

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1562 Disciplinary Docket No. 3
Petitioner :
: No. 198 DB 2009
v. :
: Attorney Registration No. 16919
RICHARD A. BEHRENS, :
Respondent : (Blair County)

ORDER

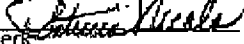
PER CURIAM:

AND NOW, this 24th day of April, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated December 2, 2011, the Petition for Review and response thereto, the request for oral argument is denied, and it is hereby

ORDERED that Richard A. Behrens 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.

A True Copy Patricia Nicola
As Of 4/24/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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	:	No. 198 DB 2009
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RICHARD A. BEHRENS	:	
Respondent	:	(Blair 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 March 3, 2010, the Supreme Court of Pennsylvania referred to the Disciplinary Board the criminal conviction of Richard A. Behrens for the crime of indecent assault. On April 27, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent based on the criminal conviction. Respondent filed an Answer to Petition on May 24, 2010.

A disciplinary hearing was held on August 10, 2010, before a District IV Hearing Committee comprised of Chair David S. Posner, Esquire, and Members Albert A. Torrence, Esquire, and John C. Unkovic, Esquire. Respondent appeared pro se. Petitioner offered into evidence Exhibits 1-8. Respondent testified on his own behalf and presented the testimony of one witness. Respondent submitted Exhibits 6-20.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 22, 2010, concluding that Respondent violated Rule 203(b)(1), Pa.R.D.E., and recommending that he be suspended for a period of three months, the suspension stayed and two years of probation imposed subject to conditions.

Petitioner filed a Brief on Exceptions on January 13, 2011, and argues that Petitioner should be suspended for at least two years with a probationary period and a mental health monitor.

Respondent filed a Brief Opposing Exceptions on February 15, 2011 and requested oral argument before the Disciplinary Board. Respondent requests that the Board affirm the recommendation of the Hearing Committee.

Oral argument was held on October 11, 2011 before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on October 18, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and 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 Richard A. Behrens. He was born in 1943 and was admitted to practice law in the Commonwealth of Pennsylvania in 1973. His attorney registration address is 309 Allegheny St., Ste. 10, Hollidaysburg PA 16648. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no record of prior discipline.

4. On July 1, 2008, in the Court of Common Pleas of Blair County, Pennsylvania, Respondent was charged with the crime of Indecent Assault in violation of 18 Pa.C.S. §3126(A)(1), a misdemeanor of the second degree.

5. On August 18, 2009, Respondent, while represented by counsel, entered a plea of nolo contendere to the offense of Indecent Assault.

6. On August 18, 2009, Respondent was sentenced to:
 - a. Probation for a period of two years, with no contact with the victim;
 - b. Undergo such counseling as shall be required by his supervising probation officer for which he shall pay costs; and
 - c. Pay the sum of \$1,000 for the benefit of Blair County, together with the costs of the prosecution.
7. Respondent did not file an appeal.
8. Respondent reported his conviction to the Secretary of the Disciplinary Board.
9. By Order of the Supreme Court of Pennsylvania dated March 3, 2010, it was ordered that the matter be referred to the Disciplinary Board.
10. On July 23, 2010, an Order of Court was entered in the Court of Common Pleas of Blair County, Pennsylvania, amending the Sentencing Order entered in Respondent's case on August 18, 2009 and setting forth specific conditions to Respondent's probation.
11. The salient facts of Respondent's conviction show that the victim of Respondent's indecent assault was an 18 year old female member of Respondent's family, his niece by marriage.
12. After attending a baseball game with the victim on April 3, 2008, Respondent drove his car off the road onto a graveled area, parked the car, turned off the

lights and the car. He removed his glasses and put his arms around the victim and would not let go. He put his hand under the victim's shirt, first in back, then to her stomach. He put his hands up under her bra and felt her breast.

13. Respondent engaged in a prior incident involving inappropriate touching of his 14 year old daughter in 1984. He was charged with a crime, but those charges were eventually dropped.

14. As a result of the incident in 1984, Respondent voluntarily resigned from the bench in Blair County in 1986, where he served as a Common Pleas judge.

15. Following the incident in 1984, Respondent became involved in counseling with Family Resources through 1995.

16. At the time of the incident in 2008, Respondent was not in counseling. He began counseling with Family Resources in May 2008 and continues on a weekly basis with group therapy.

17. Respondent offered the testimony of Jon Sandy Hommer. Reverend Hommer is the pastor of the Roseland Christian Fellowship in Glasgow, Pennsylvania.

18. In April 2008, Respondent's family contacted Reverend Hommer and asked him to speak to the family.

19. Shortly thereafter, Reverend Hommer began counseling Respondent and became his mentor.

20. Respondent did not offer any evidence, diagnoses or expert reports substantiating a finding that he suffers from a psychiatric disorder.

21. Respondent submitted six letters of support from members of the legal community in Blair County.

22. Respondent expressed great remorse for his actions.

III. CONCLUSIONS OF LAW

1. The offense of Indecent Assault of which Respondent was convicted is a misdemeanor of the second degree, which is punishable by imprisonment for a maximum of two years.

2. Respondent's conviction constitutes a "serious crime" as defined by Rule 214(i), Pa.R.D.E.

3. Respondent's conviction constitutes an independent basis for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges filed against Respondent arising from his conviction of indecent assault. This conviction is a "serious crime" pursuant to Rule 214(i).

When an attorney has been convicted of a serious crime, "the sole issue to be determined shall be the extent of the final discipline to be imposed." Rule 214(f)(1), Pa.R.D.E. Events surrounding the criminal conviction must be taken into account when determining an appropriate measure of discipline. Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999). The appropriateness of a disciplinary sanction is

based on the nature and gravity of the misconduct and the aggravating and mitigating factors present. Office of Disciplinary Counsel v. Gwendolyn N. Harmon, 72 Pa. D. & C. 4th 115 (2004).

The uncontested, underlying fact of the conviction is that in April 2008, Respondent indecently assaulted his 18 year old niece. Respondent further voluntarily admitted that in 1984 he inappropriately touched his 14 year old adopted daughter. Respondent's action did not result in prosecution or disciplinary action, but did result in Respondent's voluntary resignation from his position as a judge on the Court of Common Pleas of Blair County.

Respondent offered testimony to the effect that he is in regular counseling with his pastor for what he describes as "sexual addiction." This counseling began in 2008. Respondent sought counseling after the 1984 incident, but discontinued regular therapy in 1995. Following the 2008 incident, Respondent started counseling with Family Resources and is involved with group therapy on a weekly basis. Respondent offered no evidence that he has been diagnosed with a psychiatric disorder, nor did he offer any other type of expert testimony to substantiate a finding of mitigation pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). The evidence shows that while Respondent is clearly remorseful and is struggling with a serious personal situation, this evidence simply does not meet the Braun standard.

Disciplinary sanctions are intended to protect the public from unfit attorneys and maintain the integrity of the legal system. Office of Disciplinary Counsel v Christie, 639

A.2d 782 (Pa. 1994). This is a difficult matter, as Respondent's actions did not involve clients, he self-reported his conviction, and he showed sincere remorse. However, the focus of this matter remains Respondent's serious misconduct against an 18 year old female relative. Respondent admitted to a past similar incident with his adopted daughter, who was 14 at the time. Respondent comprehends that his actions are unacceptable.

The Board is persuaded that a suspension of one year and day appropriately addresses the serious nature of Respondent's actions and recognizes that such misconduct will not be tolerated by the attorney discipline system.

The disposition of prior similar cases supports this recommendation. In the matter of In re Anonymous No. 35 DB 2001, 652 Disciplinary Docket No. 3 (Pa. July 25, 2002), an attorney was convicted of one count of corrupting the morals of a minor. This attorney employed a 16 year old female as an intern in his law office. He went to her home to pick her up for work and she invited him inside, where she proceeded to kiss the attorney and fondle his genital area. The attorney reciprocated. This attorney was suspended for a period of 20 months, retroactive to the date of his temporary suspension from the practice of law.

In the matter of In re Anonymous No. 77 DB 1997, 49 Pa. D. & C. 4th 119 (2000), an attorney was convicted of one count of indecent assault after he kissed and fondled an adult female client and made sexually explicit statements to her. The Supreme Court imposed a three year retroactive suspension. The attorney's conduct was found to

be particularly offensive as it occurred in his law office where the victim came for legal advice.

The totality of the record and the underlying disposition of prior similar matters support the Board's recommendation of a suspension for a period of one year and one day.

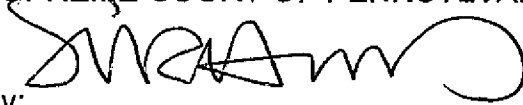
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Richard A Behrens, be Suspended from the practice of law for a period of one year and one day.

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: _____
Stephan K. Todd, Board Member

Date: December 2, 2011

Board Members Cagnetti, Cohen, Buchholz, and Rosenberg dissent and would recommend a stayed suspension and probation with mental health monitoring.

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DISSENTING OPINION

The majority of the Board has recommended a suspension for a period of one year and one day. I respectfully dissent and would recommend that a stayed suspension with probation and mental health monitoring be imposed on Respondent.¹

The majority's recommendation fails to consider that Respondent has been in weekly counseling with Family Resources since May 2008 and counsels regularly with his minister. Respondent is taking the necessary steps to address his personal problems. Respondent's misconduct was serious and regrettable, but did not occur in his professional capacity and did not involve any clients.² His ability to practice law was not put at issue in this matter. Respondent should be permitted to continue practicing law while simultaneously receiving the therapy necessary to deal with his problems. A stayed suspension with probation and mental health monitoring effectively carries out the purposes and goals of the disciplinary system.

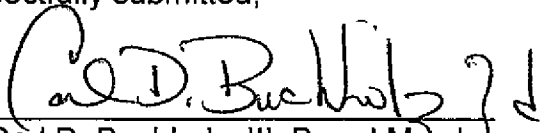
¹ The Hearing Committee in this matter recommended a stayed three month suspension with two years' probation plus conditions similar to those recommended here.

² The authorities cited by the majority in support of its recommendation can be distinguished from the instant matter because the victims in those cases, unlike the victim here, were directly related to the Respondents' practice of law. In one case the victim was a minor employed by the Respondent as an intern at his law office and in the other, the victim was the Respondent's client.

I respectfully recommend that Respondent be suspended from the practice of law for a period of one year and one day, that the suspension be stayed in its entirety and that he be placed on probation for a period of two years, subject to the following conditions:

1. Undergo a mental health evaluation by a psychologist or psychiatrist and observe any and all follow-up recommendations concerning further counseling, evaluations or treatment;
2. Observe the requirements of Respondent's Sentencing Order of August 18, 2009, as amended by Order dated June 23, 2010, the terms of which are incorporated in this Recommendation and made a part hereof;
3. Continue to receive counseling from Family Resources at least twice a month; and
4. File quarterly written reports with the Secretary of the Board attesting to Respondent's compliance with the above conditions.

Respectfully submitted,

By: 
Carl D. Buchholz, III, Board Member

Date: December 2, 2011

Board Members Cognetti, Cohen and Rosenberg join in this Dissent.