

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 651 Disciplinary Docket
Petitioner : No. 3
:
: Nos. 58 DB 1998 and 102 DB 1998
:
v. :
: Attorney Registration No. []
[ANONYMOUS] :
Respondent : ([])

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 June 23, 1998, a Petition for Discipline was filed by Office of Disciplinary Counsel, Petitioner, against [], Respondent in these proceedings. The Petition charged Respondent with violations of Rules of Professional Conduct 1.3, 1.4(a), 1.4(b), and 8.4(d). Respondent filed an Answer to Petition on August 11, 1998. On September 16, 1998 Petitioner filed a second Petition for Discipline charging Respondent with violations of Rules 1.3, 1.4(a)

and 1.4(b). The Petitions were consolidated for hearing by Order of the Disciplinary Board dated October 8, 1998.

Disciplinary hearings were held on July 15 and October 21, 1999 before Hearing Committee [], comprised of Chair [], Esquire, and Alternate Members [], Esquire, and [], Esquire. Respondent was represented by [], Esquire. Petitioner was represented by [], Esquire.

The Committee filed a Report on May 24, 2000 and found that Respondent violated Rules of Professional Conduct 1.3, 1.4(a), and 1.4(b). The Committee recommended a Public Censure and probation for three years with a practice monitor.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting held on August 2, 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 in 1944 and was admitted to practice law in the Commonwealth of Pennsylvania in 1968.

3. Respondent's registered principal office address for the practice of law was []. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. Respondent is currently on active status in this Commonwealth.

Facts Relating to Petition No. 58 DB 1998

5. In or around February 1994, [A] (hereinafter "[A]") met with Respondent at his office to discuss her options regarding her deceased aunt's Will and annuity policy.

6. On or about September 30, 1994, Respondent filed a complaint in the United States District Court, [] District of Pennsylvania, captioned [A] v. [B] Co., No. [].

7. On or about November 16, 1994, [B] answered the complaint and filed a counterclaim for interpleader against eleven other beneficiaries named on the annuity policy, (hereinafter "[C] Defendants.").

8. On or about November 22, 1994, the Honorable [D] issued a Scheduling Order requiring completion of discovery by March 20, 1995 and the filing of a Joint Pretrial Order with the Court by April 10, 1995.

9. By letter dated February 21, 1995, to Respondent, [E], Esquire, Counsel for [B], enclosed a copy of a Self-Executing Disclosure Statement, suggested alternative dispute resolution to

settle the matter, reiterated the March 20, 1995 discovery deadline for Respondent, and advised Respondent that if he did not hear from him, he would file a Motion for Summary Judgment on behalf of his client.

10. Respondent failed to provide to the [C] Defendants [A's] portion of the Pre-Trial Order and failed to communicate her factual or legal position in a Self-Executing Disclosure Statement as required under the Civil Justice Expense and Delay Reduction Plan.

11. On or about June 27, 1995, the [C] Defendants filed a Motion for Summary Judgment alleging Respondent's failure to provide self-executing disclosure and to communicate his factual or legal position as required by the Pretrial Order.

12. Respondent failed to respond to the Motion for Summary Judgment and to notify [A] that a Motion had been filed.

13. By Order dated July 18, 1995, the Court granted the [C] Defendants' Motion for Summary Judgment and ordered that interest accrued on the insurance proceeds and all litigation cost be taxed to [A].

14. By letter dated September 19, 1995, [A] advised Respondent that she had not spoken to him or received phone calls or letters since earlier in the year despite repeated attempts to contact him, and that on September 11, 1995, she learned that her case in Federal Court was closed in July 1995 and distribution of checks to the [C] Defendants was made.

15. By letter dated April 12, 1996, to [A], Respondent confirmed the meeting on that date in his office between them to review the status of the case, acknowledged her request to refund his fee and to absorb the out-of-pocket costs for the case, and confirmed that court cost charged would be his responsibility.

16. By letter dated February 28, 1997, sent by certified mail, received by Respondent's office on March 5, 1997, [A] made a demand for additional monies to compensate her for Respondent's negligence.

17. Respondent failed to reply to the letter in writing.

18. By letter dated July 28, 1997, sent by certified mail, [A] acknowledged a telephone conversation with Respondent in the beginning of July requesting that she telephone Respondent again, advised Respondent that he failed to return her calls when she did call him back, and discussed Respondent's lack of communication with her regarding the case.

Facts Relating to Petition No. 102 DB 1998

19. In or around February 1992, Respondent was retained by [F] (hereinafter "[F]") to represent her in a medical malpractice action.

20. On or about April 27, 1992, Respondent filed a Complaint in the [] Court of Common Pleas captioned [F] v. [G], M.D. et al, No. [].

21. On or about July 17, 1992, the Defendants served expert witness interrogatories on Respondent requesting the

identity of the experts who would testify at trial and their opinions, etc.

22. Respondent failed to answer the interrogatories.

23. By Order dated August 30, 1994, the court ordered Respondent to answer the expert discovery within thirty (30) days.

24. Respondent failed to comply with this Order.

25. On October 26, 1994, the court entered a second Order compelling Respondent to answer the expert discovery within twenty (20) days.

26. Respondent failed to comply with this Order.

27. On December 1, 1994, the court entered its third Order on the issue of expert discovery, precluding Respondent's client from calling expert witnesses to testify at trial and precluding the plaintiff from introducing expert witness opinion into evidence at trial.

28. Respondent failed to file a Request for Reconsideration of the preclusion order.

29. Respondent failed to advise [F] of any of the Orders regarding expert discovery or to provide the required expert discovery.

30. By Order dated May 25, 1995, Defendants', [H], M.D. and Trustees of the University of [I], Motion for Summary Judgment was granted and Defendant's, [G], M.D., Motion for Summary Judgment was denied.

31. Respondent failed to advise [F] of this decision.

32. Defendant [G] filed a Motion for Reconsideration regarding the May 25, 1995 Order and by Order dated September 19, 1995, Defendant's, [G], Motion for Summary Judgment was granted and plaintiff's claims against him were dismissed with prejudice.

33. Respondent failed to advise [F] the case had been dismissed with prejudice or to explain the matter to the extent necessary to permit [F] to make an informed decision regarding the representation.

34. By letter dated February 4, 1997, [F] advised Respondent that he had her case for nearly six years, that she gave her deposition three years ago, and that she wanted Respondent to settle her case as soon as possible.

35. By letter dated March 5, 1997, [J], Respondent's secretary, advised [F] that Respondent had received her letter and that he would like her to make an appointment to come in and speak with him regarding the matter.

36. On or about April 17, 1997, [F] met with Respondent who, for the first time, informed her of his actions and the fact that her case was over and she had lost.

37. By certified letter dated October 8, 1997, received by Respondent's agent on October 16, 1997, [F], inter alia, requested Respondent to send her a copy of her file as soon as possible.

**Facts Relating to Respondent's Prior Discipline,
Legal Practice and Office Procedures**

38. Respondent has a prior disciplinary history consisting of two Informal Admonitions and two Private Reprimands.

39. Respondent presented the testimony of several members of the Bar, who testified, in substance, that Respondent has a good reputation as a skilled and effective advocate, and that he often takes on difficult cases or cases where the client might have difficulty obtaining representation.

40. Many of the same witnesses who testified as to Respondent's skill and effectiveness as an advocate also testified as to his office procedures, both before and after the filing of the Petitions in this matter. Petitioner also elicited testimony, on cross-examination, as to Respondent's office procedures. Prior to the filing of these Petitions, Respondent failed to manage his office and legal practice in an orderly and professional manner. Telephone calls from clients were often not returned; there were no intake procedures for the evaluation and acceptance of new engagements; there was no docket control system to assure that court filings would be made on an orderly basis. The total failure to maintain proper internal controls contributed to Respondent's failure to communicate with and diligently represent his clients in the matters that are the subject of the two Petitions under review.

41. Respondent, in his own testimony, professes to recognize the lack of professional office procedures and failure of internal controls that marked his office management and legal practice prior to the commencement of these proceedings. Petitioner does recognize the failure of his past office management practices and the need to maintain professional office practices and internal controls if he is to practice in compliance with the Rules of Professional Conduct.

42. Respondent has retained the Honorable [K], formerly Chief Judge for the [] District of Pennsylvania, to serve as a practice monitor, and Judge [K] has accepted this engagement.

43. In or about September 1997, Respondent's son, [L], joined Respondent's law practice. [L] has an undergraduate degree from the [] School of the University of [], concentrating in Management Information Systems. Under [L's] supervision, Respondent's law office has installed various computer systems and instituted internal controls, including engagement evaluation and intake procedures, docket monitoring and control systems, and telephone message tickler systems. These internal control systems reflect a significant improvement over the total lack of controls that existed prior to 1997.

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.
2. RPC 1.4(a) - A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.
3. RPC 1.4(b) - A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.

IV. DISCUSSION

This matter is before the Board upon consolidated Petitions for Discipline charging Respondent with violations of the Rules of Professional Conduct arising from Respondent's alleged neglect of client affairs, failure to communicate with clients, failure to explain matters to clients, and failure to respond to court orders and requests from the court. The parties submitted a joint stipulation into evidence at the hearing, wherein Respondent agreed that he violated at least one professional conduct rule.

Based on the stipulated facts and the testimony elicited at the hearing from Respondent and [A], it is clear that Respondent failed to keep his clients adequately informed about the status of their matters and failed to explain the matters to them in a manner sufficient to allow them to make informed decisions about the representation. The record evidences long periods of time when there was no communication with the clients and the clients were not promptly informed about significant events, including adverse

court rulings. The evidence shows that Respondent violated Rules 1.4(a) and 1.4(b).

The record is equally clear that Respondent failed to act diligently and promptly in representing his clients, in violation of Rule 1.3. Respondent stipulated that in the [A] matter he did not provide defendants with his client's portion of the pretrial order and did not communicate her factual or legal position in the required disclosure statement. Respondent did not file a response to a summary judgment motion and failed to advise his client that the motion had even been filed. In the [F] matter, Respondent failed to answer interrogatories.

Respondent was charged in the [A] matter with engaging in conduct prejudicial to the administration of justice, in violation of Rule 8.4(d). The Hearing Committee concluded that Respondent did not violate this rule. After examination of the record, the Board is in agreement with the Committee's conclusion. Respondent failed to serve on the defendants a disclosure statement and a proposed pretrial order. This failure did not impact the court's ability to adjudicate the case and did not interfere with the administration of justice; therefore, it does not rise to the level of a violation of 8.4(d).

Having concluded that Respondent violated Rules 1.3, 1.4(a), and 1.4(b), the Board must determine an appropriate sanction to address these violations. In doing so the Board must consider any aggravating or mitigating circumstances present.

All of the witnesses who testified spoke to Respondent's high level of legal acumen, his outstanding courtroom skills, and his willingness to take cases rejected by other attorneys. A uniform theme in the testimony was the fact that although Respondent is an excellent lawyer, he is a very disorganized lawyer. Respondent testified that his practice violations arose in part from his disorganized office procedures, which by the accounts of all who testified were chaotic at best. By proffering this explanation Respondent does not seek to justify his actions, but instead wishes the Board to understand the nature of his practice in the 1990s. Prior to 1997, Respondent was unable to manage his office and legal practice in an orderly manner. Telephone calls from clients were often not returned due to an inadequate system of messaging in the office; there were no intake procedures for the evaluation and acceptance of new cases; and there was no docket control system to assure that court filings would be made on a timely basis. The physical condition of the office contributed to the problems, as boxes and files were stacked in any available space, including hallways.

Respondent has a history of discipline for similar infractions of the ethical rules. He received Informal Admonitions in 1991 and 1992. He received two Private Reprimands in 1993. While it might appear from this history and the current proceedings that Respondent did not take to heart the seriousness of the discipline he received in the early 1990's, the instant record evidences a sea change in the way Respondent now practices law. In

1997, Respondent's son, [L], joined the firm and instituted, in an incremental fashion, changes in the way the firm was managed. This included changes to the physical appearance of the office and changes to daily operating procedures, such as taking and distributing telephone messages and managing client appointments. The younger [L] reviewed and organized the files and developed case selection criteria for prospective new cases. Responsibility for specific cases is now delegated to the various attorneys in the office and is no longer limited to Respondent, as was the case in the past.

To further demonstrate Respondent's desire to change his practice habits, he asked the Honorable [K], former Chief Judge of the United States District Court for the [] District of Pennsylvania, to serve as his practice monitor. Judge [K] agreed to do so. At the hearing, Respondent showed remorse for the problems he caused his clients and recognition of the absolute need to change the way he practices law. His willingness to change is amply supported by the record.

The Hearing Committee recommended a Public Censure and probation for three years. The Committee came to this conclusion after weighing the severity of the misconduct, Respondent's prior discipline, the positive changes in the way Respondent's law firm is managed, Respondent's stellar reputation as an attorney, and Judge [K's] agreement to monitor Respondent's practice. Review of the record affirms that this recommendation is appropriate.

The Board recommends that Respondent receive a Public Censure and three years of probation with the Honorable [K] serving as practice monitor.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], receive a Public Censure from the Supreme Court of Pennsylvania.

It is further recommended that Respondent be placed on probation for a period of three (3) years. The Honorable [K] shall be appointed as the practice monitor. Judge [K] shall do the following during the period of Respondent's probation:

1. Periodically examine the Respondent's law office organization and procedures to ensure that the Respondent is maintaining an acceptable tickler system, filing system, and other administrative aspects of the Respondent's practice;
2. Meet with the Respondent at least monthly to examine Respondent's progress towards satisfactory and timely completion of clients' legal matters and regular client contact;
3. File quarterly written reports on a Board approved form with the Executive Director and Secretary of the Disciplinary Board of the Supreme Court of Pennsylvania; and
4. Shall immediately report to the Executive Director and Secretary of the Board any violations of the Respondent of the terms and conditions of probation.

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: _____
William R. Caroselli, Member

Date: December 22, 2000

PER CURIAM:

AND NOW, this 26th day of February, 2001, upon consideration of the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania dated December 22, 2000, it is hereby

ORDERED that [Respondent] be subjected to PUBLIC CENSURE by the Supreme Court.

It is further ORDERED that Respondent be placed on probation for a period of three (3) years. The Honorable [K] is hereby appointed as Respondent's practice monitor. Judge [K] shall do the following during the period of Respondent's probation:

- (a) Periodically examine the Respondent's law office organization and procedures to ensure that Respondent is maintaining an acceptable tickler system, filing system, and other administrative aspects of Respondent's practice;
- (b) Meet with Respondent at least monthly to examine Respondent's progress towards satisfactory and timely completion of clients' legal matters and regular client contact;
- (c) File quarterly written reports on a Board approved form with the Executive Director and Secretary of the Disciplinary Board of the Supreme Court of Pennsylvania; and
- (d) Immediately report to the Executive Director and Secretary of the Board any violations of the Respondent of the terms and conditions of probation.

It is further ORDERED that Respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.