

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1694 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 156 DB 2009
v.	:	
	:	Attorney Registration No. 59118
SCOTT DiCLAUDIO,	:	
Respondent	:	(Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 28th day of April, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 21, 2010, the Petition for Review and Exceptions and Objections and response thereto, the request for oral argument is denied and it is hereby

ORDERED that Scott DiClaudio is suspended from the practice of law for a period of three months, the suspension is stayed in its entirety and he is placed on probation for a period of one year, subject to the following conditions:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel.
2. The practice monitor 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 he is maintaining acceptable tickler and filing systems, providing written fee agreements to new clients, and efficiently managing other administrative aspects of his practice;

b. Meet with Respondent at least monthly to examine his 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 Secretary of the Board; and

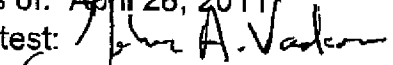
d. Shall immediately report to the Secretary any violations by Respondent of the terms and conditions of probation.

It is further ORDERED that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Mr. Justice Baer files a dissenting statement.

A True Copy John A. Vaskov

As of: April 28, 2011,

Attest: 

Deputy Prothonotary

Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1694 Disciplinary Docket No. 3
Petitioner :
: No. 156 DB 2009
v. :
: Attorney Registration No. 59118
SCOTT DICLAUDIO, :
Respondent : (Philadelphia)

DISSENTING STATEMENT

JUSTICE MAX BAER

FILED: April 28, 2011

Attorney Scott DiClaudio (Respondent) missed a briefing date resulting in a criminal appeal to the Superior Court being dismissed. During the subsequent disciplinary proceedings, he was not candid with the Office of Disciplinary Counsel (ODC), as to why this happened.

Notably, in 2003, Respondent was informally admonished for failure to file a statement of matters complained of on appeal, an offense similar to the one giving rise to the disciplinary proceedings before us. Moreover in 2008, Respondent was informally admonished for making false and misleading statements to ODC. He also repeated that behavior during the pendency of this matter.

The hearing committee noted in its recommendation that Respondent had done little to improve his practice and did not seem to have taken to heart the seriousness of his past discipline. The Board, bothered by his misrepresentations in this case (as referenced above, a repetition of a concern during the 2008 proceedings), and his failure to address

his shortcomings (again, indicating a repeat of behavior), recommended a stayed six-month suspension and a two-year probation with conditions; principally a practice monitor. The order of this Court recommends a three-month suspension, rather than the six-month suspension recommended by the Board, and a one-year probation, rather than a two-year probation, recommended by the Board.

Given that Respondent has a longitudinal history of similar disciplinary infractions (2003, 2008 and the present) with apparently little concern for his continuing transgressions, I believe protection of the public from additional instances of misconduct is better served through adoption of the Board's recommendation of a six-month suspension and a two-year probation with a practice monitor. Moreover, it seems counterproductive to the totality of our process to "second guess" the Board's recommendations in this manner.

Accordingly, I respectfully dissent.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 156 DB 2009
Petitioner	:	
	:	
v.	:	Attorney Registration No. 59118
	:	
SCOTT DICLAUDIO	:	
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

On November 6, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Scott DiClaudio, Respondent. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that Respondent mishandled the appellate representation of a client. Respondent filed an Answer to Petition on December 28, 2009.

A disciplinary hearing was held on May 5, 2010 before a District I Hearing Committee comprised of Chair Charles Eppolito, III, Esquire, and Members Cynthia A. Clark, Esquire, and Kevin J. O'Brien, Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on August 16, 2010, concluding that Respondent violated the Rules of Professional Conduct as contained in the Petition and recommending that a Public Censure be imposed followed by Probation for one year.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on October 11, 2010.

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, 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 and to prosecute all disciplinary

proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Scott DiClaudio. He was born in 1964 and was admitted to practice law in the Commonwealth in 1990. He maintains an office for the practice of law at Two Penn Center, Suite 900, Philadelphia PA 19102.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. Respondent has a history of professional discipline consisting of an Informal Admonition administered in 2003 and an Informal Admonition administered in 2008.

5. The 2003 discipline was for Respondent's failure to file a Statement of Matters Complained of on Appeal or a brief on Appeal in a criminal matter.

6. The 2008 discipline was for Respondent's failure to provide his client with a written fee agreement in one matter; and making a false or misleading statement to Office of Disciplinary Counsel in a second matter.

7. Respondent has been a sole practitioner since 2005. He hired a full time associate in 2008. Respondent concentrates his practice in criminal law and has a busy practice.

8. Respondent was retained by Michael Stevens to represent him at his trial in the Philadelphia County Court of Common Pleas on drug-related charges.

9. On January 3, 2008, Mr. Stevens was sentenced to three to six years of imprisonment.

10. On January 16, 2008, Respondent filed a Notice of Appeal. Respondent's notice incorrectly stated that he was appealing the judgment of sentence entered on January 30, 2007, instead of January 3, 2008.

11. On February 12, 2008, the Superior Court docketed the appeal at No. 342 EDA 2008.

12. On February 25, 2008, Respondent filed a Criminal Court Docketing Statement with the Superior Court.

13. On June 25, 2008, Respondent filed a Statement of Matters Complained of on Appeal with the trial court.

14. In July 2008, Respondent received \$2,250 to represent Mr. Stevens on his appeal to the Superior Court.

15. By Per Curium Order dated August 8, 2008, the Superior Court: (1) advised Respondent that it had received the trial court record; (2) informed Respondent that, pursuant to Pa.R.A.P. 2185(a), the brief for appellant must be filed on or before September 17, 2008; and (3) explained that Respondent's failure to file a timely brief would result in the Superior Court dismissing the appeal without further notice to Respondent.

16. Respondent received the Superior Court's August 8, 2008 Order.

17. By letter dated September 2, 2008, from Respondent to Mr. Stevens, Respondent enclosed a copy of the trial court opinion; informed Mr. Stevens that the

Superior Court “has set a date in late September for filing of briefs;” and advised Mr. Stevens that once the parties file their briefs, “we will then await a decision from” the Superior Court.

18. Respondent failed to file Mr. Stevens’ brief by September 17, 2008.

19. By an undated letter from Mr. Stevens to the Superior Court, Mr. Stevens inquired as to the status of his appeal. By a letter to Mr. Stevens dated October 2, 2008, the Deputy Prothonotary enclosed a copy of the docketing statement.

20. By Per Curiam Order dated October 20, 2008, the Superior Court dismissed Mr. Stevens’ appeal due to Respondent’s failure to file brief for appellant.

21. Respondent received a copy of the Superior Court’s Order.

22. Respondent failed to inform Mr. Stevens that the Court had dismissed his appeal.

23. After he failed to file the appellate brief, Respondent called Hugh Burns, Chief of Appeal of the Philadelphia District Attorney’s Office, and asked if the District Attorney’s Office would agree to reinstate Mr. Stevens’ appeal rights. Respondent determined that he would not be able to file a Post Conviction Hearing Relief Petition on Mr. Stevens’ behalf because Respondent would have to allege his own ineffectiveness.

24. By certified letter from Mr. Stevens to Respondent, received by Respondent on October 27, 2008, Mr. Stevens inquired as to why Respondent did not file the appellate brief.

25. Respondent failed to communicate with Mr. Stevens.

26. By certified letter dated November 25, 2008, from Mr. Stevens to Respondent, Mr. Stevens: (1) stated that Respondent's failure to file a brief for appellant resulted in dismissal of his case; (2) reminded Respondent that Respondent had informed Mr. Stevens that the Superior Court had set a late September date for filing the brief; (3) claimed that after Mr. Stevens had received notice of the Superior Court's dismissal, Mr. Stevens had sent a certified letter that Respondent failed to answer; (4) alleged that Respondent has not responded to attempts by Mr. Stevens' family to contact Respondent; (5) requested that Respondent send Mr. Stevens a copy of all transcripts and discovery in Respondent's possession; and (6) requested that Respondent refund the \$2,250 that Respondent had received to handle Mr. Stevens' appeal.

27. Respondent received Mr. Stevens' letter on December 8, 2008.

28. Respondent failed to communicate with Mr. Stevens.

29. Respondent eventually refunded the \$2,250 he had received to represent Mr. Stevens.

30. As a result of Respondent's failure to file an appellate brief, Mr. Stevens filed a PCRA petition seeking restoration of his appellate rights.

31. Mr. Stevens' appellate rights were reinstated on September 1, 2009.

32. Respondent testified on his own behalf at the disciplinary hearing.

33. Respondent claimed that he failed to file Mr. Stevens' appellate brief because of a glitch with his iPhone. According to Respondent, his iPhone, which contained

his only calendar and served as his tickler system for tracking appointments, court dates and deadlines, somehow erased his entire calendar.

34. Respondent was able to reconstruct his calendar, but there were some 15 or 20 cases that never got back on his phone.

35. Respondent admitted that the phone erasure happened in January or February of 2008, and he could not explain why he failed to file a brief that was due in September of 2008.

36. Respondent alluded to marital problems he was experiencing at the time the brief was due.

37. Respondent admitted that he could not bring himself to notify Mr. Stevens of the dismissal of the case because he did not want to admit his own failings.

38. Since the glitch with the iPhone, Respondent has used his desktop computer to ensure that deadlines are met.

39. Respondent hired an associate in 2008 and no longer handles appellate work himself.

40. In September 2008, six days before the due date for Mr. Stevens' appellate brief, Respondent received his second Informal Admonition.

41. Even after receiving a second Informal Admonition, Respondent testified that he did not feel he needed to make any extra efforts to comply with the Rules of Professional Conduct, as he believed that his "act was in order." (N.T. 203)

42. Respondent did not maintain a copy of the assignment of bail for Mr. Stevens and was not certain of the amount of the bail assignment.

43. Respondent did not maintain a copy of any receipts he claims to have given to Mr. Stevens or his wife for the cash Respondent received to represent Mr. Stevens at trial and on appeal.

44. Respondent did not maintain any receipts for any funds he claims to have reimbursed to Mr. Stevens' wife after Respondent failed to file the appellate brief.

45. Respondent presented six character witnesses who each testified credibly as to Respondent's excellent reputation in the community as a truthful and honest person, and an outstanding lawyer.

46. None of these character witnesses was aware of the precise nature of Respondent's misconduct nor were they aware of the existence of prior disciplinary charges.

47. The parties stipulated that other individuals, both attorneys and non-attorneys, were available to testify as to Respondent's good reputation in the community as a truthful and honest person.

III. CONCLUSIONS OF LAW

By his actions 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)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

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

4. 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. The lawyer may retain papers relating to the client to the extent permitted by other law.

5. 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 upon a Petition for Discipline charging Respondent with violations of Rules of Professional Conduct 1.3, 1.4(a)(3) and (4), 1.16(d), and 8.4(d). Respondent admitted the factual allegations in the Petition and admitted his violations of the Rules as charged in the Petition. Petitioner and Respondent submitted joint stipulations of fact and law.

In sum, Respondent's client paid \$2,250 to Respondent for representation at trial and on appeal. Respondent was advised by Order of Superior Court that Mr. Stevens' brief was due on or before September 17, 2008. Not only did Respondent miss the September 17 deadline, he filed no brief at all, and on October 20, 2008, the Superior Court dismissed Mr. Stevens' appeal. Thereafter, Respondent failed to inform his client that the appeal had been dismissed. He failed to respond to Mr. Stevens' letters requesting information, and he failed to promptly comply with Mr. Stevens' request for copies of discovery and a refund. The issue before the Board is the appropriate discipline to address Respondent's misconduct.

The goals of the attorney disciplinary system in Pennsylvania include protecting the public from unfit attorneys, maintaining the integrity of the bar, upholding respect for the legal system, and deterring future misconduct. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). In determining the appropriate discipline, the Board considers the totality of the circumstances, including any aggravating and mitigating factors brought forth into evidence, and case precedent for the purpose of measuring Respondent's acts of misconduct against other similar acts. In re Anonymous No. 35 DB 1988, 8 Pa. D. & C. 4th 344 (1990).

Respondent testified on his own behalf and presented six character witnesses. Respondent's character witnesses, while credibly testifying to his excellent reputation in the community as a truthful and honest person, and as an outstanding lawyer,

nevertheless were unaware of the nature of Respondent's disciplinary charges, and the fact that Respondent had been previously disciplined for similar misconduct.

Respondent's own testimony was not compelling in certain instances, particularly concerning his explanation as to why he failed to file Mr. Stevens' brief. Respondent initially attributed a glitch in his iPhone in January 2008 and the resultant loss of his calendar as the reason for missing the briefing deadline. It later became clear on cross-examination that the January 2008 loss of Respondent's calendar could not have contributed to his September 2008 failure to timely file Mr. Stevens' brief.

Respondent described some of the ways he has tried to improve his law practice organization so as to eliminate missed deadlines. He does not rely solely on his iPhone and has instituted a double calendar system. He no longer takes on appellate matters and refers them to other attorneys. He hired an associate in 2008 and employs a full time receptionist and secretary. Respondent admitted that he did not do the work he was retained to do for Mr. Stevens, and understood that it was the reason he was before the Disciplinary Board. He admitted that he "messed up."

Respondent has been the subject of two prior disciplinary actions, each resulting in an Informal Admonition. The first occurred in 2003 and resulted from Respondent's failure to properly file a criminal appeal. The second occurred in 2008 and resulted from Respondent's failure to have a written fee agreement and for misrepresentation in connection with his handling of client matters.

The Hearing Committee has recommended that Respondent receive a Public Censure and probation for a period of one year. This recommendation is based on case precedent wherein attorneys who continued to neglect client matters after receiving private discipline were publicly censured by the Supreme Court. Office of Disciplinary Counsel v. Edward C. Meehan, Jr., No. 26 DB 2006, No. 1178 Disciplinary Docket No. 3 (Pa. June 27, 2006), Office of Disciplinary Counsel v. Wentworth Vedder, No. 161 DB 2007, No. 1337 Disciplinary Docket No. 3 (Pa. March 26, 2008), Office of Disciplinary Counsel v. Donald Chisholm, II, No. 87 DB 2007, No. 1330 Disciplinary Docket No. 3 (Pa. March 20, 2008). The imposition of public discipline reinforces the attorney's obligation to follow through on client matters.

Petitioner, while not taking exception to the Committee's recommendation, argued in its post-hearing brief to the Committee that a six month period of suspension is warranted. Petitioner contends that Respondent has not shown that he has fully addressed his prior shortcomings and made significant changes to his law practice. Respondent needs to ensure that money is properly handled, receipts are given for funds received and disbursed, copies of important documents are placed in the file, court deadlines are correctly monitored for compliance, and clients' letters are answered.

The Board is persuaded that the appropriate discipline for Respondent is a six month period of suspension, stayed in its entirety, with probation for a period of two years. It is vital that Respondent implement the necessary changes to his office procedures in order to comply with the Rules of Professional Conduct and protect his

clients. If he does not, he will continue to face difficulties with the disciplinary system. This recommendation permits Respondent to continue his practice of law while making further adjustments to his law practice to comport with ethical rules. This recommendation offers safeguards to the public in that if there is a violation of probation there will be swift action taken to remove Respondent from the practice of law. Respondent has had past opportunities to address inconsistencies in his practice and has fallen short. It is our sincere hope that he will recognize the seriousness of his situation and take immediate action.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Scott DiClaudio be Suspended from the practice of law for a period of six months, that the suspension be stayed in its entirety and that he be placed on Probation for a period of two years, subject to the following conditions:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel.

2. The practice monitor 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 the Respondent is maintaining an acceptable tickler system, filing system, providing written fee agreements to new clients, and other administrative aspects of the Respondent's practice;

b. 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;

c. File quarterly written reports on a Board approved form with the Secretary of the Board; and

- d. Shall immediately report to the Secretary 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: Charlotte S. Jefferies
Charlotte S. Jefferies, Board Member

Date: December 21, 2010

Board Members Todd and Cogneffi recused.

Board Member Baer did not participate in the adjudication.



THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5600
PO Box 62625
Harrisburg, PA 17106-2625
Phone: (717) 231-3380 Fax: (717) 231-3381

December 21, 2010

OFFICE OF DISCIPLINARY COUNSEL	:	No. 156 DB 2009
Petitioner	:	
	:	
v.	:	Attorney Registration No. 59118
	:	
SCOTT DiCLAUDIO	:	
Respondent	:	(Philadelphia)

**Expenses Incurred in the Investigation and Prosecution
of the above-captioned proceedings***

11/06/2009	13 Copies of Petition for Discipline	\$ 58.50
12/23/2009	13 Copies of Answer to Petition for Discipline	45.50
06/18/2010	13 Copies of Office of Disciplinary Counsel's Brief to Hearing Committee	273.00
07/08/2010	13 Copies of Respondent's Brief to Hearing Committee	260.00
08/16/2010	13 Copies of Hearing Committee Report	104.00
04/17/2010	Transcripts of Prehearing Conference held 04/06/2010	303.75
05/24/2010	Transcripts of Hearing held 05/05/2010	1,978.50
12/21/2010	Administration Fee	<u>250.00</u>
	TOTAL AMOUNT DUE	<u>\$3,273.25</u>

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PAYMENT IS REQUIRED UPON RECEIPT OF ORDER

* Submitted pursuant to Rule 208(g) of the Pa.R.D.E. and §93.111 of the Disciplinary Board Rules.