

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1093, Disciplinary Docket No. 3
Petitioner	:	
	:	No. 93 DB 2003
v.	:	
	:	Attorney Registration No. 03892
ALLEN L. FEINGOLD	:	
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 July 9, 2003, Office of Disciplinary Counsel filed a Petition for Discipline against Allen L. Feingold, Respondent. The Petition charged Respondent with professional misconduct in three matters. Respondent did not file an Answer to Petition.

Disciplinary hearings were held on April 15 and June 9, 2004, before Hearing

Committee 1.14 comprised of Chair Mary Frances Ryan, Esquire, and Members Brad S. Rush, Esquire, and Martin L. Trichon, Esquire. Respondent appeared pro se at the hearings, but retained counsel, Samuel C. Stretton, Esquire, in September, 2004. Respondent filed a request to reopen the record on September 27, 2004. Petitioner filed a Response to Application to Reopen Record on October 4, 2004. After a hearing, the Committee denied the request on October 15, 2004.

The Hearing Committee filed a Report on April 4, 2005, finding that Respondent engaged in professional misconduct and recommending that he be suspended for one year with two years of probation and a practice monitor.

Respondent filed a Brief on Exceptions on April 20, 2005 and requested oral argument before the Disciplinary Board. Petitioner filed a Brief on Exceptions on April 25, 2005, and a Brief Opposing Exceptions on May 9, 2005.

Oral argument was held on July 12, 2005 before a three member panel of the Disciplinary Board chaired by Louis N. Teti, Esquire, with Members Robert E.J. Curran, Esquire, and C. Eugene McLaughlin.

This matter was adjudicated by the Disciplinary Board at the meeting on July 16, 2005.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated 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 duty to investigate all matters involving alleged misconduct of any 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, Allen L. Feingold, was born in 1941 and was admitted to practice law in the Commonwealth of Pennsylvania in 1966. His address is Suite 801, 1515 Market Street, Philadelphia PA 19102. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior history of discipline.

Charge I – O'Donnell Matter

4. Respondent represented Jennifer O'Donnell in two separate personal injury cases.

5. On July 17, 1997, Mrs. O'Donnell was involved in a slip and fall accident in the street near the 100 block of Krams Avenue, Philadelphia.

6. As a result of the slip and fall, Mrs. O'Donnell reportedly suffered injuries to her neck, shoulders, back, hip and knee.

7. On August 19, 1997, Mrs. O'Donnell consulted with Randall N. Smith, M.D. of Palmaccio Smith Associates, at which time Mrs. O'Donnell reported to Dr. Smith that:

a. She injured her neck, shoulders, lower back, right knee and right hip; and

b. Her injuries were preventing her from bending and sitting for prolonged periods.

8. On September 2, 1997, Mrs. O'Donnell was an occupant of an automobile that was struck by a vehicle driven by Veronica Cessna. Ms. Cessna's vehicle was insured by Allstate Insurance Company.

9. As a result of the automobile accident, Mrs. O'Donnell suffered injuries to, inter alia, her neck and back.

10. Mrs. O'Donnell received treatment from Dr. Smith for the injuries she suffered in the car accident.

11. Mrs. O'Donnell retained A.L. Feingold Associates, of which Respondent is the principal, to represent her in pursuing claims arising from the slip and fall accident and the automobile accident.

12. On September 12, 1997, and January 20, 1998, Mrs. O'Donnell executed authorizations for Palmaccio Smith Associates to release her treatment records to Respondent's law firm.

13. By letter dated September 12, 1997 to Dr. Smith, Respondent:

a. Notified Dr. Smith that he was representing Mrs. O'Donnell in a claim for personal injuries sustained as a result of the accident on July 17, 1997;

a. Told Dr. Smith that Mrs. O'Donnell had informed him that Dr. Smith had rendered medical treatment to her; and,

b. Requested that Dr. Smith forward a complete medical report and up-to-date bill for services rendered.

14. In response to that letter, Dr. Smith forwarded to Respondent a medical report relating to the slip and fall accident, and Dr. Smith billed Respondent \$75.00.

15. By letter dated January 20, 1998, Dora R. Garcia, Esquire, of A.L. Feingold Associates:

a. Notified Dr. Smith that she represented Mrs. O'Donnell in a claim for personal injuries sustained on September 2, 1997;

b. Told Dr. Smith that Mrs. O'Donnell had informed her that Dr. Smith had rendered medical treatment to her; and,

c. Requested that Dr. Smith forward a complete medical report and up-to-date bill for services rendered.

16. On July 9, 1999, Respondent commenced a civil action in the Court of Common Pleas of Philadelphia County in the matter involving the slip and fall accident by filing a Complaint captioned Jennifer O'Donnell and Christopher O'Donnell v. City of Philadelphia.

a. The Complaint alleged that Mrs. O'Donnell suffered personal injury as a result of the slip and fall accident.

b. Respondent personally signed the Complaint.

c. Mrs. O'Donnell verified the contents of the Complaint.

17. On July 14, 1999, Respondent commenced a civil action in the Court of Common Pleas of Philadelphia County in the matter involving the automobile accident by filing a Complaint captioned Jennifer O'Donnell and Christopher O'Donnell v. Veronica Cessna.

a. The Complaint alleged that Mrs. O'Donnell suffered personal injury as a result of the automobile accident.

b. Respondent personally signed the Complaint.

c. Mrs. O'Donnell verified the contents of the Complaint.

18. On July 26, 1999, defendant filed Preliminary Objections to Plaintiff's Complaint.

19. Allstate retained Mitchell S. Berger, Esquire, to protect Ms. Cessna's interests, and Mr. Berger entered his appearance on August 16, 1999.

20. By Order dated September 9, 1999, defendant's Preliminary Objections were sustained, and the Complaint was dismissed with leave to amend.

21. On October 1, 1999, Plaintiff filed an Amended Complaint.

22. On December 10, 1999, Mr. Berger took the deposition of Mrs. O'Donnell in the car accident matter.

23. During the December 10, 1999 deposition, Mrs. O'Donnell testified, on pages 133-135, during questioning by Mr. Berger, regarding periodic health problems, prior lawsuits and any prior injuries.

24. In January 2000, Mr. Berger, through Medical Legal Reproductions, Inc. (MLR) served a subpoena upon Dr. Smith for production of Mrs. O'Donnell's medical records.

25. On January 11, 2000, Respondent filed Plaintiff's Objections to Defendant's Notice of Intent to Serve Subpoenas to Produce Documents and Things, which Respondent signed.

26. By Order dated March 24, 2000, Judge Glazer granted defendant's motion to strike Plaintiff's Objections to record copy subpoenas.

27. On March 29, 2000, a deposition of Lucille Belisario was taken.

28. Respondent's practice when filing a complaint on behalf of a client is to dictate the first page of the complaint, and allow his staff to add form language alleging every conceivable bodily injury as well as a property damage claim, regardless of the actual facts of the case.

29. Respondent was aware that Mrs. O'Donnell alleged she had sustained injuries in two separate incidents. Respondent was aware of the existence of the two separate alleged accidents and lawsuits, and in fact he had signed the complaints less than a week apart in July 1999.

30. In her deposition, taken by Ms. Cessna's counsel Mitchell Berger on December 10, 1999, Mrs. O'Donnell falsely stated that she had no health problems, no prior lawsuits and no prior injuries.

31. Respondent was present when Mrs. O'Donnell made these false statements at her deposition. The transcript of the deposition shows Respondent to be present and making an objection just before the false testimony was given.

32. Respondent's testimony as to whether he was present during the key testimony is not credible.

33. The testimony of Respondent's wife, Dora Garcia, Esquire, is not credible as to whether Respondent was present.

34. The testimony of Mitchell Berger concerning Respondent's presence at the deposition was credible.

35. Respondent knew that Mrs. O'Donnell testified falsely in his presence, but he did nothing to correct his client's false testimony.

36. The same physician, Randall N. Smith, M.D., treated Mrs. O'Donnell for the injuries she sustained in both accidents. When counsel for Ms. Cessna subpoenaed Mrs. O'Donnell's medical records from Dr. Smith, Respondent spoke by telephone to Lucille Belisario, an employee in Dr. Smith's office. Respondent instructed Ms. Belisario to tell the person who called her to inquire about compliance with the subpoena that she could not locate Mrs. O'Donnell's records.

37. Respondent knew when he gave that instruction that Ms. Belisario did know where the records were and could easily have complied with the subpoena.

38. Respondent stated that he did have a conversation with Ms. Belisario, but claims that he told her not to produce the records because he had objections to the subpoena pending with the court. Respondent admits that he told Ms. Belisario not to produce the records, but to put the records in a separate place and say she could not find them or they were misplaced.

39. Respondent's testimony concerning a pending objection to the subpoena is not credible.

40. Ms. Belisario's testimony is credible that Respondent did not give a legal justification for refusing to comply with the subpoena. Ms. Belisario believed she was being told to lie and she was not given any explanation by Respondent.

Charge II – Complaint of Michael D. Brophy, Esquire

41. On or about January 16, 1996, Mary Fosque suffered personal injuries in an incident at Charter Fairmount Institute (CFI) where she was a patient.

42. Ms. Fosque retained Respondent to represent her in the personal injury suit against CFI and Dr. Steven Cohen.

43. On January 31, 1998, Respondent commenced a civil action in the Court of Common Pleas of Philadelphia County captioned Mary Fosque v. Charter Fairmount Behavioral Health Systems.

44. Michael Brophy, Esquire, entered his appearance for the defendant on March 9, 1998.

45. In March 2000, the civil litigation was deferred due to the filing of a bankruptcy action by Charter Fairmount.

46. On August 14, 2000, the case was removed from deferred status.

47. On June 14, 2001, the case settled.

48. On August 9, 2001, Respondent commenced a civil action in the Court of Common Pleas of Philadelphia County captioned Mary Fosque v. Plymouth Insurance Company and Michael D. Brophy.

49. Respondent's complaint against Mr. Brophy and the insurance carrier made attacks against the judges of the Court of Common Pleas. The complaint purported to quote Philadelphia District Attorney Lynn Abraham for the proposition that some of the judges in the Philadelphia Court system are stupid. Respondent further alleged that various judges refuse to treat litigants with impartiality and act out of prejudice and contrary to the facts and the law.

50. Respondent's complaint alleged that Mr. Brophy and the insurance carrier, in defending the underlying litigation, "did everything in their power, proper and improper, inappropriate, falsely, fraudulently and in every way possible to delay, injure or attempt to prevent the plaintiff from bring the underlying lawsuit..." The complaint accused Mr. Brophy and the carrier of preventing the plaintiff from obtaining discovery and evidence

to win the underlying action. It further accuses Mr. Brophy of various unspecified false statements, fraud and other misconduct.

51. Respondent's complaint accused Mr. Brophy and the carrier of fraud and conspiracy to defraud, with no factual or legal basis to do so.

52. On August 24, 2001, Mr. Brophy filed Preliminary Objections to Plaintiff's complaint.

53. By Order dated October 12, 2001, the Honorable Nitza Quinones Alejandro:

a. Ordered that Mr. Brophy's Preliminary Objections were sustained in part;

b. Struck certain paragraphs and counts IV and V; and,

c. Granted plaintiff leave to file a more specific Complaint within twenty days of the date of that Order.

54. On November 13, 2001, Respondent filed an Amended Complaint.

55. On November 26, 2001, defendant Brophy filed Preliminary Objections to the Plaintiff's Amended Complaint.

56. By Order dated May 23, 2002, the Honorable Gene D. Cohen sustained all Preliminary Objections and dismissed Plaintiff's Amended Complaint, with prejudice.

57. Judge Cohen found in a footnote to that Order that "the within Complaint contains few specifics and many broad generalities alleging that the insurance

company and counsel who participate in the settlement of the claim brought by the plaintiff against a different defendant engaged in fraud, thus attenuating the value of the settlement”; “the within Complaint consists only of an ad hominem attack on the insurance company and its counsel and no dates, times or actual conduct which would constitute fraud”, and “plaintiff seems merely to be striking back at the defendant insurance company and its counsel for litigating a case. The Courts are not a forum for revenge.”

58. On June 19, 2002, Judge Cohen denied Respondent’s Petition for Reconsideration.

59. On June 24, 2002, Respondent filed an appeal to the Superior Court.

60. By Order dated December 26, 2002, the Superior Court quashed Respondent’s appeal, based on the grounds that Respondent had not filed with the Court either a designation of the reproduced record pursuant to Pa.R.A.P. 2154, or a reproduced record in compliance with Pa.R.A.P. 2152.

Charge III – Complaint of Office of Disciplinary Counsel – SEPTA Matter

61. On July 13, 1998, Elaine Johnson suffered personal injuries while a passenger in a SEPTA bus driven by John Schatzman.

62. Ms. Johnson retained Respondent to represent her.

63. On June 28, 2000, Respondent commenced a civil action in the Court of Common Pleas of Philadelphia County, captioned Elaine Johnson v. SEPTA, et. al.

64. On May 15, 2001, a compulsory arbitration was held, at which:

a. Respondent ordered the services of a court reporter and requested that the testimony at the arbitration be transcribed; and,

b. Respondent did not call Ms. Johnson to testify, and presented no evidence on the issue of damages.

65. At the conclusion of the arbitration, the panel entered an award in the amount of \$0, since plaintiff failed to prove damages.

66. On June 11, 2001, Respondent appealed the arbitration award.

67. On March 14, 2002, Respondent commenced a civil action in the Court of Common Pleas of Philadelphia County, captioned Elaine Johnson v. SEPTA; John Schatzman; Joyce Hall; Alicia Hall; John Defeo; Jacobs & Saba; Nationwide Mutual Insurance Company; Janice Kolber; Delores Lanier, Esquire; and Joseph Trubia, M.D.

68. Respondent named as defendants the following individuals:

a. John Schatzman was the driver of the SEPTA bus in which Ms. Johnson allegedly was injured;

b. Delores Lanier, Esquire, was staff attorney and counsel of record for SEPTA and Mr. Schatzman;

c. Janice L. Kolber, Esquire, entered her appearance in place of Ms. Lanier prior to the trial listing and subsequent to the close of discovery;

d. The Halls were driver and passenger in the other vehicle;

e. Nationwide Mutual Insurance Company insured the Halls;

f. The law firm of Jacobs & Saba assigned the defense of the personal injury action to John Defeo, Esquire, an attorney with the firm; and,

g. Joseph Trubia, M. D., performed an independent medical examination of Ms. Johnson.

69. On March 26, 2002, the Honorable Allan L. Tereshko remanded the personal injury action for re-arbitration.

70. On April 3, 2002, defendants Nationwide Mutual Insurance Company, Joyce Hall, Alicia Hall, John Defeo and Jacobs & Saba filed Preliminary Objections to the second action.

71. On May 6, 2002, defendants SEPTA, Schatzman, and Hall filed Preliminary Objections to plaintiff's Complaint.

72. On June 3, 2002, Respondent filed a Praecipe for Entry of Default Judgment against defendant Joseph Trubia only, for failure to file an answer within the required time.

73. On June 14, 2002, Dr. Trubia filed a response to Respondent's Praecipe.

74. On June 19, 2002, Judge Arthur S. Kafrissen sustained defendants' (except Dr. Trubia's) Preliminary Objections, without prejudice, in the second action and granted the plaintiff leave to file a more specific pleading within twenty (20) days from the date of that Order.

75. On July 22, 2002, Respondent filed an Amended Complaint, which was filed 13 days after the 20 day period.

76. On August 12, 2002, defendants Schatzman, Kolber, Lanier and Trubia filed Preliminary Objections to the Amended Complaint.

77. On August 21, 2002, a second arbitration hearing was held.

78. On September 18, 2002, Respondent filed an appeal of the arbitrators' award in the personal injury action and demanded a jury trial.

79. On September 20, 2002, Judge Kafrissen sustained defendant, Dr. Trubia's Preliminary Objections to the Amended Complaint in the second action, and the Amended Complaint was dismissed with respect to Dr. Trubia.

80. On October 10, 2002, Respondent filed a Petition for Reconsideration of Judge Kafrissen's Order.

81. By Order dated October 22, 2002, Judge Kafrissen denied Respondent's Petition for Reconsideration.

82. On October 23, 2002, the Honorable Gary S. Glazer sustained some of the defendants' Preliminary Objections and dismissed the Plaintiff's Amended complaint in the second action with prejudice.

83. On December 6, 2002, Plaintiff filed a Petition for Reconsideration of the October 23, 2002 Order.

84. On December 13, 2002, Judge Glazer dismissed the Petition for Reconsideration. Judge Glazer wrote on the Order "dismissed as untimely filed".

85. On December 13, 2002, the Honorable Norman Ackerman dismissed Respondent's arbitration appeal in the personal injury action and remanded the case to arbitration, for all parties to put on evidence at that arbitration.

86. On April 21, 2003, an arbitration hearing was held. At the conclusion, the panel found for the plaintiff in the amount of \$500 against Joyce Hall, and in favor of the defendants, SEPTA, John Schatzman and Alicia Hall.

87. On April 28, 2003, Respondent appealed the arbitration award.

88. John Defeo, Esquire, spent approximately \$20,000 in attorneys' fees in defending the baseless claims against him.

89. Respondent has sued defense counsel in six other cases. His reason was that he was tired of what he viewed as discovery rule violations by defense counsel.

III. CONCLUSIONS OF LAW

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

1. RPC 1.2(d) – A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent.

2. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous.

3. RPC 3.4(a) – A lawyer shall not obstruct another party’s access to evidence or conceal a document or other material having potential evidentiary value or assist another person to do any such act.

4. RPC 3.4(b) – A lawyer shall not falsify evidence, counsel or assist a witness to testify falsely.

5. RPC 3.4(d) – A lawyer shall not request a person other than a client to refrain from voluntarily giving relevant information to another party.

6. RPC 4.1(b) – In the course of representing a client a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid aiding and abetting a criminal or fraudulent act by a client.

7. RPC 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or to do so through the acts of another.

8. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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

10. Respondent did not violate RPC 3.3(a)(4), as the record does not support the conclusion that he offered evidence that he knew was false.

IV. DISCUSSION

Before the Disciplinary Board is the matter of Allen L. Feingold, who has been charged with violations of the Rules of Professional Conduct in three separate instances. These charges against Respondent may be summarized as follows.

In the O'Donnell matter, Respondent assisted his client in conduct that he knew to be fraudulent and criminal, namely perjury at her deposition in a personal injury case regarding another, earlier accident, and an injury case in which Respondent represented the client. Respondent attempted to perpetuate and cover up the perjury by instructing his client's physician's employee to tell defense counsel that medical records could not be located, after defense counsel had subpoenaed medical records which would have revealed the earlier accident and injury. This occurred despite the fact that Respondent knew that the employee had knowledge of whereabouts of the records.

In the Brophy matter, Respondent filed a frivolous lawsuit, alleging meritless claims against an opposing party's insurer and defense counsel after settling the initial personal injury suit, and in so doing, engaged in conduct prejudicial to the administration of justice.

In the SEPTA matter, Respondent filed frivolous civil actions against his opposing counsel and certain defendants, after an arbitration hearing in which Respondent failed to prove any damages, and in so doing, engaged in conduct prejudicial to the administration of justice.

The Hearing Committee concluded that Respondent did engage in the

misconduct charged by Petitioner, and violated each of the Rules of Professional Conduct as charged in the Petition for Discipline, except for RPC 3.3(a)(4). Respondent took exceptions to the findings and conclusions of the Hearing Committee, contending that he did not violate any of the charged Rules of Professional Conduct, and that the charges should be dismissed. Alternatively, Respondent objected to the recommended discipline of a one year suspension, and instead recommends private discipline.

Petitioner bears the burden of proving professional misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). After careful and thorough examination and analysis of the record, and upon consideration of the arguments presented to the Board by the parties at oral argument, the Board concludes that the Petitioner met its burden as to each of the Rules violations, except for 3.3(a)(4).

In the O'Donnell matter, the Hearing Committee found that the Respondent knowingly sat by as his client perjured herself in deposition testimony regarding the personal injury actions in which Respondent represented her. Respondent was aware of the existence of the two separate accidents and lawsuits, and in fact signed the complaints for these suits less than one week apart. Respondent did not correct his client's false testimony. Respondent claims he was not in the room and did not know of the false testimony, but the Board finds that Respondent made himself available during the deposition, constantly made objections, and was aware of the events as they were happening. The deposition transcript itself clearly shows Respondent objecting numerous

times, including just before the false testimony. Respondent could not explain how he could be unaware of the other lawsuit, when he himself signed the complaint a mere five days before he signed the Cessna lawsuit.

Respondent attempted to continue the cover-up by obstructing opposing counsel's access to the evidence contained in medical records, which would have revealed the existence of the other injury. Respondent instructed a records custodian, Lucille Belisario, to say that she could not locate Ms. O'Donnell's records, even though she knew where they were. The Hearing Committee did not find Respondent's testimony as to these events to be credible. The Board's review of the record demonstrates no reason to overturn the finding of the Committee on this point.

In the Brophy and SEPTA matters, Respondent had no legitimate basis for filing lawsuits against defense counsel on the basis of fraud and conspiracy. He decided to sue his opposing counsel to take out his annoyance with the supposed inadequacies in the court system that he perceived, and his own perceptions regarding the errors of the many judges presiding over his cases. None of these complaints survived preliminary objections. Respondent failed to show any actual fraudulent behavior on the part of the targets of the litigation. All he was able to show were routine discovery disputes, such as late interrogatory answers and document production issues. These routine disputes in no way justify a civil action for fraud against opposing counsel.

Aggravating factors are present in this matter. Respondent does not accept responsibility for his conduct, and he shows no remorse whatsoever. He does not seem to

comprehend why he is charged with misconduct, especially in the Brophy and SEPTA matters. Respondent showed contempt for the disciplinary process. He waited until just before the first scheduled hearing date to serve numerous subpoenas on judges and attorneys, requiring them to appear with virtually no notice. When the witnesses did appear, Respondent was unprepared to question them. Respondent was disrespectful to the witnesses he subpoenaed. When the Chair of the Hearing Committee sustained objections to various improper lines of questioning, Respondent became very upset. He lost control of himself, raising his voice to the Committee and a witness. The sole mitigating factor in Respondent's favor is that he has practiced law for thirty-eight (38) years with no history of discipline.

The Hearing Committee recommended a one year suspension with two years of probation and a practice monitor who would be required to approve any and all pleadings and motions filed by Respondent or any attorneys associated with his practice. Such a condition of probation is impractical, and in the Board's opinion, is an inappropriate method to address the disciplinary violations committed by the Respondent. Petitioner cites Office of Disciplinary Counsel v. Eric M.D. Levande, No. 72 DB 1999, D.Bd.Rpt. 2/2/01 (S.Ct. Order 4/12/01), for the proposition that "probation is generally recommended when an attorney has shown a recognition of the causes of the misconduct, a commitment to improvement, and changes in the situation that provide reasons to believe the attorney can perform better with supervision." Here, the Board doubts that Respondent's failure to accept responsibility for his conduct and lack of remorse are conducive to an effective

practice monitor situation.

The Board's review of the record and case law leads to the conclusion that the evidence is sufficient to support a three (3) year suspension. Respondent knowingly offered a false statement to opposing counsel and to the Hearing Committee, and he instructed a records custodian to say that she did not know the whereabouts of records which were clearly in her possession and under her control. Respondent's dishonesty, deceitful practices, and improper delay tactics are the antithesis of the way in which a professional and responsible lawyer approaches the practice of law. Respondent's manner of practice endangers the public and causes disrepute to the legal and judicial system of this Commonwealth.

The Board notes that the Hearing Committee was concerned with the Respondent's failure to admit and accept responsibility for his conduct, and to show remorse, concluding that these factors "weigh heavily" in favor of a more serious level of discipline. The Committee further found that the Respondent does not seem to understand what he did wrong, and it expressed its "grave doubt" about whether any discipline short of a lengthy suspension will impress upon Respondent the gravity of his misconduct and the need to change his behavior.

The Board accepts the Petitioner's position that Respondent's misconduct mandates that he be required to petition for reinstatement to practice law and bear the burden of proving by clear and convincing evidence that he has the moral qualifications, competency and learning of the law required for admission to practice in the

Commonwealth, and that his resumption of the practice of law will neither be detrimental to the integrity and standing of the bar or the administration of justice, nor subversive of the public interest. The Board sees sufficient similarities in the instant case to the case of In re Anonymous (Sharon S. Brown) No. 102 DB 92, 25 Pa. D. & C. 4th 358 (1995). In that case, the Respondent was disbarred for knowingly offering a false statement to the Orphans' Court and lying to the hearing committee.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Allen L. Feingold, be suspended from the practice of law for a period of three (3) 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: _____
Louis N. Teti, Board Member

Date: November 18, 2005

Board Member Nordenberg did not participate in the July 16, 2005 adjudication.

ORDER

PER CURIAM:

AND NOW, this 3rd day of March, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated November 18, 2005, the Petition for Review, Exceptions and Objections and Petition for Remand, with request for oral argument, and response thereto, the request for oral argument is denied pursuant to Rule 208(e)(4), Pa.R.D.E., and it is hereby

ORDERED that Allen L. Feingold be and he is suspended from the Bar of this Commonwealth for a period of three 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.

Madam Justice Baldwin did not participate in this matter.

Mr. Justice Castille dissents and would issue a Rule to Show Cause why respondent should not be disbarred.