

[J-118-2011]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1713 DD3
	:	
Petitioner	:	No. 194 DB 2009
	:	
v.	:	Attorney Registration No. 19856
	:	(Lehigh County)
	:	
GLENN D. MCGOGNEY,	:	
	:	
Respondent	:	Submitted: November 30, 2011

ORDER

PER CURIAM

AND NOW, this 28th day of March, 2012, the order dated March 26, 2012 is vacated. Upon consideration of the parties' briefs, the record, and the report and recommendation of the Disciplinary Board, respondent, Glenn D. McGogney, is hereby disbarred. Respondent 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.

Judgment Entered 3/28/2012



DEPUTY PROTHONOTARY

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 194 DB 2009
Petitioner	:	
	:	
v.	:	Attorney Registration No. 19856
	:	
GLENN D. MCGOGNEY	:	
Respondent	:	(Lehigh 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 November 24, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Glenn D. McGogney. The Petition charged Respondent with violations of the Rules of Professional Conduct in connection with his representation of two clients. Respondent filed an Answer to Petition for Discipline on December 21, 2009.

A disciplinary hearing was held on March 9, April 29, and June 1, 2010, before a District II Hearing Committee comprised of Chair William J. Gallagher, Esquire, and Members John P. Elliott, Esquire, and Francis J. Sullivan, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 17, 2010, concluding that Respondent engaged in professional conduct and recommending that he be suspended for a period of five years.

Respondent filed a Brief on Exceptions on October 14, 2010, and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on November 4, 2010.

Oral argument was held on January 3, 2011, before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on January 19, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, 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 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 Glenn D. McGogney. He was born in 1946 and was admitted to practice law in the Commonwealth in 1974. He maintains his office at 2239 Pa. Route 309, Fl 1, Orefield, Lehigh County PA 18069-9622. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a record of prior discipline. He received a Private Reprimand in 2009 for violations of Rules of Professional Conduct 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 3.2, and 8.4(c).

Engleman Matter

4. On or around May 25, 2001, Janet L. Engleman's vehicle was struck from the rear causing her to suffer personal injuries.

5. In June of 2001, Ms. Engleman engaged Respondent to represent her in the matter of the automobile accident. Respondent prepared a written fee agreement in which he agreed to represent Ms. Engleman in return for a contingent fee of 33.33 percent of the total recovery.

6. On April 30, 2002, Respondent filed a Praecipe for Summons in the Lehigh County Court of Common Pleas, but he failed to file any complaint in the matter or obtain service on the defendant.

7. In or around May of 2002, Respondent sought to have the Sheriff serve the defendant, Eilene A. Smith.

8. The Sheriff's report indicated that the defendant had not resided at the address provided by Respondent since at least October of 2001.

9. On May 13, 2003, Respondent filed a Praecipe to Reissue Writ of Summons, but again failed to obtain service on the defendant.

10. By letter dated May 16, 2003, Respondent wrote to defendant's insurance company, Nationwide and stated that he was "attempting" to obtain service at an Allentown address, and that if that effort was unsuccessful he would petition the court for service by publication.

11. Respondent's file, which he produced pursuant to a subpoena from Petitioner, contains a copy of an "Order for Service" addressed to the Lehigh County Sheriff's Office dated May 13, 2003, and a copy of the front side of a check, for service on the defendant at an Allentown address; however, there is no documentation from the Sheriff's office confirming that service was attempted.

12. Respondent never personally served the defendant with either the writ or the complaint, and Respondent failed to petition the court for service by publication.

13. Respondent failed to serve discovery on Nationwide for the purpose of learning the defendant's last known address, or make any independent investigation or inquiry to locate the defendant.

14. On January 12, 2006, the Court filed a Notice of Proposed Termination in the matter.

15. On January 19, 2006, Respondent filed a request to remove the case from the termination list, stating that the case had not been resolved and was still active.

16. Respondent's claim that the case was active was not true in that he had failed to serve either the praecipe or a complaint on the defendant, serve any discovery on defendant's insurance company or take any action to pursue Ms. Engleman's claim.

17. By letter dated January 30, 2006, Nationwide wrote to Respondent, stated that to date it had not received medical records for Ms. Engleman, and offered \$3,000 in settlement.

18. Respondent never replied to Nationwide with any counteroffer, never supplied Nationwide with the requested medical records or informed his client about the settlement offer.

19. By facsimile dated May 17, 2006, Nationwide once again wrote to Respondent and offered to settle the matter for \$3,000; Respondent never replied with any counteroffer or informed his client about the settlement offer; and Nationwide eventually referred the matter to trial counsel.

20. On January 29, 2007, Paul M. Schaffer, Esquire, entered his appearance for defendant and filed a Praecipe & Rule to File a Complaint.

21. On February 8, 2007, Respondent filed a Complaint praying for damages in excess of \$50,000 with costs and delay damages; again, Respondent failed to effectuate service upon the defendant or seek service by publication.

22. The Complaint Respondent filed was deficient in that it did not contain any verification by the client; instead, Respondent signed the verification in which he falsely stated that the "signature of Plaintiff cannot be obtained within the time required for the filing of this pleading..."

23. On July 25, 2007, defendant filed Preliminary Objections and a Brief in Support thereof seeking to strike the Complaint on the basis that it was not verified by the plaintiff in accordance with Pa.R.C.P. 1024.

24. Respondent failed to reply to Defendant's Preliminary Objections.

25. By letter dated August 3, 2007, defendant served Requests for Admissions and Interrogatories on Respondent.

26. Respondent failed to inform Ms. Engleman about the discovery request or seek her assistance in responding to it; instead, Respondent simply ignored defendant's discovery.

27. By Order dated August 28, 2007, the Court sustained defendant's Preliminary Objections and ordered Respondent to file and serve a Complaint with a verification in compliance with Pa.R.C.P. 1024 within 20 days from the date of the Order; Respondent failed to comply with the Court's Order.

28. By Order dated August 30, 2007, after holding a status conference and with the agreement of counsel, the Court ordered that pre-trial discovery be completed by December 1, 2007, had the matter stricken for arbitration, and instead placed it to be scheduled by the Civil Operations Office on or after January 1, 2008.

29. Because Respondent continued to ignore properly propounded discovery, on September 21, 2007, defendant filed a Motion to Determine the Sufficiency of Plaintiff's Answers to Defendant's Request for Admissions; as relief, defendant asked that all Requests for Admissions be deemed admitted.

30. Respondent failed to Answer Defendant's motion or take any action to protect his client's interest.

31. On October 1, 2007, defendant filed a Motion for Judgment of Non Pros as a result of Respondent's failure to properly file the Complaint and to serve the defendant.

32. On October 11, 2007, defendant filed a Motion to Compel discovery as a result of Respondent's failure to answer Interrogatories and produce documents.

33. Respondent received the motions filed by defendants, but failed to respond or take any action whatsoever to protect his client's interests.

34. On October 18, 2007, the Court ordered that defendant's Requests for Admissions be deemed admitted for the purpose of the action.

35. By Order dated October 27, 2007, the court granted defendant's Motion for Judgment of Non Pros and entered judgment in favor of defendant and against plaintiff.

36. Respondent failed to take any steps to appeal the Order or otherwise protect his client's interest; additionally, Respondent failed to notify Ms. Engleman of the adverse decision and the effect it would have on her claim.

37. In or around August of 2008, Ms. Engleman spoke with Respondent by telephone about her case. Respondent falsely claimed he expected her case to settle in about 60 days. Respondent had no further contact or communication with Ms. Engleman.

38. Ms. Engleman did not learn the actual status of her case until she filed a complaint with the Office of Disciplinary Counsel.

39. Ms. Engleman knows that her personal injury claim is time barred; her current counsel is pursuing a malpractice claim against Respondent.

40. Ms. Engleman was upset by what happened to her, and her opinion of lawyers has changed for the worse.

41. Respondent did not express remorse for his treatment of Ms. Engleman's matter. He did not dispute her testimony and failed to explain his conduct or offer any mitigating circumstances.

Walp Matter

42. In October of 2007, Respondent began representing Gregory Walp in connection with divorce and custody proceedings in the Court of Common Pleas of Lehigh County. Respondent remained as Mr. Walp's counsel in this family matter through at least November of 2008.

43. In addition to his law practice, Respondent is a part owner of Lacey's Pub & Grill, Inc., DMMW, Inc. and Barnett Food Group LLC.

44. For several years, Respondent, along with other partners, operated Lacey's, located in Milford Township, Bucks County.

45. In August of 2004, Respondent and his partners took a mortgage of \$2,200,000 from Univest National Bank and Trust, secured by Lacey's building and property located at 1907 John Fries Highway, Bucks County. The Borrower was DMMW, Inc., the Suretor(s) were Lacey's Pub & Grill, Inc., Respondent, Anthony D. Dippolito, M.D., Michael Wunsch, and Paul Mondschein.

46. In December of 2004, the Milford Township Board of Supervisors approved Respondent's request, on behalf of DMMW, to transfer a liquor license to Lacey's. The Pennsylvania Bureau of Licensing approved the license transfer in the spring of 2005.

47. Shortly thereafter, Lacey's began experiencing financial difficulties; for example, Lacey's failed to remit all tax payments to the Commonwealth resulting in a lien against the liquor license.

48. Lacey's operated for several months under a fictitious name, Avanti's Tuscan Grill, but the business continued to fail and it closed in December of 2006.

49. In the interim, DMMW had defaulted on the Univest loan and in May of 2006, Univest filed a confession of Judgment against Respondent in the Lehigh County Court of Common Pleas in the amount of \$2,188,598.67.

50. In the summer of 2007, Respondent and his partners were heavily in debt as a result of their inability to operate Lacey's and DMMW profitably. In August of 2007, Earthstar Bank confessed judgment against Ergo Enterprises and Respondent and Dr. Dippolito individually, in the amount of \$599,999.54; in July of 2007, Blooming Glen Contractors confessed judgment against Lacey's Pub & Grill and Respondent individually in the amount of \$270,866.38; in June of 2007, the Joshi family confessed judgment against DMMW, Respondent and his wife, and the other DMMW principals individually in an amount in excess of \$1,000,000; in July of 2007, Sysco Food Systems entered judgment after an arbitration against Respondent in the amount of \$4,647.04; in January of 2006, Shifts Food Service, Inc., confessed judgment against Lacey's Pub & Grill, Respondent and the other principals of DMMW, Inc., in the amount of \$47,039.78; in July of 2006, Susquehanna Patriot Bank confessed judgment against Respondent in the amount of \$71,733.08; in October of 2006, All-Phase Electric Supply Co., confessed judgment against DMMW, Inc., Respondent and Anthony Dippolito in the amount of \$13,444.48; and in November of 2007, Vend Leasing Corp. transferred a judgment entered

in Maryland to the Lehigh County Court of Common Pleas against DMMW, Inc., and Respondent and the other DMMW principals in an amount in excess of \$20,000.

51. Despite the inability to operate profitably, Respondent and Anthony Dippolito decided to open a new establishment on the same site as Lacey's. The establishment was a strip club, to be called Coyote Show Club.

52. In order to open the new business, the two men needed an influx of capital from new business partners.

53. Respondent represented John Sibley in various matters. In the spring of 2007, Mr. Sibley sought Respondent's assistance with several legal matters.

54. Respondent solicited Mr. Sibley to invest in the new venture with Respondent and Dr. Dippolito. When Mr. Sibley said he had no funds to do it, Respondent told him that Respondent and Dr. Dippolito would use funds from their 401(k) plans and replace those funds with mortgages on commercial property owned by Mr. Sibley in the amount of approximately \$185,000; providing \$160,000 in buy-ins to the business for Mr. Sibley and an additional cash payout of \$25,000.

55. Respondent never advised Mr. Sibley of the potential conflicts inherent in this arrangement, never suggested he seek independent counsel, failed to disclose the fact that the building and property on which the restaurant would be located was facing imminent foreclosure, and never disclosed the staggering amount of unpaid debt and judgments the prior business had, or the partners had.

56. Respondent never advised Mr. Sibley, orally or in writing, to seek independent counsel before entering into the mortgage transaction or joining the Barnett Food Group.

57. Mr. Sibley testified credibly that had he known about the imminent foreclosure and the significant amount of outstanding indebtedness, he would not have agreed to invest in the business.

58. In or around June of 2007, Respondent formed Barnett Food Group LLC, which he incorporated in Delaware, listing John Sibley as an officer and the President.

59. Respondent formed Barnett in an effort to stave off Univest's foreclosure and forced sheriff sale of the property upon which Lacey's and the proposed club operated.

60. Respondent and Anthony Dippolito and Univest entered into a forbearance agreement in or around August of 2007 with DMMW, Lacey's and its principals providing for an opportunity to make monthly forbearance payments of \$20,833.33.

61. The forbearance agreement provided that Lacey's obligations to the bank were secured by this collateral, which was defined to include liquor license Number R17071; as well as all inventory, equipment and accounts of the borrower.

62. There is no dispute that at some point in 2008, DMMW defaulted on the monthly payments made under the forbearance agreement.

63. By early December of 2007, Respondent had been unable to open the new club due to, among other things, objections and legal action filed by the township to the proposed strip club.

64. Respondent and or Barnett no longer had sufficient funds to make the monthly forbearance payment to Univest.

65. In early December of 2007, Respondent solicited a \$25,000 loan from his current client, Gregory Walp.

66. Respondent knew, through his representation of Mr. Walp in the divorce matter, that Mr. Walp had assets worth approximately \$25,000.

67. Mr. Walp had withdrawn approximately \$18,000 of that money early from his 401(k) in order to advance payment on his child support obligations in connection with the divorce.

68. Mr. Walp testified credibly that in early December of 2007, during a meeting with Respondent, Respondent asked him if he knew anyone who could loan Respondent \$25,000, and that Respondent would repay the loan with a \$5,000 fee in 30 days.

69. Respondent informed Mr. Walp that the purpose of the loan was to purchase the liquor license for Barnett.

70. Respondent convinced Mr. Walp not to advance payment on his child support obligations.

71. Lured by the generous re-payment terms offered by Respondent, Mr. Walp agreed to loan the money to Barnett Food Group.

72. Respondent drafted a "Resolution of Barnett Food Group, LLC", an "Agreement" and a "Note" which he supplied to Mr. Walp.

73. The Resolution dated December 3, 2007, provides, among other things, that:

(a) the certificate holders authorize the company to borrow the sum of \$25,000 from a willing lender;

(b) the interest payable would be \$5,000 for a period of thirty days; and

(c) Barnett authorizes the lender to place a "first lien" on the Company's liquor license, identified as License Number R17071 until payment of interest and principal are made in full.

74. The Note dated December 5, 2007 provides, among other things, that:

(a) in return for the \$25,000 loan, Barnett would pay Mr. Walp \$5,000 dollars on or before thirty days from the date of the Note, whether or not principal is repaid;

(b) if it became necessary to use an attorney for the purpose of collection on the Note, Barnett agrees to pay fifteen percent of the amount due an owing on the Note as fees;

(c) as security for payment, Barnett "agrees that a first lien be placed upon its liquor license identified as License Number R17071, LID Number 54667"; and

(d) Barnett agrees that the Prothonotary, Clerk of Courts, or any Attorney of any Court, could appear and confess a Judgment against Barnett and in favor of any holder on the Note.

75. The Agreement dated December 5, 2007, provides, in relevant part,

that:

(a) Barnett enacted a resolution to borrow the sum of \$25,000 to capitalize the opening of Coyotes;

(b) the term of the loan "shall be thirty (30) days from the date that such funds become available" for use by Barnett;

(c) Barnett would repay principal and interest of \$5,000 to Walp on or before thirty days;

(d) the interest of \$5,000 would be payable whether or not the principal had been repaid prior to the expiration of thirty days;

(e) if the loan was not paid in full in thirty days, the balance would accrue interest at a rate of 1-½% per week until paid in full; and

(f) the loan "shall be collateralized by a first lien on the liquor license of Barnett identified as License Number R17071, LID Number 54667."

76. The Resolution, Note and Agreement failed to disclose that the liquor license was not owned by Barnett but rather by Lacey's Pub & Grill.

77. The Resolution, Note and Agreement failed to disclose the existence of the prior tax lien against the liquor license.

78. The Resolution, Note and Agreement failed to disclose Univest's prior security interest in the liquor license.

79. Respondent never gave Mr. Walp any information concerning Barnett's finances, including its total assets and liabilities, such as would have provided Mr. Walp with information about whether Barnett was or would be in a position to repay the loan.

80. Respondent never disclosed to Mr. Walp, either orally or in writing, the existence of the numerous judgments detailed above, all of which were outstanding and unpaid at the time he solicited the loan from Mr. Walp

81. There is no writing, signed by Mr. Walp, giving his informed consent to the essential terms of the transaction and Respondent's role in the transaction, including whether Respondent represented Mr. Walp in the transaction.

82. Respondent failed to disclose to Mr. Walp that Coyote's Show Club was not a restaurant and bar, but was instead a strip club for which Respondent had not obtained the correct and necessary approval from the Township of Milford.

83. Respondent never told Mr. Walp that Respondent was not acting as his attorney in the transaction and Respondent never advised Mr. Walp either in writing or

orally to seek the advice of other counsel; further, Mr. Walp testified that had Respondent made those disclosures he would not have made the loan.

84. Respondent failed to orally disclose the existence of the prior liens against the liquor license, including the Commonwealth of Pennsylvania's statutory first lien and the Univest security interest asserted in the August of 2007 forbearance agreement.

85. By the time Respondent solicited the loan from Mr. Walp, Respondent knew or should have known that the Commonwealth's tax lien against the liquor license would not be easily resolved, as a subsequent department audit conducted during the fall of 2007 had revealed significant additional taxes and penalties owed.

86. Valerie Barbin McMahon, Senior Deputy Attorney General for the Commonwealth of Pennsylvania in the Financial Enforcement Section, testified by deposition taken on May 19, 2009. Ms. McMahon explained that even if Respondent had been able to repay the full amount of monies owed in the fall of 2007, the license could not be transferred until all tax returns were filed; all returns were not filed until one year later, December of 2008.

87. Not only did Respondent fail to disclose to Mr. Walp that Lacey's, not Barnett Food Group, was the holder of the liquor license, but he also failed to disclose that the license was, at the relevant time, encumbered by the Commonwealth's tax lien on that license and Mr. Walp could not have first lien on the license.

88. On or around December 11, 2007, the loan funds were wired directly from Mr. Walp's credit union to Respondent's bank account.

89. Mr. Walp believed that the transaction was between himself and Respondent because the money was wired directly into Respondent's personal accounts.

90. No payments were made to Mr. Walp within 30 days.

91. On or about June 1, 2008, Respondent paid Mr. Walp \$2,000 from his law firm operating account.

92. Receiving no further payment from Respondent, Mr. Walp hired Richard L. Orloski, Esquire, to represent him in efforts to collect on the Note.

93. On June 27, 2008, Mr. Orloski filed a Complaint for Confession of Judgment pursuant to Pa.R.C.P. 2952 against Barnett.

94. As of the date of the hearing, Mr. Walp had not been repaid.

95. Respondent claims he faxed a note to Mr. Walp stating that Respondent was not Mr. Walp's attorney; that he made full oral disclosure to Mr. Walp of all relevant details, including that Barnett did not own the liquor license; that the license was subject to a tax lien and that Barnett was a new corporation.

96. Mr. Walp did not receive a facsimile from Respondent and denied that Respondent had provided him with any such information.

97. No evidence was presented, such as a facsimile confirmation sheet or a copy with typeset at the top of the paper indicating the fax machine from which the communication originated that would demonstrate that a fax was sent to Mr. Walp.

98. In Respondent's Answer to Petition for Discipline, he admitted that he never gave Mr. Walp information concerning Barnett's finances, including its total assets and liabilities, such as would have provided Mr. Walp with information as to whether Barnett was or would be in a position to repay the loan. Respondent took the position that Mr. Walp "never requested any information concerning Barnett Food Group's finances and had he, he would have been referred to Mr. John Sibley."

99. Respondent changed his position at the disciplinary hearing. He claimed that he had given Mr. Walp financial information about Barnett, claiming among other things, that he told Mr. Walp that the real estate on which the restaurant was located was not owned by Barnett and that the operation was "brand new." (N.T. 209-210)

100. Respondent admitted that he did not disclose any of the above in writing to his client, Mr. Walp. Respondent failed to explain why those disclosures were not made in writing and included in the documents supplied to Mr. Walp.

101. Mr. Walp consistently and credibly testified that he did not understand that Respondent proposed opening a strip club.

102. Respondent sought to impeach Mr. Walp's credibility through the testimony of Ira Gordon, Kyle Gordon, and Michael Wagner.

103. The purpose of the testimony was to show that Mr. Walp knew that the loan was for a strip club by claiming that Mr. Walp had gone to the club shortly after it opened.

104. Mr. Gordon testified that he and Mr. Walp took Kyle Gordon, Mr. Gordon's son, to Coyotes for Kyle's 21st birthday. Mr. Gordon testified that Kyle turned 21 in July of 2007. Kyle Gordon also testified that they went to Coyotes around the time of his birthday, which was July 27, 2007. The testimony went into detail as to who sat where and what kind of drink Mr. Walp drank.

105. However, Coyotes did not open until December 14, 2007, after Mr. Walp made the loan. After various injunctions forced its temporary closure, Coyotes operated from January until March 25 of 2008.

106. The testimony of Ira Gordon, Kyle Gordon, and Michael Wagner is not credible as Coyotes was never open in July of 2007.

107. Immediately before the disciplinary hearing, Respondent claimed that Ira Gordon had been threatened and intimidated by Mr. Walp, and sought to exclude Mr. Walp's testimony.

108. The record was held open for a second day of testimony for the express purpose of permitting Respondent to issue a subpoena to Ira Gordon.

109. At the March 9, 2010 hearing, Mr. Walp denied any effort to intimidate Mr. Gordon. He testified that Mr. Gordon left him a voicemail on February 27, 2010, the week before the disciplinary hearing. It stated, among other things, that Respondent had threatened Mr. Gordon; that Respondent had asked Mr. Gordon to tell Mr. Walp that he had been issued a subpoena to appear and testify at the hearing; and that Mr. Gordon wanted to drive to the hearing with Mr. Walp so that they could discuss the matter and "be on the same leg." (N.T. 3/9/2010, pps. 111-112)

110. Mr. Gordon appeared and testified on April 29, 2010.

111. Mr. Gordon's phone records were introduced in an effort to bolster Respondent's and Mr. Gordon's claim that Mr. Gordon had a 30 minute phone conversation with Mr. Walp on February 27, 2010, during which Mr. Walp made the purported threats resulting in the necessity for the issuance of a subpoena to Mr. Gordon.

112. Mr. Gordon's phone records reveal that immediately prior to the 30 minute conversation, he left a voicemail for Mr. Walp. On cross-examination, Mr. Gordon admitted leaving the voicemail, but denied stating that he had been threatened by Respondent; that Respondent had told him to tell Mr. Walp that he had been issued a

subpoena; and that he wanted to drive to the hearing with Mr. Walp. (N.T. 4/29/10 pps. 27-29)

113. Petitioner obtained a re-recording of the voicemail from CBW Productions, along with an original notarized affidavit; the recording was played at the disciplinary hearing, during which Mr. Gordon, among other things, stated that "Glenn told me that I needed to tell you that I got subpoenaed. Okay? That's what he said." During the voicemail Mr. Gordon repeatedly stated he wanted to drive to the hearing with Mr. Walp. Mr. Gordon stated that they needed to drive down together and discuss the matter together because "Glenn did kind of threaten me in a way." (N.T. 4/29/10, pps. 33-35)

114. Mr. Gordon did not deny the authenticity of the tape. He finally stated that "I was lying to Greg Walp." (N.T. April 29, 2010 p. 40)

115. Respondent testified at the hearing. His testimony was not credible.

a. Respondent repeatedly testified that additional sales taxes were incorrectly charged against Lacey's due to the point of sale system charging sales tax on the sale of liquor to the customer; Respondent testified that he learned about the error from the new manager hired to run Avanti's at the end of 2006, and that he informed the Revenue Department, Ms. McMahon, and even Mr. Walp about this error. (N.T. 3/9/10, 160-163) Yet Respondent claimed in an appeal of the Sales/Use Tax he filed in February of 2009 that he had just discovered the supposed error in the point of sales system in January of 2009.

b. Respondent elicited false testimony from Dr. Dippolito and falsely testified himself when both men claimed that they believed that monies paid to the Department of Revenue in October of 2007 resolved the sales tax issues with the liquor license. (N.T. 6/1/10 16-17; 59). Yet Respondent testified at the first day of hearing in March 2010 that he knew the sales tax issues had not been resolved and that he disclosed that fact to Mr. Walp. (N.T. 3/9/10 160-161). Ms. McMahon testified that there were two tax liabilities, the first for approximately \$34,000, which she contacted Respondent about in May of 2007; and the second which resulted from the Department's audit, of which Respondent was aware in October of 2007.

Respondent and Dr. Dippolito filed an appeal of the tax liability on January 22, 2008.

c. Respondent elicited false testimony from Ira Gordon. Aside from the voicemail issues, Mr. Gordon claimed on Respondent's direct examination that Mr. Walp wanted to invest in the strip club in order to hide his assets from his wife in connection with his divorce, a claim Respondent knew to be false, as demonstrated by his direct examination of Mr. Walp: Q: "In fact, an agreement was worked out with your wife where everybody kept what they had, correct? A: That is correct." (N.T. 4/29/10 p. 15) (N.T. 3/10/10 p. 109)

116. Respondent expressed no remorse for his misconduct and offered no evidence in mitigation.

117. Mr. Wunsch and Mr. Sibley testified credibly that Respondent is not an honest person and has a poor reputation for honesty in the community. (N.T. April 29, 2010, pps. 114, 178-179)

III. CONCLUSIONS OF LAW

Respondent's misconduct in connection with his representation of Ms. Engleman violated the following Rules of Professional Conduct:

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 3.2 - A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

6. RPC 3.3(a)(1) - A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

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.

Respondent's misconduct in connection with his representation of Mr. Walp violated the following Rules of Professional Conduct:

1. RPC 1.7(a) - A lawyer shall not represent a client if the representation involves a concurrent conflict of interest.

2. RPC 1.8(a) - A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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

4. 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 of professional misconduct alleged against Respondent in connection with his representation of two clients, Janet Engleman and Gregory Walp.

Respondent does not dispute any of the facts in Ms. Engleman's case. In 2001, he agreed to represent her in a personal injury matter and then failed to pursue her claims. During the next six years, Respondent performed little or no work in the matter. When defense counsel forced the issue by filing a Praecipe & Rule to File a Complaint, Respondent filed the complaint with a verification that he signed, falsely claiming that Ms. Engleman was not available. Respondent ignored properly propounded discovery and court orders. In 2007, the court granted the defense motion for judgment of non pros and entered judgment in favor of the defendant. Respondent failed to take any remedial steps or notify Ms. Engleman. When she called to inquire about the status of her case, Respondent lied to Ms. Engleman, falsely telling her he expected her case to settle in 60

days. As a result of Respondent's conduct, Ms. Engleman's claims have been dismissed and are likely barred by the applicable statute of limitations.

Respondent offered no explanation for his conduct and showed no remorse. This misconduct was similar to the misconduct that resulted in his Private Reprimand in March of 2009. That matter involved a personal injury automobile accident claim, in which Respondent performed minimal work.

The facts of the Walp matter are more troubling. Respondent represented Mr. Walp in divorce and support matters. Respondent needed money in connection with his failed restaurant business that he hoped to salvage by turning into a strip club. He solicited a loan of \$25,000 from Mr. Walp, knowing full well Mr. Walp's financial circumstances. Respondent prepared a Resolution, an Agreement and a Note, which promised that in return for the \$25,000 loan, Barnett Food Group, LLC of which Respondent was a principal, would repay the loan with interest of \$5,000 within 30 days. These documents all promised that Mr. Walp's loan would be secured by a first lien on Barnett's liquor license, identified by number in the documents. Barnett never owned any liquor license. The liquor license was owned by Lacey's, and was subject to prior liens. Respondent failed to disclose other pertinent and relevant information, such as Barnett's assets and liabilities and the existence of numerous judgments. Respondent had certain knowledge at all times that Barnett was not able to repay the monies to Mr. Walp, and in essence structured the transaction in a manner which virtually guaranteed that Mr. Walp would never recover his monies.

Mr. Walp believed that Respondent was acting as his attorney and had no reason to seek another attorney. The transaction was completed in just three days, with

Mr. Walp wiring the money for the loan directly into Respondent's bank account. The money came from Mr. Walp's 401(k) and had been intended for advanced child support payments. Mr. Walp credibly testified that Respondent persuaded Mr. Walp not to use the monies for child support.

There is no evidence, other than Respondent's own testimony, which is not credible, that Respondent ever advised Mr. Walp of the inherent conflict between his representation of Mr. Walp in the divorce matters and his business dealings with Mr. Walp. Respondent never advised Mr. Walp to seek independent counsel before entering into the transaction. Respondent never obtained written consent from Mr. Walp as required by RPC 1.8(a).

The evidence of record supports the conclusion that Respondent's motive in this matter was solely to obtain money from Mr. Walp. In order to get the money, Respondent was willing to say anything he could to persuade Mr. Walp of the benefits of the transaction. Respondent engaged in egregious opportunism at the expense of a client. His conduct was intentional and malicious.

Respondent's attempts to discredit Mr. Walp's version of events failed miserably, as his witnesses were found to be not credible by the Hearing Committee. The Committee also found Respondent's testimony to be not credible, as he contradicted himself numerous times. The Board accords substantial deference to the Committee's credibility determinations, as it is the trier of fact. The evidence overwhelmingly supports the credibility findings.

Respondent's dishonesty in his dealings with clients, the court and the Hearing Committee demonstrates that he is unfit to practice law. In particular, his self-

dealing with Mr. Walp is outrageous and constitutes very serious misconduct. In a prior case involving conflicts of interest with clients, the Supreme Court suspended an attorney for five years following his violation of Rules of Professional Conduct 1.8(a), 1.8(b) and 1.9.

This attorney represented clients in a bankruptcy proceeding arising from a severe debt load on the farm where they resided. After obtaining a bankruptcy discharge for the clients, the attorney purchased a junior mortgage on the property, foreclosed on the mortgage, and evicted his clients from the property after which he sold the land at a profit. Office of Disciplinary Counsel v. John Francis Murphy, 18 DB 2004, 1086 Disciplinary Docket No. 3 (Pa. Feb. 7, 2006). Unlike in the instant matter, mitigating circumstances were found.

The Hearing Committee has recommended a suspension for a period of five years. The Board is persuaded by the facts of record, the prior discipline, Respondent's lack of remorse and lack of credibility, and his arrogance towards and disrespect for his clients, that disbarment is appropriate.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Glenn D. McGogney, be Disbarred from the practice of law in this Commonwealth.

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: 
David A. Nasatir, Board Member

Date: February 25, 2011

Board Member Todd did not participate in the adjudication.



THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5600
PO Box 62625
Harrisburg, PA 17106-2625
Phone: (717) 231-3380 Fax: (717) 231-3381

February 25, 2011

OFFICE OF DISCIPLINARY COUNSEL	:	
Petitioner	:	
v.	:	No. 194 DB 2009
	:	
	:	Attorney Registration No. 19856
GLENN D. MCGOGNEY	:	
Respondent	:	(Lehigh County)

**Expenses Incurred in the Investigation and Prosecution
of the above-captioned proceedings***

11/24/2009	13 copies of Petition for Discipline	\$ 123.50
12/21/2009	13 copies of Answer to Petition for Discipline	32.50
09/17/2010	13 copies of Report of Hearing Committee	221.00
11/04/2010	13 copies of ODC's Brief Opposing Exceptions	162.50
03/04/2010	Transcript of Prehearing Conference held on 02/19/2010	173.25
03/26/2010	Transcript of Hearing held on 03/09/2010	1,826.25
05/10/2010	Transcript of Hearing held on 04/29/2010	1,529.00
06/01/2010	Transcript of Deposition of Valerie B. McMahon	383.50
06/02/2010	Video Service of Deposition of Valerie B. McMahon	425.00
06/11/2010	Transcript of Hearing held 06/01/2010	916.00
11/04/2010	Administrative Fee	<u>250.00</u>
TOTAL AMOUNT DUE		<u>\$6,042.50</u>

Make Check Payable to PA Disciplinary Board
PAYMENT IS REQUIRED UPON RECEIPT OF ORDER

* Submitted pursuant to Rule 208(g) of the Pa.R.D.E. and §93.111 of the Disciplinary Board Rules.