

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 672 Disciplinary Docket No. 3
Petitioner	:	
	:	
v.	:	No. 37 DB 1999
	:	
[ANONYMOUS]	:	Attorney Registration No. [ ]
	:	
Respondent	:	(Formerly [ ] 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 22, 1999, a Petition for Discipline was filed by the Office of Disciplinary Counsel, Petitioner, against [ ], Respondent in these proceedings. The Petition alleged that Respondent engaged in violations of the Rules of Professional Conduct by his criminal conduct involving false reports to law enforcement authorities and insurance fraud.

A disciplinary hearing was held on January 25, 2000, before Hearing Committee [ ] comprised of Chair [ ], Esquire, and Members [ ], Esquire, and Alternate Member [ ], Esquire. At the hearing, Respondent was represented by [A], Esquire. Petitioner was represented by [ ], Esquire. Attorney [A] subsequently withdrew his appearance on February 28, 2000.

The Hearing Committee filed a Report on May 22, 2000 and determined that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline. The Committee recommended a suspension for a period of eight months.

Petitioner filed a Brief on Exceptions on June 12, 2000, on the basis that Respondent's misconduct warrants a suspension of at least one year and one day. Respondent filed a Brief on Exceptions and request for oral argument on July 5, 2000. Petitioner filed a Brief Opposing Exceptions on July 17, 2000.

On November 6, 2000, Oral Argument was held before a three member panel of the Disciplinary Board consisting of Angelo L. Scaricamazza, Jr., Thomas J. Elliott and John W. Morris.

This matter was adjudicated by the Disciplinary Board at the meeting of November 15, 2000.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), 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 was born in 1952, was admitted to practice law in the Commonwealth of Pennsylvania in 1988, and his office is currently located at [B], [ ]. At the time these charges were filed, Respondent's office was located at [ ]. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. On April 3, 1996, Respondent's 1994 [C] automobile was stopped by the [ ] Police Department and subsequently towed and impounded.

4. Respondent was not driving the vehicle at the time when it was stopped by an officer of the [ ] Police Department.

5. At the time Respondent's vehicle was impounded, it was uninsured, his insurance company having cancelled his policy on March 10, 1996 for nonpayment of the premium.

6. Title to the vehicle was in the name of both Respondent and another couple, [ ] [D] and [ ] [D], from whom Respondent was purchasing the vehicle.

7. On April 9, 1996, after Respondent's car had been towed and impounded, Respondent applied for and received insurance on his 1994 [C] automobile from [E] Insurance Company, through [F] Insurance Agency, Inc.

8. The insurance policy from [E] Insurance Company was issued on April 9, 1996, at 3:00 p.m., and Respondent made the first premium payment of \$213.25 at that time.

9. On April 22, 1996, Respondent reported to the [ ] Police Department, through Officer [G], that his 1994 [C] automobile had been stolen.

10. Respondent told Officer [G] that he last saw his vehicle on April 17, 1996, at 9:00 p.m. Respondent also told her that when he awoke on April 18, 1996 at 9:00 a.m., the vehicle was missing.

11. On April 22, 1996, Respondent filed a claim under the insurance policy which was issued to him on April 9, 1996, claiming that his 1994 [C] automobile had been stolen.

12. At the time when Respondent reported to the police and his insurance company that his vehicle was missing, he knew that it could have been missing as early as the end of March 1996, at a time when he did not have insurance coverage on the vehicle.

13. On May 20, 1997, a criminal complaint was filed against Respondent, alleging that he had engaged in insurance fraud and false reports to law enforcement agencies, in violation of 18 Pa.C.S.A. §§ 4117 and 4906.

14. On June 26, 1997, after a preliminary hearing on the matter, the charges against Respondent were held for court.

15. Thereafter, a criminal information was filed against Respondent with regard to those charges and docketed in the Court of Common Pleas of [ ] County at criminal complaint number [ ].

16. On September 24, 1997, Respondent was accepted into the Accelerated Rehabilitative Disposition (ARD) program, placed on probation for 18 months and, as a condition of his admission to the ARD program, Respondent was to complete 150 hours of community service within nine months of September 24, 1997, with the [H] Community Services, Inc.

17. As of March 15, 1999, Respondent had not fulfilled any of the conditions of his ARD probation. Respondent has now completed his ARD conditions and the matter has been discharged.

18. Respondent has a record of discipline consisting of a Private Reprimand administered in 1999.

### III. CONCLUSIONS OF LAW

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

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

### IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline filed against Respondent charging him with violations of the Rules of Professional Conduct arising out of alleged criminal misconduct. Specifically, the Petition alleged that Respondent engaged in misconduct by providing false information to law enforcement authorities and insurance company agents as part of a scheme to defraud the insurance company in order to collect insurance coverage for Respondent's vehicle which was allegedly stolen.

The facts of record demonstrate that Respondent's insurance on his motor vehicle lapsed for non-payment effective March 10, 1996. His vehicle was stopped by officers of the [ ] Police Department and towed on April 3, 1996. Respondent was not driving the vehicle at the time. On April 9, 1996, after the vehicle had been towed and impounded, Respondent obtained insurance on it from a different insurance company. On April 22, 1996, Respondent reported to the police that his vehicle had been stolen and that he had last seen it on April 17, 1996. Respondent made a similar report to his insurance company.

Respondent was charged with the crimes of insurance fraud and false reports to law enforcement authorities in violation of 18 Pa.C.S.A. Sections 4117 and 4906. He was admitted to the ARD program and placed on probation for eighteen months, and as a condition of his admission to the program, Respondent was to complete 150 hours of community services within nine months of September 24, 1997. Respondent did not complete his community service requirement until after the deadline.

Respondent's explanation for his conduct was that he was not aware the vehicle was missing when he obtained new insurance on it, as he had left it for his estranged girlfriend's use in March of 1996, when he left the area for a vacation. He claims he only discovered the vehicle was missing on April 21, 1996, when he called his girlfriend from North Carolina, where he was on vacation. He called the police on April 22, 1996 and reported the car stolen. Respondent claims he gave the date of April 17 as the date he last saw the vehicle because the police and the insurance company pressed him for a specific date. Respondent claims to have no knowledge of the whereabouts of the vehicle from the latter part of March until April 21, 1996, when he claims to have discovered it was missing. Respondent asserts at all times he believed the vehicle had been stolen.

Even if Respondent believed his vehicle had been stolen, this would not preclude a finding that he engaged in criminal conduct. Respondent gave the police and the insurance company false information about the date he last saw the car. The date Respondent gave as last having seen the car was impossible because the car was impounded on that date. Respondent reported the vehicle was stolen on a date after he had obtained insurance, even though he knew it could have been missing during a time when it was not insured. The Hearing Committee did not find Respondent's explanations credible and properly found that Respondent's statements were false and calculated to obtain insurance benefits.

The Hearing Committee recommended a suspension for a period of eight months. The Committee opined that while the misconduct constituted serious criminal charges, it was not related to his position as an attorney and no client was adversely impacted by the misconduct.

Petitioner contends that a suspension of at least one year and one day is warranted in light of the seriousness of the misconduct. Petitioner emphasizes the dishonest nature of the actions as well as Respondent's prior history of discipline consisting of a Private Reprimand in 1999, which also involved dishonest conduct.

Respondent's position is that a suspension is inconsistent with the facts of the case and is merely punitive, which is contrary to the function of the disciplinary system.

Review of the totality of the circumstances of this matter indicates that a suspension of one year and one day is appropriate. This case involves criminal conduct with no mitigating circumstances. Essentially Respondent attempted to deceive the police and the insurance company in order to receive insurance proceeds. The fact that this misconduct took place in the private realm and did not touch on Respondent's professional relationship with clients does not lessen the

distasteful nature of his actions. Office of Disciplinary Counsel v. Grigsby, 493 Pa. 194, 425 A.2d 730 (1981). Respondent's explanations for his actions were found to be incredible by the Hearing Committee, who had ample opportunity to observe Respondent's demeanor on the witness stand. The Oral Argument panel of the Disciplinary Board likewise found that Respondent's versions of events strained credulity and his arguments were nonsensical. Respondent's entanglement in such a scheme reflects negatively on his fitness as an attorney.

The Board is of the opinion that a suspension of one year and one day will serve notice to Respondent that his activities are not appropriate for an attorney licensed in Pennsylvania. Furthermore, Respondent will be required to undergo formal reinstatement proceedings and prove his fitness before he resumes practice in the future.

IV. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [ ], be suspended from the practice of law in the Commonwealth of Pennsylvania for a period of one (1) year and one (1) 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: \_\_\_\_\_  
Angelo L. Scaricamazza, Jr., Vice-Chair



Date: March 16, 2001

Board Members Iole, George, Morris and Elliott dissented and would recommend an eight (8) month suspension.

Board Members Caroselli, Schultz, Rudnitsky and Teti did not participate in the November 15, 2000 adjudication.

PER CURIAM:

AND NOW, this 17<sup>th</sup> day of May, 2001, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 16, 2001, it is hereby

ORDERED that [Respondent] be and he is SUSPENDED from the Bar of this Commonwealth for a period of one (1) year and (1) 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.