

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 642, Disciplinary Docket No. 3
Petitioner :
 : No. 43 DB 1999
 :
 : Attorney Registration No. []
v. :
 :
 :
[ANONYMOUS] :
Respondent : ([] 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

On March 30, 1999, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent, []. The Petition alleged violations of the Rules of Professional Conduct based on Respondent's appearance in a Maryland court when he was not licensed to practice in that jurisdiction. Respondent filed an Answer to the petition on April 19, 1999.

A disciplinary hearing was held on August 23, 1999 before Hearing Committee [] comprised of Chair [], Esquire and Members [], Esquire, and [], Esquire. At the hearing, Respondent was represented by [], Esquire. Petitioner was represented by [], Esquire. [] subsequently withdrew his appearance and [], Esquire entered her appearance on behalf of Respondent on November 10, 1999.

The Hearing Committee filed its Report on January 24, 2000 and found that Respondent violated Rules of Professional Conduct 1.1, 5.5(b), 8.4(b), and 8.4(d) as charged in the Petition for Discipline. The Committee recommended a suspension for a period of six months.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of March 22, 2000.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), 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 was born on April 21, 1948, was admitted to practice law in the Commonwealth on September 30, 1997, and maintains his office at []. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On October 16, 1997, [A], filed a Petition to Establish Visitation and a Motion to Shorten Time in the Circuit Court for [] County, Maryland, against [B], of [], Pennsylvania, seeking visitation with their child, [C]. The matter was docketed as No. [].

4. [A's] counsel in the matter was [D], Esquire, an attorney admitted in both Maryland and Pennsylvania.

5. On October 16, 1997, [D] filed a Motion to Shorten Time.

6. On October 16, 1997, Judge [E] signed an order allowing thirty (30) days after service for filing an answer, and a writ of summons was issued.

7. After being served with the petition, [B] contacted Respondent who

agreed to represent her only for the purpose of contesting Maryland's jurisdiction over the matter.

8. Respondent contacted [E] and advised him he would be representing [B]. Respondent agreed to accept service of the petition.

9. On December 20, 1997, [E] sent the petition to Respondent for service. Respondent did not file an answer within thirty (30) days as required by the Order of October 16, 1997.

10. On January 29, 1998, [D] filed an "Affidavit of Service" and Request for Entry of Default. An Order finding [B] in default was entered on February 12, 1998.

11. On March 13, 1998, acting as counsel for [B], Respondent mailed to the Clerk of the Circuit Court for [] County a Motion to Vacate Order of Default, seeking to have the petition for visitation dismissed for lack of jurisdiction over the child, and also setting forth substantive allegations regarding the merits of the case and requesting that the parties be ordered to seek counseling.

- a) The motion contained Respondent's Pennsylvania identification number.
- b) The filing of this motion constituted entry of Respondent's appearance as counsel of record in the Maryland matter.

12. On March 13, 1998, and at all times in question in this matter, Respondent was not admitted to the practice of law in Maryland. Respondent did not associate with local counsel and was not specially admitted for the purpose of the [A] v. [B] case.

13. Respondent knew he was not authorized to practice law in Maryland, but mistakenly believed he could appear and obtain transfer of the matter to the courts of Pennsylvania, where he could litigate the matter in full.

- a) Under Section 10-601 of the Business and Occupation Code of the state of Maryland, a person may not practice, attempt to practice, or offer to practice law in Maryland unless that person is admitted to the bar of Maryland. Section 10-606 defines a violation of this section as a misdemeanor subject to a fine of \$5,000 and imprisonment not exceeding one year or both.
- b) Under Section 10-602 of the Business and Occupations Code of the state of Maryland, a person may not represent to the public by use of the title "lawyer" or "attorney at law" that he is licensed to practice law in Maryland unless that person is admitted to the bar of Maryland. Section 10-606 defines a violation of this section as a misdemeanor subject to a fine of \$1,000 and imprisonment not exceeding one year or both.

14. [D] filed a response to the Motion to Vacate Order of Default requesting that it be denied or in the alternative that a hearing be set.

15. By order dated March 19, 1998, Judge [F] vacated the default and ordered that the matter be scheduled for hearing "at which hearing the issue of jurisdiction will be addressed as well as the substantive (emphasis added) issues raised in the event jurisdiction exists in this court". This order was mailed to Respondent.

16. By notice dated March 26, 1998, the Assignment Office of the Circuit Court for [] County set hearing before a Family Law Master on the matter for May 5, 1998.

17. Hearing before the Family Law Master was held May 5, 1998. Respondent appeared on behalf of [B].

18. During this hearing, Respondent raised his jurisdictional questions. The Master determined that jurisdiction lay in the state of Maryland and proceeded to the merits.

19. Respondent attempted to offer into evidence certain letters purporting to offer information as to the substance of the case. When objections that such letters constituted hearsay were sustained, Respondent stated that he had not subpoenaed the writers of the letters because he assumed that the Master would find no jurisdiction, or that if he did he would admit the letters.

20. After testimony on the substantive issues, the Master made recommendations for a schedule of visitation for [A].

21. In a telephone conversation on May 6, 1998, Respondent admitted to [D] that he was not admitted to the practice of law in Maryland. Respondent requested a conference telephone call with [D] and the Master, in which Respondent advised the Master of the same information.

22. On May 8, 1998, [B], acting *pro se*, filed a document entitled "Defendant's Exceptions to the Master's Report and Motion for the Court to Consider Additional Evidence".

- a) On advice of [G], a Maryland attorney who was considering the case, Respondent drafted the Defendant's Exceptions to the Master's Report and Motion for the Court to Consider Additional Evidence for [B] to sign and file *pro se*, to preserve her rights until she could locate Maryland counsel. He faxed the motion to Attorney [G] who reviewed it and made some changes.
- b) The Exceptions and Motion argued that essential evidence from various sources had not been received and would be subpoenaed for any further hearing. The letters which the Master had refused to admit were attached as exhibits to the Exceptions and Motion.

23. On the same day, [D] filed an Answer to the Exceptions and a

Motion to Vacate Proceedings on the ground that Respondent's illegal representation of [B] rendered the proceedings a nullity.

24. On May 9, 1998, Plaintiff's counsel filed a Motion for Sanctions, based on the allegation that Respondent's unauthorized appearance caused the Plaintiff to incur legal fees for the hearing which were essentially wasted.

25. On May 15, 1998, [H], an attorney admitted in Maryland, entered his appearance as counsel for [B]. On May 22, 1998, the Defendant's Motion for the Court to Consider Additional Evidence was denied.

26. On May 28, 1998, the Court entered an order imposing sanctions of \$875.00 on Respondent personally.

27. [D] sent Respondent a letter on June 4, 1998, enclosing a copy of the Order with a request for payment.

28. Respondent did not appeal the order of May 28, 1998. Respondent has advised [D's] office of his inability to pay the sanction, but has neither paid the amount ordered by the Court nor sought modification of the Order to provide for a payment schedule.

29. The case was subsequently litigated by [D] and [H] and concluded by consent order dated February 1, 1999.

30. Respondent testified at the disciplinary hearing of August 23, 1999.

31. Respondent testified that he believed that under the Rules if [B] and her daughter had resided in the Commonwealth of Pennsylvania for six months, then Pennsylvania would have had jurisdiction over the child custody matter.

32. In response to questioning by the Hearing Committee, Respondent testified that in his estimation he did not prevail on the jurisdictional issue because there was a calculation difference in the amount of time that [B] had resided in the Commonwealth. Respondent testified that he recognized that it was a very close issue.

33. Respondent testified that although he has been involved in other custody cases in which the application of the Uniform Child Custody Jurisdiction Act was at issue, he has never tried any cases in Pennsylvania.

34. Respondent did not look at any particular Maryland cases to determine that Maryland was a 6-month jurisdiction, nor did he review any cases regarding the ability of an out-of-state lawyer to appear in a Maryland proceeding.

35. Respondent testified that he did not raise the issue as to jurisdiction but rather responded to an inquiry put to him by [D] with regard to his Maryland I.D. number.

36. Respondent testified that he first became involved in [B's] case some time in November and that prior to his being served with the Petition on December 20, 1997, he would have had conversations with [D] but recalled no point during which he related that he was not licensed in Maryland.

37. Respondent testified that he was aware prior to his appearing in Maryland at the May 5, 1998 hearing that there was a factual dispute as to the length of time that [B] resided in the Commonwealth.

38. Respondent testified that after receiving the initial pleading in this matter, he understood that he had 30 days in which to respond and did not recall any communication with [D] wherein he requested an extension of time to respond.

39. When asked whether there was a reason why the responsive pleading was not filed within 30 days of the initial Petition, Respondent could offer no compelling or sound reason.

40. Respondent could offer no justification for having failed to file a

responsive pleading within the 30-day time period.

41. Respondent could offer no excuse or justification for delay in the preparation of a Motion to Vacate after receiving a Default Judgment from Maryland.

42. Respondent acknowledged that although he first discussed with [B] his fees after returning the case to Pennsylvania, he did not provide that information to her in writing.

43. Respondent has a prior disciplinary record consisting of
- a) An Informal Admonition administered January 11, 1981;
 - b) Disbarment on Consent following an Order of the Supreme Court of Pennsylvania dated June 11, 1985; and
 - c) Respondent's period of disbarment terminated with Reinstatement ordered by the Supreme Court of Pennsylvania on July 1, 1996.

III. CONCLUSIONS OF LAW

By his actions 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 necessary for the representation.
2. RPC 5.5(b) - A lawyer shall not practice law in a jurisdiction

where to do so would be in violation of regulations of the profession in that jurisdiction.

3. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
4. 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 upon a Petition for Discipline charging Respondent with violations of the Rules of Professional Conduct 1.1, 5.5(b), 8.4(b), and 8.4(d). The record shows that Respondent undertook representation of a client in a jurisdiction where he could not legally do so. Respondent's reason for appearing on behalf of a client at a hearing on a Petition for Visitation in Maryland, where he was not licensed to practice law, was that he felt "relatively certain" (N.T. 80) that he would win on the issue of jurisdiction. Respondent admits that he did not review Maryland law to confirm his belief. He also admits that it was an error to file pleadings and appear in the Maryland proceeding since he was not licensed to do so. Further, the record shows that Respondent was ill-prepared to represent his client at the hearing, which proceeded on the merits of the Petition after the judge found jurisdiction in Maryland to be proper. The judge made a recommendation which was adverse to the interests of Respondent's client. Respondent admits that he did not bother to prepare a case on the merits because he felt sure he would win the jurisdictional issue. (N.T. 68) Respondent utterly failed to competently represent his client and engaged in the

unauthorized practice of law in Maryland. Respondent's actions violated the Rules as charged in the Petition for Discipline.

Respondent's misconduct is aggravated by his history of prior discipline. Respondent received an Informal Admonition in January of 1981. Respondent was Disbarred on Consent in June of 1985. This resignation was precipitated by his commingling and conversion of client funds, neglect of files, and delay and failure to carry out the terms of representation of clients. Respondent did not practice law again until he was reinstated by order of the Supreme Court of Pennsylvania dated July 1, 1996.

Petitioner recommended to the Hearing Committee that Respondent be disciplined by a public censure. Petitioner's position is that as the underlying misconduct warrants private discipline, Respondent's prior disbarment aggravates the matter to a public censure. Petitioner does not advocate suspension in this case.

Respondent contends that a private reprimand is the appropriate sanction to address the misconduct in this matter.

The Hearing Committee gave more weight to the aggravating nature of Respondent's prior record than the parties did, reasoning that in light of Respondent's previous problems, one would expect that he would exercise a greater degree of care in his decision-making processes. The Committee also found that while Respondent was

not dishonest in his testimony, his responses were not always forthright and credible. The Committee recommended a six month suspension.

It is well established that a history of discipline serves to aggravate a disciplinary sanction. *Office of Disciplinary Counsel v. Duffield*, 537 Pa. 485, 644 A.2d 1186 (1994), *In re Anonymous No. 29 DB 94*, 34 Pa. D. & C. 4th 121 (1996). In the instant matter, Respondent was Disbarred on Consent ten years after his admission to practice law. He remained disbarred for eleven years until his reinstatement in 1996. A mere eighteen months later, Respondent was again engaged in unethical activities. The Board agrees with Petitioner that the underlying misconduct, standing alone, would warrant private discipline. However, Respondent's activities raise legitimate concerns regarding his fitness to practice law, as they occurred so close in time to his reinstatement from disbarment in 1996. It is apparent that Respondent has not benefitted from the experience of his disbarment. The Hearing Committee made a valid point in its Report when it questioned the stability of Respondent's decision-making processes. It is reasonable to expect that a lawyer so recently reinstated from disbarment would think through his legal strategies most carefully and not make hasty judgments, as Respondent candidly admits doing. The public is entitled to protection from a lawyer who is unable to approach problems with a cool and rational thought process. For these reasons the Board recommends a suspension of one year and one day.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be suspended from the practice of law in the Commonwealth of Pennsylvania for a period of one (1) year and one (1) 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: _____
Angelo L. Scaricamazza, Jr., Vice-Chair

Date: November 14, 2000

Board Members Caroselli, and Nix recused themselves.

Board Members Miller, Cunningham, Stewart, Peck and McLaughlin did not participate in the March 22, 2000 adjudication.

PER CURIAM:

AND NOW, this 25th day of January, 2001, upon consideration of the Report and Recommendations of the Disciplinary Board dated November 14, 2000, it is hereby

ORDERED that [Respondent] be and he is SUSPENDED from the Bar of this Commonwealth for a period of one (1) year and one (1) 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.