

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 822, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 157 DB 2000
v.	:	
	:	Attorney Registration No. 25634
DAVID P. ROVNER	:	
Respondent	:	(Philadelphia)

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 December 12, 2000, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against David P. Rovner, Respondent in these proceedings. The Petition charged Respondent with violations of the Rules of Professional Conduct arising

out of allegations of billing improprieties at his law firm. Respondent filed an Answer to Petition for Discipline on January 30, 2001.

A disciplinary hearing was held on May 15, 2001 before Hearing Committee 1.16 comprised of Chair James J. McEldrew, III, Esquire, and Members Laurence H. Brown, Esquire, and James David Golkow, Esquire. An additional hearing was held on November 30, 2001. This hearing was chaired by Attorney Brown, with Eugene David McGurk, Esquire, replacing Attorney McEldrew.

Following briefing by the parties, the Committee filed a Report on August 2, 2002 and concluded that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline. The Committee recommended a suspension for a period of one year.

Petitioner filed a Brief on Exceptions on September 9, 2002. Respondent filed a Brief on Exceptions and a Request for Oral Argument on September 11, 2002. A Brief Opposing Exceptions was filed by Petitioner on October 15, 2002.

Oral argument was held before a three-member panel consisting of Disciplinary Board Members Schultz, Watkins and McLaughlin on November 7, 2002.

This matter was adjudicated by the Disciplinary Board at the meeting of December 4, 2002.

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, PA, 17101, is invested, pursuant to Rules 207 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 was born in 1952 and was admitted to practice law in the Commonwealth of Pennsylvania in 1977. His current registered address is 407 Grove Place, Narberth, PA 19072. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. In or about March 1997, while employed by the law firm German, Gallagher & Murtaugh, Respondent engaged in negotiations for employment at the law firm Harvey, Pennington, Cabot, Griffith & Renneisen, Ltd. While at German Gallagher, Respondent received a large number of referrals from Penn National and Kemper Insurance Companies.

4. In the course of those negotiations, Respondent represented to the members of the Harvey Pennington Executive Committee that he would continue to receive referrals from the insurance companies.

5. In April 1997, Harvey Pennington and Respondent reached an agreement that Respondent would join the firm as a one-share owner.

6. Respondent commenced employment with the firm in April 1997.

7. No files were transferred from German Gallagher to Harvey Pennington until May 1997, when Penn National sent five files to Respondent. Of those files, two had already been concluded.

8. In July 1997, Respondent provided to Harvey Pennington a list of 39 matters which he represented had been transferred to the firm by Penn National. Those 39 files were opened as active files.

9. Thirty-four of the files were files which were not referred to Harvey Pennington, but remained with respondent's former firm.

10. During the time frame April 1997 through April 1999, Respondent repeatedly evaded or responded falsely to questions regarding the status of matters which

Respondent purported to have brought to Harvey Pennington and bills accompanying those matters.

11. Respondent's actions included:

a. preparing timesheets for non-existent files seeking payment for work he knew he had not performed;

b. knowingly allowing bills totaling \$53,509.50 to be prepared by Harvey Pennington based on Respondent's false timesheets in non-existent matters; and

c. leading Harvey Pennington to believe that Respondent had, on three separate occasions, sent bills to Penn National seeking payment for services allegedly performed on the non-existent files.

12. In April 1999, Respondent continued to deceive Harvey Pennington and avoid discovery in the following manner:

a. advising Harvey Pennington that Penn National's policy was to pay bills one year after files were opened rather than six months after the opening as he had originally told his employers.

b. telling his employers that initial bills he sent to Penn National had to be re-edited and reformatted to conform with Penn National's new billing and audit procedures and that the outstanding bills would be paid.

13. During December 1998, Respondent met with an employee of Penn National and requested that Penn National consider referring "additional" work to Harvey Pennington, as Respondent was afraid that he would be terminated for failure to generate business.

14. On March 3, 1999, Harvey Pennington notified Respondent that his employment would be terminated as of March 31, 1999 for failure to produce revenue and generate clients.

15. On April 14, 1999, Harvey Pennington completed its internal audit and learned for the first time that most of the work Respondent claimed to have done consisted time recorded on files which had never been referred to Harvey Pennington. Harvey Pennington confronted Respondent, who at first denied wrongdoing, but then acknowledged his actions and was terminated.

16. Upon leaving Harvey Pennington, Respondent opened his own law office practicing employment law, worker's compensation and insurance defense.

17. Respondent belongs to the St. Thomas More Society and is Vice President of the Union Fire Association of Lower Merion.

18. Respondent's other community activities include pro bono activities in child advocacy, serving on the Liturgy Committee for his church, serving as President of the Bala Cynwyd Civic Association, and serving as President of the Narberth Civic Association.

19. Respondent presented the testimony of Denise Zecca, Ph.D., a clinical psychologist.

20. Respondent started treating with Dr. Zecca in March 1999 and continued with her for 16 visits until August 1999.

21. Dr. Zecca initially diagnosed Respondent with an adjustment disorder with depression and anxiety. She described this problem as arising when an event occurs and depression and anxiety attach as a reaction to the event.

22. Respondent did not receive any medication for this adjustment disorder.

23. Dr. Zecca found Respondent's major problem to be an issue with self-worth based on his homosexuality and his conflicting feelings arising from his sexuality.

24. Dr. Zecca treated Respondent through a procedure called EMDR, an eye movement desensitization and reprocessing form of treatment.

25. Dr. Zecca opined that Respondent was not in need of further treatment and was not in danger of repeating the misconduct.

26. Eight character witnesses testified on Respondent's behalf. Gerald St. John, Esq., John Smith, Armand DellaPorta, Esquire, J. Willard O'Brien, Esquire, Samuel Rennix, Rev. Stephen White, John J. Heary, and Thomas Bellwoar, Esquire, all testified as to Respondent's outstanding reputation for truthfulness and honesty.

27. Respondent has had no claims of misconduct filed against him since he left Harvey Pennington.

28. Respondent has no prior history of discipline.

### III. CONCLUSIONS OF LAW

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

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



#### IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with violations of the ethical rules arising out of his preparation of false timesheets and bills while employed at the law firm of Harvey Pennington. Respondent cooperated with Petitioner and entered into stipulations of facts, and stipulated as well that he violated Rule of Professional Conduct 8.4(c). In his Brief to the Hearing Committee, he further admitted violating Rule of Professional Conduct 1.5(a).

The facts demonstrate that Respondent accepted employment at Harvey Pennington, which expected him to generate business from insurance company contacts developed at his prior law firm. Respondent misled Harvey Pennington into believing he was generating business when, in fact, he brought virtually no new business to the firm. In order to disguise his inability to bring in the files he promised to the firm, he represented that files were referred to Harvey Pennington which the client in fact did not refer to the firm, he prepared timesheets for work on the non-existent files, and allowed bills to be prepared pertaining to the non-existent files. Respondent was responsible for mailing the bills to the client, and intentionally never transmitted them. None of the false bills were actually paid during the two-year period of deception. When questioned about the files, Respondent continued to deceive Harvey Pennington, claiming that bills had been submitted for all outstanding matters, but in an improper manner, and that the fees billed on the bogus files would eventually be paid. Respondent knew this was not the case. He

could have told Harvey Pennington that he had been unable to transfer any of his prior business to them, but he did not and chose to continue his deception.

At the hearing, Respondent put forth a defense that he suffered from a psychological disorder and presented the expert testimony of Denise Zecca, Ph. D., a practicing clinical psychologist. Dr. Zecca began treating Respondent in March 1999 and concluded treatment in August 1999, seeing Respondent for a total of sixteen sessions. Her initial diagnosis of Respondent was that he had an adjustment disorder with anxiety and depression. Dr. Zecca described this in laymen's terms as an event occurring after which the anxiety and depression attach as a reaction to that event. Dr. Zecca opined that Respondent's main problem was a lack of self-worth arising out of his homosexuality and his conflicting feelings about his sexuality. By August 1999, Dr. Zecca felt that Respondent was not in need of further treatment.

A psychological disorder can be considered as a mitigating factor in a disciplinary proceeding. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). The Braun standard requires proof by clear and convincing evidence of a causal connection between Respondent's condition and his misconduct. This is a stringent standard. The expert testimony must unequivocally link the attorney's disorder with the attorney's misconduct. In re Anonymous No 66 DB 96, 384 Disciplinary Docket No. 3 (Pa. Feb. 10, 1998). After consideration of Dr. Zecca's testimony, the Board finds that Respondent has

not established that his disorder as described by Dr. Zecca caused his misconduct. We find that the Braun standard has not been satisfied.

Dr. Zecca focussed primarily on Respondent's issues with his homosexuality and his feelings of low self-esteem. Her theory was that Respondent's only area in life where he felt confident was at work. When he was unable to prove himself as a rainmaker at Harvey Pennington, he lost his self-esteem as a practicing lawyer and acted in a self-destructive fashion by covering up his failures. The Board finds this theory difficult to accept, noting from the record Respondent's successes in personal, church, neighborhood and political activities and his popularity in these communities. Furthermore, Dr. Zecca did not classify Respondent's issues with his sexuality as a psychological disorder that caused his misconduct. For these reasons the Board rejects the testimony of Dr. Zecca and finds that Respondent did not meet his burden pursuant to the Braun standard.

Respondent presented the testimony of eight character witnesses who all testified as to Respondent's outstanding reputation for truthfulness and honesty. The record demonstrates that Respondent was known as a compassionate person who earned the respect of people he came to know through his involvement in the legal and non-legal communities.

The Hearing Committee recommended that Respondent receive a one year suspension. Petitioner contends that a suspension of three years is necessary, while Respondent contends that a public censure or private reprimand is appropriate.

Review of prior case law in similar cases indicates that discipline has been imposed ranging from private reprimand to a five year suspension. In the matter of In re Anonymous No. 82 DB 1999 , 637 Disciplinary Docket No. 3 (Pa. Dec. 28, 2000), the attorney failed to perform necessary services on his files but billed for them nonetheless. These bills were sent out and paid by the clients. The attorney's firm subsequently made restitution to the clients. The deception lasted for more than five years, resulting in an overbilling of 340 hours and between \$30,000 and \$40,000. The attorney's employer had to undertake a complete audit before the overpayments were discovered and refunded. The Supreme Court suspended this attorney for three years. The misconduct in the instant case is less egregious and may be distinguished in that none of the false bills were actually paid. Respondent intentionally did not transmit bills to the clients.

In the matter of In re Anonymous No. 149 DB 1995, 380 Disciplinary Docket No. 3 (Pa. Dec. 30, 1997), an attorney was suspended for a period of one year and one day after he falsified billings sheets in the amount of \$18,000 and expense vouchers in the amount of \$9,000. The attorney's misconduct lasted for seventeen months. Again, the Board concludes that Respondent's misconduct is less serious as no client actually paid any of the false bills.

At the other end of the spectrum of sanctions are two matters that resulted in private reprimands. In the matter at In re Anonymous No. 28 DB 83, 41 Pa. D. & C. 3d 416 (1986), an attorney served as an administrative law judge, during which employment he received reimbursement for travel expenses in the amount of \$1,400 based on claims which were fraudulently filed. There was no evidence that the attorney failed to appropriately discharge his judicial duties. Office of Disciplinary Counsel filed a Petition for Discipline against the attorney five years after the last voucher was submitted and three years after the attorney had left that particular employment. The Board imposed a private reprimand. The reasons articulated were the delay in prosecution and the attorney's restitution to the government in full.

The Board imposed a private reprimand in the case of In re Anonymous No. 95 DB 96 (1996), where an attorney filed fee petitions and received payment for services in court appointed cases, when he had not performed the services. The Board did not expand on its reasons for imposing such discipline.

The Board finds neither of these cases particularly applicable to the instant matter. In the case cited at No. 28 DB 83, the decision to impose private discipline clearly rested on the lengthy delay in prosecution, which is not a factor in the instant matter. In the case at No. 95 DB 96, no reasons were articulated as to why a private reprimand was appropriate, thus the current Board is reluctant to rely on that result in determining discipline in the instant matter.

When respondent left German Gallagher, he genuinely believed that the Penn National files would be forthcoming. When the files did not arrive, he panicked. Hoping things would turn around, he opened files which were not referred to the firm. When pressed by the firm, he began entering time in those cases. When further pressed to bill the clients, he cooperated in the firm's efforts to prepare bills. Respondent's purpose was not to have the clients pay money; he made sure the bills were never mailed and, would use the wrong codes and format because then he knew the bills would not be paid.. Although the record is clear that Respondent made misrepresentations to Harvey Pennington and engaged in a course of deception, there does not appear to have been an intent to obtain client or firm funds. Rather, these were misrepresentations made to his employer, made with the false hope that things would change.

Based on these facts and the case law as cited above, the Board recommends that Respondent be suspended for a period of six months.

V.           RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, David P. Rovner, be Suspended from the practice of law for a period of six months.

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 C. Schultz, Member

Date: January 22, 2003

Board Members Rudnitsky, Watkins and Sheerer dissented and would recommend a Public Censure.

Board Member Cunningham dissented and would recommend a one year and one day suspension.

Board Member Donohue dissented and would order a Private Reprimand before the Board.

Board Member Morris did not participate in the December 4, 2002 adjudication.

PER CURIAM:

AND NOW, this 6<sup>th</sup> day of May, 2003, upon consideration of the Report and Recommendations of the Disciplinary Board dated January 22, 2003, Respondent's Objections and Exceptions and Petition for Review and response thereto, the request for a briefing schedule and oral argument is denied, and it is hereby

ORDERED that David P. Rovner be and he is suspended from the practice of law in this Commonwealth for a period of six months, 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.