

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1771 Disciplinary Docket No. 3
Petitioner :
 : No. 149 DB 2010
v. :
 : Attorney Registration No. 29722
JAMES F. DETWILER, :
Respondent : (Montgomery County)

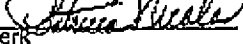
ORDER

PER CURIAM

AND NOW, this 25th day of January, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 16, 2011, it is hereby ORDERED that James F. Detwiler 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.

A True Copy Patricia Nicola
As Of 1/25/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 149 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 29722
	:	
JAMES F. DETWILER	:	
Respondent	:	(Montgomery 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 August 9, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against James F. Detwiler. The Petition charged Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement in three separate charges which contained multiple acts of misconduct against clients. Respondent failed to file an Answer.

A disciplinary hearing was held on November 15, 2010, before a District II Hearing Committee comprised of Chair Daniel B. Huyett, Esquire, and Members Nicholas E. Chimicles, Esquire, and John F. Cordisco, Esquire. Respondent did not appear.

Following the submission of a Brief filed by Petitioner, the Hearing Committee filed a Report on March 21, 2011, concluding that Respondent violated the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement as contained in the Petition, and recommending that he be suspended for a period of 28 months.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 23, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 208 of the Pennsylvania Rules of Disciplinary Enforcement, 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 James F. Detwiler. He was born in 1944 and was admitted to practice law in the Commonwealth of Pennsylvania in 1979. His address of record is 604 Honey Run Road, Ambler PA 19002.

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

4. By Order of August 6, 2009, the Supreme Court of Pennsylvania administratively suspended Respondent for his failure to comply with the Pennsylvania Rules for Continuing Legal Education.

5. Respondent has a record of attorney discipline in Pennsylvania consisting of an Informal Admonition administered in 2006 for violations of Rules of Professional Conduct 1.1, 1.3, 1.4(a) and (b), 5.5(a) and 8.4(d).

Cocivera Representation

6. In February 2008, John and Joanne Cocivera consulted with Respondent about representation for them and their company, BCI Construction, Inc (BCI).

7. The Cociveras wished to initiate legal action to collect money owed to them and needed representation to defend against numerous claims from various vendors.

8. On February 29, 2008, Respondent and the Cociveras entered into a fee agreement.

9. Beginning in March 2008, Respondent entered his appearance and took steps to represent his clients in numerous cases.

10. Between February 2008 and July 2008, the Cociveras paid Respondent more than \$23,000.00.

11. Beginning in July 2008, the Cociveras complained to Respondent that he was not keeping them informed of the status of their numerous legal cases and was failing to return their telephone calls, and they informed him that they had received notices that he was not taking action in their cases.

12. By letter to Respondent dated January 29, 2009, Mr. Cocivera:

a) expressed his disappointment with Respondent's representation since July 2008;

b) requested communication from Respondent about the future handling of the cases; and

c) attached a case management sheet with questions on a list of 18 separate matters.

13. Respondent did not respond to the January 29, 2009 letter.

14. By letter to Respondent dated February 4, 2009, Mr. Cocivera provided a copy of a ten-day notice that had been received in a law suit and asked that Respondent advise them of his intentions, and asked Respondent to contact them as he had not communicated with them for two weeks.

15. Respondent received the February 4, 2009 letter and did not respond to it.

16. By letter to Respondent dated February 12, 2009, Mr. Cocivera advised that he was giving Respondent one last chance to get in touch with him before a complaint was filed with Office of Disciplinary Counsel.

17. Respondent did not respond to the February 12, 2009 letter.

18. By letter to Respondent dated February 13, 2009, Mrs. Cocivera:

a) advised that Respondent had ignored numerous voice mail messages, e-mails and faxes and that the Cociveras did not know where Respondent stood on anything;

b) listed seven specific items that needed immediate attention and referred to the fact that there were countless other issues that needed Respondent's attention;

c) gave formal instructions for Respondent to immediately return all of the Cociveras' files and notify the courts of Respondent's withdrawal in all of their cases so that any new notifications would be sent directly to the Cociveras; and

d) advised that they would be filing a formal complaint with the Disciplinary Board.

19. On February 17, 2009, Respondent called Mrs. Cocivera to apologize and stated he would return the files to them by the weekend.

20. On February 18, 2009, the Cociveras filed a complaint with the Disciplinary Board against Respondent.

21. By letter to Respondent dated March 3, 2009, Mr. Cocivera demanded the immediate return of their files.

22. Respondent received the March 3, 2009 letter and did not respond to it.

23. By letter dated April 16, 2009, Dean E. Weisgold, Esquire, new counsel for the Cociveras, advised Respondent of his representation and requested that Respondent forward to him all of the Cociveras' files.

24. Respondent received the April 16, 2009 letter and failed to respond.

25. By letter to Respondent of May 7, 2009, Mr. Cocivera again requested that Respondent return all files and provided a list of 31 items that needed to be returned.

26. Respondent received the May 7, 2009 letter, but did not respond until sometime in late June 2009, when he called the Cociveras and left a message that they could come to his office/residence the next day at 8:00 p.m. to retrieve their files.

27. The day after she received the message from Respondent, Mrs. Cocivera went to Respondent's office/residence in Ambler, at which time Respondent:

- a) led Mrs. Cocivera to his office;
- b) had papers, unopened mail and files strewn all over the floor, desks, tables and sofa of his office;
- c) handed Mrs. Cocivera a box and told her she was welcome to gather up any of her files and unopened mail; and
- d) advised Mrs. Cocivera not to open any of the unopened mail as it was further proof of his malfeasance.

28. Respondent failed to take steps to withdraw his appearance in cases that he filed on behalf of the Cociveras and in cases where he had entered his appearance.

29. Paragraphs 30 through 33 set forth below are illustrative examples of Respondent's mishandling of the Cociveras' cases.

30. BCI Construction, Inc. v. Cleveland Hill

- a) On March 27, 2008, Respondent filed a civil complaint in the Philadelphia Court of Common Pleas in the above captioned case;
- b) A Notice of Settlement Conference dated January 9, 2009, was served upon Respondent requiring him to attend a conference on February 12, 2009 at the law office of Mitchell L. Bach;
- c) On the afternoon of February 11, 2009, Respondent spoke with Mr. Bach's assistant and confirmed his anticipated attendance for the February 12 conference;

d) Respondent failed to appear; failed to explain his failure to attend the conference; and, failed to inform the Cociveras of the conference;

e) On February 24, 2009, the Honorable Marc I. Bernstein entered a Rule to Show Cause why the case should not be dismissed for failure to prosecute, returnable on March 16, 2009;

f) The February 24, 2009 Rule was served upon Respondent;

g) Respondent failed to appear before Judge Bernstein on March 16, 2009; failed to explain his failure to attend; and, failed to inform the Cociveras of the Rule to Show Cause; and

h) On March 16, 2009, Judge Bernstein ordered that BCI's claim against Cleveland Hill be dismissed for failure to prosecute.

31. P. Santos Co. Inc v. BCI Construction Inc, et al.

a) In May 2008, a civil suit was filed in the above captioned matter in the Philadelphia Court of Common Pleas;

b) On June 20, 2008, Respondent entered his appearance on behalf of the defendants;

c) An arbitration hearing was scheduled for January 5, 2009;

d) Although Respondent had notice of the January 5, 2009 arbitration hearing, he failed to advise the Cociveras of the hearing, and failed to attend the January 5, 2009 hearing;

e) On January 5, 2009, an arbitration award in the amount of \$27,397.80 was entered against all defendants;

f) On April 13, 2009, Dean Weisgold, Esquire, filed on behalf of the Cociveras, a Motion for Leave to File an Appeal Nunc Pro Tunc from the arbitration award;

g) By letter to Respondent dated April 16, 2009, Mr. Weisgold demanded that Respondent immediately provide him with all files in Respondent's possession belonging to the Cociveras;

h) Respondent received the April 16, 2009 letter but did not respond in any manner;

i) On May 15, 2009, Judge Fox granted the Motion to Appeal Nunc Pro Tunc, and:

j) A settlement was negotiated between the Cociveras' new counsel and opposing counsel and an order to satisfy the judgment was filed on June 19, 2009.

32. Weinstein Supply v. BCI Construction et al

a) In October 2008, Weinstein Supply filed a civil suit in the Court of Common Pleas of Montgomery County in the above captioned matter;

b) Respondent failed to file a timely answer;

c) On November 28, 2008, a default judgment was entered in favor of the plaintiff and against defendants in the amount of \$9,819.91;

d) On December 8, 2008, Respondent entered his appearance and filed a Petition to Open/Strike Judgment; and

e) On April 7, 2009, Judge Bernard A. Moore dismissed the Petition to Open based on Respondent's failure to file a brief.

33. CitiCorp Leasing, Inc. v. BCI Construction Inc.

a) On April 29, 2008, CitiCorp Leasing, Inc. filed a complaint in the Court of Common Pleas of Montgomery County against BCI for return of equipment and liquidated damages;

b) On May 20, 2008, CitiCorp filed a Motion for Issuance of Writ of Seizure and an order for seizure was issued by the court on June 4, 2008;

c) On June 4, 2008, Respondent entered his appearance on behalf of BCI;

d) On October 22, 2008, a default judgment was entered against BCI in the amount of \$135,871.28;

e) Respondent failed to notify the Cociveras of the default judgment;

f) On January 20, 2009, a notice of deposition and post-judgment interrogatories in aid of execution were sent to Respondent. Although Respondent received the notice, he took no action and failed to inform the Cociveras;

g) By letter to Respondent dated February 23, 2009, Robert L. Saldutti, Esquire, counsel for CitiCorp, advised that the answers to Interrogatories were overdue and asked Respondent to inform him if Respondent was no longer representing BCI;

h) Although Respondent received the February 23, 2009 letter, he took no action and failed to inform the Cociveras;

i) On March 11, 2009, CitiCorp filed a Motion to Compel Answers to Interrogatories and Requests for Production of Documents. Although

Respondent was served and received the Motion, he took no action and failed to inform the Cociveras;

j) By Order dated April 14, 2009, Judge Moore granted the Motion to Compel. Although Respondent was served and received the April 14, 2009 Order, he took no action and failed to inform the Cociveras;

k) By letter to Respondent dated June 22, 2009, Mr. Saldutti advised that Respondent was in violation of the Court's April 14 order; and

l) Although Respondent received the June 22, 2009 letter, he took no action and failed to notify the Cociveras;

m) On June 30, 2009, Mr. Saldutti filed a Motion for Sanctions Against Defendant for Failure to Comply with Court Order to Provide Answers to Interrogatories and Request for Production. Respondent took no action and failed to inform the Cociveras;

n) By Order dated August 13, 2009, the Court granted the Motion for Sanctions;

o) Although Respondent was served and received the August 13, 2009 Order, he took no action and failed to inform the Cociveras;

p) By letter to Respondent dated November 16, 2009, Mr. Saldutti advised that he had not received responses from Respondent pursuant to the August 13, 2009 Court Order and that he would proceed to the Court for the issuance of a bench warrant against John Cocivera if responses were not forthcoming;

q) Although Respondent received the November 16, 2009 letter, he took no action and failed to inform the Cociveras;

r) On November 25, 2009, Mr. Saldutti filed a Motion for Sanctions against Defendant and for Issuance of a Bench Warrant. This Motion was stricken without prejudice for lack of prosecution. Mr. Saldutti re-filed the Motion on February 17, 2010;

s) Although Respondent was served and received the Motion, he took no action;

t) By Order of March 31, 2010, Judge Albright granted the Motion for Sanctions and for the Issuance of Bench Warrant and found BCI to be in contempt.

34. A DB-7 Letter of Inquiry dated June 26, 2009, regarding the Cocivera complaint was sent by certified mail and was received by Respondent on June 27, 2009.

35. Respondent failed to submit an answer within the time period requested.

36. By letter dated August 19, 2009, Respondent was provided another copy of the June 26, 2009 DB-7 letter and was again requested to provide a response. The certified mailing was returned to ODC on September 8, 2009, marked as "unclaimed."

37. On March 25, 2010, Respondent spoke on the telephone with Disciplinary Counsel Suzy Moore and acknowledged being in possession of the June 26, 2009 DB-7 letter. Respondent was told to submit a response by April 9, 2010. Respondent did not respond.

Post-Suspension Misconduct

38. By Order dated August 6, 2009, effective September 5, 2009, the Supreme Court of Pennsylvania administratively suspended Respondent for his failure to comply with the Pennsylvania Rules for Continuing Legal Education.

39. Respondent received notice of his suspension shortly after August 6, 2009.

40. To date, Respondent has failed to file with the Disciplinary Board a verified statement in compliance with Pa.R.D.E. 217(e).

41. Sometime in October 2009, Respondent met with Caitlin Hennessey and her father at Respondent's law office and provided legal advice in connection with her DUI arrest.

42. Respondent did not advise the Hennesseys that his license had been administratively suspended.

43. On March 19, 2010, Respondent entered his appearance and filed an application for ARD and Waiver of Rights on behalf of Caitlin Hennessey.

44. By Order of May 25, 2010, Ms. Hennessey was admitted into the ARD program.

45. On July 11, 2008, Respondent entered his appearance in the matter of his own divorce, in the Court of Common Pleas of Montgomery County.

46. Following Respondent's suspension, effective September 5, 2009, Respondent continued in the divorce matter to use letterhead containing the language "attorney-at-law," and continued to sign pleadings with "Esquire" and which contained his attorney registration number.

Failure to Appear for Informal Admonition

47. By letter of May 22, 2009, Chief Disciplinary Counsel Paul J. Killion informed Respondent that:

- a) Respondent had been previously advised of a complaint against him and the investigation into the complaint was completed;

b) It had been determined that he should receive an informal admonition for violations of former RPC 1.15(c)(current RPC 1.15(f)) and RPC 8.4(c); and

c) Respondent had the option of notifying the Secretary of the Board and the Office of Disciplinary Counsel, within 20 days, that Respondent did not wish to receive an informal admonition and that he would like to have formal proceedings initiated.

48. Respondent was sent the May 22, 2009 letter by certified mail and by first class mail, addressed to his last registered address of 604 Honey Run Road, Ambler PA 19002.

49. The certified mail receipt for the May 22, 2009 letter was returned to Petitioner marked "unclaimed" and the first class mailing was not returned.

50. Respondent received the May 22, 2009 letter.

51. By Notice to Appear dated June 12, 2009, Chief Disciplinary Counsel advised Respondent that his Informal Admonition had been scheduled for Tuesday, June 23, 2009 at 10:40 a.m. in the District II office in Trooper, Pennsylvania.

52. Respondent received the June 12, 2009 Notice to Appear.

53. On June 22, 2009, Disciplinary Counsel Suzy Moore called Respondent at his registered telephone number and left a message, reminding him that he was scheduled to receive an Informal Admonition the next day.

54. Respondent failed to contact either the Secretary of the Board or Office of Disciplinary Counsel that he was unable to attend the informal admonition.

55. Respondent failed to appear on June 23, 2009.

56. By letter dated June 24, 2009, Chief Disciplinary Counsel requested that Respondent inform him of any reason he had for not appearing for the Informal Admonition which might represent good cause, and notified Respondent that the Informal Admonition was rescheduled for July 10, 2009.

57. Respondent received the June 24, 2009 letter and failed to respond.

58. Respondent failed to appear for the Informal Admonition scheduled for July 10, 2009.

59. Respondent was personally served with a Petition for Discipline on August 12, 2010 and failed to respond.

60. Respondent failed to attend the prehearing conference and disciplinary hearing despite receiving notice of the dates and times for these proceedings.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 - A lawyer shall provide competent representation to a client.

Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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

3. RPC 1.4(a)(2) - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

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

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

6. 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.

7. Former RPC 1.15(c) - In the course of representation, when a lawyer is in possession of property in which both the lawyer and another person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

8. RPC 1.16(a)(1) - A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

9. RPC 1.16(a)(3) - A lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.

10. RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, 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 expenses that has not been earned or incurred.

11. 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.

12. RPC 7.1 - A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or

misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

13. RPC 7.5(a) - A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1.

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

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

16. Pa.R.D.E. 203(b)(2) - Willful failure to appear before Disciplinary Counsel for an informal admonition shall constitute misconduct and shall be grounds for discipline.

17. Pa.R.D.E. 217(d) - A formerly admitted attorney may not engage as attorney for another in any new case or legal matter of any nature.

18. Pa.R.D.E. 217(e) - A formerly admitted attorney is required to file with the Board a verified statement showing that the provisions of the order and the Rules of Disciplinary Enforcement have been fully complied with.

19. Pa.R.D.E. 217(j) - A formerly admitted attorney is prohibited from engaging in any form of law-related activities in this Commonwealth except in accordance with certain requirements and from representing himself or herself as a lawyer or person of similar status.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline filed against Respondent charging him with multiple violations of the Rules of

Professional Conduct and Rules of Disciplinary Enforcement. Petitioner has the burden of proving ethical misconduct by a preponderance of evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Respondent failed to submit a timely answer to the Petition for Discipline; therefore, the allegations are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E. These admissions, supplemented by Petitioner's exhibits and the testimony of the Complainant, clearly establish that Respondent violated the Rules as contained in the Petition for Discipline. Respondent did not appear at the hearing to present any evidence on his behalf.

The record demonstrates that Respondent did not provide competent or diligent representation to his clients, John and Joanne Cocivera. He unaccountably abandoned his representation of them in numerous litigation proceedings, causing prejudice to their cases and exposing them to potentially serious personal liability. Respondent failed to appear for hearings in several cases, causing matters to be dismissed for failure to prosecute or resulting in default judgment to be entered against the Cociveras. Respondent failed to respond to numerous requests from his clients for status updates. The Cociveras were compelled to terminate Respondent's representation and requested the return of their files. Respondent did not respond.

In addition to this misconduct, Respondent was administratively suspended from the practice of law effective September 5, 2009, for noncompliance with Continuing Legal Education requirements. Despite a prohibition against practicing law, Respondent entered his appearance in March 2010 in a criminal matter and provided legal advice to his client. He continued to hold himself out as an attorney in good standing in his own divorce matter.

Finally, Respondent's willful failure to appear for a scheduled informal admonition constitutes a violation of the Rules. Respondent was notified of the Admonition by letter, Notice to Appear, and by telephone. He failed to respond to any of these attempts to contact him and did not provide good cause for his failure to appear. In effect, Respondent ignored the proceedings.

Respondent's history of discipline consisting of an Informal Admonition in 2006 and his failure to appear at the disciplinary hearing or participate in any manner in these disciplinary proceedings constitute factors which aggravate the recommended sanction.

Recent cases involving client neglect, failure to participate in the disciplinary process, and prior misconduct have resulted in the Board recommending suspensions of two years which were later imposed by the Supreme Court. Office of Disciplinary Counsel v. James Menconi, No. 92 DB 2009, 1583 Disciplinary Docket No. 3 (Pa. May 17, 2010); Office of Disciplinary Counsel v. James Richard Hall, 138 DB 2006, 1270 Disciplinary Docket No. 3 (Pa. Aug. 30, 2007); Office of Disciplinary Counsel v. Paula M. Lappe, No. 38 DB 2004, 1007 Disciplinary Docket No. 3 (Pa. May 11, 2005).

Not only has the instant Respondent engaged in similar misconduct to that of the above cited cases, he has the added misconduct of failing to appear for a scheduled informal admonition. The Board is persuaded that Respondent should be suspended for a period of three years.

V. RECOMMENDATION

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

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: 

Mark S. Baer, Board Member

Date: September 16, 2011