

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1895 Disciplinary Docket No. 3
Petitioner :
 : No. 179 DB 2011
v. :
 : Attorney Registration No. 48224
RICHARD PATRICK REYNOLDS, :
Respondent : (Berks County)

ORDER

PER CURIAM:

AND NOW, this 31st day of March, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated November 19, 2013; it is hereby

ORDERED that Richard Patrick Reynolds 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 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.

Mr. Justice Baer and Mr. Justice Stevens dissent and would impose a suspension for a period of three years due to respondent's prior disciplinary history. See ODC v. Quinn, No. 2008 Disciplinary Docket No. 3 (Pa. March 31, 2014) (Baer and Stevens, JJ., dissenting) (opining that recidivist disciplinary offenders should receive more severe sanctions).

A True Copy Patricia Nicola
As Of 3/31/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1895 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 179 DB 2011
v.	:	
	:	Attorney Registration No. 48224
RICHARD PATRICK REYNOLDS	:	
Respondent	:	(Berks 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 dated October 17, 2011, Office of Disciplinary Counsel charged Richard Patrick Reynolds with violations of the Rules of Professional Conduct arising out of allegations that he neglected the criminal appeal of his client. Respondent failed to file an Answer to Petition.

A disciplinary hearing was held on March 19, 2013, before a District II Hearing Committee comprised of Chair Nicholas Chimicles, Esquire, and Members Daniel

Rovner, Esquire, and Maureen McBride, Esquire. Respondent appeared *pro se*. Petitioner introduced Exhibits ODC-1 through 31, with no objection from Respondent. Petitioner did not present any witnesses. Respondent testified on his own behalf. He presented no witnesses nor did he introduce any documentary evidence.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on July 29, 2013. The Committee concluded that Respondent violated the Rules of Professional Conduct as contained in the Petition for Discipline, and recommended that Respondent be suspended for one year and one day.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on October 9, 2013.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at The Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any 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 Richard Patrick Reynolds. He was born in 1959 and was admitted to practice law in the Commonwealth of Pennsylvania in 1986. His attorney registration address is 301 Preston Road, Flourtown PA 19031. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By Order dated January 3, 2013, the Supreme Court of Pennsylvania placed Respondent on temporary suspension for his failure to pay outstanding costs that had been assessed by the Disciplinary Board in reference to the instant matter. (ODC-28) Respondent remains on temporary suspension.

4. Respondent has a history of professional discipline in Pennsylvania. An Informal Admonition was imposed in 2007 for Respondent's neglect of an appeal in a criminal matter. Respondent received an Informal Admonition in 2008 for his neglect in two matters involving his representation of criminal defendants.

5. On March 16, 2009, Respondent was appointed, at the post-trial stage, to represent Kenneth Kline, who was convicted of criminal conspiracy to commit murder in the Third Degree, aggravated assault and criminal conspiracy to commit aggravated assault. (ODC-2, 5)

6. A notice of appeal had been filed to the Superior Court on February 10, 2009. The appeal was filed by Eric Dowdle, Esquire, Mr. Kline's trial counsel.

7. On March 17, 2009, Respondent signed a request for the court reporter to transcribe the criminal proceedings and the trial judge issued an Order granting the request. (ODC-6)

8. On March 31, 2009, a court reporter sent to Respondent, via certified mail, notice that the transcript would be lodged in the Clerk of Courts for review before it would be certified and filed of record in the case. (ODC-7)

9. After three attempts to deliver, the Post Office returned the certified letter to the court reporter as "Unclaimed." (ODC-8)

10. On or about April 24, 2009, a second court reporter sent to Respondent a copy of a Notice of Lodging Transcript of Record on Appeal, via certified mail, to his public access address, but that certified letter was return as "Unclaimed." (ODC-9)

11. On May 15, 2009, a third court reporter mailed to Respondent a Notice of Lodging Transcript of Record to his public access address, via certified mail. (ODC-10). After three attempts to deliver, that certified letter was returned as "Unclaimed." (ODC-11)

12. The Superior Court mailed to Respondent a briefing schedule in August 2009. (ODC-13)

13. On or about October 7, 2009, the Superior Court, having received no brief from Respondent, issued a Per Curiam Order dismissing Kenneth Kline's appeal for failure to file a Brief. (ODC-14)

14. Since March 16, 2009, the date on which Respondent was appointed to represent Kenneth Kline, Respondent never called, visited, or wrote to Mr. Kline. (Pet. For Disc.-29)

15. Respondent did not contact Mr. Kline notwithstanding that Mr. Kline had sent him two letters inquiring as to when Respondent would visit him so that they could talk in person regarding a possible PCRA petition or a post-sentence motion, and notwithstanding that Mr. Kline's girlfriend had contacted Respondent by telephone. (Pet. For Disc.-30, 31, 32)

16. Respondent did not communicate with Mr. Kline as to the fact that a brief had to be filed and the consequences that would flow from the failure to file a brief. (Pet. For Disc-33)

17. Respondent failed to inform his client that the Superior Court denied his appeal due to Respondent's failure to file a brief. (Pet. For Disc.-37)

18. Mr. Kline discovered that his appeal had been dismissed when he received a copy of the October 7, 2009 Per Curiam Order of the Superior Court. (ODC-14)

19. On or about August 17, 2010, Tina Kline, Mr. Kline's mother, contacted Respondent about her son's case. Respondent told Tina Kline that he would call her, but he never did. (Pet. For Disc -38)

20. On September 16, 2010, Kenneth Kline filed a pro se Post Conviction Relief Act Petition.

21. On or about September 29, 2010, the Court granted Mr. Kline's motion for appointment of counsel and appointed new counsel to represent Mr. Kline in his PCRA.

22. Respondent abandoned his client.

23. Respondent did not answer the Petition for Discipline.

24. Respondent testified on his own behalf.

25. Respondent explained that he had suffered from medical issues and had been drinking alcohol to excess, but had stopped drinking in October of 2012. (N.T. 40, 44)

26. Respondent admitted that he had not sought any professional guidance for his problems. (N.T. 44)

27. Respondent apologized to Mr. Kline, to Petitioner and to the Hearing Committee. (N.T. 40) Respondent demonstrated remorse.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated 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 1.2(a) – A lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

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

4. 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.

5. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

6. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

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

8. RPC 1.16(d) – Upon termination of representation a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering

papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

9. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

10. 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 Board for consideration of the charges filed against Respondent alleging that he engaged in ethical misconduct by neglecting his client's criminal appeal. Respondent has admitted the accuracy of Petitioner's allegations and presented no testimony to contradict those allegations. The sole issue before the Board is the appropriate level of discipline to be imposed in light of the circumstances of this particular case. The Hearing Committee has recommended that Respondent be disciplined by the imposition of a suspension of one year and one day. For the following reasons, the Board agrees.

The evidence demonstrates that Respondent was court-appointed to represent Kenneth Kline in his criminal appeal, and subsequently abandoned the appeal and caused the appeal to be dismissed by the Superior Court. Respondent failed his client in the most elemental ways. He did not provide competent representation, he blatantly disregarded his duty to act with reasonable diligence and competence, and did nothing to further the appeal. Despite Mr. Kline's attempts to communicate with Respondent, either personal attempts by Mr. Kline, or through his girlfriend and Mr. Kline's mother,

Respondent ignored his client. Mr. Kline was never told by Respondent that his case had been dismissed for Respondent's failure to file a brief; instead, Mr. Kline discovered this information when the Superior Court mailed him a copy of the Per Curiam Order.

A determination of the appropriate discipline to address Respondent's misconduct necessitates a review of his history of discipline. This proceeding marks the third time that Respondent has come before the disciplinary authorities. Respondent has twice been disciplined for, *inter alia*, client neglect and lack of diligence. In 2007, Respondent received an Informal Admonition for ignoring requirements that he file a brief and certification and a response to a petition. Less than fifteen months later, in 2008, Respondent received a second Informal Admonition in connection with his failure to provide competent representation to a client and for his failure, on termination of his representation of another client, to take steps to protect the client's interests by promptly returning the client's file. Respondent's latest encounter with the disciplinary system shows that he has not heeded the seriousness of this prior discipline.

Respondent did not testify at length during the hearing and offered no character witnesses. He apologized to Kenneth Kline, to Petitioner, and to the Hearing Committee, and appeared remorseful. Respondent related that at the time of the Kline matter, he was experiencing some medical issues and had been consuming alcohol "to excess," but had stopped drinking in October of 2012. He admitted that he has not sought any professional guidance for these issues. Although Respondent brought these issues to light, he offered no medical testimony necessary to show a causal connection between those issues and his misconduct, therefore mitigation based on those issues is not appropriate. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). In fact,

Respondent readily concedes that Petitioner's allegations against him are accurate, and acknowledges that discipline is warranted. (N.T. 53-54)

The purpose of the disciplinary process is "to protect the public from unfit attorneys and to maintain the integrity of the legal system." Office of Disciplinary Counsel v. Costigan, 584 A.2d 296 (Pa. 1990). Although each disciplinary case is to be decided on the totality of the facts present, precedent is considered due to "the need for consistency in the results reached in disciplinary cases." Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa 1983).

Attorneys with a record of discipline who have engaged in neglect of client matters have generally received discipline ranging from a private reprimand to a suspension up to two years, depending on the aggravating and mitigating factors. Office of Disciplinary Counsel v. Melanie D. Naro, 212 DB 2011 (2012); Office of Disciplinary Counsel v. Jonah Daniel Levin, 124 DB 2004 (2006); Office of Disciplinary Counsel v. Michael Mayro, 144 DB 2001 (2004). The Board notes that standing alone, this case would not merit suspension, but the cumulative nature of the prior discipline requires the Board to assess this matter in a different light.

Respondent's past private discipline has failed to result in changes to his law practice. There is no evidence that Respondent has made corrective actions to negate the likelihood that he will engage in client neglect in the future. In order to protect the public, Respondent must be removed from the practice of law and required to prove his fitness at a reinstatement hearing.

Respondent is currently on temporary suspension due to his failure to pay outstanding costs in a related issue pertaining to the instant matter. We are not inclined to reward Respondent for his dilatoriness and so recommend that his suspension be made

prospective, and not retroactive to the date of the temporary suspension. The Board recommends that Respondent be suspended for a period of one year and one day.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Richard Patrick Reynolds, be Suspended from the practice of law for a period of 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: _____

R. Burke McLemore, Jr., Board Member

Date: November 19, 2013

Board Member Todd recused.