

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1566 Disciplinary Docket No. 3
Petitioner :
 : No. 30 DB 2009
v. :
 : Attorney Registration No. 54032
STEPHEN K. URBANSKI, :
Respondent : (Luzerne County)

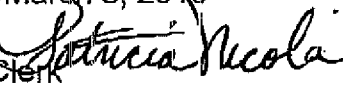
ORDER

PER CURIAM:

AND NOW, this 3rd day of March, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 4, 2009, it is hereby

ORDERED that Stephen K. Urbanski is disbarred from the Bar of this Commonwealth 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 March 3, 2010
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 30 DB 2009
Petitioner	:	
v.	:	Attorney Registration No. 54032
STEPHEN K. URBANSKI	:	
Respondent	:	(Luzerne 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, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Stephen K. Urbanski. The Petition charged Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising from allegations that he mishandled the legal matters of three separate clients. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on June 18, 2009, before a District III Hearing Committee comprised of Chair Larry B. Selkowitz, Esquire, and Members Susan E. Good, Esquire, and Thomas V. Casale, Esquire. Respondent did not appear at the hearing.

The Hearing Committee filed a Report on August 25, 2009, finding that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement as contained in the Petition for Discipline, and recommending that he be suspended for a period of four years.

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, Pennsylvania 17106, 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 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 Stephen K. Urbanski. He was born in 1964 and was admitted to practice law in the Commonwealth of Pennsylvania in 1988. His registered

attorney address is 82 Third Avenue, Kingston PA 18704. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of prior discipline. On February 22, 2000, he received two Informal Admonitions. These were administered for his failure to respond to requests from clients, failure to take action on the matters for which he was retained, and failure to refund unearned fees.

4. On March 28, 2001, Respondent received an Informal Admonition. This was administered for his failure to return telephone calls and letters from clients, failure to finalize an estate, failure to surrender the client's file following the termination of Respondent's services, and failure to distribute the estate funds until after he was contacted by Office of Disciplinary Counsel.

5. On December 4, 2002, Respondent received a Private Reprimand. This was imposed for his failure to take action on a proposed Settlement Agreement in a divorce matter, even after opposing counsel and his client contacted him numerous times.

6. Respondent was suspended for a period of one year by Order of the Supreme Court dated June 24, 2005. The suspension was stayed in its entirety and Respondent was placed on probation for a period of one year subject to certain conditions. The underlying misconduct arose from Respondent's neglect of three client matters and his failure to communicate with his client. By Order of the Supreme Court dated July 31, 2007, Respondent's probation was revoked and he was suspended from the practice of law for one year, after he violated the terms and conditions of his probation.

7. Respondent did not participate in the instant matter.

8. Respondent advised the agent of the Office of Disciplinary Counsel attempting to serve the Petition for Discipline that he (Respondent) did not care what Disciplinary Counsel did to him.

9. Respondent did not file an Answer to Petition for Discipline.

10. Despite proper notice of time, date and place, Respondent did not appear at the pre-hearing conference held on May 14, 2009, nor did he appear at the disciplinary hearing held on June 18, 2009.

Holly Lee Robinson Matter

11. On or about June 17 – 20, 2006, Holly Lee Robinson left her marital home in Tunkhannock, Pennsylvania, and began to reside along with her seven year old son, Alexander J. Robinson, in Factoryville, Pennsylvania

12. On or about August 23, 2006, Ms. Robinson pro se filed for child support in the Domestic Relations Section of the Court of Common Pleas of Wyoming County. A support conference was scheduled for September 13, 2006.

13. On or about September 1, 2006, James H. Robinson, through his attorney, Deborah Albert-Heise, filed for child support and an emergency petition for special relief for child custody of Alexander Robinson.

14. On September 1, 2006, Judge Brendan J. Vanston granted Mr. Robinson temporary custody of Alexander and issued a Rule returnable for October 12, 2006.

15. On September 5, 2006, Ms Robinson pro se filed an Amended Complaint in Support seeking spousal support for herself as well as child support.

16. On September 11, 2006, Mr. Robinson filed a Complaint in support.

17. Sometime prior to September 14, 2006, Ms. Robinson met with Respondent at which time he gave her a free consultation regarding her legal issues.

18. On or about September 13, 2006, a support conference was held with regard to both Ms. and Mr. Robinson's cross-requests for child/spousal support.

19. Ms. Robinson met with Respondent again on September 14, 2006 and retained him to initiate a divorce action and to represent her in the custody and support cases. She paid Respondent a non-refundable retainer of \$2,000 and agreed to pay him at a rate of \$150 per hour.

20. On September 14, 2006, Respondent had Ms. Robinson sign a blank Verification, which he later attached to a Complaint in Divorce.

21. On September 15, 2006, Judge Vanston directed that Mr. Robinson pay spousal support to Ms. Robinson at the rate of \$60 per week and \$10 per week on arrears of \$240 effective August 23, 2006.

22. In anticipation that spousal support for Ms. Robinson might be vacated as a result of a de novo hearing, it was stipulated that Ms. Robinson would owe Mr. Robinson child support in the amount of \$62 per week, effective September 11, 2006, if her spousal support was vacated.

23. Mr. Robinson appealed the determination that he owed spousal support and a hearing was scheduled for November 6, 2006.

24. A custody conference was scheduled before Judge Vanston for September 27, 2006.

25. On September 21, 2006, Ms. Robinson met with Respondent to discuss the Divorce Complaint he was to prepare and file, the upcoming custody conference and Mr. Robinson's alleged harassment of Ms. Robinson.

26. Based on information provided by Ms. Robinson, Respondent prepared a Complaint in Divorce, signed it, and attached the Verification his client had signed in blank on September 14, 2008.

27. On September 27, 2006, Respondent filed the Complaint for Ms. Robinson even though she had never reviewed it. While the averments in the Complaint were accurate, by attaching Ms. Robinson's verification, Respondent essentially misrepresented to the Court that she had personally verified the averments contained in the Complaint.

28. On September 27, 2006, Respondent attended the custody conference before Judge Vanston. A follow-up hearing was scheduled for October 31, 2006.

29. One or two days prior to the hearing scheduled for October 31, 2006, Ms. Robinson contacted Respondent and asked if she should have her witnesses present. Respondent replied that "it wouldn't hurt."

30. Respondent did not ask Ms. Robinson who she intended to call or the substance of their testimony or how to contact the witnesses.

31. On October 31, 2006, Ms. Robinson arrived with four witnesses. Respondent obtained the names of the witnesses but did not talk to any of them.

32. A de novo hearing on support was scheduled for November 6, 2006. Respondent did not conduct any investigation into Mr. Robinson's earnings from a business he conducted in addition to his full-time position with PennDOT.

33. At the de novo hearing, Mr. Robinson testified that Ms. Robinson had admitted to him that she had an affair. Respondent did not cross-examine Mr. Robinson on such testimony nor did Mr. Robinson testify with regard to it.

34. Based on the evidence of the extra-marital affair, Judge Vanston determined that Ms. Robinson was not entitled to spousal support and ordered her to pay child support, although the parties were sharing equal custody of their son.

35. After Ms. Robinson received notice of the child support order, she contacted Respondent on November 10, 2006 to express her confusion as to why she was paying child support when the custody agreement was 50% - 50%.

36. Respondent failed to return Ms. Robinson's call.

37. Respondent did not file exceptions to the Order of November 6, 2006.

38. During November and December 2006, the Robinsons' custody mediation continued, but Ms. Robinson was never able to speak to Respondent as he never returned her calls.

39. Ms. Robinson wanted to obtain a Protection From Abuse Order, and because she was unable to contact Respondent, she filed a Petition through the Victim Resource Center.

40. A custody conference was scheduled for March 7, 2007. On March 5, 2007, Ms. Robinson received a letter from Respondent dated March 1, 2007, informing her that she had a hearing on March 7, 2007.

41. Ms. Robinson called Respondent's office and was advised that Respondent would be unavailable until 4:00 p.m. but that Respondent would call her after that. Ms. Robinson waited until 7:00 p.m. but Respondent failed to return her call.

42. By letter dated March 6, 2007, sent via facsimile and certified mail on March 6, 2007, Ms. Robinson terminated Respondent's representation due to his failure to return her calls. She requested an itemized bill for his service within five days of his receipt of the letter.

43. The certified mail was signed for by Respondent's secretary on March 7, 2007.

44. As of April 11, 2007, the date of Ms. Robinson's disciplinary complaint, Respondent has not replied to her.

45. On March 15, 2007, Ms. Robinson filed a Petition for Modification of Existing Support Order based upon the shared equal custody of Alexander with Mr. Robinson.

46. As a result thereof, by Order of May 7, 2007, Judge Vanston terminated Ms. Robinson's obligation to pay child support effective April 27, 2007, but directed her to pay the arrearages of \$480.68, which might not have accumulated had Respondent timely filed exceptions to the Order of November 6, 2006.

47. After filing Ms. Robinson's Complaint in Divorce on September 27, 2006, Respondent took no action to pursue it.

Tracey Ann Mensinger Matter

48. On April 24, 2001, Tracey Ann Mensinger pleaded guilty to one count of acquisition/possession of a controlled substance in violation of Pa.C.S. Section 113(a)(12), a felony in the first degree. Ms. Mensinger was sentenced in the Court of Common Pleas of Luzerne County to one year probation with various conditions.

49. In 1991, Ms. Mensinger had been arrested for DUI in Luzerne County and successfully completed the ARD program.

50. On or about September 5, 2005, Ms. Mensinger retained Respondent to obtain an expungement of her felony arrest and conviction.

51. At the time of the initial consultation, Ms. Mensinger advised Respondent that two other attorneys had informed her that it was not possible to expunge a felony conviction.

52. Respondent told Ms. Mensinger that it was possible to expunge her criminal record for the first degree felony. This statement was misleading in that there was no valid basis for obtaining an expungement because her charges had not been nolle prossed or withdrawn; she had not been found not guilty; she was not eligible for ARD; her conviction did not occur when she was a juvenile nor was she 70 years old or older with no criminal arrests for ten years.

53. Even though Respondent had never previously represented Ms. Mensinger, he failed to communicate the basis or rate of his fees in writing to her either before or within a reasonable time after beginning the representation.

54. Respondent advised Ms. Mensinger orally that she would need to pay him \$783.60 for the first part of the expungement and an additional \$783.60 if the expungement had to be scheduled for a hearing.

55. On September 22, 2005, Ms. Mensinger paid Respondent \$783.60 by check number 1279, which he deposited in his bank account on September 27, 2005.

56. After meeting with Respondent twice in September 2005, Respondent never met with Ms. Mensinger again.

57. During the first year after Ms. Mensinger retained Respondent, he did not initiate any contact with her.

58. Ms. Mensinger believes that she spoke to Respondent approximately three times by telephone:

a. In March or April 2006, Respondent told Ms. Mensinger that he needed her driver's license, which she provided to him. He advised her that her case was moving forward.

b. After calling several times when Respondent did not return her calls, Ms. Mensinger spoke to him at the end of 2007 or early 2008. Respondent assured her that her case was moving forward.

c. At the end of 2007 or early 2008, Ms. Mensinger called Respondent and he advised that he was almost ready to move forward.

59. Respondent's statements to Ms. Mensinger that her case was moving forward were misrepresentations.

60. On July 31, 2007, Respondent was suspended from the practice of law in Pennsylvania for a period of one year and directed to comply with the provisions of Pennsylvania Rule of Disciplinary Enforcement 217.

61. Respondent did not notify Ms. Mensinger of his suspension and inability to represent her.

62. On September 11, 2007, Respondent filed with the Disciplinary Board a Statement of Compliance pursuant to Rule 217(e), Pa.R.D.E., wherein he certified that he had fully complied with the provisions of the Order of the Supreme Court, with the applicable provisions of the Rules of Enforcement, and with the applicable Disciplinary Board Rules.

63. Respondent's Statement of Compliance was false as he had not notified Ms. Mensinger of his suspension.

64. In May 2008, Ms. Mensinger attempted to contact Respondent, but learned that all of the telephone numbers she had for him were either disconnected or not in service.

65. Ms. Mensinger filed a disciplinary complaint because she did not know how to reach Respondent.

66. There is no record of any docket activity on behalf of Ms. Mensinger.

Judith A. Kotch Matter

67. On March 28, 2007, Judith A. Kotch met with Respondent regarding a dispute with her landlord.

68. On or about March 8, 2007, Ms. Kotch's landlord, John Clawson, filed an appeal of a magisterial judgment in which Ms. Kotch was awarded \$982.08, and filed a Praecipe to Enter Rule to File a Complaint in the Court of Common Pleas of Luzerne County. Mr. Clawson also initiated a civil action against Ms. Kotch for back rent and costs of repairs. Mr. Clawson was represented by Joseph Iracki, Esquire.

69. Respondent helped Ms. Kotch fill out a Complaint, which she filed pro se.

70. On March 20, 2007, Ms. Kotch paid Respondent a flat fee of \$950 and signed an "Agreement for Legal Services – Flat Fee." Under the terms of the Agreement, Respondent agreed to take the case "up to arbitration." The fee was nonrefundable.

71. Ms. Kotch telephoned Respondent three times in the summer of 2007 to ascertain the status of her matter and left messages. Respondent failed to return her calls.

72. By July 31, 2007, Respondent had been suspended by the Court for one year and was obligated to advise his clients, such as Ms. Kotch, and opposing counsel that he had been suspended.

73. Respondent failed to advise Ms. Kotch of his suspension.

74. Respondent failed to advise Attorney Iracki of his suspension.

75. In the late summer of 2007, Ms. Kotch was able to speak to Respondent by telephone. At that time he advised Ms. Kotch that he had filed a praecipe to list the case for arbitration, and it could take as long as eight months for a hearing to be scheduled.

76. Respondent had not filed a praecipe to list the case for arbitration.

77. During the telephone call, Respondent advised Ms. Kotch that he would no longer be practicing law and that Attorney James Haggerty would be taking over her case. When Ms. Kotch inquired why, Respondent told her that it was a long story and never went into any details.

78. Respondent failed to consult with Ms. Kotch before asking Attorney Haggerty to take over the case; regardless, Attorney Haggerty had not agreed to handle Ms. Kotch's case.

79. A short time thereafter Ms. Kotch went to the Luzerne County Prothonotary's Office to check on her matter and learned there was no hearing date and Respondent had never filed a praecipe to list the case for arbitration.

80. Respondent filed a Statement of Compliance with the Disciplinary Board on September 11, 2007, and certified that he had complied with the provisions of the Enforcement Rules, but in fact he never gave notice to Ms. Kotch or Attorney Iracki as to his suspension.

81. By letter to Respondent of October 13, 2007, Ms. Kotch requested a refund of her fees in the amount of \$950.

82. Respondent did not timely reply to Ms. Kotch's request. After being advised of the disciplinary complaint filed by Ms. Kotch, Respondent sent her a refund check in the amount of \$500, her file and a bill for legal services by letter of February 12, 2008.

83. The three complaining witnesses testified credibly as to the impact of Respondent's conduct.

84. Holly Lee Robinson was not experienced with the court system and felt lost, hopeless and scared when Respondent did not communicate with her.

85. Tracey Ann Mensinger felt violated and appalled by Respondent's behavior after he took her money and did nothing to help her.

86. Judith A. Kotch felt betrayed by Respondent because she trusted him to help her and he acted unprofessionally.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct and Rule of Disciplinary Enforcement:

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)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

4. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

5. RPC 1.15(b) – Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

6. 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.

7. RPC 3.3(a) – 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.

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

9. Pa.R.D.E. 217(b) – Failing to give notice to all clients involved in pending litigation and the attorneys for each adverse party.

IV. DISCUSSION

This matter is before the Board for consideration of the charges against Respondent that he engaged in misconduct in three client matters. Respondent failed to answer the charges contained in the Petition for Discipline; therefore, the factual allegations are deemed admitted pursuant to Pa.R.D.E. 208(b)(3). Respondent did not attend the pre-hearing conference or disciplinary hearing in this matter, despite proper notice, and has put forth no evidence of mitigating factors for the Board's consideration. There is no dispute that Respondent's actions in three client matters violated multiple Rules of Professional Conduct and Rule of Disciplinary Enforcement. It is the Board's responsibility to determine the appropriate discipline.

The facts of record in this matter depict pervasive client neglect. Respondent failed to represent his clients competently and with reasonable diligence and promptness. Respondent did not advise his clients of the status of their matters or respond to their reasonable requests for information. Respondent made misrepresentations and failed to provide accountings following his clients' request. In two cases, Respondent failed to inform his clients that he had been placed on suspension. He misrepresented to the Board that he fully complied with his suspension order.

Respondent's clients were prejudiced by his actions, particularly as Respondent accepted the retainer payments and never refunded the monies, or refunded the monies in a late fashion that deprived the clients of the use of their funds. Beyond the actual harm that the clients suffered, the record is clear that each suffered feelings of

betrayal as each relied on Respondent to help with a critical problem and he did not fulfill his obligations to them. Respondent at most performed preliminary services and basically ignored his clients after he took their money.

The record is replete with aggravating factors. Foremost of these is Respondent's history of discipline. Starting in 2000, Respondent has had regular interaction with the disciplinary system of the Commonwealth. Three Informal Admonitions were imposed between 2000 and 2001 for basic neglect, lack of communication and failure to surrender files and unearned funds. The year 2002 brought a Private Reprimand for neglect in a divorce matter. In 2005, Respondent was suspended for one year for neglect of three client matters. This suspension was stayed in its entirety and Respondent was placed on probation. However, Respondent was unable or unwilling to abide by the conditions of probation and his probation was revoked. The Supreme Court suspended Respondent for a period of one year on July 31, 2007.

A long trail of client neglect has emerged from Respondent's past history and continues in the present as demonstrated by the facts of the instant matter. There is no evidence that Respondent has gained insight from his past experiences. In fact, his failure to participate at any level in his disciplinary proceeding is another aggravating factor and underscores the sad reality that Respondent has no concern for his clients or his law practice.

The Hearing Committee recommendation before the Board is a four year suspension. After close scrutiny of the record, it is the position of the Board that

suspension is not an aggressive enough form of discipline to address Respondent's misconduct. Instead, the Board is persuaded that disbarment is warranted.

Disbarment is an extreme sanction that is to be imposed for only the most egregious ethical violations. Office of Disciplinary Counsel v. Jackson, 637 A.2d 615 (Pa. 1994). This sanction is reserved for only the most serious cases of wrong-doing because it represents a termination of the license to practice law without a promise of its restoration at any future time. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). While many disbarment cases have occurred for theft of client funds or criminal activity, there have been occasions when the Court has disbarred lawyers for client neglect when found in conjunction with a history of discipline and other aggravating factors.

Robert S. Fisher was disbarred by the Court after he violated multiple Rules of Professional Conduct in 12 client matters. The record involved client neglect: missed appointments; clients left to wait for hours; lack of communication consisting of many unreturned telephone calls and letters; deception regarding the status of cases; misrepresentation about work done; failing to withdraw from representation or allow the transfer of a case to a new attorney. This misconduct lasted approximately four years. Mr. Fisher had a history of discipline consisting of a one year and one day suspension ordered by the Court on July 29, 2004, and a three month suspension ordered by the Court on November 16, 2004. Mr. Fisher failed to appear at his disciplinary hearing. Office of Disciplinary Counsel v. Robert S. Fisher, 52 DB 2005, 1169 Disciplinary Docket No. 3 (Pa. Sept. 19, 2006)

In a case from 2002, the respondent engaged in neglect and misrepresentation during his representation of a husband and wife in a medical malpractice action. Respondent continued to tell his clients that their case was proceeding, all the while aware that he had taken no action on their behalf. The action was eventually terminated due to the respondent's failure to move the case forward, but for a period of approximately four years, the respondent led his clients to believe that their case was proceeding normally, and even informed his clients that there was an offer of settlement. This respondent had a history of discipline consisting of disbarment in 1980, from which he was reinstated in 1989. Against this factual background the Court disbarred the respondent. Office of Disciplinary Counsel v. Anonymous, 140 DB 1999, 704 Disciplinary Docket No. 3 (Pa. March 22, 2002).

The facts weigh heavily against Respondent's continued privilege to practice law. At present Respondent is a burden to the public. If he is not prevented from practicing law, he will continue to take money from unsuspecting individuals and perform no legitimate services. His actions are a blot on the reputation of all lawyers in this Commonwealth. Undoubtedly the three clients involved in the instant matter have formed negative perceptions of the legal profession after their unfortunate experiences with Respondent.

The Board recommends that Respondent be disbarred.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Stephen K. Urbanski, be Disbarred from the practice of law.

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: Charlotte S. Jefferies
Charlotte S. Jefferies, Board Member

Date: December 4, 2009