

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2019 Disciplinary Docket No. 3
Petitioner :
 : No. 196 DB 2012
v. :
 : Attorney Registration No. 68764
JOHN MICHAEL BIONDI, :
Respondent : (Beaver County)

ORDER

PER CURIAM:

AND NOW, this 26th day of June, 2014, a Rule having been entered upon respondent by this Court on March 31, 2014, to show cause why he should not be disbarred and no response thereto having been filed, it is hereby

ORDERED that the Rule is made absolute, John Michael Biondi is disbarred from the Bar of this Commonwealth and he shall comply with all of 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.

A True Copy Patricia Nicola
As Of 6/26/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 196 DB 2012
Petitioner	:	
	:	
v.	:	Attorney Registration No. 68764
	:	
JOHN MICHAEL BIONDI	:	
Respondent	:	(Beaver 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 December 21, 2012, Office of Disciplinary Counsel charged John Michael Biondi with violations of the Rules of Professional Conduct and the Rules of Disciplinary Enforcement. Respondent was personally served with the Petition. Respondent did not file an Answer to Petition.

By Notice of Prehearing Conference and Hearing dated February 6, 2013, which was personally served on Respondent, he was notified that a prehearing conference

was scheduled for March 12, 2013 and that a hearing in this matter was scheduled for April 19, 2013.

Respondent did not appear at the March 12, 2013 prehearing conference. Following the conference, Respondent was personally served with the transcript of the conference, a copy of the Order of March 12, 2013 entered by the Hearing Committee Chair, a copy of Petitioner's Witness List and Exhibit List, a copy of the Exhibits, a copy of the Notice of the Prehearing Conference and Hearing and a letter to Respondent dated March 14, 2013 from Disciplinary Counsel.

A disciplinary hearing was held on April 19, 2013, before a District IV Hearing Committee comprised of Chair Richard P. Kidwell, Esquire, and Members Philip Walter Zarone, Esquire, and Ansley Stell Westbrook, II. Esquire. Respondent did not appear. Petitioner called six witnesses, five of whom testified by telephone. Petitioner offered thirty-five exhibits, all of which were admitted into evidence.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on July 31, 2013, concluding that Respondent violated the Rules as contained in the Petition and recommending that Respondent be disbarred.

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, Office of Disciplinary Counsel, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Pa.R.D.E. 207, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice in the Commonwealth and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is John Michael Biondi. He was born in 1968 and was admitted to practice law in the Commonwealth of Pennsylvania in 1993. His attorney registration mailing address is 344 Fourth Street, Beaver, Pennsylvania 15009. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in Pennsylvania.

4. Respondent was administratively suspended effective October 20, 2011, by Order of the Supreme Court of Pennsylvania dated September 30, 2011. The last Attorney's Annual Fee Form received by Attorney Registration from Respondent was dated May 24, 2010. (PE 35; N.T. 38, 48)

5. On or about October 30, 2001, Respondent entered his appearance on behalf of K. Michelle Good in the Court of Common Pleas of Butler County. (PE 15; N.T. 16, 48)

6. On December 18, 2001, Respondent signed a Support Order of Court on behalf of Ms. Good. (PE 16; N.T. 16, 17, 48)

7. On or about February 14, 2003, a Support Order of Court was entered on behalf of Sheri L. Glenz (now Morgan) in the Court of Common Pleas of Butler County. (PE 17; N.T. 17, 48)

8. Said February 14, 2003 Support Order of Court shows that a copy was sent to Respondent. (PE 17; N.T. 48)

9. On or about November 16, 2001, Respondent signed a Support Order of Court on behalf of Melinda R. Ordy in the Court of Common Pleas of Butler County. (PE 18; N.T. 18, 48)

10. The Honorable Thomas J. Doerr testified at the hearing. Judge Doerr is the President Judge of the Court of Common Pleas of Butler County, and is administratively in charge of the court system of Butler County. (N.T. 9)

11. Judge Doerr's office contacted local attorneys who might know Respondent, placed telephone calls to Respondent's then law firm and checked with the Disciplinary Board with regard to Respondent's current address. (N.T. 10)

12. By Order dated June 8, 2011, Judge Doerr issued an Order whereby Respondent was removed from matters involving Ms. Good, Ms. Morgan and Ms. Ordy. (PE 24; N.T. 10 48)

13. Respondent's failure to respond to the court system caused a five month delay in notification of clients, causing the court to take action to notify the clients in order to ensure that the clients' legal rights would be protected. (N.T. 11)

14. Since the early part of 2011, Respondent has not contacted Judge Doerr or any court staff. (N.T. 12)

15. Adam Fencil testified at the hearing. Mr. Fencil is the Family Court Administrator for the Court of Common Pleas of Butler County. Beginning in January 2011, his office attempted to locate Respondent. (N.T. 16)

16. After contacting Respondent's then law firm, Walsh, Collis and Blackmer, P.C. the law firm's office manager wrote to the Butler County Domestic

Relations Section by letter dated January 18, 2011 and explained that Respondent was no longer employed by the law firm. (PE 19; N.T. 48)

17. A copy of the law firm's letter was sent to Respondent at the address of 344 Fourth Street, Beaver, PA 15009. (PE 19; N.T. 48)

18. By letter dated January 28, 2011, the law firm's manager wrote to the Domestic Relations Section of Butler County and stated, in part, that all pleadings and correspondence be directly sent to Respondent at the Fourth Street address. (PE 20; N.T. 48)

19. A copy of this letter was sent to Respondent. (PE 20; N.T. 48)

20. By letter dated April 11, 2011, the Enforcement Supervisor of the Domestic Relations Section of Butler County wrote to Respondent at the Fourth Street address requesting, in part, that Respondent contact the Domestic Relations Department. (PE 21; N.T. 48)

21. By letter dated May 20, 2011, Mr. Fencil wrote to Respondent in care of the Walsh, Collis and Blackmer law firm indicting that Respondent had not filed anything on behalf of Ms. Good, Ms. Morgan or Ms. Ordy. (PE 22; N.T. 48)

22. The office manager of the law firm wrote by letter of May 23, 2011 to again explain that Respondent had not been employed by the law firm since October 4, 2010. (PE 23; N.T. 48)

23. The law firm's letter of May 23, 2011 was copied to Respondent at his Fourth Street address.

24. Respondent's address at 344 Fourth Street, Beaver PA 15009 is the address he provided to Attorney Registration on his most recent Annual Fee Form. (PE 35; N.T. 48)

25. When the Family Court Administrator's office began receiving correspondence from Respondent's then law firm, it began to investigate other cases in which Respondent may have been involved. (N.T. 23)

26. The process of identifying what other cases Respondent was associated with took approximately two months, due to the computer system used by Butler County and the Commonwealth. (N.T. 23)

27. After accumulating the information, Mr. Fencil needed to discuss the matter with Judge Doerr. (N.T. 24)

28. Respondent has not contacted anyone on Mr. Fencil's staff since January 2011. (N.T. 24)

29. Mr. Fencil believes the matter could have been settled with "just a phone call" from Respondent, but Respondent never made that phone call. (N.T. 24)

30. Respondent was administratively suspended by Order dated September 20, 2011, pursuant to Rule 219, Pa.R.D.E. (PE 1; N.T. 48)

31. By letter dated November 3, 2011, Angelea Allen Mitas, Counsel-in-Charge of District IV Office wrote to the Honorable John McBride, President Judge of the Court of Common Pleas of Beaver County, informing Judge McBride, in part that Respondent had been administratively suspended. (PE 2; N.T. 48)

32. Ms. Mitas' letter dated November 3, 2011 shows that a copy was sent to Respondent. (PE 2; N.T. 48)

33. By letter dated October 20, 2011 (DB-7 Request for Statement of Respondent's Position) Respondent was notified of the allegations under consideration in the matter. (PE 8; N.T. 48)

34. The October 20, 2011 letter of inquiry was sent to Respondent by first class mail, and by certified mail return receipt requested. (PE 8; N.T. 48)

35. The October 20, 2011 letter of inquiry was sent to Respondent at his address of 344 Fourth Street, Beaver PA 15009. (PE 9; N.T. 48)

36. The October 20, 2011 letter of inquiry sent by certified mail, return receipt requested was returned to Office of Disciplinary Counsel and marked as "unclaimed." (PE 9; N.T. 48)

37. On October 24, 2011, Mark A. Pastore, Investigator with the Office of Disciplinary Counsel, personally served Respondent with the October 20, 2011 letter of inquiry by handing the letter to Respondent at "Witch Flavor Ice Cream Shop." (PE 10; N.T. 40, 48)

38. By letter dated December 30, 2011, Respondent was informed that he had not yet responded to the letter of inquiry. Said letter was sent by regular mail to Respondent's address of 344 Fourth Street in Beaver. (PE 11, N.T. 48)

39. By letter dated February 23, 2012, Respondent was notified by the Office of Disciplinary Counsel that based on the alleged facts contained in the October 20, 2011 letter of inquiry, and his failure to respond to the letter of inquiry, the Office of Disciplinary Counsel would consider that he had also violated Pennsylvania Rule of Disciplinary Enforcement 203(b)(7). (PE 12; N.T. 48)

40. The February 23, 2012 letter to Respondent was sent by first class mail and certified mail, return receipt requested. (PE 12; N.T. 48). The letter was returned to Office of Disciplinary Counsel marked as "return to sender, unclaimed, unable to forward." (PE 13; N.T. 48)

41. By letter dated May 31, 2012, Respondent was notified that if he failed to respond to the allegations of misconduct or provide good cause for failing to respond by July 3, 2012, the Office of Disciplinary Counsel might seek to impose discipline for his violation of Pa.R.D.E. 203(b)(7) and Rule of Professional Conduct 8.1(b). (PE 14; N.T. 48)

42. The May 31, 2012 letter to Respondent was sent to him at his address at 588 Third Street, Beaver PA 15004 and signed for by or on behalf of Respondent on June 1, 2012. (PE 14; N.T. 48)

43. By letter dated August 22, 2012, sent by certified mail, return receipt requested, and by first class mail, Paul J. Killion, Chief Disciplinary Counsel, informed Respondent that as a result of his violations of Rules of Professional Conduct 8.1(b), 8.4(d), Pa.R.D.E. 203(b)(7), 219(a), and 219(d)(3), it was determined that Respondent should receive an Informal Admonition with conditions. (PE 25; N.T. 48)

44. On September 6, 2012, Investigator Pastore of the Office of Disciplinary Counsel personally served Respondent with the letter dated August 22, 2012 from Chief Disciplinary Counsel, by handing the same to Respondent.

45. Mr. Pastore testified at the disciplinary hearing.

46. Mr. Pastore asked Respondent for his address, but Respondent refused to give his address. (N.T. 42)

47. Mr. Pastore identified the document when he handed it to Respondent and Mr. Pastore testified that Respondent looked at the document. (N.T. 42)

48. Mr. Pastore did not observe anything unusual about Respondent's appearance or behavior. (N.T. 42)

49. By letter dated November 14, 2012, from Paul J. Killion, Chief Disciplinary Counsel, sent to Respondent by certified mail, return receipt requested and by

first class mail as well as personal service, Respondent was informed that he should appear for an Informal Admonition on November 28, 2012, at 2:00 p.m. in the District IV Office at Suite 1300, Frick Building, 437 Grant Street, Pittsburgh, PA 15219. (PE 27; N.T. 48)

50. On November 24, 2012, Alex Korol, Pennsylvania State Constable, personally served Respondent with the letter dated November 14, 2012. (PE 28; N.T. 27, 48)

51. Constable Korol testified at the disciplinary hearing.

52. Constable Korol observed that each time he served Respondent with documents on behalf of Office of Disciplinary Counsel, Respondent would open the documents as he was receiving them. (N.T. 27)

53. Constable Korol did not observe that Respondent was ill. (N.T. 30)

54. Respondent failed to appear for the Informal Admonition, failed to provide proof of his compliance with the conditions attached thereto, and failed to show good cause for his failure to appear. (PE 4; N.T. 48)

55. On December 21, 2012, Petitioner filed a Petition for Discipline in this matter. (PE 4; N.T. 48)

56. On January 6, 2013, Constable Korol personally served Respondent with the Petition for Discipline and Notice to Plead. (PE 5; N.T. 27, 48)

57. Respondent failed to file an Answer to Petition for Discipline. (Pre-hearing N.T. 5)

58. By Notice of Prehearing Conference and Hearing dated February 6, 2013, Marcee Sloan, Assistant Secretary to the Disciplinary Board, sent to Respondent a

Notice of Prehearing Conference and Hearing as well as an Order dated February 6, 2013.
(PE 6; N.T. 33, 48)

59. The February 6, 2013 Notice was sent to Respondent by regular mail and by certified mail return receipt requested. (N.T. 33)

60. Ms. Sloan testified at the disciplinary hearing.

61. The regular mail was not returned to Ms. Sloan's office but the certified mail was returned as "unclaimed." (PE 7; N.T. 33, 48)

62. On March 11, 2013, Constable Korol personally served the Notice of Prehearing Conference and Hearing and Order dated February 6, 2013 to Respondent at 344 Fourth Street, Beaver, Pa 15009. (PE 21; N.T. 27, 48)

63. On March 12, 2013, a Prehearing Conference was held in this matter, but Respondent did not appear. (PE 32; N.T. 48)

64. By Order dated March 12, 2013, Hearing Committee Chair Richard P. Kidwell, Esquire, ordered that the allegations contained in the Petition for Discipline be deemed admitted, that Respondent must serve Disciplinary Counsel with Respondent's witness list and exhibit list on or before April 5, 2013, that witnesses for Disciplinary Counsel may testify by telephone, and that Disciplinary Counsel shall personally serve on Respondent its list of witnesses and Exhibits as well as notice of any additional witnesses or exhibits on or before April 5, 2013. (PE 32; N.T. 48)

65. On March 14, 2013, Constable Korol personally served Respondent at 344 Fourth Street, Beaver, PA 15009 with a copy of the transcript of the prehearing conference, a copy of the Hearing Committee Chair Order, a copy of Petitioner's witness list and offers of proof, a copy of Petitioner's exhibit list, a copy of the exhibits which Petitioner intended to offer into evidence at the hearing, a copy of the Notice of Prehearing

Conference and Hearing, and a letter to Respondent dated March 14, 2013 from Disciplinary Counsel William R. Friedman. (PE 30; N.T. 29, 48)

66. By letter dated March 21, 2013, Ms. Sloan mailed to Respondent a copy of the Prehearing Order that was entered at the Conference on March 12, 2013. (PE 31; N.T. 34, 48)

67. The March 21, 2013 letter to Respondent was sent to him at 344 Fourth Street, Beaver PA 15009. (PE 31; N.T. 34,38)

68. The March 21, 2013 letter was not returned to Ms. Sloan's office, nor did Respondent ever contact Ms. Sloan's office. (N.T. 34)

69. Ms. Sloan telephoned Respondent and the outgoing voice message stated that the number was registered to an "ice cream shop." (N.T. 34)

70. Ms. Sloan left a voice mail message for Respondent to return her call, but he did not do so. (N.T. 34)

71. By letter dated April 1, 2013, Petitioner sent to Respondent copies of Petitioner's Exhibits 29, 30, 31, and 32. (PE 33; N.T. 48)

72. On April 1, 2013, Constable Korol served on Respondent a letter dated April 1, 2013 from William R. Friedman and the above exhibits. (PE 34; N.T. 29, 48)

III. CONCLUSIONS OF LAW

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

1. RPC 8.1(b) – An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter shall not fail to disclose a fact necessary to correct a misapprehension known by the person to

have arisen in the matter or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by rule 1.6.

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

3. 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.

4. Pa.R.D.E. 203(b)(3) – Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline.

5. 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 Rules Section 87.7(b), for a statement of the respondent attorney's position.

6. Pa.R.D.E. 219(a) – Every attorney admitted to practice law in this Commonwealth shall pay an annual fee of \$130.00 under this rule. The annual fee shall be collected under the supervision of the Attorney Registration office, which shall send and receive or cause to be sent and received, the notices and forms provided for in this rule.

7. Pa.R.D.E. 219(d)(3) – On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Attorney Registration Office a signed form prescribed by the Attorney Registration Office in accordance with the following procedures: Every person who has filed such a form shall notify the Attorney Registration Office in writing of any change in the information previously submitted within 30 days after such change.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent that he willfully ignored communications from the Court of Common Pleas of Butler County, the Family Court Administrator and Domestic Relations Section of Butler County, and the Office of Disciplinary Counsel and Chief Disciplinary Counsel.

From at least October 30, 2001 until February 14, 2003, Respondent was representing three separate clients in various domestic relations matters in the Court of Common Pleas of Butler County. Despite efforts on the part of the Domestic Relations Section and Family Court Administrator to contact Respondent in regard to these matters, they were unable to do so. This necessitated the involvement of Thomas Doerr, the President Judge, who issued an Order removing Respondent from the matters of the three clients.

According to the evidence of record, the matters at the Domestic Relations level could have been resolved with "just a phone call" from Respondent, but Respondent never contacted anyone in the Domestic Relations office about his client matters.

Consistent with this lack of response, Respondent ignored efforts on the part of Office of Disciplinary Counsel to resolve the matter. Despite being personally served with the October 20, 2011 letter of inquiry and despite being notified that he had not responded to the October 20 letter, Respondent again chose not to respond.

Respondent's misconduct continued to escalate. On September 6, 2012, he was personally served with a letter dated August 22, 2012 from Paul J. Killion, Chief Disciplinary Counsel, informing Respondent that it was determined that Respondent should receive an Informal Admonition with conditions. Thereafter, on November 24, 2012,

Respondent was personally served with a letter dated November 14, 2012 from Mr. Killion, notifying Respondent that he was to appear for an Informal Admonition on November 28, 2012 at 2:00 p.m. in the District IV Office of the Office of Disciplinary Counsel in Pittsburgh.

Respondent failed to appear for the Informal Admonition and failed to provide proof of compliance with conditions attached thereto.

Respondent's failure to appear and failure in any way to correspond with the Disciplinary Board ultimately resulted in the filing of the Petition for Discipline. Consistent with his earlier lack of response and despite extensive notice, Respondent 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 on the part of Butler County and the Office of Disciplinary Counsel to contact him. Letters were sent to him at his Attorney Registration address, and he was personally served on multiple occasions with various documents. Each time he opened the envelopes and looked at the documents.

Based on the evidence of record, the Board concludes that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement. With the culpability of Respondent established, the Board must address the level of discipline to be imposed. Petitioner and the Hearing Committee have recommended that Respondent be disbarred from the practice of law. Upon careful consideration of the record and the prior case law, we are persuaded that a lengthy suspension is the appropriate discipline.

Disbarment is a severe sanction which is to be reserved for only the most egregious ethical violations and serious cases of misconduct because the consequence is a termination of an attorney's license without promise of its restoration in the future. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). Many disbarment cases include

criminal activity, theft of client funds or severe client neglect. Office of Disciplinary Counsel v. Stephen K. Urbanski, 30 DB 2009 (Pa. 2010). The Supreme Court imposed disbarment when an attorney manifested an intention to withdraw from the practice of law. This attorney had an extensive history of discipline ranging from private discipline to a suspension of one year and one day. Office of Disciplinary Counsel v. D. Gregory Whitney, 113 DB 1999 (Pa. 2001). The "total picture of [a respondent's] professional conduct" must be taken into account when determining the level of discipline to be imposed. Office of Disciplinary Counsel v. John W. Campbell, 345 A.2d 616 (Pa. 1975).

The Board finds instructive Respondent's lack of prior discipline and the lack of any evidence of criminal activity or theft of client funds. It is unknown as to how Respondent's misconduct affected his client matters. Without evidence of egregious actions engaged in by Respondent akin to those found in prior cases, it is difficult to justify disbarment. Yet certainly Respondent's continued pattern of ignoring the court system and the disciplinary system warrants a lengthy suspension. Office of Disciplinary Counsel v. William A. Walsh, 73 DB 2005 (Pa. 2006); Office of Disciplinary Counsel v. William W. McVay, III, No. 112 DB 2002 (Pa. 2005). Respondent has made no effort to confront his disciplinary issues and has provided no evidence that he values his privilege to practice law. He has forfeited any opportunity to accept responsibility and express remorse.

For these reasons, we recommend a suspension of four years. Such a time frame underscores the serious nature of Respondent's refusal to communicate with the court system and his ongoing refusal to participate at any level of the instant proceedings.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, John Michael Biondi, be Suspended from the practice of law for a period of four years.

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: 

Brian John Cal, Board Member

Date: December 11, 2011

Board Member Leonard dissented and would recommend Disbarment.