

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 990, Disciplinary Docket No. 3
Petitioner	:	Supreme Court
	:	
v.	:	No. 50 DB 2005 – Disciplinary Board
	:	
JAMES R. COONEY	:	Attorney Registration No. 32706
Respondent	:	
	:	
In the Matter of JAMES R. COONEY	:	No. 57 DB 2001 - Disciplinary Board
	:	
PETITION FOR REINSTATEMENT	:	Attorney Registration No. 32706
FROM INACTIVE STATUS	:	
	:	(Erie 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 Rules 218(c)(5) and 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, The Disciplinary Board of the Supreme Court of Pennsylvania submits its findings and recommendations to your Honorable Court with respect to the above captioned Petition for Reinstatement from Inactive Status and Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On September 3, 2004, James R. Cooney filed a Petition for Reinstatement from Inactive Status in which he reported his May 20, 2003 conviction of the unauthorized practice of law. On November 8, 2004, Office of Disciplinary Counsel filed its response opposing the Petition for Reinstatement based on the conviction, as well as Mr. Cooney's failure to report that conviction. By letter dated December 6, 2004, Office of Disciplinary Counsel referred Mr. Cooney's criminal conviction to the Supreme Court pursuant to Rules 104(c) and 214(c) of the Pennsylvania Rules of Disciplinary Enforcement. By Order dated April 19, 2005, the Supreme Court temporarily suspended Respondent and referred this matter to the Disciplinary Board pursuant to Pa.R.D.E. 214(f)(1) directing that consideration of the Petition for Discipline be consolidated with the hearing on the Petition for Reinstatement. On May 2, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against Mr. Cooney. Respondent filed an Answer and New Matter to the Petition for Discipline on May 18, 2005.

A consolidated hearing on discipline and reinstatement was held on July 21, 2005, before a District IV Hearing Committee comprised of Chair Nancy Jean Lamont, Esquire, and Members Michael J. Pawk, Esquire, and Robert G. DelGreco, Jr., Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 13, 2005 and recommended that Respondent be suspended for one year retroactive to April 19, 2005, with probation of two years, and that the Petition for Reinstatement from Inactive Status be granted.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on February 1, 2006.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Office of Disciplinary Counsel, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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, James R. Cooney, was born in 1954. He was admitted to practice law in the Commonwealth of Pennsylvania in 1980. His attorney registration mailing address is 3511 Priscilla Drive, Erie, PA 16506. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Supreme Court Order dated July 10, 1997, effective August 9, 1997, Respondent was transferred to inactive status pursuant to Rule 111, for failure to fulfill his continuing legal education credits.

4. Respondent attributes his failure to fulfill CLE credits and his subsequent transfer to inactive status to marital problems occurring at that time. Respondent's wife left him and took their two young sons. Respondent did not cope well with the loss and began to abuse alcohol. His law practice deteriorated.

5. Respondent remained on inactive status until he was temporarily suspended from the practice of law by Order of the Supreme Court of Pennsylvania on April 19, 2005.

6. In January of 2001, Barbara Springer retained Respondent to represent her concerning criminal charges filed against her on December 7, 2000.

7. Respondent did not inform Ms. Springer that he was on inactive status.

8. On February 2, 2001, Respondent appeared on behalf of Ms. Springer at a preliminary hearing before District Justice Walter W. Luniewski, Jr. Respondent did not inform either District Justice Luniewski or Assistant District Attorney Ann Steiner that he was on inactive status.

9. In April 2001 a criminal information was filed against Ms. Springer charging her with two accounts of driving under the influence of alcohol and one count of careless driving in the Court of Common Pleas of Allegheny County.

10. On August 16, 2001, Ms. Springer was formally arraigned with regard to the criminal charges against her.

11. On August 31, 2001, Respondent appeared on behalf of Ms. Springer at a pretrial conference held before Judge Lawrence J. O'Toole. He did not inform either Judge O'Toole or the Assistant District Attorney that he was on inactive status.

12. Ms. Springer was accepted into the Accelerated Rehabilitative Disposition program.

13. On August 15, 2001, Respondent was retained by Deborah M. Cringle to represent her in a divorce and child support matter.

14. Respondent represented Mrs. Cringle at a Protection from Abuse Hearing on August 20, 2001.

15. Respondent filed a Complaint in Divorce on behalf of Mrs. Cringle on August 29, 2001.

16. Some time later Mrs. Cringle filed a claim with the Pennsylvania Lawyers Fund for Client Security. In March 2004 the Fund made an award to Mrs. Cringle of \$1,308.50. In July 2004, Respondent made reimbursement to the Fund of \$1,333.59.

17. On July 9, 2002, Respondent appeared before the Honorable Shad Connelly in the Court of Common Pleas of Erie County to represent Michael J. Volgstadt concerning a Protection from Abuse which had been filed against his wife, Joanne Volgstadt.

18. Respondent appeared in court on behalf of his client, examined witnesses and made argument to the Court. He did not inform Judge Connelly that he was on inactive status.

19. By Order dated July 9, 2002, the Protection from Abuse Petition was denied.

20. On July 25, 2002, pursuant to a subsequent Petition for Protection from Abuse filed on behalf of Mrs. Volgstadt, a hearing was held before Judge Connelly. Respondent appeared on behalf of Mr. Volgstadt, cross-examined witnesses and made argument.

21. On July 25, 2002, Respondent filed a Complaint in Divorce on behalf of Mr. Volgstadt, in which he represented that he was counsel for Mr. Volgstadt and executed the Complaint in that capacity.

22. On August 1, 2002, and on August 19, 2002, Respondent appeared before District Justice Sue Mack in Erie County and held himself out as a practicing attorney.

23. On August 2, 2002, Respondent entered his appearance on behalf of Samuel C. Province, Jr., and Richard G. Hersperger in the United States Bankruptcy Court for the Western District of Pennsylvania with regard to a matter entitled In Re Automotive Telephone, Inc. , but did not inform the Bankruptcy Court, opposing Counsel or his client that he was on inactive status and not permitted to practice law.

24. On August 7, 2002, Respondent received notice of a disciplinary complaint filed by Judge Connelly in connection with unauthorized practice of law in the Volgstadt matter.

25. On September 11, 2002, Respondent filed a Praecipe for a Writ of Summons in the Court of Common Pleas of Allegheny County on behalf of Vending Systems Integration against The Society of Automotive Engineers, Inc., and served defendant's counsel with a Motion for Preliminary Injunction, which was to be heard that afternoon.

26. On September 11, 2002, Respondent appeared in the Court of Common Pleas to represent Vending Systems Integration, but did not inform the Court, opposing counsel or his client that he was on inactive status.

27. On September 30, 2002, Office of Disciplinary Counsel filed a complaint against Respondent alleging unauthorized practice of law in the Province matter and the Vending Systems matter.

28. On November 7, 2002, Respondent began treating with Dr. Robert Johansen, a psychiatrist.

29. Respondent had filed a Petition for Reinstatement from Inactive Status with the Disciplinary Board in April 2001, but as a result of the complaint filed by Office of Disciplinary Counsel against him, Respondent withdrew his Petition by letter dated December 16, 2002

30. On December 19, 2002, a Criminal Information was filed against Respondent in the Court of Common Pleas of Erie County, charging Respondent with two counts of unauthorized practice of law in violation of 42 P.S. §2524.

31. On May 20, 2003, Respondent entered a plea of guilty to both counts of the Criminal Information.

32. On June 20, 2003, Respondent was sentenced at Count 1, to pay costs of prosecution, a fine of \$1,000, 20 hours of community service and one year of probation. At Count 2, he was sentenced to pay a fine of \$1,000 and one year of probation consecutive to the probation to be served in Count 1.

33. Respondent did not file an appeal from his conviction or sentence.

34. Respondent made regular payment on all fines and completed his community service and probation.

35. In February 2003, Respondent began treating with psychiatrist Helen Kohn and continued to treat with her and take prescribed medications to the time of the consolidated hearing.

36. Both Dr. Johansen and Dr. Kohn diagnosed Respondent with major depressive disorder, recurrent in nature, and panic disorder.

37. Dr. Kohn determined that within a reasonable degree of medical certainty Respondent's illegal actions were caused, at least in part, by his depression and anxiety. Dr. Kohn further opined that Respondent has made significant progress with treatment and is ready to return to the practice of law.

38. Respondent takes medication on a regular basis to combat his depression and anxiety and continues treatment with his psychiatrist.

39. Respondent, who had abused alcohol in the past, attends Alcoholics Anonymous meetings on a regular basis and Lawyers Concerned for Lawyers. He has been sober since February 2000.

40. Respondent filed his second Petition for Reinstatement from Inactive Status on September 3, 2004 and therein disclosed his conviction for the unauthorized practice of law for the first time to the Disciplinary Board. The Petition disclosed the Springer, Cringle, Province and Vending Systems matters.

41. Respondent testified that he misunderstood that the Clerk of Court would report the conviction to the Disciplinary Board, and so did not report his conviction within 20 days as required by Rule 214(a), Pa.R.D.E.

42. Respondent submitted letters from Dr. Helen Kohn concerning her treatment of Respondent; from Dr. Robert W. Johansen concerning Respondent's treatment; from Joseph J. Pillitteri, M.A. of Andrew Martin Associates, concerning Respondent's employment by that environmental consulting firm.

43. Character testimony was heard from five witnesses, including four attorneys and Respondent's ex-wife.

44. John R. Orie, Jr., Esquire, has known Respondent in a professional capacity and has had a number of cases wherein Respondent was the opposing counsel. He believes Respondent is honest and has high professional standards.

45. William L. Stang, Esquire, is a partner at Fox Rothschild and has known Respondent for more than 15 years. Like Mr. Orie, he has been involved in cases wherein Respondent was the opposing counsel. He believes that Respondent always handled himself in a professional manner and is an honest individual.

46. Thomas E. Reilly, Esquire, has known Respondent for 20 years. He believes Respondent comports himself professionally and was a worthy adversary in cases he had against Respondent. He believes Respondent is a good lawyer and a good advocate, as well as an honest person.

47. John F. Morris, Esquire, is a law clerk for Judge Timothy P. O'Reilly and has known Respondent since 1986. He is aware of Respondent's conviction and mental health problems and still believes Respondent is a person of good character and integrity.

48. Christine A. Cooney is Respondent's former wife. She testified that she has seen a vast improvement in Respondent since he sought help for his depression and no longer drinks alcohol.

49. Since May of 2004 Respondent has worked for Andrew Martin Associates Environmental Engineers in Erie. He is a proof reader and administrative assistant. He helps prepare reports and perform miscellaneous office duties.

50. Respondent is aware that he committed serious disciplinary infractions by practicing law while on inactive status.

51. Respondent is truly sorry for his actions.

III. CONCLUSIONS OF LAW

By his conduct as set forth above in the Petition for Discipline, Respondent violated the following Rules of Disciplinary Enforcement:

1. Pa.R.D.E. 203(b)(1) - Conviction of a serious crime constitutes an independent basis for discipline.

2. Pa.R.D.E. 214(a) - Failure to notify the Secretary of the Disciplinary Board within 20 days after the date of conviction constitutes an independent basis for discipline.

In addition, the Board concludes:

3. Respondent met his burden of proof pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), that he suffered from a psychiatric disorder at the time of the misconduct which substantially caused the misconduct.

4. Respondent is entitled to mitigation.

As to the Petition for Reinstatement, the Board concludes that the Petition should be denied.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline and on a Petition for Reinstatement from Inactive Status. With respect to the Petition for Discipline, the sole issue to be determined is the extent of final discipline, as the Petition was predicated on Respondent's criminal conviction for the unauthorized practice of law. The determination of the appropriate discipline is based upon balancing risk to the public from an unfit attorneys and the need to maintain the legal system against Respondent's interest in practicing law. Office of Disciplinary Counsel v. Christie, 639 A.2d 782 (Pa. 1994). Consideration is to be given to any aggravating or mitigating factors. Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1993 (Pa. 1982).

Respondent presented numerous mitigating factors. He suffers from a major depressive disorder and anxiety. The testimony of his psychiatrists confirmed that his misconduct was caused, at least in part, by his psychiatric disorders. He takes medication to control these conditions and participates in therapy sessions with his doctor. His prognosis is good and he is ready to return to the practice of law. Respondent has addressed his alcohol abuse, which had been a problem for him since approximately 1996 or 1997. He has been sober since 2000 and attends Alcoholics Anonymous meetings. Additional mitigation is that Respondent cooperated with Office of Disciplinary Counsel and showed sincere remorse for his acts of misconduct.

While Office of Disciplinary Counsel argued in favor of a suspension of one year and one day, the Committee concluded that although suspension is required in this matter as a result of the number of incidents of the unauthorized practice of law, the mitigating factors warrant suspension of one year, retroactive to April 19, 2005, the date of Respondent's temporary suspension. Additionally, the Committee recommended two years of probation with a sobriety monitor.

The Board concurs with the Committee that a one year period of suspension is appropriate. Respondent was convicted of the unauthorized practice of law and engaged in at least five other incidents of the unauthorized practice of law while on inactive status. The case law supports suspension for such misconduct. Office of Disciplinary Counsel v. David Ferleger, 51 and 104 DB 2004, 1035 Disciplinary Docket No. 3 (Pa. Mar. 16, 2005); Office of Disciplinary Counsel v. Gustee Brown, 64 DB 2003, 954 Disciplinary Docket No. 3 (Pa. Oct. 15, 2004); Office of Disciplinary Counsel v. Wayne A. Rodney, 118 DB 2000, 743 Disciplinary Docket No. 3 (Pa. June 13, 2002). The cited cases all resulted in suspensions of one year and one day. Respondent's mitigating circumstances are compelling and indicate that a one year suspension is appropriate, retroactive to May 19, 2005, the effective date of the order of temporary suspension by the Supreme Court.

With respect to the Petition for Reinstatement from Inactive Status, the Board concludes that it should be denied, as the Board has recommended that Respondent be suspended. Pa.R.D.E. 218(f)(1) dictates that upon the expiration of any term of suspension not exceeding one year and upon the filing thereafter by the formerly admitted attorney with the Board of a verified statement showing compliance with all the terms and

conditions of the order of suspension and of Enforcement Rule 217, the Board shall certify such fact to the Supreme Court, which shall enter an order reinstating the formerly admitted attorney to active status. Upon Respondent's compliance with the order of suspension, his period of probation will take effect.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, James R. Cooney, be suspended for one year from the practice of law retroactive to May 19, 2005 followed by Probation for a period of two years with a sobriety monitor, subject to the following conditions:

1. Respondent shall abstain from using alcohol or any other mind altering chemical;
2. Respondent shall regularly attend Alcoholics Anonymous meetings on a weekly basis;
3. Respondent shall obtain a sponsor in Alcoholics Anonymous and maintain weekly contact with that sponsor;
4. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule 89.293(c);
5. Respondent shall furnish his sobriety monitor with his Alcoholics Anonymous sponsor's name, address and telephone number;
6. Respondent shall establish his weekly attendance at Alcoholics Anonymous meetings by providing written verification to the Board on a Board approved form;
7. Respondent shall undergo any counseling, out-patient or in-patient treatment, prescribed by a physician or alcohol counselor;
8. Respondent shall file with the Secretary of the Board quarterly written reports;

9. With the sobriety monitor, Respondent shall:
 - a. meet at least twice a month;
 - b. maintain weekly telephone contact;
 - c. provide the necessary properly executed written authorizations to verify his compliance with the required substance abuse treatment; and
 - d. cooperate fully.

10. The appointed sobriety monitor shall:
 - a. monitor Respondent's compliance with the terms and conditions of the order imposing probation;
 - b. assist Respondent in arranging any necessary professional or substance abuse treatment;
 - c. meet with Respondent at least twice a month, and maintain weekly telephone contact with Respondent;
 - d. maintain direct monthly contact with the Alcoholics Anonymous chapter attended by the Respondent;
 - e. file with the Secretary of the Board quarterly written reports; and
 - f. immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of the probation.

The Board further recommends that the Petition for Reinstatement be Denied and that, pursuant to Rules 208(g) and 218(e), Pa.R.D.E., Respondent be directed to pay the necessary expenses incurred in the investigation and processing of this matter.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Jonathan H. Newman, Vice-Chair

Date: April 21, 2006

ORDER

PER CURIAM:

AND NOW, this 25th day of July, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 21, 2006, it is

ORDERED that James R. Cooney be and he is suspended from the Bar of this Commonwealth for a period of one year retroactive to May 19, 2005, to be followed by probation for a period of two years, subject to the following conditions:

1. Respondent shall abstain from using alcohol or any other mind-altering chemical;
2. Respondent shall attend Alcoholics Anonymous meetings on a weekly basis and shall submit to the Board written verification of attendance on a Board-approved form;
3. Respondent shall obtain an Alcoholics Anonymous sponsor and maintain weekly contact with that sponsor;
4. Respondent shall undergo any counseling or treatment prescribed by a physician or alcohol counselor;
5. Respondent shall file with the Secretary of the Board quarterly written reports;
6. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule 89.293(c);
7. With the sobriety monitor, Respondent shall:
 - a. meet at least twice a month;
 - b. maintain weekly telephone contact;
 - c. provide the necessary properly executed written authorizations to verify his compliance with the required substance abuse treatment;
 - d. provide the name, address and telephone number of his Alcoholics Anonymous sponsor; and

- e. cooperate fully.
8. The appointed sobriety monitor shall:
- a. monitor Respondent's compliance with the terms and conditions of the order imposing probation;
 - b. assist Respondent in arranging any necessary professional or substance abuse treatment;
 - c. meet with Respondent at least twice a month and maintain weekly telephone contact with him;
 - d. maintain monthly contact with the Alcoholics Anonymous chapter attended by Respondent;
 - e. file with the Secretary of the Board quarterly written reports; and
 - f. immediately report to the Secretary of the Board any violations by Respondent of the terms and conditions of probation.

Decision on the Petition for Reinstatement from Inactive Status is reserved pending the filing of a verified statement of compliance pursuant to Rule 218(f)(1), Pa.R.D.E.

It is further ORDERED that Respondent shall comply with all the provisions of Rule 217, Pa.R.D.E., and shall pay the costs incurred in the investigation and processing of these matters.