

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2008 Disciplinary Docket No. 3
Petitioner :
 : No. 97 DB 2012
v. :
 : Attorney Registration No. 36542
THOMAS RUSSELL QUINN, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 31st day of March, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated November 1, 2013; it is hereby

ORDERED that Thomas Russell Quinn 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 files a dissenting statement in which Mr. Justice Stevens joins.

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

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

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	:	
Respondent	:	(Philadelphia)

DISSENTING STATEMENT

MR. JUSTICE BAER

I respectfully dissent from the Court's imposition of a suspension for a period of one year and one day in this attorney disciplinary matter. I acknowledge that the sanction imposed by the Court is consistent with the recommendations of the Hearing Committee and the Disciplinary Board, and is arguably consistent with disciplinary sanctions imposed in previous cases under similar facts.¹ However, I am bothered by Respondent's extensive recidivist history of disciplinary infractions, and believe that a suspension of one year and one day is inadequate to protect the public and ensure that this Court and its Disciplinary Board is doing enough to maintain the public's confidence in our profession. Accordingly, I respectfully call for the adoption of a more severe

¹ This type of generalization is difficult to assert in disciplinary matters given that they are all factually unique, and every distinct matrix can precipitate a different reaction, resulting in a different disciplinary consequence.

approach to sanctioning attorneys who have failed repeatedly to conform their conduct to the governing standards of the legal profession, and I would begin by imposing a suspension for three years in this case.

The instant disciplinary case constitutes Respondent's fourth disciplinary matter in slightly over ten years. Respondent received an informal admonition in 2002 for failing to file a memorandum of law in support of a Petition for Habeas Corpus, despite receiving an extension to do so, failing to respond to client inquiries regarding the status of the case, and failing to withdraw from the client's case when Respondent was suffering from a medical condition that impaired his ability to represent his client. Three years later, in 2005, Respondent received a private reprimand and eighteen months of probation for failing to provide a written fee agreement, failing to communicate with a client regarding the status of his case, and failing to respond to client inquiries. Thereafter, in 2008, Respondent received a six-month stayed suspension with probation for failing to take action on a client's behalf. Further, the Office of Disciplinary Counsel presented evidence of four civil cases filed against Respondent, resulting in judgments that remained outstanding at the time of the disciplinary proceeding.

In the aggregate, Respondent's recurrent disregard for his professional obligations has placed members of the public at risk of substandard representation, prejudicing their rights, and causing those with knowledge of the misconduct to question legitimately our system of justice. While I recognize that the sanction of suspension for a period of one year and one day requires Respondent to petition for reinstatement, allowing for full scrutiny of his character, I do not believe the one year period before that occurs is sufficient either as punishment or to ensure that we see a changed person at that juncture. Accordingly, I respectfully dissent from the Court's decision. Left to my own devices, I would suspend Respondent for three years in recognition of his

substantial and consistent disciplinary history. It would be my hope that, after such period of time, Respondent would mature and recognize that this behavior must stop if he is readmitted. There should be no doubt that if Respondent would again appear before this Court for disciplinary enforcement after being readmitted to practice law, I would disbar him.

Mr. Justice Stevens joins this Dissenting Statement.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 97 DB 2012
Petitioner	:	
	:	
v.	:	Attorney Registration No. 36542
	:	
THOMAS RUSSELL QUINN	:	
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 June 21, 2012, Office of Disciplinary Counsel charged Thomas Russell Quinn with violation of Rule of Professional Conduct 8.4(d). Respondent did not file an Answer to Petition.

A disciplinary hearing was held on December 17, 2012, before a District I Hearing Committee comprised of Chair David S. Senoff, Esquire, and Members Zachary S. Davis, Esquire, and Henry F. Canelo, Esquire. Respondent appeared *pro se*.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on May 29, 2013, concluding that Respondent violated Rule of Professional Conduct 8.4(d) and recommending that he 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 July 27, 2013.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, 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 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 said Rules of Disciplinary Enforcement.

2. Respondent is Thomas Russell Quinn. He was born in 1955 and was admitted to practice law in the Commonwealth in 1982. His public access address is Two Penn Center, Suite 1850, Philadelphia PA 19102. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On June 21, 2012, Petitioner filed a Petition for Discipline against Respondent.

4. Respondent was personally served with a copy of the Petition and Notice to Plead on July 11, 2012. (Pet. 9)

5. Respondent did not file an Answer to Petition (N.T. 28)

6. Any factual allegations not timely answered shall be deemed admitted. Pa.R.D.E. 208(b)(3).

7. The factual allegations of the Petition are deemed admitted.

8. Sometime in 2005, Thomas E. Robinson contacted Respondent to inquire about retaining Respondent to represent him before the Superior Court of Pennsylvania in an appeal of the denial of Mr. Robinson's PCRA Petition. (Pet. 2)

9. By letter dated December 30, 2005, sent to Mr. Robinson, Respondent:

- a. acknowledged receipt of a letter from Mr. Robinson;
- b. stated that Respondent would represent Mr. Robinson for a fee of \$2,500, plus copying costs; and
- c. advised Mr. Robinson that if the terms were acceptable, he should arrange for payment of Respondent's fee and provide Respondent with copies of the relevant paperwork. (Pet. 2,3)

10. By letter dated April 4, 2006, sent to Respondent, Mr. Robinson:

- a. acknowledged receipt of a letter dated April 1, 2006 from Respondent;
- b. notified Respondent that he was seeking an attorney to present the claims he had raised in a brief that he had drafted for filing with the Superior Court and to file three motions he intended to prepare that related to his claims; and

c. stated that he would immediately send Respondent \$2,100 and \$100 per month until the \$2,500 fee was satisfied, if Respondent would agree to provide the services he requested. (Pet. 3)

11. By letter dated April 6, 2006, sent to Mr. Robinson, Respondent sought answers to certain questions that related to the April 4, 2006 letter. (Pet. 3)

12. Thereafter, Mr. Robinson retained Respondent to represent him based on the terms set forth in Mr. Robinson's April 4, 2006 letter. (Pet. 4)

13. Mr. Robinson paid Respondent's requested fee of \$2,500. (Pet. 4)

14. On November 22, 2006, Respondent filed a brief with the Superior Court of Pennsylvania on behalf of his client. (Pet. 4)

15. Mr. Robinson was dissatisfied with the brief because it did not raise all of the claims that Mr. Robinson had raised in the draft brief he had prepared. (Pet. 4) Mr. Robinson requested in writing that Respondent refund the \$2,500 fee. (Pet. 4)

16. By letter dated January 2, 2007, Respondent advised Mr. Robinson that he would not refund the \$2,500. (Pet. 4)

17. On January 29, 2007, Mr. Robinson commenced a civil lawsuit against Respondent in the Philadelphia Court of Common Pleas in order to recover the \$2,500 he had paid Respondent for representing him in his PCRA matter, said case captioned *Thomas Robinson v. Thomas Quinn* docket number 070103605 ("the lawsuit") (Pet. 4,5)

18. On October 5, 2009, an arbitration hearing was held. (Pet. 5)

19. On October 5, 2009, a majority of the Arbitrators entered an award on behalf of Mr. Robinson in the amount of \$2,500. (Pet. 5)

20. On November 4, 2009, Respondent filed an appeal from the Arbitrators' award. (Pet. 5)

21. By Order dated February 3, 2010, the court directed Respondent to provide Mr. Robinson with discovery material that had been requested from Respondent. (Pet. 5)

22. Respondent received a copy of the February 3, 2010 order but failed to comply with the directives therein. (Pet. 5)

23. On August 6, 2010, Mr. Robinson filed a Motion for Sanctions with the court, based on Respondent's failure to comply with the February 3, 2010 Order. (Pet. 5)

24. Respondent received a copy of the Motion for Sanctions. (Pet. 5)

25. Respondent did not file a response to the Motion for Sanctions. (Pet. 5)

26. By Order dated August 31, 2010, the court:

- a. granted the Motion for Sanctions;
- b. found Respondent in contempt of court;
- c. directed Respondent to provide Mr. Robinson with the discovery material he requested within twenty days; and
- d. directed Respondent to pay Mr. Robinson sanctions in the amount of \$375. (Pet. 6)

27. Respondent received a copy of the August 31, 2010 Order, but failed to comply with the directives therein. (Pet. 6)

28. On September 14, 2012, at a pre-hearing conference in the instant matter, Respondent obtained permission from the Hearing Committee Chair to file an Answer to the Petition. (N.T Prehearing Conference at 15)

29. Respondent never filed an Answer with the Board Secretary. (N.T. 27-28)

30. Respondent offered no reasonable explanation for failing to file an Answer. (N.T. 28)

31. On December 14, 2012, three days prior to the disciplinary hearing, Respondent mailed a check for \$2,875 to Mr. Robinson, which satisfied the judgment entered against Respondent in the lawsuit. (N.T. 17, 30-31)

32. By making the payment to Mr. Robinson, Respondent complied with that portion of the August 31, 2010 court order that required him to pay sanctions in the amount of \$375. (Pet. Exhibit 23)

33. Respondent has a history of discipline.

a. On September 18, 2002, Respondent received an Informal Admonition for violating Rules of Professional Conduct 1.3, 1.4(a), 1.4(b) and 1.16(a)(2). Respondent failed to file a Memorandum of Law in support of a Petition for Writ of Habeas Corpus despite receiving an extension to do so. He further failed to respond to inquiries made by the client and his mother regarding the status of the case, and failed to withdraw from the client's case when Respondent was suffering from a medical condition that impaired his ability to represent his client.

b. On March 7, 2005, Respondent received a Private Reprimand and probation for 18 months for violation of Rules of Professional Conduct 1.4(a), 1.4(b) and 1.5(b). Respondent was retained to represent a client by filing a Rule 521 Motion requesting that a judge release the client on bail. Respondent quoted a fee but failed to provide a written fee agreement for the representation. Respondent filed the Motion, which was later denied. Respondent failed to advise the client that the Motion was denied and failed

to respond to inquiries. Respondent completed the 18 month substance abuse probation and probation was terminated on August 24, 2006.

c. On October 16, 2008, Respondent was suspended by the Supreme Court for six months, with the suspension stayed and substance abuse probation for a period of twelve months. Respondent was retained to file a response to an order from a federal court issued after the client filed a Petition for Writ of Habeas Corpus. Respondent requested an extension to seek *pro hac vice*. Respondent was granted the extension but failed to apply and gain admission, and failed to take any further action on his client's behalf. He failed to respond to requests concerning the status of the matter and failed to refund the advance payment of his fee that went unearned. Respondent completed the substance abuse probation, which was terminated on February 17, 2010.

34. Four civil cases were filed against Respondent in the Philadelphia Court of Common Pleas. In each of the cases liens were filed against Respondent. (Pet. Exhibit 18-22)

35. In September 2012, Petitioner provided Respondent with the docket reports for each of the four civil cases. (N.T. 32)

36. In two of the four civil cases, the Commonwealth of Pennsylvania, Department of Revenue, Bureau of Compliance, is the plaintiff. (Pet. Exhibit 18-19)

a. In one of the two civil cases, the Commonwealth filed the lien on October 25, 2005, in the amount of \$1,354.40.

b. In the second civil case, the Commonwealth filed the lien on August 8, 2006, in the amount of \$667.43

37. In one of the four civil cases, the Internal Revenue Service is the plaintiff. (Pet. Exhibit 20) In that matter, the IRS filed the lien on June 2, 2010, but the amount of the lien was not specified on the docket report.

38. Despite Respondent having received from Petitioner the docket reports for the civil cases involving the Commonwealth and the IRS over two months before the disciplinary hearing, Respondent had not prepared in advance of the hearing to answer questions posed to him regarding those matters. (N.T. 32-35)

39. For one of the four civil cases, which relates to the failure to pay real estate taxes to the City of Philadelphia, Respondent testified that he does not own the property in question and advised the City Solicitor's Office of that fact. (N.T. 25-26; Pet. Exhibit 21)

40. KLA Marketing Associates filed a civil case against Respondent in the Philadelphia Municipal Court. (Pet. Exhibit 22)

a. On March 5, 2010, the court entered a default judgment in favor of KLA in the amount of \$1,058. (Pet. Exhibit 24)

b. Respondent has not satisfied that judgment. (N.T. 34)

41. Respondent testified on his own behalf.

42. Respondent believes he has suffered from depression since childhood, has experienced an acute episode of depression over the last year, and his disorder remains active. (N.T. 36-37, 43)

43. Respondent believes that his current depressive episode was triggered by the death of a close friend and the disappearance of Respondent's son for several months after the son returned from serving in the military overseas. (N.T. 36-37; 43)

44. During Respondent's current depressive episode he has been absent-minded and disinclined to work, and has experienced periods of "wanting to sit and vegetate." (N.T. 37)

45. Respondent has reduced the number of client cases he is handling because he feels depressed. (N.T. 37, 41-42)

46. Respondent has treated with a psychiatrist, Dr. Faith Hartman Cohen, over the years whenever he suffers a depressive episode. (N.T. 37-38, 42-43)

47. Respondent resumed treating with Dr. Cohen about one year ago. (N.T. 38-39)

48. Over the last six months, Respondent has irregularly treated with Dr. Cohen; he may meet with her once a week, once every three weeks or monthly. (N.T. 42)

49. Dr. Cohen prescribed the anti-depressant medication Zoloft, which Respondent took for about four months but discontinued in the Spring of 2012 after advising Dr. Cohen that he didn't believe the medication was helping his depression. (N.T. 37, 39-41)

50. Respondent's current treatment regimen consists of therapy sessions with Dr. Cohen. (N.T. 40-41, 43)

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent has violated the following Rule of Professional Conduct:

1. 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 against Respondent that he violated Rule 8.4(d). Petitioner has the burden of proving ethical misconduct by a preponderance of evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). The factual allegations set forth in the Petition, which are deemed admitted pursuant to Pa.R.D.E. 208(b)(3), as well as the exhibits introduced at the hearing, prove that Respondent violated Rule 8.4(d).

Under Rule 8.4(d), it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. Respondent violated Rule 8.4(d) by failing to comply with two court Orders. By Order dated February 3, 2010, the court directed Respondent to provide Mr. Robinson with discovery material that he had requested from Respondent. Respondent's failure to comply with this Order prompted Mr. Robinson to file a Motion for Sanctions. By Order dated August 31, 2010, the court granted the uncontested Motion for Sanctions. The court found that Respondent had engaged in contemptuous conduct and directed Respondent to provide Mr. Robinson with the discovery material he had requested within twenty days and to pay sanctions in the amount of \$375 to Mr. Robinson. Respondent failed to comply in a timely manner, having paid the monetary sanction more than two years after the court issued the order imposing the sanction.

An attorney's failure to comply with court orders serves as a basis for finding a violation of Rule 8.4(d). Office of Disciplinary Counsel v. Gary Scott Silver, 73 Pa. D. & C. 4th 559 (2005); Office of Disciplinary Counsel v. Marc Alan Weinberg, No 30 DB 2011 (Pa. April 15, 2011).

The remaining issue is the degree of discipline warranted by Respondent's misconduct. The appropriateness of a disciplinary sanction is based on the nature and gravity of the misconduct and the aggravating and mitigating factors. In re Anonymous No. 85 DB 1997, 44 Pa. D. & C. 4th 299 (1999). In considering the appropriate discipline, the fact that Respondent has three prior incidents of discipline, each more serious than the previous instance, is clearly an aggravating factor.

Respondent describes himself as being in a depressive episode for the past year, with a history of depression. He admitted that he has been compelled to reduce his client cases due to the depression and that he experiences periods of "wanting to sit and vegetate." He treats irregularly with a psychiatrist for counseling, but currently does not take medication. Respondent did not introduce expert evidence of his depression nor did he show that the depression caused his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989) The record is clear that Respondent has not successfully addressed his admitted depression.

Respondent's testimony demonstrates that he is unfit to practice law. In order to protect the public, he must be suspended for one year and one day so that he is required to prove his fitness at a reinstatement hearing. This sanction is appropriate in light of Respondent's history. This is Respondent's fourth occasion before the Board since 2002, when he was informally admonished. He was then privately reprimanded with probation in 2005 and suspended for six months, stayed, with probation in 2008. Unfortunately, these prior sanctions have not had their intended effect to ensure future adherence to the Rules. As Respondent's record grows, it becomes necessary to increase the level of discipline.

The Board recommends that Respondent be suspended for one year and one day.

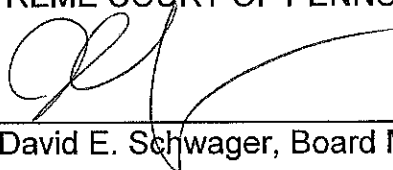
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Thomas Russell Quinn, 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: 
David E. Schwager, Board Member

Date: November 1, 2013

Board Member Cali did not participate in the adjudication.