

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2290 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 165 DB 2015
	:	
v.	:	Attorney Registration No. 74067
	:	
MATTHEW I. COHEN	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 20th day of October, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, Matthew I. Cohen is suspended from the Bar of this Commonwealth for a period of two years, 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 10/20/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 165 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 74067
	:	
MATTHEW I. COHEN	:	
Respondent	:	(Philadelphia)

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 October 8, 2015, Office of Disciplinary Counsel charged Matthew I. Cohen with violations of the Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.") arising out of his failure to appear for the imposition of private discipline. Respondent failed to file an Answer to Petition for Discipline.

A prehearing conference was held on December 15, 2015, and a disciplinary hearing was held on January 26, 2016, before a District I Hearing

Committee comprised of Chair Ria C. Momblanco, Esquire and Members Sophia Lee, Esquire, and Mark G. Goodheart, Esquire. Respondent failed to appear at either hearing.

Following the submission of Petitioner's Brief, the Hearing Committee filed a Report on June 3, 2016, concluding that Respondent violated the Rules as charged in the Petition for Discipline and recommending that he be suspended for a period of two years.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 23, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania, 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 Matthew I. Cohen. He was born in 1957 and was admitted to the practice of law in the Commonwealth in 1995. His last registered address is 1500 John F. Kennedy Blvd., Suite 200, Philadelphia PA 19102-1754.

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

3. Respondent has no record of prior discipline.

4. On or about June 28, 2012, Respondent was retained by Evandy Gibson to register a trademark on her behalf. ODC-1.

5. By email dated July 11, 2012, to Ms. Gibson, Respondent:

- a. Acknowledged receipt of Ms. Gibson's letter;
- b. Acknowledged receipt of Ms. Gibson's check in the amount of \$1,075.00, in satisfaction of his fee and the trademark filing fees;
- c. Attached a copy of his fee agreement; and
- d. Indicated that she should have her trademark ready to file by the end of the following week at the latest.

ODC-1.

6. After July 11, 2012, Ms. Gibson tried to reach Respondent by telephone and email, but Respondent did not return her messages. ODC-1.

7. By certified letter dated November 8, 2012, to Respondent, Ms. Gibson:

- a. Stated that since receiving Respondent's July 11, 2012 email, she had made "repeated attempts to reach Respondent";
- b. Stated that Respondent had failed to respond to numerous emails, telephone calls, and voice mail messages; and
- c. Requested the status of her trademark application.

ODC-1.

8. Respondent received Ms. Gibson's letter. ODC-1.

9. Respondent failed to respond to Ms. Gibson's November 8, 2012 letter. ODC-1.

10. In or around November 2012, Charles Klitsch, Director of Public and Legal Services of the Philadelphia Bar Association, contacted Respondent and requested that Respondent contact Ms. Gibson. ODC-1.

11. Respondent failed to contact Ms. Gibson. ODC-1.

12. Thereafter, Jim Moss, Esquire telephoned Respondent on Ms. Gibson's behalf to obtain a status update. ODC-1.

13. Respondent failed to return Mr. Moss's call. ODC-1.

14. By Supreme Court Order dated December 6, 2012, effective January 5, 2013, Respondent was administratively suspended from the bar of Pennsylvania for noncompliance with Continuing Legal Education requirements. Respondent has not resumed active status. ODC-1.

15. By certified letter dated December 6, 2012, Suzanne Price, Attorney Registrar, *inter alia*, advised Respondent of his administrative suspension and the requirements of Rule 217, Pa.R.D.E. ODC-1.

16. Respondent received Ms. Price's letter. ODC-1.

17. Respondent failed to notify Ms. Gibson that he was no longer eligible to practice law in Pennsylvania, as required by Pa.R.D.E. 217(a). ODC-1.

18. By email dated April 10, 2013, to Respondent, Ms. Gibson:

- a. Advised that she was planning a promotion in May; and
- b. Requested the status of her trademark application.

19. In response, by email dated April 11, 2013, Respondent:

a. Stated that he would check on the registration that day to find out what was taking so long;

b. Advised that, even if the registration was slow, Ms. Gibson had trademark rights by using the mark; and indicated that he would get back to Ms. Gibson when he found out what was going on with her trademark registration.

ODC-1.

20. Respondent failed to comply with Pa.R.D.E. 217 and notify Ms. Gibson that he was ineligible to practice law.

21. By email dated April 17, 2014, Ms. Gibson requested documentation of her trademark. ODC-1.

22. Respondent failed to respond to Ms. Gibson's email. ODC-1.

23. On February 24, 2014, Respondent was personally served at his Woodlawn Avenue address with Petitioner's DB-7 Request for Statement of Respondent's Position in regard to Ms. Gibson's matter. ODC-2.

24. Respondent failed to respond to the DB-7 as required by Rule 203(b)(7), Pa.R.D.E.

25. By letter dated June 23, 2015, sent to Respondent at his last registered address by certified mail, return receipt requested, and by first class mail, Chief Disciplinary Counsel notified Respondent, *inter alia*, that:

a. In connection with the complaint No. C1-14-665 filed against him by Ms. Evandy Gibson, reviewing authorities had determined that Respondent should receive an Informal Admonition for having violated RPC 1.3, RPC 1.4(a)(3), RPC 1.4(a)(4), RPC 1.4(b), RPC 8.4(c),

Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(a), 217(j)(1), 217(j)(2), 217(j)(4)(ii), (iii), (iv), (v), and (vi), and Pa.R.D.E. 203(b)(7);

b. A condition was attached to the Informal Admonition, which required Respondent, not less than ten days prior to the date of the scheduled admonition, to provide documented proof to Petitioner that he had refunded the unearned fee of \$1,075.00 to Ms. Gibson;

c. Respondent had the option of deciding that he did not wish to receive the Informal Admonition and that he could have the question of his conduct decided by formal proceedings, in accordance with Pa.R.D.E. 208(a)(6);

d. If Respondent decided to have the matter proceed to formal proceedings, within twenty days he had to provide written notification to the Secretary of the Disciplinary Board, with a copy to Petitioner, advising that he did not wish to receive the Informal Admonition and that formal proceedings should be initiated; and

e. The failure to file such a request within twenty days of the Notice to Appeal would result in the loss of his right to demand formal proceedings, pursuant to §87.54(b) of the Disciplinary Board Rules.

ODC-18.

26. Neither the certified letter nor the letter sent by regular mail was returned. ODC-18.

27. Respondent received the letter of June 23, 2015. ODC-18.

28. Respondent did not notify the Secretary of the Board that he did not wish to receive the Informal Admonition and that formal proceedings should be initiated. ODC-18.

29. By letter dated July 24, 2015, sent to Respondent at his last registered address by certified mail, return receipt requested, and by first class mail, Chief Disciplinary Counsel notified Respondent, *inter alia*, that the Informal Admonition was scheduled for August 4, 2015, at 4:00 p.m. in the District I Office. ODC-18.

30. Neither the certified letter nor the letter sent by regular mail was returned to Chief Disciplinary Counsel. ODC-18.

31. Respondent received the letter of July 24, 2015. ODC-18.

32. Not less than ten days prior to the scheduled Informal Admonition or at any time did Respondent provide Petitioner with documentation showing that he had complied with the condition. ODC-18.

33. On August 4, 2015, Respondent failed to appear for the Informal Admonition. ODC-18.

34. By letter dated August 10, 2015, sent to Respondent at his registered residence address by certified mail, return receipt requested, and by first class mail, Chief Disciplinary Counsel notified Respondent, *inter alia*, that:

a. By letter dated July 24, 2015, he was advised of the hour and date that he was to appear in the District I Office for an Informal Admonition;

b. §87.52(b) of the Disciplinary Board Rules provides that "The neglect or refusal of the respondent-attorney to appear for the purposes of

informal admonition without good cause shall constitute an independent act of professional misconduct..."; and

c. If he had any reason he wished to offer for not appearing at the scheduled informal admonition that might represent "good cause," Respondent should advise Chief Disciplinary Counsel within ten days of receipt of the letter.

ODC-18.

35. Neither the certified letter nor the letter sent by regular mail was returned to Chief Disciplinary Counsel. ODC-18.

36. Respondent received the letter dated August 10, 2015. ODC-18.

37. By letter dated September 16, 2015, sent to Respondent at his residence address via regular mail, Disciplinary Counsel, *inter alia*, requested that Respondent contact her if Respondent had an issue or problem that Respondent wished to bring to Chief Disciplinary Counsel's attention before the scheduling of the Informal Admonition. ODC-18.

38. The letter of September 16, 2015 was not returned to Disciplinary Counsel. ODC-18.

39. Respondent received this letter. ODC-18.

40. Respondent did not respond to the letter of September 16, 2015. ODC-18.

41. By letter dated September 23, 2015, sent to Respondent at his residence address by certified mail, return receipt requested, and by first class mail, Chief Disciplinary Counsel notified Respondent, *inter alia*, that the Informal Admonition was rescheduled for September 30, 2015 at 10:00 a.m. in the District I Office. ODC-18.

42. Neither the certified letter nor the letter sent by regular mail was returned to Chief Disciplinary Counsel. ODC-18.

43. Respondent received the letter dated September 23, 2015. ODC-18.

44. Respondent failed to provide Petitioner with documentation showing that he had complied with the condition. ODC-18.

45. On September 30, 2015, Respondent again failed to appear for the Informal Admonition. ODC-18.

46. The Petition for Discipline was personally served upon Respondent. ODC-15.

47. Respondent failed to answer the Petition for Discipline.

48. Respondent received notices of the prehearing conference and disciplinary hearing. ODC-16, ODC-19.

49. Respondent failed to appear at the December 15, 2015 prehearing conference.

50. Respondent failed to appear at the January 26, 2016 disciplinary hearing.

51. There is no evidence that Respondent has refunded the monies owed to Ms. Gibson.

52. Respondent has one open judgment in the Court of Common Pleas of Philadelphia County. ODC-3.

53. Respondent has two open judgments and five liens in the Court of Common Pleas of Delaware County. ODC-4 through ODC-10.

54. Respondent has four closed liens in the Court of Common Pleas of Delaware County. ODC-11 through ODC-14.

III. CONCLUSIONS OF LAW

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

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

2. Pa.R.D.E. 203(b)(3) – Willful violation of any other provisions of the Enforcement Rules shall be grounds for discipline, via Pa.R.D.E. 204(b), which states that conditions may be attached to an informal admonition, private reprimand or public reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.

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

4. As a result of Respondent's failure to demand the institution of formal proceedings, Respondent is conclusively deemed to have violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement in connection with the disciplinary complaint filed by Evandy Gibson:

a. Respondent failed to act with diligence, in violation of RPC

1.3.

b. Respondent failed to communicate with Ms. Gibson, in violation of RPC 1.4(a)(3), RPC 1.4(a)(4), and RPC 1.4(b).

c. Respondent failed to advise Ms. Gibson that he was no longer eligible to practice law following his administrative suspension, in violation of RPC 8.4(c), Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(a), 217(j)(1), 217(j)(2), 217(j)(4)(ii), (iii), (iv), (v) and (vi).

d. Respondent failed to submit an answer to the DB-7 letter in violation of Pa.R.D.E. 203(b)(7).

IV. DISCUSSION

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). Petitioner has met that burden by virtue of the facts pled in the Petition for Discipline, which are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E., because of Respondent's failure to file an Answer to Petition. The related evidence and exhibits submitted fully support the conclusion that Respondent committed ethical misconduct.

In connection with the disciplinary complaint filed against Respondent by Evandy Gibson, Respondent received a DB-7 Request for Statement of Respondent's Position on February 24, 2014, informing him that Petitioner had received a complaint, detailing the nature of the complaint and the potential rule violations, and requiring a response. Ms. Gibson had retained Respondent to register a trademark on her behalf. In an email dated July 11, 2012, Respondent acknowledged receipt of Ms. Gibson's check in the amount of \$1,075.00 in satisfaction of his fee and the trademark filing fees.

He further indicated that he should have her trademark ready to file in the near future. After the July 11, 2012 email, Respondent abruptly and inexplicably discontinued the provision of legal services to Ms. Gibson and ceased communication with her, thereby forcing Ms. Gibson to send a certified letter on November 8, 2012, requesting the status of her trademark application. Respondent never responded to the certified letter, even after two attorneys contacted Respondent in an effort to induce him to contact his client. Ms. Gibson contacted Respondent in April 2013, to which Respondent emailed her and stated he would check on her trademark registration and get back to her, but failed to do so. In April 2014, Ms. Gibson again requested documentation of her trademark. Respondent failed to respond. Unbeknownst to Ms. Gibson, during the time frame of the legal representation, Respondent was transferred to administrative suspension by Supreme Court Order for noncompliance with Continuing Legal Education requirements. Respondent never informed Ms. Gibson of this fact, which rendered him ineligible to practice law effective January 5, 2013.

Respondent ignored the efforts of Petitioner to resolve this matter. Despite being served with the DB-7 letter of inquiry which advised Respondent that he was required to respond, he chose not to respond, in violation of Rule 203(b)(7), Pa.R.D.E

Respondent continued to mishandle his involvement in the disciplinary process. He received a letter dated June 23, 2015, from Chief Disciplinary Counsel, informing him it was determined that he should receive an Informal Admonition with the condition that he provide documented proof that he made a full refund to Ms. Gibson in the amount of \$1,075.00. Thereafter, by Notice to Appear dated July 24, 2015, Chief Disciplinary Counsel advised Respondent that his Informal Admonition had been scheduled for August 4, 2015, at 4:00 p.m. in the District I Office in Philadelphia.

Respondent failed to appear for the Informal Admonition, failed to provide proof of compliance with the condition attached thereto, and failed to show good cause for his nonappearance. Notwithstanding the fact that Respondent failed to appear on August 4, 2015, he was given a second opportunity to comply with the condition, receive his Informal Admonition and conclude his involvement with the disciplinary process. Respondent received a letter dated September 23, 2015, from Chief Disciplinary Counsel, informing him that the Informal Admonition was rescheduled for September 30, 2015, at 10:00 a.m. in the District I Office in Philadelphia. Again, Respondent failed to appear and failed to provide any proof that he reimbursed monies to Ms. Gibson. It is clear from the record that Petitioner afforded Respondent numerous opportunities to communicate and resolve this matter.

Respondent's failure to appear and failure in any way to communicate with Petitioner ultimately resulted in the filing of the Petition for Discipline. Consistent with his earlier lack of response and despite extensive notice, Respondent failed to answer the Petition and failed to attend both the prehearing conference and the disciplinary hearing before the Hearing Committee.

The evidence of record leaves no doubt that Respondent was aware of the efforts to contact him. He received notice of each stage of the proceedings by certified and first class mail or by personal service. His failure to participate in the process exhibits an utter lack of respect for his professional duties and for the disciplinary process in general. Respondent has made no effort to confront and address his disciplinary issues and has provided no evidence that he values his privilege to practice law. He has forfeited any meaningful opportunity to make his client whole and to accept responsibility and express remorse. Respondent was given two

opportunities to resolve his misconduct by Informal Admonition, the lowest level of private discipline, which would have allowed him to continue practicing law. Instead, he ignored the process and in so doing, has seriously exacerbated the gravity of his situation.

It is well-established by the evidence of record that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This matter is ripe for the determination of discipline. Petitioner has recommended that Respondent be disbarred. The Hearing Committee has recommended that Respondent be suspended for a period of two years. Our analysis of these recommendations requires careful examination of the applicable precedents.

The Board and the Supreme Court have considered on many occasions the question of an attorney's neglect and lack of client communication followed by a failure to appear at the informal admonition and disciplinary hearing or otherwise participate in the disciplinary process. Although the sanctions have depended on the aggravating or mitigating factors, these attorneys have been required to go through a reinstatement process to prove fitness to practice law.

There is a line of cases that has resulted in suspension for at least one year and one day. In a recent case, *Office of Disciplinary Counsel v. John Klinger Mort*, 2272 D.D. No. 3 (Pa. 2016), the attorney failed to appear for an informal admonition and failed to show good cause for his nonappearance. His underlying misconduct involved two client matters in which he collected money from real estate settlement matters and then failed to disburse that money to the proper recipients. Mort did not answer the petition for discipline or appear at the disciplinary hearing. In mitigation, the Board noted Mort's pristine record of practice for more than 35 years. The Board recommended and

the Court imposed a suspension of one year and one day. We also note the following cases: *Office of Disciplinary Counsel v. Anne Michelle Campbell*, 1610 D.D. No. 3 (Pa. 2010) (failure to appear for an informal admonition in one matter, neglect of a client in another matter, failure to file an answer to the petition for discipline, failure to appear at the disciplinary hearing, and no prior history of discipline) (suspension for one year and one day); *Office of Disciplinary Counsel v. Carol Chandler*, 1732 D.D. No. 3 (Pa. 2011) (charged with Pennsylvania and New Jersey Rules of Professional Conduct in connection with her neglect and lack of communication in regard to client matters, failure to file an answer to petition for discipline, failure to appear at the disciplinary hearing, and no prior history of discipline) (suspension for one year and one day); *Office of Disciplinary Counsel v. Jesse Louis Katz*, 1769 D.D. No. 3 (Pa. 2012) (neglect of two clients, failure to comply with Supreme Court Order placing respondent on administrative suspension, failure to file an answer to petition for discipline, failure to participate in the disciplinary proceedings, prior history of discipline consisting of two informal admonitions) (suspension for two years).

Two recent cases have resulted in disbarment. In *Office of Disciplinary Counsel v. Joseph A. Rizzo*, 2194 D.D. No. 3 (Pa. 2015), the attorney neglected one client matter, failed to comply with the Supreme Court order placing him on administrative suspension, failed to appear for an informal admonition and failed to comply with a condition requiring the refund of \$1,500.00 of client monies, failed to answer the petition for discipline, failed to appear at the disciplinary hearing and generally failed to participate in disciplinary proceedings. The Board recommended disbarment after noting that Rizzo had absconded with his client's funds and had made

himself unavailable to the disciplinary system by failing to provide a current address to the Disciplinary Board.

The other disbarment matter is the case of *Office of Disciplinary Counsel v. John Michael Biondi*, 2019 D.D. No. 3 (Pa. 2014). Therein, Biondi ignored communications with the Court of Common Pleas of Butler County and related court offices, failed to answer the petition for discipline and failed to appear at the disciplinary hearing. Biondi was administratively suspended for failure to comply with Continuing Legal Education requirements but had no prior record of discipline. The Board recommended to the Court that Biondi be suspended for a period of four years after determining that Biondi had not evidenced “a scintilla of interest in his privilege to practice”; however, the Court imposed disbarment.

After considering the nature and gravity of Respondent’s 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 is persuaded that disbarment is the appropriate discipline.

In evaluating professional discipline, each case must be decided on its own unique facts and circumstances, bearing in mind “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*, 427 A.2d 186, 190 (Pa. 1983). The Board is ever mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the court and deter unethical conduct. *Office of Disciplinary Counsel v. Czmus*, 889 A.2d 117 (Pa. 2005).

Although Respondent's underlying misconduct in connection with his representation of Ms. Gibson was isolated and relatively minor, as reflected by the original disposition of an Informal Admonition, Respondent's misconduct has been significantly aggravated by his failure to appear for the Informal Admonition and failure to comply with the condition to refund his client's monies, and thereafter by his total and complete failure to participate in the disciplinary process. The only mitigating factor of record is that Respondent has no history of discipline since his admission to the bar in 1995. We do not find this factor particularly compelling, in light of his absolute resistance to participating in proceedings directly impacting his license to practice.

Disbarment is a severe sanction reserved for only the most egregious misconduct because the consequence is a termination of an attorney's license to practice without promise of its future restoration. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986). The recent precedents illustrate that when there is actual notice to the respondent of a pending disciplinary proceeding, the respondent demonstrates a total lack of respect for the process and is well aware of the process he has neglected, and fails to refund an unearned fee, the Court will impose disbarment, even where such respondents have no history of discipline. The instant matter falls within this factual scenario. We are well-advised of the standard of cases imposing suspension that has been reinforced over time, yet we cannot ignore the Court's imposition of disbarment in two very recent, similar matters.

For the above reasons, we recommend that Respondent be disbarred.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Matthew I. Cohen, be Disbarred 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: [Signature]
Stefanie B. Porges, M.D., Member

Date: 8/22/16

Board Member Cordisco did not participate in the adjudication.