

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1583 Disciplinary Docket No. 3  
Petitioner :  
 : No. 92 DB 2009  
v. :  
 : Attorney Registration No. 10046  
JAMES F. MENCONI, :  
Respondent : (Schuylkill County)

ORDER

PER CURIAM:

AND NOW, this 17<sup>th</sup> day of May, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 23, 2010, it is hereby

ORDERED that James F. Menconi is suspended from the Bar of this Commonwealth for a period of two years 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.

A True Copy Patricia Nicola

As of: May 17, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 92 DB 2009
Petitioner	:	
v.	:	Attorney Registration No. 10046
JAMES F. MENCONI	:	
Respondent	:	(Schuylkill 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 June 26, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against James F. Menconi. The Petition charged Respondent with violations of the Rules of Professional Conduct arising out of allegations that he mishandled an estate. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on October 5, 2009, before a District II Hearing Committee comprised of Chair Mason Avrigian, Sr., Esquire, and Members James E. Gavin, Esquire and Elizabeth A. Schneider, Esquire. Respondent did not appear at the hearing.

The Hearing Committee filed a Report on December 10, 2009, finding that Respondent violated the Rules as contained in the Petition for Discipline and recommending that he be suspended for one year and one day.

This matter was adjudicated by the Disciplinary Board at the meeting on January 20, 2010.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, 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 James F. Menconi. He was born in 1945 and was admitted to practice law in the Commonwealth in 1971. He maintains his office at 119 West Broad Street, Tamaqua, PA 18252. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a history of professional discipline in Pennsylvania. He received an Informal Admonition in 2007 for neglecting his responsibilities to the executrix of an estate. He failed to deposit checks received on behalf of the estate, failed to file an inheritance tax return or pay inheritance tax on behalf of the estate. He failed to communicate with his client and respond to requests for information.

4. Respondent received an Informal Admonition in 2008 for failing to diligently represent his client in a domestic relations matter. He failed to appear at a support hearing and failed to provide his client with information regarding the case. He failed to turn over the file or forward it to the client after the representation was terminated.

5. In June 2007, Respondent was retained by Jeffrey Houser to probate the estate of his uncle, Elmer Houser.

6. Respondent had never represented Mr. Houser but failed to provide him with a written fee agreement.

7. On June 4, 2007, Respondent filed a Petition for Probate and Grant of Letters in connection with the Houser Estate.

8. Subsequent to June 4, 2007, Jeffery Houser was granted Letters Testamentary and appointed Executor of the Houser Estate.

9. Subsequent to June 4, 2007, Mr. Houser called Respondent numerous times but Respondent did not return his calls.

10. By January 19, 2009, approximately 19 months later, Respondent failed to timely file an Inheritance Tax Return or administer the assets and liabilities of the estate.

11. On January 19, 2009, the Commonwealth of Pennsylvania, Department of Revenue notified Respondent and Mr. Houser that the estate was in delinquent status for failure to file the Inheritance Tax Return.

12. On or about February 6, 2009, Mr. Houser retained David W. Conner, Esquire, who contacted Respondent.

13. Over the next six months, successive counsel attempted to secure the Houser file from Respondent.

14. On August 3, 2009, Respondent finally turned over the file pursuant to a court order.

15. Respondent did not file an Answer to Petition for Discipline.

16. A prehearing conference was held on September 1, 2009, for which Respondent received notice by telephone and mail. Respondent failed to appear.

17. A hearing was held on October 5, 2009, for which Respondent received notice by telephone and mail. Respondent failed to appear.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 - A lawyer shall provide competent representation to a client.
2. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a)(2) - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.
4. RPC 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.
5. RPC 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information.
6. RPC 1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
7. RPC 1.5(b) - When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
8. 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 or other counsel,

surrendering paper and property to which the client is entitled and refunding any advance payments of fee or expense that has not been earned or incurred.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of a Petition for Discipline alleging that Respondent engaged in professional misconduct in his handling of an estate. Petitioner must prove ethical misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (Pa. 1994). The record supports the conclusion that Petitioner met its burden of proof.

This is an uncontested proceeding. Respondent failed to Answer the Petition for Discipline, thereby admitting all factual allegations pursuant to Pa.R.D.E. 208(b)(3); failed to appear at the prehearing conference; and failed to appear at the disciplinary hearing. He failed to participate in any way in the disciplinary proceedings brought against him.

In addition to the factual admissions contained in the Petition, the record is replete with evidence establishing violations of the Rules of Professional Conduct. Respondent demonstrated neither competence nor diligence upon undertaking representation of Mr. Houser. After filing for Letters Testamentary and a Petition for Probate, Respondent took no action for 18 months. He did not communicate with Mr. Houser, though Mr. Houser attempted to facilitate such communication. The end result

was that Respondent missed the deadline for filing inheritance taxes. His dilatoriness resulted in unnecessary late fees and fines for the estate.

Mr. Houser terminated Respondent's representation and requested his file be turned over to his new attorney. Respondent should have done this immediately but did not. Six months lapsed and a court order was issued in order to retrieve the file from Respondent.

Aggravating factors are present in this matter. Respondent has a history of discipline consisting of very similar misconduct to the instant matter. Respondent failed to appear at his disciplinary hearing or participate in any way in the matter filed against him. His absolute disregard for the proceedings against him signifies a lack of fitness and competence.

The Hearing Committee has recommended a suspension of one year and one day. The Board is persuaded that a longer suspension is necessary to serve as protection to the public and warning to Respondent that such misconduct will not be tolerated. Where an attorney continues to violate the rules over an extended period of time, it is clear that a strong sanction must be directed against the attorney.

The Board recommends that Respondent be suspended for a period of two years.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, James F. Menconi, be Suspended from the practice of law for a period of two years.

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:   
Albert Momjian, Board Member

Date: February 23, 2010

Board Members Pietragallo, Cagnetti and Cohen dissented and would recommend a one year and one day suspension.