

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1193 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 72 DB 2005
v.	:	
	:	Attorney Registration No. 41979
JOHN A. EICHMAN, IV	:	
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 May 12, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against John A. Eichman, IV, Respondent, charging him with professional misconduct arising out of his failure to appear for an informal admonition, which in turn was determined as a result of Respondent’s failure to complete an estate. Respondent did not file an Answer to the Petition for Discipline.

A disciplinary hearing was held on September 8, 2005, before a District I Hearing Committee comprised of Chair Gaetan J. Alfano, Esquire, and Members Samuel Cohen, Esquire, and Debra Schwaderer Dunne, Esquire. Respondent appeared pro se. At the close of the hearing, the participants agreed that the record would remain open until mid-October in order for Respondent to complete work on the underlying estate matter. A second hearing was held on October 24, 2005, to allow Respondent to update his progress regarding the probate of the estate.

Petitioner filed a Brief to the Hearing Committee. Respondent did not file a Brief. The Hearing Committee filed a Report on February 6, 2006, finding that Respondent engaged in professional misconduct as charged in the Petition for Discipline, and recommending that he be suspended for one year and one day.

No Briefs on Exceptions to the Report were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on March 29, 2006.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, 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, John A. Eichman, IV, was born in 1957 and was admitted to practice law in the Commonwealth in 1984. His office address is 1617 JFK Boulevard, Suite 1680, Philadelphia PA 19103. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior history of discipline.

4. Respondent was co-executor of the estate of Fanny Rich Hanifan Brandt, who died on August 8, 1999.

5. Ms. Brandt's sister, W. Harvey Mapes, is the principal beneficiary of Ms. Brandt's estate, which has been valued at approximately \$5 million.

6. On 2004, Mrs. Mapes and her husband filed a complaint against Respondent. The Mapes alleged, and the Office of Disciplinary Counsel concluded, that Respondent committed the following violations:

a. Respondent failed to act with reasonable diligence and promptness in not finalizing the Brandt estate after five years, a violation of RPC 1.3;

b. Respondent failed:

1. To keep Mrs. Mapes informed about the status of the Brandt estate;

2. To reply promptly to reasonable requests for information; and,

3. To explain the matter to Mrs. Mapes to the extent necessary to permit her to make informed decisions, in violation of RPC 1.4(a) and 1.4(b);

c. Respondent also failed to deliver promptly to Mrs. Mapes funds that she was entitled to receive from the Brandt estate, in violation of RPC 1.15(b); and,

d. Respondent failed to make reasonable efforts to expedite the finalization of the Brandt estate in violation of RPC 3.2.

7. By letter of January 11, 2005, Chief Disciplinary Counsel, Paul J. Killion, informed Respondent of the estate-related violations. Mr. Killion further informed Respondent that Office of Disciplinary Counsel determined that he should receive an informal admonition.

8. The January 11, 2005 letter contained a condition to the informal admonition:

“Within 20 days of the date of this Notice, Respondent shall make final distribution to all parties, provide to all beneficiaries and Disciplinary Counsel a copy of the Account filed with the Orphans’ Court for audit, and notify the co-executors and beneficiaries in writing that they have the right to file with the court exceptions to the Accounting (including the amount of the executors’ commission and legal fees).”

9. Chief Disciplinary Counsel’s letter was sent by certified mail, return receipt requested. Respondent signed for and received the letter on January 19, 2005.

Upon receipt of the letter, Respondent could either appear on a scheduled date for the imposition of an informal admonition, or notify the Disciplinary Board and Office of Disciplinary Counsel in writing, within 20 days, that he intended to decline the informal admonition and request the institution of formal disciplinary proceedings.

10. Respondent did not respond to the January 11, 2005 letter from Chief Disciplinary Counsel.

11. Respondent did not notify, in writing, the Disciplinary Board or the Office of Disciplinary Counsel within 20 days of the January 11, 2005 letter that he did not wish to receive the informal admonition, or that he wished to institute formal proceedings.

12. By Notice to Appear letter dated February 25, 2005, Chief Disciplinary Counsel informed Respondent that:

a. he had been previously advised of a complaint filed against him, alleging violation of the Rules of Professional Conduct;

b. it had been determined that Respondent should receive an informal admonition with condition;

c. failure to comply with the condition will be grounds for imposition of more serious discipline; and,

d. the informal admonition was scheduled for Monday, March 14, 2005 at 3:00 p.m. in the District I Office at 16<sup>th</sup> Floor, Seven Penn Center, 1635 Market Street, Philadelphia.

13. Respondent received the February 25, 2005 Notice by certified mail and signed for it on February 28, 2005.

14. Respondent failed to appear on March 14, 2005 for his scheduled informal admonition.

15. By letter dated March 15, 2005, Chief Disciplinary Counsel informed Respondent that if he had any reason he wished to offer for not appearing at the informal admonition, he should so advise within 20 days from the date of the letter, and in the absence of receiving an acceptable explanation for his failure to appear, Disciplinary Counsel would proceed with further disciplinary action.

16. A copy of the March 15, 2005 letter was hand delivered to Respondent by a District I Investigator on March 30, 2005.

17. Thereafter, Respondent did not contact either the Secretary of the Disciplinary Board or the Office of Disciplinary Counsel to inform them of any good cause for not appearing for the informal admonition.

18. A Petition for Discipline was filed against Respondent on May 12, 2005. Respondent did not file an Answer to the Petition.

19. A pre-hearing conference was held on July 20, 2005. Respondent did not appear on that date. He did appear at the District I office the following day, July 21, 2005, citing a calendar error causing his failure to appear the previous day.

20. Respondent appeared at his disciplinary hearing on September 8, 2005.

21. When asked about his failure to complete his work on the Brandt Estate, Respondent stated that he had been “working as hard as [he] can” and that he had “no substantive defense”. (N.T. p. 22)

22. Respondent previously worked with his father, who also is an estates lawyer. Respondent’s father recently became ill and Respondent took on his father’s work load.

23. Respondent attempted to hire help, but was unable to retain employees.

24. Respondent underwent abdominal surgery in April, 2003 and missed two weeks of work.

25. When questioned about his failure to appear for the scheduled informal admonition, Respondent claimed a calendar error, but later realized that was why he missed the pre-hearing conference, not the informal admonition. (N.T. 24-25)

26. When questioned as to his lack of responsiveness, Respondent stated that “I have been buried and I have been dealing with a lot, and that again, is no excuse. I have been scrambling, and that’s the reason why”. (N.T. p. 23)

27. Respondent indicated that his time frame for concluding the Brandt estate was the end of September, 2005. (N.T. p. 25).

28. Respondent indicated that there were no impediments to concluding the estate. (N.T. 25-26).

29. At the conclusion of the hearing, the Chair determined to continue the hearing to mid-October 2005 in order to allow Respondent to complete the estate, based on his assertion that he could complete it by September, 2005.

30. The disciplinary hearing was continued to October 24, 2005.

31. Respondent failed to complete the Brandt estate by that date.

32. At the October 24, 2005 hearing, Respondent acknowledged his failure to file federal and state tax returns for the estate; that those returns had extensions that had lapsed; that the returns were overdue; and that he intended to personally pay interest and penalties on the Brandt estate.

33. Respondent explained that he needed certain bank records to file the 2005 estate tax returns; that he did not realize until shortly before the hearing that those records were with Petitioner; and, that the first time he requested copies from Petitioner was the morning of October 24, 2005.

34. Respondent admitted that the inaccessibility of records relating to the 2005 taxes did not prevent him from filing the 2003 and 2004 taxes, which he failed to do.

35. At the time of the hearing Respondent was working on approximately 10 or 15 other estates.

36. Respondent assured the Committee that “the things are coming along, and by and large are being done timely”. (N.T. 35-36)

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(2) - Willful failure to appear before Disciplinary Counsel for informal admonition shall be grounds for discipline.

2. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

In addition to the foregoing violations resulting from Respondent's failure to appear for the informal admonition, Respondent is conclusively deemed to have violated the following Rules of Professional Conduct as a result of his failure to demand the institution of formal proceedings:

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.

4. RPC 1.15(b) - A lawyer shall promptly deliver to a client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

5. RPC 3.2 - A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.<sup>1</sup>

#### IV. DISCUSSION

This matter comes before the Board for consideration of the Petition for Discipline against Respondent, who is charged with professional misconduct arising out of his failure to appear for an informal admonition. Respondent admits that he received, by certified mail, the Notice to Appear on March 14, 2005 for the admonition and his obligation to fulfill the condition attached to the admonition. Respondent did not request a continuance of the informal admonition or the institution of formal proceedings. Respondent did not appear for the admonition, nor did he attempt to provide good cause for his absence. At this point, the disciplinary proceedings against Respondent reached a new level of seriousness. A Petition for Discipline was filed against Respondent. Consistent with Respondent's pattern of avoidance, he failed to file an Answer to the Petition; all factual allegations against Respondent were deemed admitted pursuant to Rule 208(b)(3).

A pre-hearing conference scheduled for July 20, 2005 was not attended by Respondent, although he showed up at Petitioner's District I office the very next day, citing a calendar error that caused him to miss the conference. Respondent did appear at the hearing on September 8, 2005.

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<sup>1</sup> Respondent is conclusively deemed to have violated Rule 3.2, as well as the other Rules cited above, as a result of his failure to respond to Petitioner and request formal charges subsequent to his notification of the Rules violations. Had this matter come before the Board on formal charges, the Board would have dismissed Rule 3.2, as Respondent was handling an estate, not litigation. as specified by the Rule.

Respondent admitted his violations of the Rules of Professional Conduct arising out of his failure to complete the Brandt Estate. Respondent offered various reasons for his failure to complete the estate over a five year period of time. These explanations included an increased work load due to the illness of his father, with whom he practiced law; Respondent's abdominal surgery in 2003, which kept him out of the office for two weeks; and his inability to find and keep employees to assist him with the work load. These justifications are simply inadequate to explain a five year delay in completing the estate. Respondent admits as much, stating that he had no excuse. As to his reasons for failure to appear at the informal admonition, Respondent at first cited a calendar error, then realized that the calendar error was his excuse for not attending the pre-hearing conference. Respondent had no excuse for missing the informal admonition. He attributes his lack of responsiveness to that fact that he was busy at work and dealing with a lot.

At the end of the September 8, 2005 hearing, the Committee continued the hearing until October 24, 2005 for the express purpose of allowing Respondent to complete the Brandt Estate. Respondent indicated to the Committee that he believed he could complete it by the end of September. At the October 24, 2005 hearing, Respondent still had not completed the estate. In fact, Respondent waited until the weekend before the hearing date to determine that he needed certain bank records from Petitioner in order to file the 2005 estate tax returns; he requested these records the morning of October 24, 2005. Respondent did not file the 2003 and 2004 estate tax

returns, and admitted that the inaccessibility of the bank records for 2005 did not prevent him from filing the other taxes.

By his lack of action, Respondent again demonstrated his inability to fulfill fundamental obligations to his clients. Any leniency the Committee was inclined to give Respondent dissipated, as he did not avail himself of the opportunity given by the Committee to complete the estate and fulfill his responsibilities. Although Respondent assured the Committee that “things are coming along”, the Committee was gravely concerned by his continued inaction on the estate. The Committee has recommended a suspension of one year and one day.

This is a very unfortunate and disturbing matter. Respondent has practiced law since 1984 without mishap, and now finds himself fighting to keep his license due to his inability to fulfill professional obligations to his client and to the Disciplinary Board of the Supreme Court. A matter that could have been resolved with an informal admonition and some extra attention to a particular estate has blossomed into a formal disciplinary proceeding. Respondent essentially ignored attempts by Petitioner to get this matter resolved at the early stages. Respondent had many opportunities to communicate with Petitioner and failed to do so. When given his final opportunity by the Hearing Committee to complete the Brandt Estate, Respondent again was unable to do so. Respondent did not offer any tenable, credible explanation for his continued dereliction to the estate.

After careful consideration of the matter, particularly the Hearing Committee’s well-crafted analysis of this case, the Board agrees that a suspension of

one year and one day is appropriate to address the misconduct in this matter. Respondent's severe lack of attention to the estate and to his obligations to the Disciplinary Board aggravate the underlying misconduct to the point that Respondent is not currently fit to practice law and to represent clients as a licensed attorney.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, John A. Eichman, IV, 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: \_\_\_\_\_  
Louis N. Teti, Board Member

Date: August 11, 2006

Board Member Suh dissents and would recommend one year stayed suspension with the condition of completing the estate in 90 days.

ORDER

PER CURIAM:

AND NOW, this 14<sup>th</sup> day of November, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 11, 2006, it is hereby

ORDERED that John A. Eichman, IV, be and he 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.