

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1272 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 66 DB 2006
v.	:	
	:	Attorney Registration No. 25123
ROBERT A. KRUG,	:	
Respondent	:	(York County)

ORDER

PER CURIAM:

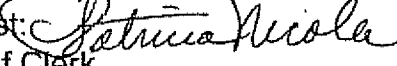
AND NOW, this 24<sup>th</sup> day of September, 2007, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated June 14, 2007, it is hereby

ORDERED that Robert A. Krug be subjected to public censure by the Supreme Court.

It is further ORDERED that the expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent.

A True Copy Patricia Nicola

As of: September 24, 2007

Attest:   
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 66 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 25123
	:	
ROBERT A. KRUG	:	
Respondent	:	(York 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 7, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Robert A. Krug, Respondent. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of his representation of a client. Respondent filed an Answer to Petition for Discipline on May 10, 2006.

A disciplinary hearing was held on July 24, 2006, before a District III Hearing Committee comprised of Chair Lawrence B. Abrams, III, Esquire, and Members Philip J. Murren, Esquire, and Daniel J. Distasio, Jr., Esquire. Respondent appeared pro se. Petitioner introduced a Stipulation as to Facts, Documents and Conclusions of Law into evidence. In addition, Petitioner introduced exhibits and presented the testimony of one witness. Respondent did not call any witnesses or testify on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 4, 2006, finding that Respondent committed professional misconduct and recommending that he be publicly censured before the Supreme Court of Pennsylvania.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on March 20, 2007.

## II. FINDINGS OF FACT

The Board makes the following findings of fact

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg PA 17101, 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 was born in 1951 and was admitted to practice law in the Commonwealth in 1977. He maintains his office at 53 East Canal Street, P.O. Box 155, Dover, PA 17315.

3. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

4. Respondent has a history of discipline; he received a private reprimand in 2002 for violation of Rules of Professional Conduct 1.3, 1.4(a), 1.4(b), 4.1(a) and 8.4(c).

5. In approximately 2001, Tonda L. Sterner retained Respondent to represent her in a divorce. There were no custody or support issues; the only issue was equitable distribution.

6. On March 14, 2002, Respondent filed a Complaint in Divorce in the Court of Common Pleas of York County.

7. On May 30, 2002, Respondent filed his client's Affidavit pursuant to 23 Pa.C.S. §3301(d).

8. On November 19, 2002, Respondent filed a Petition for Bifurcation.

9. On November 26, 2002, the Court issued a Rule to Show Cause why the Divorce should not be bifurcated. The Rule was returnable on January 14, 2003, before the Honorable G.M. Snyder.

10. On January 14, 2003, a stipulation was entered regarding the bifurcation, which stated: "1. the parties agree and stipulate that a Decree in Divorce may be entered between the parties,...2. All economic issues, including equitable distribution of property, alimony, alimony pendente lite, counsel fees, costs and expenses,...are hereby reserved, to be decided upon the appointment of a Master for this purpose by either party."

11. At the hearing on the Rule to Show Cause on January 14, 2003, Mark L. Houska, the husband of Ms. Sterner, agreed orally to a division of the marital property. He agreed to go to Respondent's office to sign an agreement concerning the division of property.

12. On January 14, 2003, Judge Snyder issued an order dismissing without prejudice the Petition for Bifurcation, based on the fact that the parties amicably resolved the issues raised by the Petition for Bifurcation and indicated to the court that a stipulation would be filed that same day.

13. After orally agreeing to a division of the marital property, Mr. Houska failed to go to Respondent's office to sign the Equitable Distribution Agreement.

14. On January 31, 2003, a Certificate of Service was filed on the Notice of Intention to Request Entry of the §3301(d) divorce.

15. On February 4, 2003, Judge Snyder's Order denying the Petition for Bifurcation without prejudice, which had been entered on January 14, 2003, was filed and docketed in the Clerk of Court's office.

16. On February 4, 2003, Notice of the Judge's Order denying bifurcation was given pursuant to Pa.R. Civ. P. 236. The Notice was faxed to Respondent on February 4, 2003, and mailed to the defendant on February 5, 2003.

17. On February 20, 2003, the records were transmitted to the court for final disposition.

18. On February 24, 2003, the divorce of Tonda Sterner and Mark Houska was granted.

19. In May 2003, Mr. Houska offered to sell his half of the marital real estate to Ms. Sterner for \$5,000.

20. Ms. Sterner proposed that she give Mr. Houska \$3,000 at that time and an additional \$2,000 in July 2003.

21. This proposal was not acceptable to Mr. Houska. He counter proposed that he pay Ms. Sterner \$3,000 for her interest in their marital property.

22. Ms. Sterner rejected this proposal.

23. Toward the end of July 2003, Ms. Sterner advised Respondent that she wanted the equitable distribution matter to be scheduled before the divorce master.

24. Respondent advised Ms. Sterner that she would need to fill out some paperwork and pay him an additional \$300 to get a hearing scheduled on the equitable distribution.

25. At the time that Respondent requested an additional fee, Respondent knew or should have known that equitable distribution could no longer be raised since the

divorce had been finalized by court decree five months earlier and the petition for bifurcation had been denied.

26. Per Respondent's request, Ms. Sterner filled out paperwork he had given her in order to pursue a hearing on equitable distribution.

27. A check in the amount of \$300 plus the paperwork was delivered to Respondent's office sometime in August 2003.

28. Ms. Sterner spoke to Respondent in August 2003 and he advised her that he would file the paperwork as soon as possible, but it would take a few months to get a hearing before the master.

29. In February 2004, Ms. Sterner became aware that Mr. Houska was planning on selling the marital real estate, and called Respondent to find out the status of the equitable distribution hearing.

30. Respondent told Ms. Sterner that Mr. Houska had called him about a week prior with an offer to settle the property issues.

31. After hearing the offer, Ms. Sterner rejected it and asked Respondent when he thought the hearing would be held.

32. Respondent asked Ms. Sterner if she still wanted a hearing, and she told him that she did.

33. Ms. Sterner called Respondent in April or May of 2004 to find out the status of her hearing.

34. At that time Respondent advised Ms. Sterner that the court had changed the paperwork necessary to file for an equitable distribution hearing. He then advised her that he would have to submit new paperwork to the court.

35. Respondent's statement to Ms. Sterner about submitting new paperwork was a misrepresentation, as he knew or should have known that he had not filed a motion or petition to schedule a hearing; the court would not schedule such a hearing since the divorce had been finalized without an order bifurcating the divorce.

36. Ms. Sterner telephoned Respondent in June 2004 and asked about a court date for an equitable distribution hearing.

37. Respondent advised Ms. Sterner that he had not heard anything from the court.

38. Respondent's statement was misleading.

39. Ms. Sterner continued to call Respondent about her case, and he continued to give Ms. Sterner misleading information. At one point Respondent informed Ms. Sterner that the reason for the delay was that the York County Courthouse had moved.

40. Around the end of spring 2005, Ms. Sterner was advised that Mr. Houska had sold his half of the property to someone else.

41. Ms. Sterner called Respondent to advise him of this latest information. Respondent told Ms. Sterner that Mr. Houska could not sell his interest in the marital property.



42. Respondent advised Ms. Sterner that the divorce master had sent him a list of dates from which she was to choose, and that Ms. Sterner would be getting a hearing date within the next few weeks.

43. Respondent's statement was a misrepresentation since no paperwork for an equitable distribution had ever been filed and no list of dates provided by the master.

44. In July 2005, when she had not received a hearing date, Ms. Sterner again called Respondent. Respondent advised her that since she had not heard from him, she could assume that the court had not given him a date. Respondent then advised Ms. Sterner that he would contact her when he got a hearing date.

45. On or about September 20, 2005, Ms. Sterner called the divorce master's office. She advised the court personnel that Respondent had filed for a hearing on equitable distribution matters in August 2003 and it still had not been scheduled. The personnel checked the records and found that Respondent had not filed a petition or motion for an equitable distribution hearing.

46. Ms. Sterner was further informed by the divorce master that there were no records of any filings since Ms. Sterner's divorce was granted on February 24, 2003.

47. The docket entries do not reflect that Respondent filed any paperwork after the decree of divorce was granted.

48. On March 2, 2005, a deed was filed in the Recorder of Deeds Office of Cambria County, Pennsylvania, which shows that Mark Houska granted his one-half interest in the former marital property to Sheila Gaither for consideration of a dollar.

49. Respondent did nothing to resolve the equitable distribution issues for his client.

50. As a result of Respondent's failure to pursue his client's claims, she did not receive her one-half interest in the marital property, valued at approximately \$11,000.

51. Respondent cooperated with Office of Disciplinary Counsel.

52. Respondent apologized to Ms. Sterner and appeared remorseful.

53. At a conference after the disciplinary hearing, Respondent met with Ms. Sterner and Petitioner to discuss restitution. Respondent and Ms. Sterner agreed that a payment of \$5,000 would be fair.

54. By letter dated August 15, 2006, Respondent sent Ms. Sterner a check in the amount of \$5,000. Ms. Sterner confirmed with Petitioner that the check cleared her bank.

### III. CONCLUSIONS OF LAW

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

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a) – A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

3. RPC 1.4(b) – A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

4. 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 charging Respondent with professional misconduct arising out of allegations that he neglected a matter and made misrepresentations to his client. Respondent and Petitioner entered into a comprehensive Stipulation as to the facts and conclusions of law in this matter, with Respondent admitting that he violated the Rules of Professional Conduct as charged in the Petition for Discipline.

Respondent failed to diligently represent his client's interests in her equitable distribution claim. After Ms. Sterner's husband failed to sign the marital settlement agreement, Respondent had a duty to protect his client and could have taken several courses of action, but instead did nothing. He compounded his inaction by either failing to keep his client informed about her case, or repeatedly making excuses for the reasons that the equitable distribution hearing had not been scheduled. Respondent never told Ms. Sterner that a hearing had not been scheduled; Ms. Sterner contacted the divorce master's office after many months had passed without satisfaction and was informed that nothing had been filed.

It is the many misrepresentations made to Ms. Sterner by Respondent that make this case troubling. Instead of being honest with his client, Respondent perpetuated the false idea that Ms. Sterner's legal issues were being appropriately handled. Respondent consistently disregarded his responsibilities to his client.

Respondent has been practicing law for nearly 30 years. He previously received a private reprimand in 2002 for similar misconduct. He has taken responsibility for his actions by apologizing to his client and making restitution, as well as showing remorse. As this case involved a single client and has resolved itself to that client's satisfaction, the Board is persuaded that a suspension is not warranted; however, due to Respondent's similar history of misconduct, a public censure will serve to impress upon him the serious nature of his responsibilities to his clients.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Robert A. Krug, be subjected to a Public Censure.

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: 

Robert L. Storey, Board Member

Date: June 14, 2007

Board Members O'Connor and Suh dissented and would recommend a Private Reprimand.

Board Member Brown dissented and would recommend a six month suspension.

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 66 DB 2006

Petitioner :

v. :

: Attorney Registration No. 25123

ROBERT A. KRUG :

Respondent : (York County)

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DISSENTING OPINION

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES  
OF THE SUPREME COURT OF PENNSYLVANIA:

With respect to the majority I disagree that this matter calls for a public censure.

In this case we are dealing with a seasonal, experienced older lawyer who appears to have a fairly well defined sole practice.

The only blemish on the nearly thirty-year record of this gentleman is a private reprimand in 2002.

For some reason Attorney Krug just could not face the reality of Ms. Sterner's issues. Either counsel didn't know the applicable law or failed to give this matter the attention it deserved. In any case, he does not appear to be a bad lawyer.

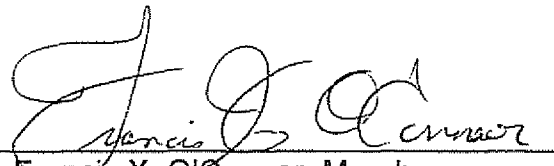
When faced with the realities of this situation counsel did not deny his mistakes. He accepted full responsibility for his lack of attention, misstatements and errors. He expressed genuine remorse, paid from his own pocket full and fair compensation to the client and fully cooperated with the office of disciplinary counsel.

I believe mistakes can be made, that sometimes attorneys procrastinate on cases they are uncomfortable with and that even good lawyers need to be reminded of their responsibilities.

In my opinion, this is not a Supreme Court case. A private reprimand is sufficient and if the course of conduct continues counsel should be advised he could suffer a far greater interference with his ability to practice law.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

By:   
Francis X. O'Connor, Member

Date: June 14, 2007