Respondent claims to suffer from arthritis for the past five years, and takes Oxycodone pills to address the pain. Respondent claims an inability to function normally due to these pills, including an inability to get out of bed due to severe pain. We note that Respondent did not offer an expert witness or medical records in support of these claims. Respondent's testimony does not mitigate his conduct in this matter.

The Hearing Committee has recommended a suspension for five years. We concur with the Committee in the fact that Respondent's conduct and the particular aggravating factors of this matter deserve a lengthy suspension. The Board is persuaded that a suspension of three years is appropriate. Respondent's sanctions have continually increased for each disciplinary proceeding brought against him. His most recent sanction was a stayed suspension of three months with probation of one year. A logical, incremental step is a three year suspension. This sanction accounts for Respondent's extensive history of discipline for similar misconduct, while recognizing that the specific underlying events of the instant matter, standing alone would not warrant an extremely severe response. What is abundantly clear is that Respondent needs to be removed from the practice of law for a long enough period of time to make an impression upon him, without being more punitive than the particular circumstances require.

A three year suspension was imposed in a similar matter. The Board notes the recent case of Office of Disciplinary Counsel v. James F. Detwiler, No. 149 DB 2010 (Pa. January 25, 2012). Therein, Mr. Detwiler engaged in multiple instances of neglect of client matters. He failed to provide competent representation, failed to appear for hearings, and caused matters to be dismissed due to his failure to prosecute. He was placed on administrative suspension and subsequently entered his appearance in a matter. He received an Informal Admonition in 2006, and failed to appear for an Informal Admonition in 2009. Finally, Respondent failed to appear for his disciplinary hearing. The Board recommended a suspension for three years, which the Court imposed.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, John M. Kasaback, be Suspended from the practice of law for a period of three years.

It is further recommended that Respondent be directed to pay the expenses incurred in the investigation and prosecution of this matter, as well as the expenses totaling \$1,393, incurred at No. 45 DB 2009 (1651 Disciplinary Docket No. 3) that were ordered to be paid by the Supreme Court on December 6, 2010.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Douglas W. Leonard, Board Member

Date: December 13, 2012

Board Member Momjian did not participate in the adjudication.