

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2313 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 10 DB 2015
	:	
v.	:	Attorney Registration No. 92657
	:	
THOMAS AXEL JONES,	:	(Monroe County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 5th day of January, 2017, upon consideration of the Report and Recommendations of the Disciplinary Board, Thomas Axel Jones is suspended from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 1/5/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 10 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 92657
	:	
THOMAS AXEL JONES	:	
Respondent	:	(Monroe 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 Petition for Discipline filed on July 9, 2015, Office of Disciplinary Counsel charged Thomas Axel Jones, Respondent, with violations of the Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E"), arising out of Respondent's failure to appear before the Disciplinary Board on June 11, 2015, for a private reprimand. Respondent failed to file an Answer to Petition for Discipline.

A prehearing conference was held on October 7, 2015. A disciplinary hearing was held on November 5, 2015, before a District III Hearing Committee comprised of Chair Stephen Jennings, Esquire and Members Timothy Bowers, Esquire and Rita Alexyn, Esquire. Petitioner presented Exhibits ODC-1 through ODC-16. Respondent appeared *pro se* and testified on his own behalf.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on April 14, 2016, concluding that Respondent violated the Rules as charged in the Petition for Discipline and recommending that he be suspended for a period of one year.

On May 3, 2015, Petitioner filed a Brief on Exceptions to the Report of the Hearing Committee.

On May 9, 2015, Respondent filed a Brief on Exceptions to the Report of the Hearing Committee and requested that the record be re-opened to receive additional evidence.

Petitioner filed an Answer to Request on May 13, 2016.

By Order of May 18, 2016, the Disciplinary Board granted the request to reopen the record to allow submission of specific documents.

The Disciplinary Board adjudicated this matter at the meeting on July 23, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62675, Harrisburg, PA

17106-2625, 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 law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Thomas Axel Jones. He was born in 1977 and was admitted to practice law in the Commonwealth of Pennsylvania in 2004. His registered address is P.O. Box 838, Stroudsburg, PA 18360. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Currently, Respondent is administratively suspended, pursuant to a Supreme Court Order dated September 21, 2015, effective October 21, 2015. ODC-14, ODC-15.

4. Following his administrative suspension, Respondent has not complied with the requirements of Pa.R.D.E. 217. ODC-16.

5. Respondent has prior private discipline consisting of an Informal Admonition administered on March 31, 2014, as a result of Respondent's Driving Under the Influence conviction. ODC-14.

6. By DB-7 Request for Statement of Respondent's Position dated November 5, 2014, Office of Disciplinary Counsel notified Respondent of allegations relating to his representation of Cheryl Ann Kunkle. ODC-1.

7. The letter requested Respondent's position regarding:

- a. Missed deadlines in an appeal to the Supreme Court;
- b. Failure to communicate with client to keep her updated as to the status of her case;

c. Failure to abide by an order of the Supreme Court to file a Petition for Allowance of Appeal;

d. Failure to provide competent representation to a client; and

e. Failure to act with reasonable diligence and promptness in representing a client.

8. Respondent responded to these allegations in a letter dated December 5, 2014. ODC-2.

9. Thereafter, the matter was referred to a three-member Review Panel of the Disciplinary Board, which recommended that Respondent be subjected to a Private Reprimand before the Board. ODC-3.

10. By letter dated February 13, 2015, Elaine M. Bixler, Secretary of the Disciplinary Board, informed Respondent that:

a. In connection with the complaint, a three-member Review Panel of the Board determined that Respondent should receive a private reprimand before the Board for violating RPC 1.3, RPC 1.4(a)(2), RPC 1.4(a)(3), and RPC 8.4(d);

b. Pursuant to Pa.R.D.E. 208(a)(6), Respondent had the right to demand, in writing, within 20 days, that a formal proceeding be instituted against him before a hearing committee, and in the event of such demand, need not appear for the administration of the private reprimand and the matter would be disposed of in the same manner as any other formal hearing; and

c. Pursuant to D.Bd. Rule §87.53(b) and Enforcement Rule 203(b)(2), Respondent's neglect or refusal to appear for a private

reprimand without good cause would constitute an independent act of professional misconduct and would automatically result in formal proceedings relating to such act of misconduct and the grievance upon which such private reprimand was to relate.

ODC-3.

11. Thereafter, Respondent did not demand that a formal proceeding be instituted against him with regard to the allegations giving rise to the imposition of the private reprimand. Petition ¶6.

12. On March 6, 2015, Respondent was notified, by certified mail, to appear before a panel of three members of the Disciplinary Board of the Supreme Court of Pennsylvania on March 27, 2015, at 1:30 p.m. in Courtroom 3002 of the Pennsylvania Judicial Center at 601 Commonwealth Avenue, Harrisburg, Pennsylvania to receive his private reprimand. ODC-4.

13. This notice advised Respondent that a failure to appear before the Board “shall be an independent ground for discipline under Enforcement Rule 203(b)(2).”

14. At 9:04 a.m. on March 27, 2015, the date Respondent was to appear for the private reprimand, he sent a letter via facsimile to Board Secretary Bixler requesting a continuance due to a “catastrophic failure” of his vehicle, and stating that he was unable to make it to Harrisburg by the afternoon. ODC-5.

15. Respondent’s request for continuance was granted, and a second Notice to Appear dated March 30, 2015, was issued, which included the same notice of the consequences under Rule 203(b)(2) should he fail to appear, and which rescheduled Respondent’s private reprimand for April 16, 2015, at 10:00a.m. at the

District I Office of the Disciplinary Board, 16th Floor, Seven Penn Center, 1635 Market Street, Philadelphia. ODC-6.

16. On April 16, 2015, at 9:26 a.m., approximately thirty-four minutes before the scheduled time for the private reprimand, Respondent sent a letter via facsimile to Board Secretary Bixler requesting a second continuance, "as I do not have transportation to Harrisburg" and "I am simply not able to make it to the hearing today." The reprimand was scheduled for Philadelphia, not Harrisburg. ODC-7.

17. The request for continuance was granted and by letter dated April 29, 2015, Secretary Bixler wrote to Respondent:

a. Confirming receipt of Respondent's letters dated March 27, 2015 and April 16, 2015, respectively, asking to continue the private reprimands scheduled for those respective dates;

b. Stating that both of the above-mentioned letters were received by fax on the mornings of the scheduled reprimands;

c. Providing that although Respondent stated in his letters that he did not contest the reprimand, Respondent seemed unable to make the effort to appear in person to receive it; and

d. Notified Respondent that one more attempt would be made to reschedule the private reprimand and failure to appear would be deemed a demand for formal charges.

ODC-8.

18. On May 28, 2015, the third Notice to Appear was sent to Respondent by certified mail setting the date of June 11, 2015, at 10:00 a.m. at the District I Office in Philadelphia. ODC-9.

19. Respondent failed to appear at his June 11, 2015, private reprimand. Petition ¶14.

20. By letter dated June 24, 2015, Secretary Bixler wrote to Paul J. Killion, Chief Disciplinary Counsel, notifying him of Respondent's failure to appear at the private reprimand, and referring the matter to Office of Disciplinary Counsel for institution of formal charges. ODC-10.

21. The Petition for Discipline was filed on July 9, 2015, and personally served upon Respondent on July 23, 2015. ODC-12.

22. Respondent failed to respond to the Petition for Discipline.

23. Respondent appeared at and participated in the hearing, held on November 5, 2015, at the Pennsylvania Judicial Center in Harrisburg, Pennsylvania.

24. Respondent did not deny the allegations of the Petition for Discipline and conceded that he committed the conduct charged. N.T. 12.

25. Respondent explained the missed reprimands by stating, "[i]t was simply a transportation issue at the time." Respondent failed to provide any documentation, corroboration, or additional information regarding his failure to appear at the reprimands. N.T. 21.

26. Respondent testified that his client, Ms. Kunkle, suffered no prejudice from his neglect, as her appeal was eventually heard by the Supreme Court. N.T. 20.

27. Respondent did not demonstrate genuine remorse for his actions relating to Ms. Kunkle or for his failure to appear for the private reprimand.

28. As to Respondent's DUI conviction, which was the subject of his prior Informal Admonition, he testified that he entered a rehabilitation facility as part of

the underlying criminal case, followed by outpatient therapy. Respondent indicated he attends “meetings.” N.T. 31-32.

29. Respondent testified at the disciplinary hearing that he did not believe alcohol was an issue for him. N.T. 31, 32.

30. Subsequent to the disciplinary hearing on November 5, 2015, and the filing of the Hearing Committee Report on April 14, 2016, Respondent submitted evidence of his admission to substance abuse treatment programs. Respondent’s evidence showed that he was admitted to Pocono Mountain Recovery Center from January 22, 2016 to February 8, 2016, and Clearbrook Lodge Treatment Center from February 8, 2016 to February 19, 2016.

III. CONCLUSIONS OF LAW

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

1. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

2. Pa.R.D.E. 203(b)(2) – Willful failure to appear before the Supreme Court, the Board or Disciplinary Counsel for censure, private reprimand or informal admonition, shall be grounds for discipline.

3. In addition to the foregoing violations resulting from Respondent’s failure to appear for a Private Reprimand, Respondent is conclusively deemed to have violated the following Rules of Professional Conduct as a result of Respondent’s failure to demand the institution of formal proceedings:

- a. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(2) - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- c. RPC 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter;
- d. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline charging that, after the Board determined that a private reprimand was the appropriate discipline for Respondent's neglect of a client matter, Respondent failed to appear at three scheduled and rescheduled dates for administration of the reprimand before the Board.

Petitioner bears the burden of proving, by a preponderance of evidence that is clear and satisfactory, that Respondent's actions constitute professional misconduct. ***Office of Disciplinary Counsel v. Robert Surrick***, 749 A.2d 441 (Pa. 2000). Petitioner met this burden by the facts pled in the Petition for Discipline, which are deemed admitted pursuant to Pa.R.D.E. 208(b)(3), because of Respondent's failure to file an Answer to Petition.

Respondent was notified in a February 13, 2015, letter from the Board Secretary, that it had been determined he should receive a private reprimand for violations of RPC 1.3, RPC 1.4(a)(2) and (3) and RPC 8.4(d) arising from his neglect of the criminal matter of Cheryl Ann Kunkle. Respondent was informed that "[f]ailure to file [notice of a demand for formal proceedings] within 20 days of th[e] Notice to Appear w[ould] cause [Respondent] to lose [his] right to demand formal proceedings." See D.Bd. Rules § 87.54. Respondent received the letter and never demanded formal charges. Respondent is conclusively deemed to have violated the Rules relating to the underlying representation of Ms. Kunkle by his failure to request formal charges. Thereafter, Respondent requested that the private reprimand be rescheduled on two occasions, which requests were granted by the Board. Respondent failed to appear at the third private reprimand scheduled for June 11, 2015, after receiving notice of the date, time and place.

The evidence of record established that Respondent willfully failed to appear for his private reprimand and did not show good cause for his nonappearance, in violation of Pa.R.D.E. 203(b)(2). His continued failure to appear, after multiple, last-minute requests to reschedule the reprimands, prejudiced the administration of justice, in violation of RPC 8.4(d). Thereafter, Respondent chose to ignore the disciplinary process by failing to respond to the Petition for Discipline.

Having concluded that Respondent engaged in professional misconduct, we consider the issue of the appropriate sanction. The Hearing Committee recommended a suspension of one year. Petitioner requests that the Board recommend a suspension for one year and one day. Respondent posits that a suspension of his law license is too harsh and a Public Reprimand is appropriate.

After reviewing the parties' recommendations and the Report and recommendation of the Hearing Committee, and after 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**, 7 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be suspended from the practice of law for a period of one year and one day.

As the Board has explained, a respondent-attorney's failure to appear at designated private discipline is significant because it exhibits a lack of respect for the professional responsibilities inherent in the legal profession and for the disciplinary process in general. **Office of Disciplinary Counsel v. John Klinger Mort**, 110 DB 2015 (D.Bd. Rpt. 5/10/2016) (S. Ct. Order 6/30/2016).

Prior disciplinary cases of a similar nature illustrate that a suspension of one year and one day is warranted to address Respondent's misconduct. See **Office of Disciplinary Counsel v. Mark Jurikson**, 128 DB 2000 (D.Bd. Rpt. 9/19/2003) (S. Ct. Order 12/9/2003) (imposing a suspension of one year and one day where the respondent-attorney failed to appear for two scheduled and rescheduled private reprimands for his neglect of a client); **Office of Disciplinary Counsel v. Mary McNeill Zell**, 154 DB 2000 (D.Bd. Rpt. 4/4/2003) (S. Ct. Order 6/4/2003) (imposing a suspension of one year and one day for a respondent who missed two scheduled and rescheduled private reprimands for neglect of a client matter); **Office of Disciplinary Counsel v. William W. McVay, III**, 112 DB 2002 (D. Bd. Rpt. 11/2/2004) (S. Ct. Order 1/31/2005) (imposing a suspension of one year and one day on respondent-attorney who failed to appear at a private reprimand and comply with the ordered condition for neglect of two clients' matters).

Respondent's appearance at the disciplinary hearing evidenced a willingness on his part to participate in the process to determine the consequences of his admitted misconduct. However, Respondent's testimony and exhibits failed to provide a basis for the imposition of discipline less than one year and one day. Respondent's explanation for his failure to appear for discipline before the Supreme Court body tasked with such responsibility was merely that he had transportation issues. Respondent failed to acknowledge the significance of his actions and failed to demonstrate remorse.

Currently, Respondent is administratively suspended from the practice of law because he failed to file his attorney registration form. In connection with the administrative suspension, Respondent failed to comply with Pa.R.D.E. 217. Prior to the administrative suspension in 2015, Respondent received an informal admonition as a result of a DUI conviction. While Respondent assured the Hearing Committee that he had no alcohol issues, he submitted evidence post-hearing of his admission to treatment programs in 2016. Respondent's evidence is not sufficient to show a causal connection between his substance abuse issues and his misconduct. Mitigation is not appropriate under ***Office of Disciplinary Counsel v. Seymour Braun***, 553 A.2d 894 (Pa. 1989).

The primary purpose of the disciplinary system is to protect the public from unfit attorneys and to maintain the integrity of the legal system. ***Office of Disciplinary Counsel v. John J. Keller***, 506 A.2d 872, 875 (Pa. 1986). In determining the appropriate discipline, the Board reviews the totality of the facts and prior cases in order to achieve the goal of consistent results. ***Office of Disciplinary Counsel v. Anthony C. Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012). On this record, the Board recommends

that Respondent be suspended for one year and one day, as he is unfit to practice law and must be required to demonstrate his fitness at a reinstatement hearing.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Thomas Axel Jones, be Suspended from the practice of law for a period one year and one day.

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: 

David A. Fitzsimons, Board Member

Date: 10/19/2016

Board Member Cordisco did not participate.