

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2393 Disciplinary Docket No. 3
: :
Petitioner : No. 81 DB 2016
: :
v. : Attorney Registration No. 17300
: :
WILLIAM JAMES HELZLSOUER : (Allegheny County)
: :
Respondent :

ORDER

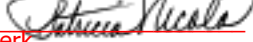
PER CURIAM

AND NOW, this 27th day of September, 2017, upon consideration of the Report and Recommendations of the Disciplinary Board, William James Helzlsouer is suspended from the Bar of this Commonwealth for a period of three months. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

Respondent's request for oral argument is denied. See Pa.R.D.E. 208(e)(4). Respondent's Petition for Review is dismissed as untimely.

Justice Baer did not participate in the consideration or decision of this matter.

A True Copy Patricia Nicola
As Of 9/27/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 81 DB 2016 |
| Petitioner | : | |
| | : | |
| v. | : | Attorney Registration No. 17300 |
| | : | |
| WILLIAM JAMES HELZLSOUER | : | |
| Respondent | : | (Allegheny 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") submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on May 26, 2016, the Office of Disciplinary Counsel (ODC) charged William James Helzlsouer, Respondent, with violating the Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.") arising from his representation of his clients in a civil action. On June 22, 2016, Respondent filed an Answer to Petition for Discipline.

A disciplinary hearing was held on September 13, 2016, before a District IV Hearing Committee comprised of Chair Neva L. Stotler, Esquire, and Members Kirsten J.

Sigurdson, Esquire, and Anne N. John, Esquire. Petitioner's Exhibits ("PE") Nos. 1 through 14 were offered and admitted into evidence. Administrative Exhibits ("AE") 1 and 2, along with the Stipulation of Facts marked as AE 3, were offered and admitted into evidence. Respondent, who represented himself, testified on his own behalf. He offered no other witnesses or evidence. At the conclusion of the hearing, the record was closed.

On October 24, 2016, Petitioner filed a brief with the Hearing Committee. Respondent elected not to respond to Petitioner's brief. The Hearing Committee filed a Report on January 27, 2017, concluding that Respondent violated RPC 1.1 and 1.3, and Pa.R.D.E. 203(b)(7), as charged in the Petition for Discipline, and recommending that he receive a public censure.

The parties did not take exception to the Hearing Committee's recommendation.

The Board adjudicated this matter at the meeting on April 28, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, ODC, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the rules.

2. Respondent is William James Helzlsouer. He was born in 1948 and admitted to practice law in the Commonwealth of Pennsylvania in 1973. His attorney registration address is 302 Euclid Avenue, Dravosburg, Allegheny County, PA 15034.

3. Respondent has a prior record of discipline:

a. On December 8, 2010, a private reprimand was administered for Respondent's violations of RPC 1.3, 1.4(a)(3) and 1.4(a)(4). This discipline was based on Respondent's lack of diligence and communication in handling an estate matter. PE 13.

b. By Order of the Supreme Court dated June 5, 2012, Respondent was suspended on consent for a period of three months. The suspension was stayed in its entirety with a period of probation for three months, with a practice monitor. The suspension was based on Respondent's violation of RPC 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.5(b), 1.5(c), 1.16(d), and 8.4(d) for neglect, failure to communicate, and other misconduct in three client matters. Respondent completed his probation in 2012. PE 14

4. In July 2014, Laura Bivona and Kelly Davis ("Plaintiffs") retained Respondent to represent them in a civil action against Smith Grove Campground, Inc. AE 3, *Stipulation*, ¶ 4.

5. At or about the time of Respondent's retention, Plaintiffs paid him the sum of \$1,200. *Id.* ¶ 5.

6. On July 23, 2014, in the Court of Common Pleas of Butler County, at docket number 2014-10667, Respondent filed a Complaint to Enjoin Non-Judicial Eviction

of Plaintiffs for Breach of Contract and Exemplary Damages against Smith Grove Campground, Inc. *Id.* ¶ 6.

7. Respondent filed an Amended Complaint on July 25, 2014. *Id.* ¶ 7.

8. On August 6, 2014, counsel for Defendant filed preliminary objections to the complaint. *Id.* ¶ 8.

9. By Order dated September 24, 2014, the Butler County Court of Common Pleas granted Defendant's preliminary objections in part, dismissing the claim to enjoin the non-judicial eviction of Plaintiffs and the claim for exemplary damages. *Id.* ¶ 9.

10. On October 28, 2014, Defendant filed an Answer to Plaintiffs' Amended Complaint and New Matter and Counterclaim. Respondent failed to file a reply to Defendant's New Matter and Counterclaim on behalf of Plaintiffs, and never filed a second Amended Complaint following the partial grant of Defendant's preliminary objections. *Id.* ¶ 10-11.

11. On October 28, 2014, Defendant filed a notice of Service of Requests for Admissions, Interrogatories and Request for Production of Documents and served Respondent with the documents. *Id.* ¶ 12.

12. Respondent did not file a responsive pleading to the New Matter or Counterclaim and did not file a response on behalf of Plaintiffs to Defendant's Request for Admissions, Interrogatories and Request for Production of Documents. *Id.* ¶ 13.

13. Because Respondent failed to respond to Defendant's Request for Admissions within thirty days from the date of service, all of the Requests for Admissions were deemed admitted, in accordance with Pa. Rule of Civil Procedure 4014. *Id.* ¶ 14.

14. On December 23, 2014, Defendant filed a Motion to Close the Pleadings, which was granted the same day. *Id.* ¶ 15-16.

15. On December 31, 2014, Defendant filed a Praecipe for Reference to Arbitrators and Appointment of Arbitrators, and the case was scheduled for arbitration on March 16, 2015. *Id.* ¶ 18.

16. The arbitration took place on March 16, 2015, with Respondent appearing on behalf of Plaintiffs. The Arbitrators awarded Defendant the amount of \$5,449.97. Nothing was awarded to Plaintiffs. *Id.* ¶ 19-20.

17. On April 15, 2015, Respondent filed a Praecipe for Appeal from Arbitration on behalf of Plaintiffs. *Id.* ¶ 21.

18. On April 16, 2015, the Butler County Court of Common Pleas issued an Order scheduling a pre-trial conference and setting a due date for submission of the parties' pre-trial statements. *Id.* ¶ 22.

19. Although Defendant filed a pre-trial statement, Respondent failed to file one on behalf of Plaintiffs. *Id.* ¶ 23-24.

20. On June 11, 2015, Defendant filed a Motion in Limine arguing, *inter alia*, that based upon Plaintiff's admissions, the issues to be heard at trial should be limited to proof of Defendant's damages and attorney's fees. By Order dated June 11, 2015, the Court granted the motion, precluding Plaintiffs from offering testimony or evidence on any issues outside of the amount of Defendant's damages and the amount of Defendant's attorney's fees. *Id.* ¶ 25-26.

21. On June 24, 2015, a non-jury trial was held on the issues of Defendant's damages and attorney's fees at which time Respondent appeared on behalf of Plaintiffs. *Id.* ¶ 27.

22. On June 24, 2015, Judge Marilyn Horan of the Butler County Court of Common Pleas, issued Background, Findings of Fact, Discussion, Conclusions of Law, and a Decision finding:

a. In favor of Defendant and against Plaintiffs, for all of Plaintiffs' claims against Defendant in the Amended Complaint;

b. In favor of Defendant and against Plaintiffs in the counterclaim filed by Defendant; and

c. Defendant was entitled to an award of \$9,274.63.

Id. ¶ 28-29.

23. Petitioner ODC sent a Letter of Inquiry to Respondent by certified mail dated October 27, 2015, which Respondent received on October 28, 2015. *Id.* ¶ 30.

24. By letter to Petitioner dated November 30, 2015, Respondent requested a thirty-day extension to respond to the Letter of Inquiry, due to personal family problems. *Id.* ¶ 31.

25. On December 1, 2015, Petitioner acknowledged receipt of Respondent's letter, and granted an extension with the expectation that Respondent's response would be received by December 26, 2015. *Id.* ¶ 32.

26. By letter dated December 28, 2015, Respondent indicated that he was "finishing up" his response and needed three additional days to do so. *Id.* ¶ 33.

27. Respondent did not submit a response within the promised three days. *Id.* ¶ 36.

28. On May 26, 2016, Petitioner contacted Respondent to advise him that a Petition for Discipline would be personally served on him. He accepted service. *Id.* ¶ 34-35.

29. On May 31, 2016, Respondent finally submitted a response to ODC's October 27th Letter of Inquiry. *Id.* ¶ 36.

30. Before the Hearing Committee, Respondent testified that he experienced personal problems involving his son during the time frame of his Butler County misconduct. N.T. 17.

31. Then, in March of 2016, Respondent spent four or five days in the hospital with a physical problem, which was resolved after 90 days of treatment. That physical problem and "some other personal problems," were why he delayed responding to ODC's inquiry for seven months. N.T. 18, 21.

32. Petitioner claimed he had worked very hard to avoid personal problems and "resolve all these issues," and he was working very hard to try to keep his practice "in proper perspective". N.T. 18.

33. Respondent testified that he understood his professional misconduct was a serious problem, and he knew he was "expected to act in a professional manner and represent my client zealously". N.T. 18-19.

34. Respondent accepted some responsibility for his actions, stating "I moved fairly aggressively to try to get the case resolved as soon as possible," but then there were extensive motions, preliminary objections . . . and the other things," and "then the case fell apart" N.T. 20.

35. He admitted he "did not serve this client well. There's not much more I can say about that." N.T. 20-21.

36. When first addressing his prior history of misconduct for neglect, lack of diligence, and failure to communicate with clients, Respondent said, “[e]xcuses are excuses, and they’re never anything more than excuses”. N.T. 17.

37. In response to the Hearing Committee's directly asking him how he “explain[ed] now this third instance of similar conduct,” Respondent rationalized that there was “a break in the time between when . . . those earlier ones occurred”. N.T. 19-20.

38. Other than discussing the toll his son’s problems had taken on him, N.T. 17-18, 20, Respondent did not present any evidence explaining or documenting his unspecified 2016 physical problems, or “some other personal problems affect[ing] my judgment in this case”. N.T. 18.

39. Respondent did not offer any character witnesses, and did not present a plan for how he intended to put his solo law practice in proper perspective by, for example, turning to his former practice monitor for help with case priorities and deadlines. N.T. 13-15, 18; AE 3.

40. Although the Hearing Committee recommended to Respondent that he file a brief in response to ODC's, he did not do so. N.T. 23.

III. CONCLUSIONS OF LAW

By his September 2, 2016 stipulation with ODC, and September 13, 2016 testimony, Respondent admitted violating the following Rules of Professional Conduct:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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

3. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rule §87.7(b) for a statement of the respondent-attorney's position shall be grounds for discipline.

IV. DISCUSSION

Disciplinary proceedings were instituted against Respondent by way of a Petition for Discipline filed on May 26, 2016, charging Respondent with professional misconduct in relation to Respondent's representation of his clients in a civil case. The Petition charged Respondent with violating RPC 1.1, RPC 1.3 and Pa.R.D.E. 203(b)(7). Petitioner must establish by a preponderance of clear and satisfactory evidence that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441, 444 (Pa. 2000). Respondent stipulated to the factual allegations contained in the Petition for Discipline and admitted at the hearing that he violated the Rules cited above. N.T. 10-11. The Board concluded, therefore, that Petitioner met its burden and Respondent had violated RPC 1.1, 1.3 and Pa.R.D.E. 203(b)(7).

Respondent violated RPC 1.1 by failing to exhibit the requisite competence required to provide competent representation to his clients. It is uncontroverted that Respondent failed to take action in his clients' case after he filed an amended complaint. His inaction showed an inexcusable lack of "legal knowledge, skill, thoroughness and preparation reasonably necessary" to proceed in a non-complex arbitration case.

Respondent's actions also showed he failed to represent his clients with the "reasonable diligence and promptness" required by RPC 1.3. He failed to file necessary pleadings, specifically a reply to Defendant's new matter or counterclaim, and he failed to file a second amended complaint on behalf of his clients. Respondent failed to respond to Defendant's Request for Admissions, Interrogatories or Request for Production of Documents. Although he filed a Praecipe for Appeal from Arbitration on behalf of his clients, Respondent subsequently failed to file a pretrial statement on their behalf, and failed to file a response to Defendant's Motion in Limine to limit issues to be heard at the time of trial.

Respondent showed the same dilatory behavior in his own disciplinary proceedings. He failed to timely provide a response to the Letter of Inquiry until May 31, 2016, waiting until he knew that ODC was filing a Petition for Discipline against him. Although Respondent cooperated with Petitioner by agreeing to be served with the Petition, filing an Answer, and entering into stipulations of fact about his Butler County-related misconduct, he did not file a brief with the Hearing Committee.

Having concluded that Respondent violated the Rules, this matter is ripe for the Board's determination of appropriate discipline. The Hearing Committee recommended a public censure and the parties did not take exception to this recommendation. After review of the record, and considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), the Board recommends that Respondent be suspended from the practice of law for a period of three months.

A disciplinary case such as this, involving one client matter and no dishonest actions on the part of the attorney, might result initially in private discipline. Respondent, however, has a history of discipline, which is an aggravating factor and heightens the severity of the discipline. The evidence demonstrates that Respondent was subject to two prior sanctions for similar misconduct. On December 8, 2010, Respondent received a private reprimand for his violations of RPC 1.3, 1.4(a)(3) and 1.4(a)(4) in his handling of an estate matter. By Order dated June 5, 2012, the Supreme Court suspended Respondent for three months, then stayed the suspension with a probation period of three months, and a practice monitor. In the latter proceeding, Respondent consented to discipline for his misconduct in three client matters, in violation of RPC 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.5(b), 1.5(c), 1.16(d) and 8.4(d). Respondent completed his probationary period in 2012.

The Board noted that Respondent's prior acts of misconduct were quite similar to the misconduct in the instant matter. Unfortunately, Respondent made no effort to show whether he had re-instituted a plan to help him stop neglecting clients, or how he proposed to elevate their interests above the personal or physical problems that might distract him in the future. Although he claimed he was working very hard to put client interests in the proper perspective, he offered nothing to give the Board confidence in his current ability to competently protect his clients. He said he wanted to continue practicing law "for as long as the good Lord allows me;" however, he didn't "really have anything else to say," about, for example, case management practices he could revive, or procedures he could implement to help him represent clients "in a professional manner," let alone "zealously". N.T. 18-19. After neglecting his Butler County clients, he could not even muster the interest to timely respond to ODC's Letter of Inquiry. Evidently, he

thought it sufficient to cooperate with ODC and then appear before the Hearing Committee to "take my medicine". N.T. 20.

While there is no *per se* discipline in Pennsylvania, the Board examines precedent for the purpose of measuring "the [R]espondent's conduct against other similar transgressions." *In re Anonymous (Linda Gertrude Roback)*, No. 56 DB 1994, 28 Pa. D. & C. 4th 398 (1995). The Supreme Court will consider applicable precedents, "being mindful of the need for consistency in the results reached in disciplinary cases so that similar misconduct is not punished in radically different ways." *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983); *Office of Disciplinary Counsel v. Edward C. Meehan, Jr.*, 26 DB 2006 (D. Bd. Rpt. 6/27/2006) (S. Ct. Order 9/18/2006) (Where an attorney has not engaged in any misrepresentation, discipline in neglect cases ranges from a private reprimand to a suspension of one year and one day. "Generally, the amount of discipline increases with the number of matters and the extent of prior discipline."). In Respondent's case, a short period of suspension is consistent with the discipline imposed on other attorneys who have neglected clients and have a record of discipline for comparable conduct.

A six-months' suspension was imposed in the matter of *Office of Disciplinary Counsel v. Norman Orville Scott*, 99 DB 2015 (D. Bd. Rpt. 6/22/2016) (S. Ct. Order 8/17/2016). Scott failed to diligently represent, consult, and communicate with court-appointed clients in two separate matters, and engaged in conduct prejudicial to the administration of justice. Similar to Respondent's case, Scott failed to timely respond to ODC's Letter of Inquiry. Scott's prior disciplinary record of an informal admonition and a public reprimand with probation aggravated the matter. In mitigation, as in Respondent's case, Scott cooperated with ODC by entering into stipulations of fact.

In another related case, a respondent-attorney who neglected two client matters to an extreme degree, retained client property, and had a prior record of discipline consisting of an informal admonition and a private reprimand was suspended for a period of six months, followed by probation for one year, with a practice monitor. *Office of Disciplinary Counsel v. Melanie D. Naro*, 52 DB 2011 (D. Bd. Rpt. 3/6/2012) (S. Ct. Order 7/12/2012). In *Office of Disciplinary Counsel v. Ronald James Gross*, 2150 D.D. 3 (Pa. 2015), Gross failed to respond to ODC's Inquiry, engaged in neglect of his client as well as in misrepresentation of the status of a matter, and sought a sentence modification for a client by communicating *ex parte* with a magisterial district justice.

In Respondent's case, his client neglect and lack of competent representation appear less serious when compared to the facts of the above-cited cases, because this time Respondent's conduct involved one client matter, and did not prejudice the administration of justice, involve misrepresentation, or a failure to return an unearned fee. On the other hand, Respondent's misconduct marks his third involvement with the disciplinary system in less than ten years based on a pattern of neglect, and he already had the remedial benefit of a stayed suspension and a practice monitor. N.T. 13. For these reasons, the Board concludes that Respondent's actions call for his suspension from practice for a period of three months. A suspension of three months is warranted to align Respondent's discipline with the decisions reviewed above, and call attention to Respondent's inability to address his pattern of client neglect. A suspension will give Respondent an opportunity to reflect on the significance of his law practice and, more importantly, protect the public while he takes corrective actions to avoid future disciplinary problems.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, William James Helzlsouer, be Suspended for a period of three months from the practice of law in this Commonwealth.

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: 

Jane G. Penny, Board Member

Date: 06.29.17