

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1599 Disciplinary Docket No. 3
Petitioner :
: No. 44 DB 2010
v. :
: Attorney Registration No. 77883
JOHN H. LOWERY, III, :
Respondent : (Fayette County)

ORDER

PER CURIAM:

AND NOW, this 25th day of October, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 9, 2011, it is hereby

ORDERED that John H. Lowery, III, is suspended from the Bar of this Commonwealth for a period of eighteen months 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 10/25/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1599 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 44 DB 2010
v.	:	
	:	Attorney Registration No. 77883
JOHN H. LOWERY, III	:	
Respondent	:	(Fayette 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

By Order of June 16, 2010, the Supreme Court referred the criminal conviction of John H. Lowery, III, for driving under the influence of alcohol or controlled substance and driving on roadways laned for traffic and his conviction for disorderly conduct and public drunkenness to the Disciplinary Board pursuant to Rules 214(f)(1) and (g), Pa.R.D.E. On July 13, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent. Respondent did not file an Answer.

A disciplinary hearing was held on October 27, 2010, before a District IV Hearing Committee comprised of Chair Leonard J. Marsico, Esquire, and Members Henry M. Casale, Esquire, and Michele S. Dawson, Esquire. Petitioner presented six witnesses and offered nine exhibits. Respondent appeared pro se and presented no witnesses other than his own testimony, and offered no exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on February 28, 2011, concluding that Respondent violated the Rules as charged in the Petition for Discipline, and recommending that he be suspended for a period of 18 months.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on April 13, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 is John H. Lowery, III. He was born in 1970 and was admitted to practice law in the Commonwealth in 1996. His attorney registration mailing address is 112 Washington Drive, Fayette City, PA 15438. Respondent has no history of discipline. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. In the Court of Common Pleas of Washington County, Respondent was charged with the following offenses:

(a) Count 1: Driving Under the Influence of Alcohol or Controlled Substance, in violation of 75 Pa.C.S. Section 3802(a)(1), an ungraded misdemeanor;

(b) Count 2: Driving Under the Influence of Alcohol or Controlled Substance: 0.16 percent or higher (Second Offense, Tier 3) in violation of 75 Pa.C.S. Section 3802(c), a misdemeanor of the first degree;

(c) Count 3: Driving on Roadways Laned for Traffic, in violation of 75 Pa.C.S. Section 3309, a summary offense;

(d) Count 4: Careless Driving, in violation of 75 Pa.C.S. Section 3714, a summary offense;

(e) Count 5: Registration and Certificate of Title Required, 75 Pa.C.S. Section 1301, a summary offense; and,

(f) Count 6: Operation of Vehicle Without Official Certificate of Inspection, in violation of 75 Pa.C.S. Section 4703.

4. In the instant matter, Respondent's amount of alcohol by weight in the blood by chemical testing was .21%.

5. On August 13, 2008, Respondent, while represented by counsel, entered a plea of guilty to Driving Under the Influence of Alcohol or Controlled Substance (Second Offense, Tier 3) and the summary offense of Driving on Roadways Laned for Traffic.

6. By Order of Court dated August 13, 2008, Respondent was sentenced by the Honorable John F. DiSalle, of the Court of Common Pleas of Washington County to Intermediate Punishment for a period of 18 months, with the first six months on electronic home monitoring followed by standard probation, and to undergo a drug and alcohol evaluation.

7. The conviction of Respondent for DUI (Second Offense) is a "serious crime" as defined by Rule 214(i), Pa.R.D.E.

8. Respondent did not report his conviction to the Secretary of the Board, as required by Rule 214(a), Pa.R.D.E.

9. On September 26, 2008, the Fayette County Adult Probation Office accepted supervision of Respondent's probation from Washington County.

10. The transfer was a courtesy transfer of supervision from Washington County.

11. Respondent was to report once a month in person to his probation officer in the Fayette County Adult Probation Department.

12. Respondent did not report in person as he was required to do.

13. Respondent's Fayette County Probation Officer sent Respondent violation notices on December 10, 2008 for Respondent's failing to pay his house arrest costs and another violation notice on July 23, 2009 for failing to pay house arrest fees as instructed.

14. Respondent failed to report for the month of May 2009.

15. On June 21, 2009, Lee DeMarco, Respondent's probation officer, left a message for Respondent to report as soon as possible.

16. On June 24, 2009, Mr. DeMarco and a police officer made a home visit to Respondent's residence, where Mr. DeMarco placed a business card in the door, instructing Respondent to report to the Probation Office.

17. Respondent did not report to the Probation Office as required, and on June 25, 2009, Mr. DeMarco returned Respondent's probation supervision to Washington County insofar as "defendant failed to report and pay as instructed."

18. As a condition of Respondent's Washington County probation, which he signed on August 13, 2008, he was not permitted to possess a dangerous weapon, he was not to display assaultive, threatening, or harassing behavior, and he was not to possess, purchase, or use any alcoholic beverages.

19. As a condition of Respondent's Fayette County probation, which he signed on September 26, 2008, he was to "faithfully obey" all federal, state, county and criminal laws and municipal ordinances, "immediately notify" his probation officer of any arrest, citation, receipt of summons or investigation by "any law enforcement agency" and abstain from the use of alcoholic beverages.

20. Respondent remained on probation until February 13, 2010.

21. Respondent was not permitted to use alcohol while he was on probation, but he admitted on cross-examination that he did use alcohol.

22. On October 23, 2009, Respondent was involved in an incident with Samuel Clark in which the two began arguing. Mr. Clark stabbed Respondent and Respondent retaliated by stabbing Mr. Clark.

23. Although the incident resulted in an investigation by a law enforcement agency, Respondent did not report that investigation to his probation officer.

24. In Allegheny County on November 9, 2007, Respondent was involved in a physical altercation with another male individual in Pittsburgh.

25. At that time, David Young, a Pennsylvania State Constable, observed the altercation.

26. Constable Young was in full uniform, identified himself as a law enforcement officer to Respondent and the other individual, and gave verbal commands to the two to stop fighting.

27. Constable Young identified Respondent as the aggressor.

28. The male individual with whom Respondent was fighting was in a defensive stance at the time Constable Young approached.

29. Constable Young approached Respondent, gave additional verbal commands to stop fighting and tried to pull Respondent back.

30. Respondent then stood up and approached the Constable in an aggressive manner and Constable Young attempted to draw his taser.

31. Constable Young removed the taser from his holster, but Respondent was swinging wildly and knocked the cartridge off the end of the taser.

32. Constable Young was eventually able to handcuff Respondent and flag down City of Pittsburgh Police who were in the vicinity.

33. The Constable remained in the area while police and paramedics responded and witnessed Respondent being defiant and verbally abusive to two female police officers.

34. The police officers testified that Respondent appeared to be highly intoxicated and was very belligerent towards the police, yelling and swearing obscenities.

35. Respondent threatened all of the witnesses' jobs as he claimed he knew District Attorney Stephen Zappala and the judges.

36. Respondent was asked numerous times by the officers to quiet down but he refused and continued to use extremely vulgar and crude language towards the police officers.

37. Respondent acted in a very aggressive manner by attempting to head butt the paramedic who was trying to give medical attention to Respondent's bleeding hand.

38. Respondent was charged with simple assault, aggravated assault, disorderly conduct and public drunkenness.

39. On January 7, 2008, Respondent entered a plea of guilty to the summary offenses of disorderly conduct and public drunkenness.

40. The summary offenses to which Respondent entered his plea of guilty are each punishable by imprisonment of a maximum of 90 days and are not "serious crimes" as defined by rule 214(i), Pa.R.D.E.

41. Respondent was not required to report his conviction of these summary offenses.

42. Respondent testified at the disciplinary hearing.

43. He described his actions as "bad decisions."

44. Respondent did not express sincere remorse for his misconduct.

III. CONCLUSIONS OF LAW

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

1. Respondent's plea of guilty to the crime of Driving Under the Influence of Alcohol or Controlled Substance (Second Offense, Tier 3) constitutes the conviction of a serious crime as defined by Rule 214(i), Pa.R.D.E., and is an independent basis for discipline pursuant to Pa.R.D.E. 203(b)(1).

2. Respondent's pleas of guilty to the crimes of Driving on Roadways Laned for Traffic, Disorderly Conduct and Public Drunkenness do not constitute convictions of serious crimes as defined by Rule 214(i), Pa.R.D.E., but constitute an independent basis for discipline pursuant to Pa.R.D.E. 203(b)(1).

3. Respondent failed to report his conviction of a serious crime to the Office of the Secretary of the Board, pursuant to Rule 214(a), Pa.R.D.E.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of Respondent's criminal convictions in two separate matters. Respondent did not file an Answer to Petition for Discipline and subsequently confirmed that he admitted the factual allegations as set forth in the Petition.

Respondent was convicted in Washington County in August 2008 of driving under the influence, second offense, a serious crime under the Rules of Disciplinary Enforcement, and the offense of roadways laned for traffic, a summary offense. In January

2008, Respondent was convicted of the summary offenses of disorderly conduct and public drunkenness in Allegheny County.

When an attorney has been convicted of a serious crime, "the sole issue to be determined shall be the extent of the final discipline to be imposed." Rule 214(f)(1), Pa.R.D.E. In any disciplinary case arising from a criminal conviction, the events surrounding the criminal conviction must be taken into account when determining an appropriate measure of discipline. Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999).

The events surrounding Respondent's convictions demonstrate aggravating circumstances. Following Respondent's DUI conviction, which he failed to report to the Board, he was placed on intermediate punishment for 18 months, followed by probation supervised by Washington County. However, as an accommodation to Respondent, the supervision of the probation was transferred to Fayette County. Respondent failed to report to the probation department in Fayette County, despite being reminded of his obligations. Fayette County ultimately returned Respondent's probation supervision to Washington County.

Additionally, Respondent admitted that he used alcohol in violation of the conditions of his probation, and he engaged in an incident in 2009 which resulted in Respondent being stabbed and Respondent then stabbing the person in retaliation. Respondent did not report this incident to his probation officer.

In November 2007, some four months after Respondent's arrest in Washington County for DUI, but prior to his conviction in that matter, Respondent was involved in a physical altercation with another male in Pittsburgh. Respondent was out of control, swearing, screaming and acting defiant to a constable, police officers, and a

paramedic. His conduct was extreme and disturbing in that he resorted to violence against law enforcement officers engaged in their official duties. This behavior resulted in a conviction for summary disorderly conduct and public drunkenness.

Respondent appeared at the disciplinary hearing and testified on his own behalf. He did not provide any mitigating factors, nor did he reasonably explain his conduct, other than referring to some "bad decisions" on his part. Respondent did not express sincere remorse for his actions.

In the matter of Office of Disciplinary Counsel v. Jeffrey T. Spangler, 69 Pa. D. & C. 4th 254 (2004), Mr. Spangler was convicted of simple assault and recklessly endangering another person. In two separate incidents, Mr. Spangler was involved in violent confrontations with other persons. On the morning of the disciplinary hearing, Mr. Spangler engaged in a third incident with a woman while on his way to the hearing. His misconduct resulted in a suspension of 18 months.

In the instant matter, the Hearing Committee has recommended a suspension for a period of 18 months. The totality of the circumstances in this matter supports this recommendation. Respondent engaged in serious criminal activity with attendant aggravating circumstances, which he cannot excuse simply by referring to these incidents as "bad decisions." Respondent's actions render him unfit to practice law at this time.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, John H. Lowery, III, be Suspended from the practice of law for a period of 18 months.

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: 
Mark S. Baer, Board Member

Date: June 9, 2011

Board Member Jefferies did not participate in the adjudication.