

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1570 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 157 DB 2008
v.	:	
	:	Attorney Registration No. 40131
LAWRENCE E. BRINKMANN, JR.,	:	
Respondent	:	(Bucks County)

ORDER

PER CURIAM:

AND NOW, this 26th day of March, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 15, 2009, it is hereby

ORDERED that Lawrence E. Brinkmann, Jr. is suspended from the Bar of this Commonwealth for a period of one year and one day 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, in accord with the Disciplinary Board's recommendation, would suspend respondent for a period of two years.

A True Copy Patricia Nicola

As of: March 26, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 157 DB 2008
Petitioner	:	
	:	
v.	:	Attorney Registration No. 40131
	:	
LAWRENCE E. BRINKMANN, JR.	:	
Respondent	:	(Bucks 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 9, 2008, Office of Disciplinary Counsel filed a Petition for Discipline against Lawrence E. Brinkmann, Jr. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that he mishandled the representation of his clients' legal matter. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on February 9, 2009 before a District II Hearing Committee comprised of Chair Anthony Morris, Esquire, and Members Daniel J. Donahue, Esquire, and Teresa A. Mallon, Esquire. Respondent appeared pro se.

The Hearing Committee filed a Report on July 2, 2009, finding that Respondent engaged in violations of the Rules of Professional Conduct as contained in the Petition for Discipline, and recommending that he be suspended for a period of one year and one day.

This matter was adjudicated by the Disciplinary Board at the meeting on October 28, 2009.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg PA 17106, 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 Lawrence E. Brinkmann, Jr. He was born in 1955 and was admitted to practice law in the Commonwealth in 1983. His attorney registration address is The Farm at Doylestown, 220 Farm Lane, Doylestown PA 18901. Respondent

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

3. Respondent has a history of professional discipline. He received an Informal Admonition in 2004, an Informal Admonition in 2006, and a Public Censure in 2006.

4. The Public Censure was imposed after Respondent failed to appear for a previously scheduled Informal Admonition and a previously scheduled Private Reprimand.

5. On or about April 26, 2007, Michael and Donna Rose retained Respondent to represent them in their real estate and contract dispute.

6. By check dated April 27, 2007, the Roses paid Respondent a retainer of \$5,000.

7. On May 7, 2007, Respondent filed a Complaint on behalf of his clients in the Court of Common Pleas of Bucks County.

8. Between June 12, 2007 and June 25, 2007, the defendants filed Preliminary Objections.

9. On or about July 3, 2007, Respondent talked to Mrs. Rose and:

- a. assured her everything was fine;
- b. advised her that he had received Preliminary Objections from some of the defendants; and
- c. promised to address the Preliminary Objections upon his return from vacation on July 9, 2007.

10. Respondent did not file any response to the Preliminary Objections.

11. On July 10 and August 17, 2007, the Court granted the Preliminary Objections of the defendants and dismissed the claims against all parties except for one claim against Victor Bruce.

12. On July 11, 2007, the Roses e-mailed Respondent and requested him to contact them.

13. Respondent did not respond and did not inform the Roses that their claims had been dismissed but for one claim.

14. Between August 2007 and October 5, 2007, the Roses left several voice mails with Respondent's office, asking him to contact them.

15. Respondent did not respond to his clients' voice mails.

16. On August 31, 2007, Mr. Bruce filed an Answer, New Matter and Counterclaim with a notice to plead appended.

17. Respondent was served with the Answer, New Matter and Counterclaim filed by Mr. Bruce.

18. Respondent did not inform the Roses of the filings by Mr. Bruce.

19. Respondent did not file a response to the Answer, New Matter and Counterclaim.

20. On September 24, 2007, Mr. Bruce served Respondent with a ten-day Notice of Default for failure to respond to the Answer, New Matter and Counterclaim in a timely manner.

21. Respondent did not inform the Roses of the Notice of Default.

22. Respondent did not file a response to the Notice of Default.

23. On October 5, 2007, Mr. and Mrs. Rose faxed and e-mailed to Respondent notice that they had discharged him for failure to communicate.

24. On October 12, 2007:

- a. The Roses visited Respondent's office and requested their file; and
- b. Respondent told the Roses that they could pick it up on October 15, 2007.

25. On October 15, 2007:

- a. Mrs. Rose stopped at Respondent's office and found that it was closed; and
- b. Mr. Bruce filed a Petition for Rule to Show Cause why the Court should not issue a Default Judgment against Plaintiff for failure to respond to Defendant's New Matter and Counterclaim.

26. On October 16, 2007:

- a. Respondent represented to Attorney John Benson that Respondent had mailed the Roses their file; and
- b. Mr. Benson filed Preliminary Objections to Mr. Bruce's Counterclaim.

27. By letter dated October 17, 2007, Mr. Benson officially informed Respondent he represented the Roses and provided him with a Withdrawal and Entry of Appearance.

28. Respondent received Mr. Benson's October 17, 2007 letter and enclosures.

29. Respondent did not respond to Mr. Benson's October 17, 2007 letter.

30. By facsimile dated October 23, 2007, Mr. Benson informed

Respondent:

a. Mr. Benson was contacted on October 23, 2007, by Mrs. Rose and informed that the Roses had not received their file in the mail;

b. A week earlier, Respondent had represented to Mr. Benson that Respondent had sent out the file;

c. Due to the Judgment of Default being filed and the number of defendants that had been released from the litigation, Mr. Benson was compelled to file various documents quickly in an attempt to open the matters and re-litigate the issues;

d. Mr. Benson requested that Respondent immediately provide the file to the Roses.

31. Respondent received Mr. Benson's October 23, 2007 facsimile but did not respond.

32. By facsimile dated October 30, 2007, Mr. Benson informed

Respondent:

a. Despite two requests, he had not received the Roses' file nor a response from Respondent;

b. Respondent's inaction was seriously prejudicing the Roses' ability to litigate the case;

c. Respondent had not returned the Motion to Withdraw as counsel;

d. If Mr. Benson did not receive the file and Motion to Withdraw immediately he would have to petition the matter to the attention of the Court; and

e. He would assume Respondent did not wish to cooperate and would take necessary action if he did not receive a response from Respondent by October 31, 2007.

33. Respondent received Mr. Benson's October 30, 2007 facsimile.

34. Respondent did not respond.

35. On October 31, 2007 Mr. Benson entered his appearance for the Roses.

36. On November 1, 2007, Mr. Benson filed a Petition to Compel Production of Documents Retained by Lawrence Brinkmann, Jr., Esquire, and a Motion for Substitution of counsel.

37. On November 5, 2007, Mr. Benson withdrew his November 1, 2007 Petition after Respondent delivered the file to Mr. Benson and filed a Withdrawal of Appearance.

38. On November 7, 2007, Mr. Benson filed a Petition for Rule to Show Cause why the Court should permit the Roses to file an Amended Complaint.

39. On January 3, 2008, Mr. Benson filed an Answer to Defendants' New Matter to Plaintiff's Petition for Rule to Show Cause.

40. At the time of the disciplinary hearing, Mr. Benson was awaiting a final resolution from the court.

41. Respondent admitted that his representation of Mr. and Mrs. Rose fell below the standard required by attorneys.

42. Respondent admitted that he was not as diligent as he should have been.

43. Respondent's explanation for his lack of diligence was that he represented a lot of different clients, including those referred to him from the Bucks County criminal conflict list. These cases required a great deal of his attention and he didn't get to other matters as quickly as he should have.

44. Respondent showed no true remorse for his misconduct and had no plan to prevent its reoccurrence in the future.

III. CONCLUSIONS OF LAW

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

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

8. 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 expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

9. 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 against Respondent that he mishandled the representation of his clients. Respondent did not answer the charges against him and the allegations contained in the Petition for Discipline are deemed admitted. Pa.R.D.E. 208(b)(3). At the disciplinary hearing Respondent indicated he understood that by not filing an Answer to the Petition he

effectively admitted the averments set forth. These admissions, supplemented by Petitioner's exhibits and the testimony of Donna Rose and John Benson, Esquire, clearly establish that Respondent violated the Rules of Professional Conduct.

Respondent was retained to represent the Roses in a civil matter and failed to provide competent or diligent representation, and failed to communicate with his clients. Respondent failed to apprise his clients of important developments in their matter. Respondent simply did not participate in the litigation after he had filed the complaint. His deficiencies resulted in client dissatisfaction and the eventual termination of representation, which in turn presented more problems for Respondent, as he failed to cooperate with his clients' new attorney. The only explanation Respondent provided was that he was involved with other cases and didn't always get to matters as quickly as he should have.

This is Respondent's fourth interaction with the Disciplinary Board since 2004. He received an Informal Admonition in 2004 for neglecting a client's domestic relations matter. In 2006, he received an Informal Admonition for failing to pursue a client's claim after accepting a retainer fee. A Public Censure was imposed on Respondent by the Supreme Court of Pennsylvania in 2006 following his failure to appear at a Private Reprimand before the Disciplinary Board, which was itself discipline for Respondent's failure to appear for an Informal Admonition before Chief Disciplinary Counsel. At the Public Censure, the Chief Justice admonished Respondent concerning his lack of respect for the discipline process and cautioned him specifically that further professional violations would result in severe disciplinary sanctions.

Notwithstanding this history of discipline, Respondent is yet again before the Board. Quite obviously, these prior entanglements have not impressed upon Respondent

his responsibilities to his clients. Respondent did not appear remorseful either for his instant misconduct or any of the past incidents. The instant record is completely devoid of evidence to support a finding that Respondent intends to conform his actions to the Rules of Professional Conduct in the future.

The degree of discipline warranted in this matter hinges on the nature and gravity of the misconduct and the aggravating and mitigating factors. The misconduct in the instant matter can be classified as a perpetuation of the pattern of neglect Respondent has chosen to engage in during the past five years. Intertwined with his client neglect is his apparent lack of respect for the disciplinary system. The genesis of Respondent's Public Censure was his failure to appear for private discipline on two occasions. It is inexplicable that an attorney would permit a situation that should have been resolved by an informal admonition, the lowest form of sanction, to blossom into public discipline before the Supreme Court.

The Hearing Committee has recommended that Respondent be suspended for a period of one year and one day. The Board concurs that a suspension is appropriate discipline. However, due to the cumulative nature of Respondent's past discipline, we are inclined to impose a suspension of two years. A longer suspension will put Respondent on notice, as well as the public, that his actions will not be tolerated.

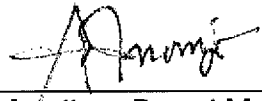
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Lawrence E. Brinkmann, Jr., be Suspended from the practice of law for a period of two 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: 
Albert Momjian, Board Member

Date: December 15, 2009