

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1468 Disciplinary Docket No. 3
Petitioner :
v. : No. 36 DB 2008
: Attorney Registration No. 66660
PETER WILLIAM DIGIOVANNI, :
Respondent : (Delaware County)

ORDER

PER CURIAM:

AND NOW, this 28th day of May, 2009, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 27, 2009, it is hereby

ORDERED that Peter William DiGiovanni 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: May 28, 2009

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 36 DB 2008 |
| Petitioner | : | |
| | : | |
| v. | : | Attorney Registration No. 66660 |
| | : | |
| PETER WILLIAM DIGIOVANNI | : | |
| Respondent | : | (Delaware 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 February 29, 2008, Office of Disciplinary Counsel filed a Petition for Discipline against Peter William DiGiovanni. The Petition charged Respondent with professional misconduct arising out of allegations that he engaged in the unauthorized practice of law. Respondent filed an Answer to Petition for Discipline on April 3, 2008.

A disciplinary hearing was held on June 9, 2008, before a District II Hearing Committee comprised of Chair Terry Dennis Weiler, Esquire, and Members Mason Avrigian, Sr., Esquire, and Chris M. Jamison, Esquire. Respondent appeared pro se. Petitioner presented Exhibits 1 through 12, including a Joint Stipulation of Fact and Law. Respondent testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 20, 2008, finding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of one year and one day.

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

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1: Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, 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 Peter William DiGiovanni. He was born in 1967 and was admitted to practice law in the Commonwealth of Pennsylvania in 1992. He maintains his office at P.O. Box 250, Gradyville, Pennsylvania 19038. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a record of discipline consisting of an Informal Admonition administered on October 31, 2005, for failing to complete an estate and failing to keep his client informed of the status of his matter.

4. By Order of March 16, 2007, the Supreme Court of Pennsylvania transferred Respondent to inactive status as a result of his failure to comply with Continuing Legal Education requirements.

5. In the months prior to the Court's Order, Respondent received multiple notices warning him of the change in his status.

6. By letter dated October 20, 2006, the Continuing Legal Education Board (CLE Board) sent Respondent a copy of his Annual CLE Report, which indicated that he was non-compliant for the CLE compliance year ending April 31, 2006.

7. By letter dated January 23, 2007, the CLE Board wrote to Respondent and explained that the notice was urgent and that if he did not rectify his incomplete CLE, his name would be submitted as non-compliant to the Supreme Court of Pennsylvania as of 4:00 P.M. on February 22, 2007.

8. By letter dated June 1, 2007, the CLE Board wrote to Respondent to inform him that his status was "inactive".

9. All three CLE Board letters were sent by regular mail.

10. Respondent acknowledged receipt of the CLE Board letters, but stated that he never opened them.

11. Respondent acknowledged that he had received such letters in the past and was generally aware of their contents.

12. Respondent admitted that he was negligent by failing to open the letters.

13. By letter dated March 16, 2007, sent certified mail to Respondent's registered attorney address, return receipt requested, Elaine M. Bixler, Secretary to the Disciplinary Board, wrote to Respondent, providing him with a copy of the Court's Order of March 16, 2007 and advising him of his obligations to comply with the Rules of Disciplinary Enforcement and the Disciplinary Board Rules.

14. Despite the fact that the post office provided Respondent with notice that he had certified mail to sign for and to collect on March 28, 2007, and on April 4, 2007, Respondent failed to collect the certified mail and it was returned unopened to the Office of the Secretary on or around May, 7, 2007.

15. Respondent acknowledged his failure to collect the certified mail and indicated that he hadn't gone to collect his business mail in weeks as he was not expecting anything important.

16. Respondent failed to cease practicing law after the effective date of the Court's Order of April 15, 2007. He made no effort to comply with the Rules of Disciplinary Enforcement.

17. Respondent continued to hold himself out as a practicing attorney after April 15, 2007.

18. Respondent failed to promptly notify by registered or certified mail, return receipt requested, all clients involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of his transfer to inactive status and consequent inability to act as an attorney after April 15, 2007.

19. Respondent failed to notify all other persons with whom he either had a fiduciary relationship, or with whom he had an existing professional relationship and who might have inferred that he remained an attorney in good standing, of his transfer to inactive status.

20. Respondent failed to file, within ten days of his transfer to inactive status, a verified statement with the Board showing that the provisions of the Order and the Rules of Disciplinary Enforcement had been complied with.

21. Respondent failed to notify all other jurisdictions to which he had been admitted of his transfer to inactive status.

22. Respondent continued to represent clients in existing matters and continued to accept new clients without informing them of his transfer to inactive status.

23. After his transfer to inactive status, Respondent agreed to represent Winona Crampton-Negron in a divorce matter.

24. Respondent failed to inform Ms. Crampton-Negron of his transfer to inactive status and inability to represent her in her matter.

25. On May 29, 2007, Respondent filed a complaint in divorce on behalf of Ms. Crampton-Negron in the Chester County Court of Common Pleas.

26. After his transfer to inactive status, Respondent agreed to represent Faith Vega in a civil matter.

27. Respondent did not inform Ms. Vega of his transfer to inactive status and inability to represent her in her matter.

28. On June 25, 2007, Respondent filed a civil complaint on behalf of Ms. Vega in the Chester County Court of Common Pleas.

29. After his transfer to inactive status, Respondent agreed to represent Robert Reale in a civil matter.

30. Respondent failed to inform Mr. Reale of his transfer to inactive status and inability to represent him in his matter.

31. On September 4, 2007, Respondent filed a writ of summons on behalf of Mr. Reale in the Chester County Court of Common Pleas.

32. During the time of his transfer to inactive status, Respondent remained counsel of record in many cases filed in Chester County, and he filed pleadings in at least one case in the Chester County Court of Common Pleas.

33. On or around September 17, 2007, Respondent sought reinstatement to active status as he had by that time complied with CLE.

34. In connection with his reinstatement, Respondent filed a Statement of Compliance dated September 17, 2007.

35. By signing the Statement of Compliance, Respondent falsely certified that he had "fully complied" with the provisions of the Order of the Supreme Court dated March 16, 2007, and that he had fully complied with the applicable provisions of the Pennsylvania Rules of Disciplinary Enforcement and with the applicable Disciplinary Board Rules.

36. Respondent cooperated with the Office of Disciplinary Counsel by entering into a comprehensive stipulation to the material factual allegations in the Petition for Discipline and the violations of the Rules of Professional Conduct.

37. Respondent testified at the disciplinary hearing.

38. Respondent indicated he might be depressed but acknowledged that he had not sought professional assistance.

39. Respondent did not express sincere remorse for his misconduct, instead noting that it did not harm the profession or any clients.

III. CONCLUSIONS OF LAW

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

1. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

2. RPC 7.1 – A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

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.

5. Pa.R.D.E. 217(a) – A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere.

6. Pa.R.D.E. 217(b) – A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment,

suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney.

7. Pa.R.D.E. 217(c) - A formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension or transfer to inactive status, by registered or certified mail, return receipt requested:

i. All persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension or transfer to inactive status, and

ii. All other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing.

8. Pa.R.D.E. 217(d) – Orders imposing suspension, disbarment or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

9. Pa.R.D.E. 217(e) – Within ten days after the effective date of the disbarment, suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing:

i. That the provisions of the order and these rules have been fully complied with; and

ii. All other state and federal and administrative jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

10. Pa.R.D.E. 217(j) – A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: all law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complied with the

requirements of this subdivision (j). If the formerly admitted attorney is engaged by a law firm or other organization providing legal services, whether by employment or other relationship, an attorney of the firm or organization shall be designated by the firm or organization as the supervising attorney for purposes of this subdivision.

11. Pa.R.D.E. 217(j)(4) – Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

- i. Performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm, organization or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension;
- ii. Performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis;
- iii. Performing any law-related services for any client who in the past was represented by the formerly admitted attorney;
- iv. Representing himself or herself as lawyer or person of similar status;
- v. Having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3);
- vi. Rendering legal consultation or advice to a client;

vii. Receiving, disbursing or otherwise handling client funds.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent that he engaged in the unauthorized practice of law and that he signed a false certification in connection with the unauthorized practice of law. Petitioner has the burden of establishing by clear and convincing evidence that Respondent's conduct while on inactive status constituted the unauthorized practice of law. In re Anonymous No. 28 DB 73 14 Pa. D. & C. 3d 716 (1980). Petitioner met its burden, as Respondent stipulated to the material facts contained in the Petition for Discipline and to the violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement. The issue before the Board is the appropriate sanction to be imposed.

The disciplinary sanctions imposed in Pennsylvania regarding the unauthorized practice of law have been consistent through the recent years. Suspension of one year and one day has been the primary sanction used to address this misconduct, as the practice of law while on inactive status is considered contemptuous. An established line of cases reflects the Supreme Court's position that practicing law while on inactive status and prohibited from doing so is a serious disciplinary offense and has serious ramifications for members of the public who unwittingly and unknowingly retain or continue to employ an unlicensed lawyer. Office of Disciplinary Counsel v. Goldin Didinsky 87 DB 2003, 969 Disciplinary Docket No. 3 (Pa. Dec. 13, 2004); Office of Disciplinary Counsel v.

Holder, 131 DB 1999, 660 Disciplinary Docket No. 3 (Pa. March 23, 2001); Office of Disciplinary Counsel v. Harrigan, 123 DB 2000, 782 Disciplinary Docket No. 3 (Pa. Nov. 25, 2002); Office of Disciplinary Counsel v. Rodney, 118 DB 2000, 743 Disciplinary Docket No. 3 (Pa. June 13, 2002). A lawyer's failure to attend to the administrative details of his license may be a cause for suspension when such failure leads to the unauthorized practice of law. It is not unreasonable to expect an attorney to be aware of the status of his privilege to practice law.

The instant case is similar to the facts of the above - cited cases. Respondent was lax in completing his CLE credits, ignored notices from the CLE Board and was placed on involuntary inactive status. Subsequent thereto, Respondent ignored his obligations under the Supreme Court Order and continued to hold himself out as a licensed attorney, taking new cases, failing to withdraw from current cases and filing motions. When Respondent eventually completed his CLE, he falsely certified to the Board that he had fully complied with all provisions pursuant to the Supreme Court Order of March 16, 2007, and the Board Rules. While Respondent did cooperate with Petitioner by entering into stipulations, he did not perceive his actions to have harmed the public or his clients, and did not show remorse.

The Hearing Committee in the instant matter recommended a suspension of one year and one day. The totality of the record persuades the Board that this matter warrants a suspension which requires Respondent to undergo the reinstatement process prior to practicing law in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Peter William DiGiovanni, 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: 

Carl D. Buchholz, III, Board Member

Date: February 27, 2009

Board Member Newman did not participate in the adjudication.