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January 19, 1992

Editor
Pike County Dispatch
PO Box 186
Milford, Pa. 18337-0186

To the Dispatch,

The staff of the Dispatch should be commended for the prominent and extensive news coverage given to the disbarment and criminal proceedings against John A. Wittmaack of Lords Valley. Public trust in the largely honorable legal profession can be destroyed when even a few unscrupulous lawyers are permitted to creep into the works. Open airing of misconduct allegations against the most egregious of these scumbags, and strict sentencing of the guilty, is the only way to restore and maintain full public confidence in our system of justice.

Keep it up!

With every good wish,

Thomas S. Rue
Monticello, N.Y.

tsr

Wittmaack hearing held before Sanquilly

1/16/92 PCD

By Steve McKinley

LORDS VALLEY — John A. Wittmaack, 51, of Hemlock Farms, Lords Valley, Blooming Grove Township was bound over for trial on two counts of theft and forgery Thursday, Jan. 9 at the completion of a preliminary hearing before District Justice William Sanquilly.

The charges arose from an investigation by State Police at Blooming Grove and the PA Attorney Generals office which resulted in allegations that Wittmaack wrote a check and initiated a phone transfer of funds totaling $105,000 on Golden Key Corporation accounts at the Honesdale National Bank (HNB) and forged the signature of James Burke on a corporate resolution authorizing him (Wittmaack) to conduct banking business for the corporation.

The first witness called by prosecutor Jack Brier, a Lackawanna County assistant district attorney was Stanley Yackoski, a vice president at HNB

Yackoski, under questioning by Brier, identified various bank records including a signature card bearing the name John Wittmaack for the Golden Key Corporation checking account and a corporate resolution authorizing Wittmaack to conduct banking business for the company.

Yackoski also testified that his bank had received a check drawn on the Golden Key corporation to J and R Management for $60,000 to pay off a mortgage of J and R Management. The mortgage was endorsed by John Wittmaack as managing partner and personally, Yackoski said.

Yackoski also identified a notice of transfer of funds for $45,000. The notice showed the funds had been transferred by phone from the Golden Key Corporation checking account to an account of Wittmaack's.

Yackoski's testimony was subject to numerous objections by defense attorney Stephen Bresset which intensified when prosecutor Brier asked Yackoski to identify Wittmaack's signature.

Bresset claimed Yackoski was not "an expert" and therefore could not identify Wittmaack's signature.

Under cross examination by Bresset, Yackoski testified that he had witnessed Wittmaack sign his name ten or more times over the years 1984 to 1987.

Yackoski then identified Wittmaack's signatures on some of the documents.

Concluding his testimony, Yackoski answered attorney Brier's question if he had any doubt that the $60,000 check was used to pay off the J and R Management Associates loan, that he did not.

James Burke a partner in the Golden Key Corporation with Wittmaack and Richard Herman testified next.

Burke identified an agreement between himself, Wittmaack and Herman under which the three would form the Golden Key Corporation for the purpose of acquiring and selling the first refusal rights for the Gold Key development lots from the Gold Key Corporation.

The agreement stipulated that Burke would put up the capital. $25,000, Herman would do the selling and Wittmaack would do the paperwork and conduct the closing when lots were sold, Burke testified.

The agreement also authorized Wittmaack, Burke said, to sign corporate checks of up to $1,000, but required Burke's signature for checks of over $1,000.

Burke was shown the corporate resolution bearing the name James Burke.

Burke testified that it was not his signature that appeared on the resolution.

Attorney Brier asked Burke if he had authorized the $60,000 check, the $45,000 transfer or signed his name to the resolution. Burke replied that he had not.

During cross examination defense attorney Bresset spent considerable time attempting to gain information about Burke's business dealings which were evidently unrelated to the charges, drawing objections from the prosecution.

Justice Sanquilly questioned the relevance of the questioning then allowed a five minute recess for Bresset to consult with Wittmaack.

Upon the Court's return to session Bresset asked Burke if he had ever seen the books or checkbook of the Golden Key corporation. Burke said he had not, that Wittmaack would not relinquish them.

Burke was then asked if he had asked Wittmaack for $1,000,000 in exchange for not prosecuting the alleged theft.

Burke replied that he had not.

Burke testified that he had not met with Herman and Wittmaack to discuss an out of court settlement of the matter.

Richard Herman was then called to testify.

Herman told the Court that he had received a phone call from Wittmaack's wife Eileen requesting a meeting to discuss settlement of the problem.

Herman said he offered to "let the matter slide" (not prosecute) if Wittmaack returned the missing money.

Herman said Wittmaack offered to pay $10,000 immediately then make $1,000 per month payments until all the cash was returned.

Herman said he rejected the offer but said he would mention it to Burke.

Herman testified that he and Burke's suspicions were first aroused when they received K-1 forms from Wittmaack that did not make any sense and did not agree with payouts to the partners from the corporation.

Herman said he went to Wittmaack's office with his accountant to resolve the K-1 issue, but Wittmaack would not cooperate and subsequently became very upset and ejected them (Herman and the accountant) from his office.

Herman also confirmed Burke's testimony about the agreement to form the Golden Key Corporation.

Attorney Bresset also asked Herman if he had asked for a $1,000,000 payment from Wittmaack to avoid prosecution.

Herman replied, absolutely not.

Herman said he only asked that the missing money be returned, although he did not know exactly how much money was missing at that time.

Surprisingly, attorney Bresset asked Herman about checks allegedly written to attorney Dennis Mark. The checks had been cashed at a bank, Herman said.

Herman said he called Mark and inquired about those checks. Mark denied any knowledge of them, Herman said, saying he had not endorsed any such checks.

Kathy Hollister of HNB customer service was then called to testify.

Hollister identified the bank records which had been the subject of earlier testimony and said that she had personally opened the Golden Key Corporation checking account, by phone.

Attorney Bresset in his closing argument, moved unsuccessfully for dismissal of the forgery charge on the grounds that the prosecution had not supplied any evidence or testimony to prove that Wittmaack had actually signed the corporate resolution.

Prosecutor Brier successfully argued that issuance of a forged document also constitutes forgery under PA law and that the Commonwealth had established a prima facie case that Wittmaack had issued the document.

Wittmaack was arrested by State Police at Blooming Grove after he voluntarily surrendered in November, 1991. The charges of theft and forgery were filed with District Justice Sanquilly October 30, 1991.

Wittmaack was released on his own recognizance after the hearing after he agreed to appear in the State Police barracks to complete arrest processing that was not accomplished when he was arrested.

Improper disclosure, forgery cited 4/9/87 PCD

Atty. Wittmaack disbarred in Pa.

PITTSBURGH — Attorney John A. Wittmaack, of Lords Valley, was ordered disbarred from practicing law March 11 by the Pa. Supreme Court.

The order was the outcome of a hearing before the high court's Disciplinary Board on two charges revolving around Wittmaack's actions representing clients.

The first charge was that the attorney failed to inform clients Dr. and Mrs. John D. Nelson, of New York City, whom he represented in a 1981 mortgage matter, that he held a major financial interest in and was counsel for Heck Builders, the construction company which would receive the proceeds of the mortgage.

The charge "also concerns Mr. Wittmaack's forgery of a document purporting to be signed by his clients" in which the clients supposedly acknowledged and consented to the dual representation, according to the Supreme Court opinion.

The second charge is that Wittmaack represented both the buyers and seller of real estate in a 1982 transaction, but until the closing was almost completed failed to inform the buyers, Mr. and Mrs. Lester G. Freundlich, of New York, that he represented the private seller, "one Mr. Dandrow."

The first charge contains the most serious allegations: After entering a binding building contract, the Nelsons found out through a third party that Wittmaack was a principle in the company, according to the document.

"Nor did Mr. Wittmaack tell the Nelsons that Heck Builders had failed to make a profit in its six years of existence, that Heck was owned by his father and himself, that the company owed the two of them $40,000 and that he had just loaned the company another $35,000."

"We agree with the Disciplinary Board that the Nelsons were entitled to rest assured that their attorney would not advise them to continue with a building project with a builder who the attorney knew to be unsound," according to the Supreme Court.

The builder defaulted on the construction contract and a civil suit was filed by the Nelsons, during which Wittmaack's alleged conflict of interest was brought out. The attorney then produced a copy of a multiple representation agreement (M.R.A.) allegedly signed by the Nelsons.

"Expert handwriting analysis, however, established that the signatures on this document were forgeries which were effected by xeroxing the Nelsons' signatures on the closing documents, pasting them on a copy of the M.R.A. and xeroxing the pasteup," according to the court records.

"Mr. Wittmaack's conduct may be summarized as two counts of failing to inform his clients of conflicting interests in matters wherein he represented the clients; failing also to explain to the clients the extent of his interests and the ways in which his independent judgment might be affected by these interests; fabricating a document designed to falsely exonerate himself from one of the conflict of interest problems, and lying about the fabrication of evidence at every stage of this and related proceedings," according to the court.

Three of the Supreme Court Justices, Hutchinson, Larsen and Zappala, filed a dissenting opinion because the evidence was only circumstantial that Wittmaack had forged his clients' signatures. The dissenters did not believe the other charges warranted disbarment, and favored instead a two-year suspension that had been recommended by the Disciplinary Board.

The wheels turn

To the Dispatch,

I read with interest your April 9 page-one report that attorney John A. Wittmaack of Lords Valley had been disbarred from the practice of law by the Pennsylvania Supreme Court. According to your account, Mr. Wittmaack was found to have committed forgery and failed to disclose conflict of interest to a client.

My acquaintance with Mr. Wittmaack goes back several years.

It is heartening to see that while the wheels of justice sometimes turn slowly, the system does work.

Very truly yours,
Tom Rue
Milanville

PCD 4/16/87

Attorney Whittmaack suspended 6/12/86

By TOM RUE

HONESDALE — Attorney John A. Wittmaack was ordered "to show cause why he should not be disbarred," in a May 28th order received by the Wayne County prothonotary's office. He was given 20 days to file an answer.

Signed by the chief justice of the Supreme Court of Pennsylvania, the order stated that Wittmaack has been suspended from the practice of law, upon recommendation of the court's Disciplinary Board. Vince Scammel, administrator of the Supreme Court, told **The River Reporter** that the proceedings stemmed from "a criminal matter," but he would not elaborate until further information is released by the board's secretary.

Wittmaack could not be reached for comment and failed to return phone calls. His office staff was apparently told to direct press inquiries to Marshall Anders of Stroudsburg. Anders stated simply, "It's a confidential proceeding."

According to an account in the **Tri-State Gazette**, Edwin Frese, assistant counsel to the Diciplinary Council's District 3, refused to discuss the case "because of his own involvement as a litigant in the case."

Oral arguments on the case, which will be open to the public, are expected to be held in Philadelphia at some future date.

Nicholas Barna, president of the Wayne County Bar Association estimated that there are 10 to 20 disbarrments in the state each year. "Given the number of lawyers, I guess that's not very many," he commented.

Wittmaack lists his practice as Wayne County, although his law offices and residence are in Pike County's Hemlock Farms in Lord's Valley. Formerly he maintained a practice in Middletown.

On April 20, 1977, Wittmaack was indicted by the New York State Supreme Court in Queens on charges that while president of the Berkley Co-op Towers, a housing cooperative in Woodside, NY, he billed $5000 worth of items to the co-op which were actually for his personal use.

Wittmaack was charged with two counts of second-degree grand larceny, six counts of third-degree larceny, six counts of third-degree grand larceny, and forgery. Reportedly, these charges were dismissed mid-trial after the case file was lost.

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"Expert handwriting analysis, however, established that the signatures on this document were forgeries which were effected by xeroxing the Nelsons' signatures on the closing documents, pasting them on a copy of the M.R.A. and xeroxing the pasteup," according to the court records.

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Three of the Supreme Court Justices, Hutchinson, Larsen and Zappala, filed a dissenting opinion because the evidence was only circumstantial that Wittmaack had forged his clients' signatures. The dissenters did not believe the other charges warranted disbarment, and favored instead a two-year suspension that had been recommended by the Disciplinary Board.

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Tom Rue
Milanville

PCD 4/16/87

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 530 Disciplinary Docket No. 2
v.	:	Disciplinary Board No. 21 DB 85
JOHN A. WITTMAACK, Respondent (Wayne County)	:	Attorney Registration No. 20740

ORDER AND RULE TO SHOW CAUSE

AND NOW, this 28th day of May, 1986, upon consideration of the Report and Recommendation of the Disciplinary Board dated May 8, 1986, it is hereby

ORDERED that JOHN A. WITTMAACK be and he is SUSPENDED IMMEDIATELY from the Bar of the Commonwealth, and he shall comply with all the provisions of Rule 217, Pa.R.D.E., which are not inconsistent with this Order.

Pursuant to Rule 208(e)(3), Pa.R.D.E., a Rule is hereby issued upon respondent to show cause why he should not be disbarred.

BY THE COURT:

Chief Justice

TRUE COPY FROM RECORD
Attest: 5-29-86

Marlene F. Lachman, Esq.
Prothonotary
Supreme Court of Pennsylvania

WAYNE COUNTY
PROTHONOTARY AND
CLERK OF COURTS
JUN 3 9 50 AM '86

Atty. Wittmaack suspended

Dispatch 6/5/86

HARRISBURG — Attorney John A. Wittmaack, who has a law practice in Pike and Wayne Counties, was suspended from the state bar, effective Wednesday, May 28, according to an order from the Pa. Supreme Court.

A rule was served on Wittmaack to show cause why he should not be disbarred.

Wittmaack lists his practice as Wayne County, although his law offices and residence are in Hemlock Farms, Lords Valley.

The suspension followed consideration of a report and recommendation by the Disciplinary Board, dated May 8. Further information about the nature of the charges against Wittmaack were unavailable as of presstime. The attorney could not be reached for comment.

Nick Barna 253

Rosenblum & Adler

(Marshall Andrews) or Kary Ferraro

717-424-6661

Court suspends lawyer

6/5/86 Gazette

Rob

By R.G. Rosenthal
Staff Reporter

HARRISBURG — A Lords Valley attorney was suspended last week by the Disciplinary Council of the Supreme Court of Pennsylvania from practicing in the state and must now show cause as to why the council shouldn't disbar him.

In an order dated May 28, the court suspended John A. Wittmaack of Hemlock Farms for allegations of impropriety, said Edwin Frese, the assistant counsel to the council's District 3.

However, Frese said he did not feel it was proper to discuss the nature of the allegations against Wittmack because of his own involvement as a litigant in the case.

Wittmaack could not be reached for comment.

Frese said that Wittmaack must submit briefs in his defense and that oral arguments on the case would be scheduled during an open session of the court sometime in the future. That session would most likely take place in Philadelphia.

The allegations against Wittmaack are not the first charges of impropriety lodged against the attorney, who formerly had an office in Middletown.

On April 20, 1977, Wittmaack was

★ (See LAW, page 3)

NOTICE OF SUSPENSION

Notice is hereby given that on May 28, 1986, the Supreme Court of Pennsylvania ordered that John A. Wittmaack, be suspended immediately from the Bar of the Commonwealth and further entered a rule to show cause why he should not be disbarred.

Nan M. Cohen, Secretary
The Disciplinary Board of the
Commonwealth of Pennsylvania

Tom 6/7/86 Independent

Office of Dis. Counsel

call Mon. pm

★ LAW

(Continued from page 1)

indicted in New York State Supreme Court in Queens on charges that while board president of a housing coop in Woodside, N.Y., he appropriated $5,000 worth of items billed to the coop for his personal use.

Wittmaack was charged with two counts of second-degree grand larceny, six counts of third-degree grand larceny, and forgery for allegedly forging the signature of the superintendent of the Berkley Co-op Towers on invoices for goods the co-op never received between April 1972 and September 1973.

However, those charges against Wittmaack were reportedly dismissed in the middle of his trial after the case file was lost. At press time, *The Tri-State Gazette* could not determine if the records on the Wittmaack case in Queens had been sealed as would have been consistent with a case dismissed in New York.

(2) all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing.

The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended or on inactive status.

(d) Orders imposing suspension, disbarment or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension, or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

(e) Within ten days after the effective date of the disbarment, suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing:

(1) that the provisions of the order and these rules have been fully complied with; and

(2) all other state, federal and administrative jurisdictions to which such person is admitted to practice.

Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

(f) The Board shall cause a notice of the suspension, disbarment or transfer to inactive status to be published in the legal journal and a newspaper of general circulation in the county in which the formerly admitted attorney practiced.

(g) The Board shall promptly transmit a certified copy of the order of suspension, disbarment or transfer to inactive status to the president judge of the court of common pleas in the judicial district in which the formerly admitted attorney practiced. The president judge shall make such further order as may be necessary to fully protect the rights of the clients of the formerly admitted attorney.

(h) A formerly admitted attorney shall keep and maintain records of the various steps taken by such person under these rules so that, upon any subsequent proceeding instituted by or against such person, proof of compliance with these rules and with the disbarment, suspension or transfer to inactive status order will be available. Proof of compliance with these rules shall be a condition precedent to any petition for reinstatement.

Amended March 11, 1983, effective April 2, 1983.

Rule 218. Reinstatement

(a) No attorney suspended for a period exceeding three months, transferred to inactive status more than three years prior to resumption of practice, or disbarred, may resume practice until reinstated by order of the Supreme Court after petition therefor pursuant to these rules.

(b) A person who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment, except that a person who has been disbarred pursuant to Rule 216 (relating to reciprocal discipline) may apply for reinstatement at any earlier date on which reinstatement may be sought in the jurisdiction of initial discipline.

(c)(1) Petitions for reinstatement by formerly admitted attorneys shall be filed with the Board.

(2) Upon receipt of the petition the Board shall refer the petition to a hearing committee in the disciplinary district in which the respondent-attorney maintained an office at the time of the disbarment, suspension or transfer to inactive status. If any other formal disciplinary proceedings are then pending or have been authorized against the formerly admitted attorney, the reinstatement and disciplinary matters may be heard by the same hearing committee. In such case the combined hearing shall be held not later than 45 days after receipt by the Board of the petition for reinstatement.

(3) The hearing committee shall promptly schedule a hearing at which:

(i) A disbarred or suspended attorney shall have the burden of demonstrating by clear and convincing evidence that such person has the moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

(ii) A formerly admitted attorney who has been on inactive status shall have the burden of demonstrating that such person has the moral qualifications, competency and learning in the law required for admission to practice in the Commonwealth.

(4) At the conclusion of the hearing, the hearing committee shall promptly file a report containing its findings and recommendations and transmit same, together with the record, to the Board.

purposes of Enforcement Rule 402(1) (relating to confidentiality) the order shall not be an order for the imposition of public discipline. The statement required under the provisions of subdivision (a) of this rule shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except upon order of the Supreme Court.

Amended Sept. 22, 1980, effective 120 days after Oct. 11, 1980.

Rule 216. Reciprocal Discipline

(a) Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this Commonwealth has been disciplined by suspension or disbarment in another jurisdiction, the Supreme Court shall forthwith issue a notice directed to the respondent-attorney containing:

(1) a copy of said order from the other jurisdiction; and

(2) an order directing that the respondent-attorney inform the Court within 30 days from service of the notice, of any claim by the respondent-attorney that the imposition of the identical or comparable discipline in this Commonwealth would be unwarranted, and the reasons therefor.

The Board shall cause this notice to be served upon the respondent-attorney by mailing it to the address furnished by the respondent-attorney in the last registration statement filed by such person in accordance with Enforcement Rule 219(d) (relating to periodic assessment of attorneys).

(b) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in the Commonwealth shall be deferred until such stay expires.

(c) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of subdivision (a) of this rule, the Supreme Court may impose the identical or comparable discipline unless Disciplinary Counsel or the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

(1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject;

(3) that the imposition of the same or comparable discipline would result in grave injustice; or

(4) that the misconduct established has been held to warrant substantially different discipline in this Commonwealth.

Where the Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

(d) In all other respects, a final adjudication in another jurisdiction that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Commonwealth.

Amended March 11, 1983, effective April 2, 1983.

Rule 217. Formerly Admitted Attorneys

(a) A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere.

(b) A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension, or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney.

(c) A formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension or transfer to inactive status, by registered or certified mail, return receipt requested:

(1) all persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension or transfer to inactive status, and

ate, within 60 days after the adjudication of the matter at a meeting of the Board:

(i) Dismissal. In the event that the Board determines that a proceeding should be dismissed, it shall so notify the respondent-attorney.

(ii) Informal admonition or private reprimand. In the event that the Board determines that the proceeding should be concluded by informal admonition or private reprimand, it shall arrange to have the respondent-attorney appear before Disciplinary Counsel for the purpose of receiving informal admonition or before the Board for the purpose of receiving private reprimand, in which case the Chairman shall deliver the private reprimand.

(iii) Other discipline. In the event that the Board shall determine that the matter should be concluded by probation, censure, suspension, disbarment, or by private reprimand in cases where the respondent-attorney is unwilling to have the matter concluded by private reprimand, it shall submit its findings and recommendations, together with the briefs, if any, before the Board and the entire record, to the Chief Justice.

(3) Rescinded Nov. 10, 1980, effective Feb. 8, 1981.

(e) Review and action in the Supreme Court.

(1) Service of the findings and recommendations of the Board upon the respondent-attorney, service of other papers under this subdivision, and the number of copies to be provided for the use of the Supreme Court shall be governed by Rules 121 through 124 of the Pennsylvania Rules of Appellate Procedure.

(2) In the event the Board recommends that the matter should be concluded by disbarment, the respondent-attorney may, within twenty (20) days after service of the findings and recommendations of the Board under paragraph (1) of this subdivision, submit to the Supreme Court a request to present oral argument.

(3) In the event the Board recommends a sanction less than disbarment, and the Court, after consideration of said recommendation, is of the view that a rule to show cause should be served upon respondent-attorney, why an order of disbarment not be entered, the same shall be issued. A copy of said rule is to be served on Disciplinary Counsel. Within twenty (20) days after service of the rule either party may submit to the Supreme Court a response thereto. Within ten (10) days after service of a response, the other party may submit to the Supreme Court a reply thereto. Respondent-attorney in such case shall have the absolute right upon request for oral argument.

(4) Except as provided in (e)(2) and (e)(3), respondent-attorney will not be afforded the right of oral argument.

(5) The Supreme Court shall review the record, where appropriate consider oral argument, and enter an order.

(f) Emergency interim suspension orders and related relief. Disciplinary Counsel, with the concurrence of the Board or a reviewing member of the Board, whenever it appears that the continued practice of law by a person subject to these rules is causing immediate and substantial public or private harm in manifest violation of the Disciplinary Rules or the Enforcement Rules, may petition the Supreme Court for injunctive or other appropriate relief. The Court, or any justice thereof, may, after such notice to the respondent-attorney and other parties as may be appropriate in the circumstances, issue such orders to the respondent-attorney, and to such financial institutions or other persons as may be parties to the proceeding, as may be necessary to preserve or recover funds, securities or other valuable property of clients or others which appear to have been misappropriated or mishandled in manifest violation of the Disciplinary Rules, or to rectify or control any manifest violation of the Disciplinary Rules or the Enforcement Rules which is or appears to be otherwise causing immediate and substantial public or private harm. Such orders may require temporary suspension of the practice of law pending definitive action under these rules.

(g) Costs.

(1) The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of a proceeding which results in the imposition of discipline shall be paid by the respondent-attorney. All expenses taxed under this paragraph shall be paid by the respondent-attorney within 30 days of entry of the order taxing the expenses against the respondent-attorney.

(2) In the event a proceeding is concluded by informal admonition or private reprimand, the Board in its discretion may direct that the necessary expenses incurred in the investigation and prosecution of the proceeding shall be paid by the respondent-attorney. All expenses taxed by the Board under this paragraph shall be paid by the respondent-attorney on or before the date fixed for the appearance of the respondent-attorney before Disciplinary Counsel or the Board for informal admonition or private reprimand. The expenses which shall be taxable under this paragraph shall be prescribed by Board rules.

Amended Nov. 10, 1980, effective Feb. 8, 1981; amended May 18, 1981 (rescinded by amendment of June 1, 1981); amended June 1, 1981, effective June 27, 1981; Dec. 10, 1981, effective Jan. 9, 1982; March 11, 1983, effective April 2, 1983; Feb. 2, 1984, effective Feb. 18, 1984.

(1) Shall be a party to all proceedings and other matters before the Board or the Supreme Court under these rules.

(2) May urge in the Supreme Court a position inconsistent with any recommendation of the Board where in the judgment of Disciplinary Counsel a different disposition of the matter is warranted by the law or the facts.

(3) May within the time and in the manner prescribed by the Pennsylvania Rules of Appellate Procedure obtain in the Supreme Court judicial review of any final determination of the Board.

Amended Nov. 10, 1980, effective Feb. 8, 1981; March 11, 1983, effective April 2, 1983.

Rule 208. Procedure

(a) Informal proceedings.

(1) All investigations, whether upon complaint or otherwise, shall be initiated and conducted by Disciplinary Counsel.

(2) Upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous or as falling outside the jurisdiction of the Board, or recommend:

(i) Dismissal of the complaint.

(ii) A conditional or unconditional informal admonition of the attorney concerned.

(iii) A conditional or unconditional private reprimand by the Board of the attorney concerned.

(iv) The prosecution of formal charges before a hearing committee.

(3) Except where the complaint is dismissed because the complaint is frivolous or falls outside the jurisdiction of the Board, the recommended disposition shall be reviewed by a member of a hearing committee in the appropriate disciplinary district who may approve or modify.

(4) Disciplinary Counsel may appeal the recommended disposition directed by a hearing committee member to a reviewing member of the Board who shall order that the matter be concluded by dismissal, conditional or unconditional informal admonition or conditional or unconditional private reprimand or direct that a formal proceeding be instituted before a hearing committee in the appropriate disciplinary district.

(5) A recommendation by a reviewing hearing committee member for a conditional or unconditional private reprimand shall be reviewed by a member of the Board who may approve or modify.

(6) A respondent-attorney shall not be entitled to appeal an informal admonition, a private reprimand or any conditions attached thereto in cases where no formal proceeding has been conducted, but may demand as of right that a formal proceeding be instituted against such attorney before a hearing committee in the appropriate disciplinary district. In the event of such demand, the informal admonition or private reprimand shall be vacated and the matter disposed of in the same manner as any other formal hearing instituted before a hearing committee, but any expenses of the proceeding taxed against the respondent-attorney shall be paid as required by paragraph (g)(2) of this rule.

(b) Formal hearing. Formal disciplinary proceedings before a hearing committee shall be as follows:

(1) Proceedings shall be instituted by filing with the Board a petition setting forth with specificity the charges of misconduct.

(2) A copy of the petition shall be personally served upon the respondent-attorney.

(3) Within 20 days after such service, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Board. In the event the respondent-attorney fails to file an answer, the charges shall be deemed at issue.

(4) Following the service of the answer, if there are any issues raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee.

(5) The Board shall serve a notice of hearing upon the respondent-attorney, or upon counsel for such attorney, indicating the date and place of the hearing at least 15 days in advance thereof. The notice of hearing shall state that the respondent-attorney is entitled to be represented by counsel, to cross-examine witnesses and to present evidence in the attorney's own behalf.

(c) Hearing committee procedures. Proceedings before hearing committees shall be governed by Board rules, except that, unless waived in the manner provided by such rules, at the conclusion of the hearing the hearing committee shall submit a report to the Board containing its findings and recommendations.

(d) Review and action by Board.

(1) Proceedings before the Board shall be governed by Board rules, except that, unless waived in the manner provided by such rules, the respondent-attorney shall have the right to submit briefs and to present oral argument to a panel of at least three members of the Board.

(2) The Board shall either affirm or change in writing the recommendation of the hearing committee by taking the following action, as appropri-