

IN THE SUPREME COURT OF PENNSYLVANIA

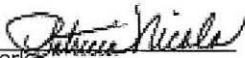
OFFICE OF DISCIPLINARY COUNSEL, : No. 2209 Disciplinary Docket No. 3
Petitioner :
v. : No. 206 DB 2014
MICHAEL E. GROULX, : Attorney Registration No. 40401
Respondent : (Lycoming County)

ORDER

PER CURIAM

AND NOW, this 19th day of November, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board, Michael E. Groulx 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 Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 11/19/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 206 DB 2014
Petitioner	:	
	:	
v.	:	Attorney Registration No. 40401
	:	
MICHAEL E. GROULX	:	
Respondent	:	(Lycoming 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

By Petition for Discipline filed on December 23, 2014, Office of Disciplinary Counsel charged Michael E. Groulx with professional misconduct arising from his failure to appear for an Informal Admonition. Respondent was unable to be located for personal service of the Petition; therefore, Respondent was served with the Petition at his registered address *via* first-class mail and UPS overnight delivery on January 12, 2014, and hand-delivery to the registered address on January 16, 2015. Respondent failed to file an Answer to Petition for Discipline.

A disciplinary hearing was held on April 10, 2015, before a District III Hearing Committee comprised of Chair Edward H. Jordan, Jr., Esquire and Members

Bradley R. Bolinger, Esquire and James L. Goldsmith, Esquire. Respondent failed to appear for the hearing.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on June 18, 2015, concluding that Respondent violated the Rules as contained in the Petition for Discipline and recommending that he be suspended for a period of one year and one day.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 25, 2015.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62625, Harrisburg, Pennsylvania, is invested pursuant to Pa.R.D.E. 207, 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 said Rules of Disciplinary Enforcement.

2. Respondent, Michael E. Groulx, was admitted to the practice of law in the Commonwealth of Pennsylvania in 1984. His registered address for the practice of law is Campana & Groulx, 339 Market Street, Williamsport, PA 17701. Respondent is

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

3. Respondent has been administratively suspended since 2013.

4. Respondent has no record of prior discipline in Pennsylvania.

5. In accordance with Rule 208(a)(2) and (3), it was determined that Respondent should receive an Informal Admonition as a result of his conduct in File No. C3-13-820. ODC-2.

6. By letter sent certified and first-class mail dated September 18, 2014, directed to Respondent's registered address, Chief Disciplinary Counsel Paul J. Killion informed Respondent that:

a. In connection with complaint C3-13-820 filed against him by the Honorable J. Michael Williamson of the Court of Common Pleas of Clinton County, a Reviewing Member of a Hearing Committee had directed that Respondent should receive an Informal Admonition for violating RPC 1.4(a)(5), RPC 1.4(b), RPC 8.4(b), RPC 8.4(c), Pa.R.D.E. 203(b)(7), and Pa.R.D.E. 217(b);

b. Pursuant to Rule 208(a)(6), Pa.R.D.E. and D. Bd. Rule §87.54, Respondent had the right to demand, in writing, within 20 days, that a formal proceeding be instituted against him before a hearing committee, and in the event of such demand, need not appear for the administration of the Informal Admonition and the matter would be disposed of in the same manner as any other formal hearing; and

c. Pursuant to D.Bd. Rule §87.52, Respondent's neglect or refusal to appear for an informal admonition without good cause shall

constitute an independent act of professional misconduct and shall automatically result in formal proceedings relating to such acts of misconduct and the grievance upon which such informal admonition was to relate.

ODC-2.

7. The letter further described the factual circumstances surrounding Respondent's violations as follows:

a. Respondent violated Pa.R.D.E. 203(b)(7) by failing to respond to ODC's DB-7 Request for Respondent's Position dated May 22, 2014 and to a follow-up letter dated July 1, 2014, stating the consequences of his failure to respond;

b. Respondent violated RPC 1.4(a)(5) and 1.4(b) by failing to notify his client, Joshua Deck, that Respondent had been administratively suspended for failure to comply with Continuing Legal Education requirements; and

c. Respondent violated RPC 8.4(b) and (c) and Pa.R.D.E. 217(b) by falsely certifying that he had fully complied with Pa.R.D.E. 217, which Rule requires that a suspended attorney inform his clients, within 10 days of the effective date of the suspension, of the existence of the suspension and his inability to act as their counsel.

ODC-2.

8. Although the certified mailing was returned as unclaimed, the first-class mailing was not returned. ODC-5 at ¶¶ 6, 7.

9. Respondent did not demand that a formal proceeding be instituted against him with regard to the allegations giving rise to the imposition of the Informal Admonition in C3-13-820, pursuant to Pa.R.D.E. 208(a)(6).

10. By letter sent certified and first-class mail dated October 20, 2014, directed to Respondent's registered address, Chief Disciplinary Counsel informed Respondent that:

a. Respondent had previously been advised of a complaint against him alleging violations of the Rules of Professional Conduct in which it was determined that Respondent should receive an Informal Admonition; and

b. Chief Disciplinary Counsel had scheduled Respondent's Informal Admonition for Monday, November 3, 2014 at 11:15 a.m. at the Office of Chief Disciplinary Counsel in Harrisburg, Pennsylvania.

ODC-3.

11. Although the certified mailing was returned as unclaimed, the first-class mailing was not returned. ODC-5, at ¶¶ 11, 12.

12. Respondent failed to appear for his November 3, 2014 Informal Admonition. ODC-5, at ¶ 13.

13. By letter sent certified and first-class mail dated November 5, 2014, directed to Respondent's registered address, Chief Disciplinary Counsel requested that Respondent advise him, within ten days from Respondent's receipt of the letter whether Respondent had "good cause" for his failure to appear for his Informal Admonition. ODC-4.

14. Although the certified mailing was returned as unclaimed, the first-class mailing was not returned. ODC-5, at ¶¶ 15-16.

15. Respondent did not answer Chief Disciplinary Counsel's letter nor did he provide good cause for his failure to appear for his Informal Admonition. ODC-5, at ¶ 17.

16. On December 23, 2014, a Petition for Discipline was filed at 206 DB 2014 relating to Respondent's failure to appear for the Informal Admonition. ODC-5.

17. Following Petitioner's extensive, unsuccessful attempts to locate Respondent, the Petition for Discipline was served at Respondent's registered address *via* first-class mail and UPS overnight delivery on January 12, 2015, and *via* hand-delivery to that address on January 16, 2015. ODC-5; ODC-6.

18. Respondent failed to file an Answer to Petition for Discipline.

19. By notice dated February 2, 2015, sent by the Secretary of the Disciplinary Board, Respondent was notified of the February 26, 2015 prehearing conference and the April 10, 2015 hearing. ODC-7.

20. By letter dated February 23, 2015, Disciplinary Counsel sent Respondent its exhibits, and informed Respondent that Petitioner would be requesting that the exhibits be admitted into evidence during the prehearing conference. PHC-1.

21. During the prehearing conference, the Hearing Committee Chair deemed the factual allegations of the Petition admitted based on Respondent's failure to answer the Petition. N.T. PHC, at 4, 8-9.

22. The Hearing Committee Chair also admitted into evidence Petitioner's Exhibits 1 through 7. N.T. PHC, at 8.

23. Respondent failed to appear for the disciplinary hearing on April 10, 2015. N.T. at 5.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules:

1. Pa.R.D.E. 203(b)(2) – Willful failure to appear before Chief Disciplinary Counsel for the imposition of an informal admonition is grounds for discipline.

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

As a result of Respondent's failure to demand the institution of formal proceedings against him, Respondent is conclusively deemed to have violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement set forth in Chief Disciplinary Counsel's September 18, 2014 letter:

a. RPC 1.4(a)(5) – A lawyer shall consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law;

b. 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;

c. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

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

e. Pa.R.D.E. 203(b)(7) – Failure of a respondent-attorney without good cause to respond to Disciplinary Counsel's request under Disciplinary Board Rules and Procedures §87.7(b) for a statement of the respondent-attorney's position is grounds for discipline; and

f. Pa.R.D.E. 217(b) – A formerly admitted attorney is required to notify all clients involved in pending litigation of his or her administrative suspension.

IV. DISCUSSION

Petitioner bears the burden of proving, by a preponderance of evidence that is clear and satisfactory, that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441 (Pa. 2000). Petitioner has met that burden by virtue of facts pled in the Petition for Discipline, which are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E., due to Respondent's failure to file an Answer to Petition.

In connection with the disciplinary complaint filed against Respondent by the Honorable J. Michael Williamson, Respondent received a DB-7 Request for

Statement of Respondent's Position dated May 22, 2014 and a follow-up dated July 1, 2014, informing him that Petitioner had received a complaint, detailing the nature of the complaint and the potential rule violations, and requiring a response. The factual circumstances involved Respondent's failure to notify his client that Respondent had been administratively suspended for failure to comply with Continuing Legal Education requirements, and his false certification that he had complied with Pa.R.D.E. 217, which required him to inform his client within ten days of his administrative suspension, of the existence of his suspension and his inability to act as counsel. Respondent did not respond to the DB-7 letter of inquiry.

Respondent's misconduct continued to escalate. He received a letter dated September 18, 2014 from Chief Disciplinary Counsel, informing Respondent that it was determined that he should receive an Informal Admonition for violating Rules of Professional Conduct 1.4(a)(5), 1.4(b), 8.4(b) and 8.4(c), and Rules of Disciplinary Enforcement 203(b)(7) and 217(b). Thereafter, by Notice to Appear dated October 20, 2014, Chief Disciplinary Counsel advised Respondent that his informal admonition had been scheduled for Monday, November 3, 2014 at 11:15 a.m. in the District III office in Harrisburg, Pennsylvania. Respondent failed to appear for the Informal Admonition and failed to show good cause for his nonappearance.

Respondent's failure to appear and failure to communicate with Petitioner ultimately resulted in the filing of the Petition for Discipline on December 23, 2014. Consistent with his earlier lack of response and despite extensive notice, Respondent failed to answer the Petition and failed to attend both the prehearing conference and the disciplinary hearing before the Hearing Committee. The record is devoid of explanation for Respondent's inaction.

The evidence of record proves that Respondent received notice of each stage of the proceedings by first class mail and/or hand-delivery to his attorney registration address. Despite extensive efforts, Petitioner was unable to locate Respondent to personally serve him; therefore, service of the Petition for Discipline was effectuated by substituted service, pursuant to Rule 212, Pa.R.D.E.

It is well-established by the evidence of record that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This matter is ripe for the determination of discipline. Both Petitioner and the Hearing Committee have recommended that Respondent be suspended for a period of one year and one day. After considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), the Board is persuaded that suspension for one year and one day is appropriate discipline.

In evaluating professional discipline, each case must be determined on its own particular facts and circumstances. *Office of Disciplinary Counsel v Lucarini*, 427 A.2d 186 (Pa. 1983). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts and deter unethical conduct. *Office of Disciplinary Counsel v. Czmus*, 889. A.2d 117 (Pa. 2005).

Although Respondent's underlying misconduct in connection with his client matter was relatively minor, as reflected by the original disposition of an informal admonition, Respondent's misconduct has been significantly aggravated by his failure to appear for the Informal Admonition, and thereafter by his utter failure to participate in the disciplinary process. The sole mitigating factor is that Respondent has no record of

discipline in Pennsylvania. Respondent was admitted in 1984 and practiced law without a blemish for nearly 30 years prior to his transfer to administrative suspension in 2013. We are troubled by Respondent's apparent lack of interest in a professional license which he maintained for many years without issue.

By Respondent's failure to participate in the process, he has exhibited a lack of respect for his professional duties and for the disciplinary process in general. He has made no effort to confront and address his discipline issues and has provided no evidence that he values his privilege to practice law. He has forfeited any meaningful opportunity to accept responsibility and express remorse. For the protection of the public, Respondent cannot be permitted to continue practicing law without an assessment of his fitness to do so.

Prior disciplinary cases have resulted in suspensions for a period of one year and one day where attorneys failed to appear for an informal admonition and subsequently failed to participate in the disciplinary process. See, *Office of Disciplinary Counsel v. Anne Michelle Campbell*, 81 DB 2009 (2010); *Office of Disciplinary Counsel v. William Walsh*, No. 73 DB 2005, 1 Pa. D. & C. 5th 342 (2006); *Office of Disciplinary Counsel v. Kenton O'Neill*, No. 212 DB 2003, 72 Pa. D. & C. 4th 438 (2004). The reason for a suspension requiring reinstatement is not the actual underlying misconduct, but Respondent's absolute failure to acknowledge the disciplinary proceeding.

We are cognizant of the recent case of *Office of Disciplinary Counsel v. John Michael Biondi*, No. 196 DB 2012 (2014), wherein Mr. Biondi was disbarred after he ignored communications with the Court of Common Pleas of Butler County and related court offices, failed to file an Answer to Petition for Discipline charging him with violations in connection with his lack of communications, and failed to appear at the

prehearing conference and disciplinary hearing, despite receiving notification of all proceedings against him. Similar to the instant Respondent, Mr. Biondi was administratively suspended at the time of the disciplinary proceedings and had no prior record of discipline. Although the Board recommended that Mr. Biondi be suspended for four years, the Supreme Court rejected this recommendation and imposed disbarment. Our review of *Biondi* persuades us that the result therein is inapplicable to the instant case, as the facts and circumstances of *Biondi* are more egregious. Mr. Biondi not only ignored communications from the Disciplinary Board, but his underlying misconduct involved lack of communications with the Butler County Court of Common Pleas. His unavailability was pervasive and deserving of disbarment.

In light of the precedent, suspension must apply. A period of one year and one day will protect the public until such time as Respondent affirmatively demonstrates that, whatever the cause of his difficulties, he is fit to practice law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Michael E. Groulx, 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: _____
Stefanie B. Porges, M.D., Member

Date: September 25, 2015