

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 210, Disciplinary Docket
Petitioner : No. 3 - Supreme Court
:
: No. 95 DB 1996
: Disciplinary Board
v. :
: Attorney Registration No. []
[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 November 14, 1994, Respondent, [], entered a plea of guilty to one count of Accessory After the Fact, in violation of 18 U.S.C. ' 3. On March 15, 1996, Respondent was sentenced to a period of two months home confinement and probation of one year, as well as a fine of \$3,000. By Order of the Supreme Court of

Pennsylvania dated July 26, 1996, Respondent was placed on temporary suspension from the practice of law and this matter was referred to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E. A Petition for Discipline was filed against Respondent by the Office of Disciplinary Counsel on August 30, 1996. Respondent filed an Answer on September 23, 1996.

A disciplinary hearing was held on January 17, 1997 before Hearing Committee [] comprised of Acting Chair [], Esquire, and Member [], Esquire, and Alternate Member [], Esquire. Respondent was represented by [], Esquire. Petitioner was represented by [], Esquire. The Committee filed a Report on August 18, 1997 and recommended an eighteen month period of suspension. No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of October 4, 1997.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now 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 1953 and was admitted to practice law in Pennsylvania in 1981. He resides at []. Respondent is married with five children.

3. By Order of the Supreme Court dated July 26, 1996, Respondent was placed on temporary suspension from the practice of law and this matter was referred to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E.

4. On September 21, 1993, a 60 count indictment was filed against Respondent and others in United States District Court for the [] District of New York. Respondent was charged in 29 of those counts.

5. On November 14, 1994, pursuant to a plea agreement, Respondent entered a plea of guilty to one count of Accessory After the Fact to Mail Fraud by failing to disclose his client's submission of false and fraudulent statements and representations

concerning the operation of the landfill, in violation of 18 U.S.C.
' 3.

6. On March 15, 1996, Respondent was sentenced to a period of two months home confinement and a term of probation of one year, as well as a \$3,000 fine.

7. The crime to which Respondent pleaded guilty is a Class E felony punishable by imprisonment for a maximum of two and one-half years and a maximum fine of \$25,000.

8. The underlying facts of Respondent's criminal conduct are as follows:

- a) Respondent represented his client, [A], in an appeal of an injunction granted to DEP which had shut down his client's landfill operation in connection with the alleged failure to dispose of certain municipal waste. Concurrent with these proceedings in the [] County Court of Common Pleas, another related administrative matter was pending before the PA Environmental Hearing Board. Discovery was taken from and by the various parties. Respondent represented two of said parties, specifically [A] and [B] Company, of which [A] claimed to be the owner.
- b) Central to the proceedings was whether certain municipal waste previously deposited in the landfill had been removed and replaced with construction and demolition waste.

- c) [A's] and [B's] position in the administrative action was that the offending municipal waste had been removed, while DEP contended it had not. Respondent hired an expert to analyze the landfill. The expert found evidence that all of the waste had not been removed. Respondent began to suspect that [A] had not removed the waste, which was inconsistent with his story. Respondent did submit such report to DEP without reconciling it with his client's account.
- d) In anticipation of the upcoming deposition, Respondent questioned [A] about the inconsistencies between the report and [A's] story. At that time, [A] revealed to Respondent that the landfill had to be reopened under the circumstances because the true party having a financial interest in the landfill was the [C] organized crime family of New York. (N.T. 62)
- e) At the deposition, counsel for DEP asked [A] to identify who had a financial interest in the landfill. [A] failed to identify the [C] family. During the break, Respondent told [A] to go in and correct the record. [A] informed Respondent that he was not going to correct his false testimony and furthermore that if he did not get the landfill reopened he was going to be killed. (N.T. 64)
- f) Respondent continued representing [A] through the afternoon session of the deposition. [A] never corrected his false testimony, nor did Respondent.
- g) After the deposition was concluded, Respondent met with [A] and told him that he thought the case was a loser, [A's] perjury would only make things worse, and [A] should get a new lawyer. (N.T. 66)
- h) After Respondent informed [A] of his intentions to withdraw from the case, [A]

for the first time revealed that certain documents submitted to DEP in discovery prior to the expert's report were falsified. These documents falsely represented that the municipal waste had been removed from the site, when in fact it had not.

- i) Respondent's failure to notify DEP or anyone else of either [A's] perjured testimony or the falsified documents, led to his conviction.
- j) The day after the deposition, Respondent had a meeting in New York with [D], who had previously hired Respondent for an unrelated matter and who had referred [A] to Respondent. [D] was allegedly a captain within the [C] family. Realizing that [D] and the [C] family were involved with [B], Respondent felt he needed [D's] permission to withdraw from the case. The meeting ended unsuccessfully for Respondent with [D] telling him to get the landfill reopened.
- k) Subsequently Respondent filed several postponements to continue the case, while [A] supposedly was in the process of retaining new counsel. When [A] did hire a new attorney, Respondent withdrew. [A] told Respondent at their last meeting that he was contemplating cooperation with the government.

9. Six character witnesses testified on Respondent's behalf and stated that Respondent has a good reputation for truth and honesty in the community. (N.T. 111-129)

10. Respondent has no prior history of discipline.

11. Respondent demonstrated sincere remorse for his actions.

III. CONCLUSIONS OF LAW

Respondent's conviction constitutes an independent basis for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with violation of Rule 203(b)(1), Pa.R.D.E., based on his conviction for Accessory After the Fact.

Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement provides that conviction of a serious crime shall be grounds for discipline. Rule 214(e), Pa.R.D.E., specifies that a certificate of conviction of an attorney for a serious crime shall be conclusive evidence of that crime. When a disciplinary proceeding is commenced against an attorney based upon a criminal conviction, the Board does not engage in a retrial of the underlying facts of the crime. The Board's responsibility in this situation is to determine the appropriate measure of discipline relative to the seriousness of the crime. The focal issue is whether the attorney's character, as shown by his or her conduct, makes the attorney unfit to practice law. Office of Disciplinary

Counsel v., Casety, 511 Pa. 177, 512 A.2d 607 (1986). This test balances a concern for the public with a respect for the substantial interest of an attorney in maintaining his or her privilege to practice law. Office of Disciplinary Counsel v. Lewis, 493 Pa. 519, 426 A.2d 1138 (1981). It is appropriate for the Board to examine any aggravating or mitigating circumstances present in this matter.

On November 14, 1994, Respondent pleaded guilty to one count of Accessory After the Fact, in violation of 18 U.S.C. ' 3.

In March of 1996, Respondent was sentenced to a period of two months home confinement and a term of probation of one year, as well as a fine of \$3,000. Respondent was placed on temporary suspension from the practice of law by Order of the Supreme Court dated July 26, 1996.

The circumstances leading to the conviction began in approximately July of 1990, when Respondent agreed to represent [A] and his company, [B], in an action pending before the [] County Court of Common Pleas and the Environmental Hearing Board. The action involved a landfill in [] County that had been closed by Department of Environmental Protection (DEP) due to allegations by DEP that certain waste had not been removed from the site as promised by [A] pursuant to an agreement with DEP. Respondent had been hired to get the landfill reopened. Respondent hired an

expert to analyze the landfill in preparation for a deposition to be held in January 1991. Respondent received the report one week before the deposition. The expert report was unfavorable to Respondent's client and appeared to be inconsistent with the fact version of Respondent's client. Respondent discussed the report with his client prior to the deposition and at that time was advised that it was imperative for the landfill to be reopened as the silent partners involved were the [C] crime family. (N.T. 62) Respondent had no knowledge of this information prior to this discussion with his client.

At the deposition, Respondent's client was asked by DEP to name those persons who had a financial interest in the landfill. [A] did not reveal that the [C] family had an interest. At the break, Respondent told his client that it would be in his best interests to correct the record. [A] showed Respondent a gun which he said he carried to protect himself, because if the landfill was not reopened, he was a dead man. (N.T. 64) [A] did not correct the record, nor did Respondent make any effort to correct the record. Respondent testified at the disciplinary hearing that he was afraid that [A] was telling the truth and something would happen to him. (N.T. 65) Shortly after the deposition, Respondent met with his client and told him he thought the case was a loser, and the perjury would only make things worse, so Respondent told

his client he should get another lawyer. (N.T. 66) At that meeting, [A] informed Respondent that other information submitted to DEP in the form of discovery was false as well. Respondent did not inform DEP of this information. Respondent decided he had to withdraw from the case and met with [D], who had originally referred [A] to Respondent. Respondent now understood that [D] was connected with the [C] family and Respondent believed he needed permission to withdraw from the case. After an unpleasant meeting with [D], Respondent filed some postponements in the case to allow [A] to find new counsel, and subsequently withdrew after new counsel was obtained. Thereafter Respondent was indicted and pleaded guilty to one count of Accessory After the Fact to Mail Fraud.

The record evidences that shortly after his agreement to represent [A], Respondent was faced with a complex and troublesome scenario when he obtained an expert's report that contradicted his client's version of the facts. He learned that his client was affiliated with organized crime. He witnessed his client give false deposition testimony, and he later learned that documents previously submitted to DEP by his client were falsified. The nature of Respondent's misconduct is serious, as he was aware of his client's fraud but failed to take action and by his silence assisted his client in committing fraud. Although Respondent

exercised bad judgment by not revealing his client's false testimony and falsification of documents to the proper authorities, the Board believes his improper handling of a problematic situation does not display a fundamental lack of integrity on Respondent's part. The Board notes that the record shows Respondent did not counsel his client to lie and urged him to correct the record. Respondent also submitted the expert report to DEP that contradicted his client's version of the case. Respondent withdrew from the case as soon as was feasible for him to do so. The Board finds Respondent's testimony credible that he became involved in a situation beyond his ability to handle, which invoked Respondent's genuine concern as to his client's safety and his own safety.

Respondent was convicted of a serious crime and must be sanctioned accordingly. This matter is tempered by the surrounding circumstances of Respondent's misconduct and his credible explanation of his actions, as well as the fact that he showed remorse; he has no prior history of discipline; and character witnesses testified to Respondent's good reputation in the community for truth and honesty. The Board recommends that Respondent receive an eighteen month period of suspension retroactive to the date of his temporary suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be suspended for a period of eighteen (18) months retroactive to July 26, 1996.

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., Member

Date: January 15, 1998

Board Members Saltz, Marroletti, Schultz and Cunningham did not participate in the October 4, 1997 adjudication.

O R D E R

PER CURIAM:

AND NOW, this 25th day of March, 1998, upon consideration of the Report and Recommendations of the Disciplinary Board dated January 15, 1998, it is hereby

ORDERED that [Respondent] be and he is SUSPENDED from the Bar of this Commonwealth for a period of eighteen (18) months, retroactive to July 26, 1996, 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 Cappy did not participate in this matter.