

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 193, Disciplinary Docket  
Petitioner : No. 3 - Supreme Court  
:  
:  
v. : No. 41 DB 1996 - Disciplinary  
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:  
:  
:  
[ANONYMOUS], : Attorney Registration No. []  
:  
Respondent : ([])

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

Respondent, [], pleaded guilty on January 12, 1995 to one count of Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. '1341 and 18 U.S.C. '2. He was sentenced to three years probation, restitution of \$5,500, and a fine of \$1,000. Respondent was placed on temporary suspension by the Supreme Court on April

24, 1996 and this matter was referred to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E.

A Petition for Discipline was filed against Respondent by Office of Disciplinary Counsel on May 9, 1996, based on Respondent's criminal conviction. A hearing was held on July 22, 1996 before Hearing Committee [] comprised of Chairperson [], Esquire, and Members [], Esquire, and [], Esquire. Respondent was represented by [], Esquire. Petitioner was represented by [], Esquire.

The Committee filed a Report on November 12, 1996 and recommended a twenty-one month suspension effective April 24, 1996. Respondent filed a Brief on Exceptions on December 3, 1996 and contends that twenty-one months is too long after considering all of the facts of the case. Petitioner filed a Brief Opposing Exceptions on December 19, 1996 and contends that the Committee's recommendation was appropriate. Respondent subsequently requested oral argument, which was granted on December 24, 1996. Oral argument was held before a three member panel of the Board on February 26, 1997.

This matter was adjudicated by the Board at the meeting of March 5, 1997.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now 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 on April 5, 1959 and was admitted to practice law in the Commonwealth of Pennsylvania on December 8, 1993. He was admitted to the practice of law in the State of New Jersey in July 1994. Respondent's registered residential address is []. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. On January 12, 1995, Respondent entered a plea of guilty to one count of Mail Fraud and Aiding and Abetting, in violation of 18 U.S.C. '1341 and 18 U.S.C. '2. He was sentenced to three years probation, restitution of \$5,500, and a fine of \$1,000.

4. Respondent was placed on temporary suspension by Order of the Supreme Court dated April 24, 1996.

5. The incidents leading to the criminal conviction began in May 1989, when Respondent was involved in an automobile accident. He did not initially seek medical treatment, but at the suggestion of an acquaintance, [A], Respondent went to see Dr. [B], D.O.

6. At the same time, Respondent obtained legal representation from his cousin, [C], Esquire.

7. At the time Respondent went to see Dr. [B], he was aware from his conversation with [A] that he would not have to go through a course of treatment, yet his bills to the insurance company would reflect more than one visit. (N.T. 64)

8. After his first visit with Dr. [B] in June 1989, Respondent did not return for further treatment, but he allowed Attorney [C] and Dr. [B] to submit false medical reports and bills to [D] Insurance.

9. These documents indicated that Respondent received 35 physical therapy sessions from May 1989 through September 1989.

10. As a result of this scheme, [D] issued a \$5,500 check payable to Respondent and \$3,043 payable to Dr. [B] for Respondent's fraudulently alleged medical expenses. Respondent's lawyer, [C], received \$1,000 from the \$5,500 check and Respondent kept \$4,500.

11. This fraud took place prior to Respondent entering law school and being admitted to the bar in December 1993.

12. Respondent was confronted about the scheme by Postal Inspectors in October 1994 and admitted his culpability. He cooperated with the investigation and volunteered to make restitution.

13. Respondent currently is employed as a painter and has timely paid his restitution according to a schedule prepared by his probation officer.

14. Respondent was suspended for eighteen months effective May 16, 1995 by the State of New Jersey as he was licensed to practice in that State at the time of his conviction.

15. Respondent has no prior history of discipline in Pennsylvania.

16. Respondent's character witnesses testified that Respondent's actions were an aberration and he is an honorable person and a good attorney.

### III. CONCLUSIONS OF LAW

Respondent's conviction for violation of 18 U.S.C. '1341 and 2 is a conviction under Rule 214(d), Pa.R.D.E.

Respondent's conviction constitutes a per se individual basis for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

### IV. DISCUSSION

Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement provides that conviction of a serious crime shall be grounds for discipline. The dispositive issue before the Disciplinary Board in the case at bar is the extent of discipline to be

imposed on Respondent for his conviction for Mail Fraud and Aiding and Abetting. Office of Disciplinary Counsel v. Costigan, 526 Pa. 16, 584 A.2d 296 (1990). In cases where the disciplinary proceeding arises out of a criminal conviction, the inquiry must focus on whether the Respondent's character, as evidenced by his conduct, makes him unfit to practice law from the standpoint of protecting the public and the court system. Office of Disciplinary Counsel v. Casety, 511 Pa. 177, 512 A.2d 607 (1986).

Respondent's misconduct took place in May 1989. At that time, he was not an attorney nor in law school. Respondent was involved in a minor car accident and was encouraged by an acquaintance, [A], to seek treatment with Dr. [B]. Respondent was apprised by [A] that he would only have to go for one visit, but the bills would reflect that he underwent a series of visits. Armed with this knowledge, Respondent saw Dr. [B] on one occasion in June 1989. Medical records and bills submitted to [D] Insurance reflected that Respondent underwent thirty-five treatments. On the basis of these documents [D] Insurance issued a check in the amount of \$5,500 payable to Respondent. Respondent kept \$4,500 and gave \$1,000 to his attorney, [C], who was also part of the scheme.

Respondent testified that when he was indicted, he decided that the best course of action was to come forth and admit what he had done and accept his punishment. Respondent described the devastating effects his conduct had on his life. He felt that he let his wife and family down. At present, Respondent is working as a painter and trying to put the episode behind him. He is making timely payments towards his restitution. Respondent testified that his misconduct was an aberration, and it was inconceivable that he could ever engage in such conduct again. Respondent's only explanation for his actions was that he saw the opportunity to make some easy money.

Respondent's testimony evidences that he feels a great deal of remorse for his actions; however, his present contrition cannot ameliorate the fraudulent activity in which he engaged in the past. Even though he was not an attorney at the time of the misconduct, he was astute enough to appreciate the depth and degree of the criminal activity. Respondent was aware before he went to Dr. [B] that fraud would occur. He made the choice to go in spite of this knowledge. This choice reflects a disturbing lack of ethical judgment on Respondent's part and places in issue his fitness as an attorney to make ethically sound decisions for his clients.



The Board is cognizant that Respondent has no prior history of discipline and that this misconduct took place in 1989 when he was not a representative of this profession. The car accident was not staged in order to commit fraud on the insurance company. Respondent appears to have engaged in the scheme after encouragement by his acquaintance [A]. While, certainly, Respondent's easy acquiescence to partake in the scheme belies his questionable judgment, it is apparent to the Board that Respondent did not orchestrate the scheme. Respondent produced character witnesses who affirmed that Respondent's actions were uncharacteristic. These facts, in addition to Respondent's remorse, persuade the Board to recommend an eighteen month period of suspension, retroactive to April 14, 1996.

V.           RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be suspended from the practice of law for a period of eighteen (18) months, retroactive to April 14, 1996.

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: \_\_\_\_\_  
Thomas J. Elliott, Member

Date: May 23, 1997

Vice-Chairman Saltz recused.

Board Members Carson and Caroselli did not participate in the March 5, 1997 adjudication.

O R D E R

PER CURIAM:

AND NOW, this 15th day of July, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 23, 1997, it is hereby

ORDERED that [RESPONDENT] be and he is SUSPENDED from the Bar of this Commonwealth for a period of eighteen (18) months, retroactive to April 24, 1996, 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.