

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 580, Disciplinary Docket No. 3 -
Petitioner	:	Supreme Court
	:	
	:	No. 38 DB 2000 – Disciplinary Board
v.	:	
	:	Attorney Registration No. []
[ANONYMOUS]	:	
Respondent	:	([] 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 April 27, 2000, Petitioner, Office of Disciplinary Counsel filed a Petition for Discipline against [], Respondent in these proceedings. The Petition charged Respondent with professional misconduct arising out of his 1999 conviction in the Court of Common Pleas of [] County of the crime of accidents involving personal injury or death and his 1994 conviction in the Court of Common Pleas of [] County of driving under the influence.

A disciplinary hearing was held on September 15, 2000, before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire and [], Esquire. Respondent appeared pro se. Petitioner was represented by [], Esquire.

The Committee filed a Report on February 9, 2001 and recommended that Respondent receive a Public Censure.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of April 18, 2001.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 3710, One Oxford Center, Pittsburgh, Pennsylvania 15219, is invested, under 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 that rule.

2. Respondent was born on August 31, 1960. Respondent has an undergraduate degree from the University of [] and graduated from the [] School of Law in 1985.

3. Respondent was admitted to practice law in the Commonwealth of Pennsylvania on or about June 3, 1988.

4. Respondent is a solo practitioner in [], PA.

5. On June 23, 1993, Officer [A] was on routine patrol when he observed Respondent, who was headed northbound on [], cross over into the southbound lane of [] and drive northbound. Officer [A] stopped Respondent's vehicle and noticed that Respondent showed signs of intoxication including bloodshot eyes, slurred speech, unsteadiness in walking, and an odor of alcohol upon his breath. Officer [A] requested that Respondent take a blood alcohol test, the results of which indicated a blood alcohol content of .21 percent.

6. As a result of this incident, Respondent was arrested for DUI. Respondent subsequently pleaded guilty to one count of DUI. President Judge [B] sentenced the Respondent to a thirty-day to one-year term of incarceration and ordered him to pay the costs of prosecution and a \$500 fine.

7. As a result of the DUI arrest and conviction, Respondent was admitted to an alcohol rehabilitation facility, [], in [] for thirty days. Respondent received credit toward incarceration for his 30-day alcohol treatment program and was paroled immediately at the time of his sentencing on November 14, 1994.

8. On March 16, 1999, at approximately 4:30 p.m., Respondent was returning to his home from his office while traveling northbound on [].

9. Respondent failed to notice [C's] vehicle stopped in his lane. While she and her passenger, [D], waited to make a left-hand turn, Respondent hit her right rear bumper, causing her car to spin 360° and land facing north in the left lane of []. Respondent's car crossed the right lane and came to a final rest on the east berm of the road facing north.

10. Respondent proceeded to drive away from the scene continuing north on [] without giving information or rendering aid.

11. Respondent testified that he wasn't paying attention to his driving immediately before the accident.

12. Respondent hit his head on the windshield as a result of accident but did not receive any medical treatment for his injuries. He had no bleeding as a result of the incident, but later discovered he had a little brushburn on his hairline.

13. Respondent testified that immediately after the accident, he went to his home. He saw moderate damage to his car, which amounted to approximately \$3000 damage to his car's left front corner. He testified that he realized that he hit something, but it was unclear that it was a vehicle that he hit. (NT 32)

14. Respondent claims that he cannot recall the accident. (NT 27, 28, 29, 32, 33)

15. When Respondent returned to his home after the accident, his sister [E] was waiting for him. Within minutes of returning home, Respondent accompanied his sister in her car as she drove to their mother's house in [], about 30 to 35 miles away. Respondent spent the night at his mother's house, worked on her computer, and then took his mother's car back to [] County the next morning so he could get a paint estimate on her car. The car that Respondent had been driving at the time of the accident had been impounded the previous evening on March 16, 1999.

16. [C], the driver of the vehicle that Respondent hit, and her passenger, [D], both alleged that they suffered soft tissue injuries. They both claim pain in their necks, shoulders and backs, and

are still receiving treatment from a chiropractor. They have filed a civil lawsuit concerning this matter.

17. A witness pursued Respondent's vehicle as he left the accident scene, wrote down his license plate number, and gave police a description of the driver.

18. After ascertaining the owner of the car bearing that license plate number, State Trooper [F] promptly went to Respondent's home, but no one was home. Respondent and his sister had already left his home by the time Trooper [F] had arrived. State Trooper [F] saw Respondent's damaged car in the driveway and impounded it.

19. That evening after his shift ended, Trooper [F] returned to Respondent's home, and advised [G] that he wanted to question her husband about his possible involvement in an accident. [G] then telephoned her husband at his mother's home about 7:00 p.m. and advised Respondent that Trooper [F] wanted to talk to him about an accident. Since the Trooper was off-duty, Respondent did not call him to discuss the accident until the following morning.

20. Sometime between 7 a.m. and 8 a.m. that following morning, Respondent telephoned Trooper [F] and advised him that he was not the driver of the vehicle at the time of the accident and did not know who was driving the car.

21. Trooper [F] told Respondent that he needed to come down to the station to give a statement, and advised Respondent that before he came down to the station and made his report, he needed to think long and hard about what he was going to tell him.

22. Trooper [F] testified that in his view, Respondent did not tell the truth during the initial phone call in that he denied being in the accident. (NT 61-62)

23. Approximately an hour after Respondent's phone call, Trooper [F] received a phone call from an attorney who was representing Respondent. The attorney informed Trooper [F] that Respondent would come in and give a statement admitting that he had been involved in the accident.

24. Later that day Respondent, accompanied by his lawyer, went to the police station and gave a written statement admitting that he had been involved in the accident. Respondent's written statement simply admitted to being involved in an accident, but did not provide any details as to the reasons why he left the scene.

25. Prior to the conviction upon which this Petition for Discipline is premised, Respondent was previously arrested on September 9, 1989 for DUI in [] County. As a result of the 1989 DUI, Respondent entered the Accelerated Rehabilitative Disposition (ARD) Program on February 28, 1990, and lost his driver's license for a period of six (6) months.

26. Respondent had a duty to report his 1994 DUI conviction and his 1999 conviction for Accidents Involving Death or Personal Injury to the Secretary of the Disciplinary Board, but he failed to do so.

27. Respondent has cooperated with Petitioner.

28. Respondent has no prior disciplinary history.

29. Neither of Respondent's convictions involved abrogation of his responsibilities as an attorney and did not involve harm to his clients.

30. Although the victims of the accident alleged that they have suffered ongoing pain in their necks and backs since the time of the accident, the injuries were not "serious injuries" as defined by law.

31. Respondent produced seven letters attesting to his moral character and/or fitness to practice law.

32. Respondent has expressed he is sincerely remorseful for his conduct in both incidents.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Disciplinary Enforcement.

1. Respondent's convictions for accidents involving death or personal injury and driving under the influence constitute a per se ground for discipline pursuant to Pa.R.D.E. 203(b)(1).

IV. DISCUSSION

This matter is before the Board on a Petition for Discipline. The Petition was filed after this matter was referred to the Disciplinary Board by Order of the Supreme Court of Pennsylvania dated March 28, 2000. The Petition charged Respondent with violation of Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement based on his conviction in 1999 for accidents involving personal injury or death and his conviction in 1994 for driving under the influence. Respondent failed to report either of these convictions to the Secretary of the Disciplinary Board as required by Pa.R.D.E. 214 (a).

As with all disciplinary matters that come before this Board predicated on a criminal conviction, the sole issue to be resolved is the extent of discipline to be imposed on Respondent. Office of Disciplinary Counsel v. Eilberg, 497 Pa. 388, 441 A.2d 1193 (1982). Consideration is to be given to any aggravating or mitigating circumstances. Id.

In 1994 Respondent was convicted of DUI. He was observed crossing over into the southbound lane while heading northbound on []. When pulled over by the police, he was observed to show signs of intoxication. His blood alcohol test indicated a blood alcohol content of .21. Respondent pleaded guilty to one count of DUI and was sentenced to a thirty-day to one year term of incarceration.

In 1999 Respondent was involved in a hit and run accident. He struck the rear of a vehicle stopped in his lane of traffic. The vehicle spun and landed in the opposite lane. Respondent's vehicle crossed the right lane and came to rest on the berm. Respondent then proceeded to drive away from the scene. The occupants of the struck vehicle have allegedly received soft tissue injuries. The state police attempted to contact Respondent that day but he was not home. The police impounded the car. Respondent called the police barracks the following morning and initially advised the officer that he was not the driver of the vehicle. Subsequently, Respondent admitted that he was involved in the accident. Respondent pleaded guilty to one count of accidents involving personal injury or death and was sentenced to intermediate punishment for one year, including a two week period to be served in the outmate restrictive intermediate punishment program. His driving license was suspended for one year.

Respondent testified at the disciplinary hearing that although he admits his involvement in the accident, he does not remember hitting the other vehicle. He was not paying attention as he was operating his vehicle and cannot recall the accident. Respondent testified that he had no recollection of the other car at all. He knew he hit something but thought it could be a pole. His head hit the windshield and he received a small brushburn on his forehead. His car received approximately

\$3,000 damage. Respondent did not explain his reason for driving away when he was aware that he had hit something with his car.

Several aggravating factors exist in this matter. Respondent failed to report his convictions to the Secretary of the Disciplinary Board. Lawyers are required to report convictions of crimes punishable by incarceration of one year or more. Respondent explained that he simply did not know of this requirement, nor did his criminal lawyer so advise him. It appears that Respondent was ignorant of the rules and was not trying to evade his responsibilities. In 1989 Respondent was arrested for DUI in [] County. He entered the Accelerated Rehabilitative Disposition program and lost his driver's license for six months. As this was an arrest resulting in ARD, Respondent was not required to report this circumstance to the Disciplinary Board.

The case law indicates that private discipline has been imposed in situations involving DUI convictions, as in the matter of In re Anonymous No. 73 DB 97, 47 Pa. D. & C. 4th 526 (1998). In that case the attorney was convicted of driving under the influence of alcohol. He struck a parked vehicle that was occupied. No injuries were sustained by the occupants. He timely reported his conviction to the Disciplinary Board. The attorney had two prior DUI convictions; however, they occurred prior to the attorney's admission to the bar, so the Board did not place weight on these convictions. The Board decided that a penalty harsher than a private reprimand was not warranted because there was no injury involved and the attorney timely reported his conviction to the Board. The attorney's expression of remorse and lack of prior discipline also gave weight to the Board's decision that the misconduct did not require public discipline.

In another matter, an attorney was convicted of DUI after he drove his vehicle in the wrong direction on a one-way street. No accident occurred and no injuries resulted. The Board determined that a private reprimand was warranted, as the attorney did not harm anyone else and he had an unblemished disciplinary record. In re Anonymous No. 62 DB 91, 22 Pa. D. & C. 4th 187 (1993).

In the instant matter, a more stringent sanction than a private reprimand is warranted, as Respondent was convicted of two serious offenses, DUI and leaving the scene of an accident. He did not report his convictions and he did not adequately express remorse or an understanding of the nature of the hit and run accident. The occupants of the vehicle Respondent struck have alleged that they received soft tissue injuries. The hit and run coupled with the DUI in 1994 compound the seriousness of Respondent's disciplinary problems. Although these convictions did not implicate Respondent's clients or law practice, they are of the type that warrant discipline. The Board is persuaded that a public censure is the appropriate discipline to address the misconduct engaged in by Respondent.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], receive a Public Censure from the Supreme Court of Pennsylvania.

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: _____
John E. Iole, Member

Date: September 21, 2001

Board Member Watkins dissented and would recommend a Private Reprimand with two years probation with a sobriety monitor.

Board Members Schultz, Donohue and Cunningham did not participate in the April 18, 2001 adjudication.

PER CURIAM:

AND NOW, this 20th day of November, 2001, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 21, 2001 it is hereby

ORDERED that [Respondent] be subjected to PUBLIC CENSURE by the Supreme Court.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E