

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARIO G. COMUSO : CIVIL ACTION
 :
 v. :
 :
 NATIONAL RAILROAD PASSENGER :
 CORPORATION a/k/a AMTRAK : NO. 97-7891

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER**

HUTTON, J.

April 25, 2000

Presently before the Court are Defendant's Motion for Sanctions (Docket No. 43), Plaintiff's response to Defendant's Motion for Sanctions (Docket No. 45), Defendant's reply memorandum (Docket No. 48), Plaintiff's Motion to Strike Defendant's Reply Supporting Motion for Sanctions (Docket No. 50), Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion for Sanctions (Docket No. 55), and Defendant's Supplemental Memorandum of Law in Further Support of its Motion for Sanctions. On March 2, 2000, the Court held an evidentiary hearing on Defendant's instant Motion.

I. FINDINGS OF FACT

1. Trial commenced in this action on January 11, 1999, and continued on January 12, 1999.
2. This case ended in a mistrial on January 12, 1999.
3. Defendant now moves for sanctions against Marvin Barish,

Esquire ("Barish"), Plaintiff's counsel. The gravamen of Defendant's Motion concerns Barish's conduct during the Court's recess on the trial's second day. Defendant's counsel, Paul F. X. Gallagher, Esquire ("Gallagher"), alleges that in the courtroom during the recess, in the presence of court personnel, Barish verbally assaulted and physically threatened to kill him.

4. At the Court's evidentiary hearing, Barish addressed his conduct during the Court's recess on the afternoon of January 12, 1999, stating:

Well, it was not appropriate. I should not have done it. I should have been able to control myself. And I want to apologize to the Court and to Mr. Gallagher. Nothing happened that day that I was proud of. And, I -- it's never going to happen again. I can tell you that.

(Transcript at 8).

5. Barish acknowledged that "most of the things that [Gallagher] said I said, I did." (Transcript at 13).

6. Barish stated that he is "really sorry" about what happened. Barish said: "I'm sorry about it primarily because I should have known better, and I should have conducted myself better." (Transcript at 13).

7. Barish stated that he does not dispute "anything that [Gallagher] said . . . except the inference that he and I differ on [i.e., whether Barish really meant that he was going to kill Gallagher]. I'm not condoning my conduct. It was really bad." (Transcript at 14).

8. Barish threatened to kill Gallagher. (Transcript at 14).

9. Barish had his fist cocked when he threatened to kill Gallagher. (Transcript at 15).

10. Barish was screaming when he threatened Gallagher. (Transcript at 15).

11. Barish called Gallagher a "fat pig" four times. (Transcript at 15).

12. Barish told Gallagher that he is "lower than whale s---." (Transcript at 16).

13. Barish called Gallagher a "mother f-----," and stated that he will "kill" him. (Transcript at 18).

14. The aforementioned threats culminated with Barish's assistant, Mr. Randy Zevin, having to physically grab Barish on at least two occasions to pull him away from Gallagher. (Transcript at 15:19-16:3).

15. Barish acknowledged that his "conduct was not appropriate." (Transcript at 19).

16. Barish acknowledges that he did not conduct himself "as a trial lawyer should." (Transcript at 19).

17. Barish acknowledges that there is "certainly a basis to sanction" him for his conduct. (Transcript at 19).

18. Barish acknowledges that what he "did in this case was wrong. . . . and that it was not in keeping with what the courts expect." (Transcript at 27).

19. Barish's conduct in the courtroom during the Court's recess on January 12, 2000 was outrageous.

20. Barish stated that he "sure hope[s] not" to conduct himself similarly in the future. (Transcript at 20).

21. Barish stated that nothing like this (i.e., his outrageous conduct) happened previously. (Transcript at 20). Barish eventually stated that "[n]othing this -- nothing like that" happened during a previous trial. (Transcript at 21).

22. Barish acknowledged, however, that five months after this case ended in a mistrial, he "certainly did" call opposing counsel an "ass----" at a videotaped deposition in another case. When asked at this Court's March 2, 2000 evidentiary hearing whether calling his adversary an ass---- was appropriate behavior, he responded, "I imagine - - I imagine not. But he certainly fit the - - no, I imagine not." (Transcript at 24 (emphasis added)).

23. Barish then acknowledged that his clients have suffered reversals because of his courtroom conduct. (Transcript at 21).

24. Barish stated that he "never received any sanction or anything from the Disciplinary Board" (Transcript at 35).

25. The factual bases which underlie the outrageousness of his threats, physical intimidation, and profane outbursts are uncontroverted and admitted by Barish.

26. Barish verbally and physically threatened the life of Gallagher.

27. Barish used profane language.

28. Barish screamed at Gallagher in the courtroom.

29. Barish called Gallagher disparaging names.

30. Barish initially lied to this Court regarding his threat to kill Gallagher in the courtroom during the recess.

31. Barish's outrageous profane behavior during the Court's recess on January 12, 1999 was in bath faith.

32. Barish's conduct resulted in the needless waste of judicial resources.

33. Barish imposed upon his client and his adversary emotional and financial costs.

34. Barish needlessly squandered the time and service of the empaneled jury.

35. Barish inexcusably delayed for both parties a determination of their rights and status under the law.

36. Barish's prevarication impugned the integrity and dignity of the proceedings and required the intervention of the U.S. Marshal's Service to escort him from the courtroom.

II. DISCUSSION¹

Defendant seeks sanctions pursuant to two sources of authority: (1) 28 U.S.C. § 1927; and (2) the Court's inherent powers. Each source of authority is discussed below.²

A. 28 U.S.C.A. § 1927

Section 1927 states as follows:

Any attorney or any other person admitted to conduct cases in any court of the United States or any territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally

¹To the extent that the "Discussion" portion of this decision contains findings of fact and/or conclusions of law in addition to those set forth under such headings, these determinations are deemed to be part of the respective sections even if not expressly stated.

²Plaintiff argues in his Supplemental Memorandum of Law that Defendant's Motion for Sanctions must be dismissed as it was untimely. The substance of Plaintiff's argument is that because 148 days passed from the date the above-captioned matter ended in a mistrial to the date Barish was served with Defendant's Motion for Sanctions, said Motion must be dismissed pursuant to logic enunciated by the Third Circuit in Mary Ann Penserio, Inc. v. Lingle, 847 F.2d 90 (3d Cir. 1988).

The relevant discussion in Lingle concerns the timeliness of filing a Rule 11 motion in the context of an appeal of the trial court's holding. While the Court recognizes the desirability of "recommend[ing] that a party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so," the Court does not understand Lingle to establish a per se test for promptness. Id. at 99 (citation omitted) (emphases added). The Third Circuit also stated that "[w]here appropriate, [Rule 11] motions should be filed at an earlier time--as soon as practicable after discovery of the Rule 11 violation." Id. at 100. The Lingle court's express language suggests that both the party seeking sanctions and the court have discretion in deciding when it is "practicable" to file a sanctions motions. The Court therefore finds that Defendant's suggested interpretation of Lingle is misguided. Moreover, Plaintiff fails to cite to and the Court is unaware of any authority that requires a motion for sanctions to be filed in a specific time period--particularly in a period less than 148 days. As such, the Court finds that Defendant's Motion was timely filed and therefore rejects Plaintiff's argument for dismissal on the basis of untimeliness. One of the inherent powers of every federal court is the authority to discipline attorneys and remedy litigation practices which constitute ethical violations.

the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct.

28 U.S.C.A. § 1927.

Imposition of attorney's fees and costs under § 1927 is reserved for behavior "of an egregious nature, stamped by bad faith that is violative of recognized standards in the conduct of litigation." (Emphasis added). Baker Indus., Inc. v. Carburize Ltd., 764 F.2d 204, 308 (3d Cir. 1985) (citation omitted); see also In re Orthopedic Bone Screw Products Liability Litigation, Nos. 98-1762, 98-1829, 1999 WL 796833, at *13, (E.D. Pa. Oct. 7, 1999). Fees may not be awarded under § 1927 unless there is a "finding of willful bad faith on the part of the offending attorney." Baker Indus., 764 F.2d at 209. Bad faith is found where there is "indication of an intentional advancement of a baseless contention that is made for an ulterior purpose, e.g., harassment or delay." Ford v. Temple Hosp., 790 F.2d 342, 347 (3d Cir. 1987) (emphasis added). This indication may be express or implied from statements made on the record that a court may interpret as proving bad faith. See Zak v. Eastern Pa. Psychiatric Institute of the Med. College of Pa., 103 F.3d 294, 297-98 (3d Cir. 1996); Horizon Unlimited, Inc. v. Richard Silva & SNA, Inc., No. CIV.A. 97-7430, 1999 WL 675469, at *3 (E.D. Pa. Aug. 31, 1999). Ultimately, this section should be utilized only where an attorney "willfully abuse[s] the judicial process." In re Orthopedic Bone Screw Products Liability Litigation, Nos. MDL 1014, 1998 WL 633680, at *3, (E.D. Pa. Aug.

14, 1998) (emphasis added); see also Baker Indus., 764 F.2d at 208.³

B. Inherent Power Of The Court

One of the inherent powers of every federal court is the authority to discipline attorneys practicing before it. See Matter of Abrams, 521 F.2d 1094, 1099 (3d Cir. 1975). As part of this power, the court may prohibit or remedy litigation practices which constitute ethical violations. See University Patents, Inc. v. Klingman, 737 F. Supp. 325, 327 (E.D. Pa. 1990). The judiciary is charged with the responsibility of maintaining the integrity of the legal profession. See Belote v. Maritrans Op. Partners, L.P., No. CIV.A. 97-3993, 1998 WL 136523, at *6 (E.D. Pa. March 20, 1998) (citation omitted). Pennsylvania's Rules of Professional Conduct apply in proceedings before this Court. E.D. Pa. R. Civ. P. 83.6 (Rule IV). The Third Circuit cautioned that a "trial court should consider invoking its inherent sanctioning powers only where no sanction established by the Federal Rules [of Civil Procedure] or pertinent statute is 'up to the task' of remedying the damage done by a litigant's malfeasance . . . and only when the sanction is tailored to address the harm identified." See Klein v. Stahl GMBH

³Defendant cites no case Third Circuit case law that supports the imposition of § 1927 sanctions for behavior similar to that which Barish exhibited during the Court's recess. Defendant cites a Sixth Circuit case, however, where a § 1927 sanction was imposed after counsel assaulted opposing counsel after the day's proceedings had adjourned. See Cook v. American Steamship Co., 134 F.2d. 771 (6th Cir. 1998).

& Co. Maschinefabrik, 185 F.2d 98, 108 (3d Cir. 1999) (citations omitted).

The Supreme Court stated, however, that first requiring a court to apply rules and/or statutes containing sanctioning provisions to discrete occurrences before invoking inherent powers to address remaining instances of sanctionable conduct would only foster extensive and needless collateral litigation. See Chambers v. NASCO, Inc., 501 U.S. 32, 51 111 S. Ct. 2132, 2136 (1991).

Inasmuch as the Third Circuit has not sanctioned an attorney under § 1927 for outrageous conduct similar to that exhibited by Barish during the Court's recess, the issue remains whether the Court may properly rely on its inherent power to sanction Barish. At least one court within the Third Circuit invoked its inherent authority to find that sanctions for counsel misconduct were appropriate where counsel made personal attacks on the opposing party and her counsel. See Cannon v. Cherry Hill Toyota, No. CIV.A. 97-3722(JBS), 1999 WL 157684, at *15-18 (D.N.J. Feb. 25, 1999).

The Cannon court noted that the accused counsel consistently used personal attacks and inflammatory language. See Cannon, 1999 WL 157684, at *15. The court found counsel's tactics objectionable because they, inter alia, debased the judicial system and the legal profession. See Cannon, 1999 WL 157684, at *15. The court found that counsel's tactics presented

the unhappy picture of a lawyer who has crossed the boundary of legitimate advocacy into personal recrimination against his adversary Lawyers are not free, like loose cannons, to fire at will upon any target of opportunity which appears on the legal landscape. The practice of law is not and cannot be a free fire zone.

Cannon, 1999 WL 157684, at *15 (citations omitted).

As the Supreme Court warned, "[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion." Chambers, 501 U.S. at 44, 111 S. Ct. at 2132. "A primary aspect of [a district court's] discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process" Id. (emphasis added)). Thus, the trial court must ensure that there is a sufficient factual basis for exercising its inherent powers, and must also ensure that the sanction is tailored to address the harm identified. In exercising its discretion under its inherent powers, the court is guided by the same considerations that guide it in the imposition of sanctions under the Federal Rules. See Republic of Philippines v. Westinghouse Elec. Corp., 43 F.3d 65, 75 (3d Cir. 1994).

The trial court must consider the conduct at issue and explain why the conduct warrants sanction.⁴ See id.

⁴The Third Circuit stated in Landon v. Hunt, 938 F.2d 450 (3d Cir.1991), that "a prerequisite for the exercise of the district court's inherent power to sanction is a finding of bad faith conduct" Id. at 454. Nevertheless, in Republic of Philippines, the Third Circuit stated that its statement in Landon should not be read to require a finding of bad faith in every case, regardless of the sanction contemplated. See Republic of Philippines, 43 F.3d at 74 n.11.

The court's inquiry may extend beyond the incident or incidents that transpired at one trial or during the course of one litigation. The Third Circuit stated that

[a] pattern of wrongdoing may require a stiffer sanction than an isolated incident; a grave wrongdoing may compel a more severe sanction than might a minor infraction; and wrongdoing that actually prejudices the wrongdoer's opponent or hinders the administration of justice may demand a stronger response than wrongdoing that, through good fortune or diligence of court or counsel, fails to achieve its untoward object. Furthermore, there may be mitigating factors that must be accounted for in shaping the court's response.

Republic of Philippines, 43 F.3d at 74.

Permissible sanctions include the award of attorneys' fees and costs, see Chambers v. NASCO, Inc., 501 U.S. 32, 45-46, 111 S. Ct. 2123, 2133 (1991), and disqualification. A district court has the power to disqualify an attorney deriving "from its inherent authority to supervise the professional conduct of attorneys appearing before it." United States v. Miller, 624 F.2d 1198, 1201 (3d Cir. 1980); see also In re Corn Derivatives Antitrust Litig., 748 F.2d 157, 160 (3d Cir. 1984); E.D. Pa. R. Civ. P. 83.6 ("The United States District Court for the Eastern District of Pennsylvania, in furtherance of its inherent powers and responsibility to supervise the conduct of attorneys who are admitted to practice before it, . . . promulgates . . . Rules of Disciplinary Enforcement . . .").

Rule IV of Local Rule 83.6 states as follows:

For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any

attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant.

E.D. Pa. R. Civ. P. 83.6 (Rule IV). The unfettered practice of law is of paramount importance and disqualification should be ordered in only the most grave circumstance. See Ex parte Burr, 9 Wheat. 529, 22 U.S. 529, 529-30 (1824); Belote v. Maritrans Operating Partners, Inc., CIV.A. No. 97-3993, 1998 WL 136523, at *6 (E.D. Pa. March 20, 1998). It is the judiciary's responsibility to ensure that the integrity of the profession is maintained. See Belote, 1998 WL 136523, at *6. As many decisions have stressed, "courts have vital interests in protecting the integrity of their judgments, maintaining public confidence in the integrity of the bar, eliminating conflicts of interest, and protecting confidential communications between attorneys and their clients." Commonwealth Ins. Co. v. Graphix Hot Line, Inc., 808 F. Supp. 1200, 1203 (E.D. Pa. 1992); see also United States v. Moscony, 927 F.2d 742, 749 (3d Cir. 1991).

III. CONCLUSIONS OF LAW

1. Third Circuit case law suggests that Defendant's § 1927 motion may lie only for abuses of the judicial process.⁵

⁵Defendant argues that the judicial process was abused because the lawsuit ended in a mistrial as a direct result of Barish's "inappropriate and uncivil conduct [which] escalated to profanity and verbal threats directed toward defense counsel" and which occurred during the Court's recess. (Def.'s Motion for Sanctions at 18).

2. The applicability of § 1927 is limited by the Third Circuit's definition of bad faith as the "intentional advancement of a baseless contention." Ford, 790 F.2d at 347 (emphasis added).

3. "Contention," in the context of relevant case law, entails arguments, motions, objections, discovery disputes, etc. See, e.g., In re Prudential Ins. Co. of Am. Sales Practices Litig., 63 F. Supp. 2d 516, 525 (E.D. Pa. 1999) (upholding in part Magistrate Judge's recommendation that sanctions be imposed pursuant to § 1927 because counsel, inter alia, "bombard[ed] the Court with paper."); In re: Orthopedic Bone Screw Prod. Liability Litig., No. MDL 1014, 1998 WL 633680, at *3 (E.D. Pa. Aug. 14, 1998) (considering § 1927 sanctions plaintiff's legal committee alleged to have vexatiously multiplied the proceedings by prosecuting a conspiracy claim); Loftus v. SEPTA, 8 F. Supp. 2d 458, 3463 (E.D. Pa. 1998) (finding that § 1927 sanctions appropriate where attorney set forth meritless defense, failed to concede that precedent doomed said defense, and failed to withdraw said defense); Loatman v. Summit Bank, 174 F.R.D. 592, 609 (D.N.J. 1997) (finding § 1927 sanctions appropriate where, inter alia, defendant's conduct disrupted litigation such that case lingered for "over a year of motion practice unrelated to the merits of the class action"); Hicks v. Arthur, 891 F. Supp. 213, 215-16 (E.D. Pa. 1995) (imposing § 1927 sanctions because of party's "massive over-pleading"); Boykin v. Bloomsburg Univ. of Pa., 905 F. Supp. 1335, 1335 (M.D. Pa. 1995)

(imposing § 1927 sanctions where attorney pursued claim although advised by court that claim was time-barred).

4. The focus of the Court's inquiry is not the in-court conduct of plaintiff's counsel in the presence of the jury, but rather Barish's conduct during the Court's recess in the presence of court personnel on the afternoon of the second day of trial. The Court's concern is whether Barish's conduct out of the jury's presence is sanctionable under the law.

5. While Defendant argues that Barish's conduct may be viewed as a willful bad faith effort to abuse the judicial process by forcing a mistrial, the record reveals that the Court was considering declaring a mistrial because of the behavior of both counsel in front of the jury.

6. The Court recognizes that insofar as § 1927 is intended to protect the courts and parties from abuses of the judicial process, there is not a sufficient factual basis to sanction Barish under § 1927 for abuse of the judicial process.

7. The Court holds that it may properly invoke its inherent powers to sanction Barish.

8. Barish's outrageous conduct in this matter during the Court's recess warrants this Court's sanction. In addition, the Court is charged with looking beyond the incident that occurred in this instant matter to determine whether Barish's conduct is part of a larger pattern of questionable conduct which came to light

during the hearing on March 2, 2000.

9. In Spruill v. National R.R. Passenger Corp., No. CIV.A. 93-4706, 1995 WL 534273 (E.D. Pa. Sept. 5, 1995), the trial court found that it was reasonably probable that Barish's conduct had a prejudicial effect on the jury. See Spruill, 1995 WL 534273, at *9. The court ultimately vacated a multi-million dollar verdict because it found Barish to be "intemperate, inappropriate, and disrespectful." See Spruill, 1995 WL 534273, at *9. The trial judge stated that Barish's conduct "shocked the conscience of the court" and noted that his behavior during a previous trial was subject to judicial criticism. See Spruill, 1995 WL 534273, at *9.

10. In McEnrue v. New Jersey Transit Rail Operations, Inc., CIV.A. No. 90-4728 (JBS) (D.N.J. Sept. 30, 1993), the trial court vacated a multi-million dollar verdict because of Barish's conduct. Opposing counsel alleged that Barish verbally assaulted him while out of the jury's presence with expletives too explicit to be repeated, that Barish physically pushed him, and that Barish called him an ass----. The Court acknowledged that it erred when it let the trial go forward after accepting and thereafter relying on Barish's apologies and promises.

11. In Patchell v. National R.R. Passenger Corp., CIV.A. No. 90-4745, 1992 WL 799399 (E.D. Pa. July 31, 1992), the Court found Barish's trial conduct so outrageous that it ordered a new trial. See Patchell, 1992 WL 799399, at *6. In reaching said decision,

the court noted its awareness of previous cases in which Barish's behavior led to a similar result. See Patchell, 1992 WL 799399, at *6.

12. In Bezerra v. National R.R. Passenger Corp., July Term, 1997, No. 1511 (Philadelphia County Ct. Common Pleas June 7, 1999) (Barish (1) called opposing counsel an ass---- during a videotaped deposition, (2) told opposing counsel that he wanted to watch his "swishy ass go by," (3) said "f--- you" to opposing counsel during trial, (4) laughed at judge's ruling, (5) elbowed opposing counsel, (5) said to the judge, "I love you," in response to her ruling, and (6) told the judge, "I just want you to know that I am sorry for the things that I may have done, and I am sorry for the things that I may have done totally intentionally that you may have saw . . ."); Muni v. National R.R. Passenger Corp., June Term, 1997, No. 1489 (Philadelphia County Ct. Common Pleas Jan. 21, 1999) (Barish admonished by the trial judge for making improper remarks to witnesses and for making improper arguments to jury).

13. Pursuant to its inherent powers, the Court awards Defendant its reasonable fees and costs for litigating the instant matter.

14. Pursuant to its inherent powers, the Court disqualifies Barish from the continued representation of Plaintiff in this matter.

15. Finally, in light of his behavior in the instant matter and his alleged prior transgressions in other trials which indicate that Barish apparently engages in a pattern of misconduct, this

opinion and record shall be referred to the Disciplinary Board of the Supreme Court of Pennsylvania for review and consideration.⁶

An appropriate Order follows.

⁶ Canon 1 of the Code of Conduct for United States Judges states in relevant part that "[a] judge should participate in establishing, maintaining, and enforcing high standards of conduct" Code of Conduct for United States Judges Canon 1 (1999). There are various grounds for finding that Barish engaged in professional misconduct: (1) it is professional misconduct for a lawyer to engage in conduct involving dishonesty, deceit, or misrepresentation or conduct that is prejudicial to the administration of justice, see Pennsylvania Rule of Professional Conduct 8.4(c) & (d); (2) a lawyer shall not engage in conduct disruptive to a tribunal, see Pennsylvania Rule of Professional Conduct 3.5(c); and (3) a lawyer shall provide competent representation to a client. See Pennsylvania Rule of Professional Conduct 1.1.

For misconduct and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before the United States District Court for the Eastern District of Pennsylvania may be disbarred, suspended from practice before this court, reprimanded, or subjected to such other disciplinary action as the circumstances may warrant. See E.D. Pa. R. Civ. P. 83.6 (Rule IV.A). The Rules of Professional Conduct adopted by the Eastern District of Pennsylvania are the Rules of Professional Conduct adopted by the Supreme Court of Pennsylvania. See E.D. Pa. R. Civ. P. 83.6 (Rule IV.B). Therefore, within the ambit of Rule IV.A's "such other disciplinary action as the circumstances may warrant," reporting attorney misconduct to the appropriate professional authority is contemplated. See, e.g., Pennsylvania Rule of Professional Conduct 8.3(a). Nevertheless, "[w]hen a judge decides to take action in response to perceived misconduct, the reference to appropriate authorities should be made in a neutral fashion." Code of Conduct for United States Judges, Compendium § 1.1(d) (1999).

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O R D E R

AND NOW, this 25th day of April, 2000, upon consideration of Defendant's Motion for Sanctions (Docket No. 43), Plaintiff's response to Defendant's Motion for Sanctions (Docket No. 45), Defendant's reply memorandum (Docket No. 48), Plaintiff's Motion to Strike Defendant's Reply Supporting Motion for Sanctions (Docket No. 50), and Plaintiff's Supplemental Memorandum in Opposition to Defendant's Motion for Sanctions (Docket No. 55), and Defendant's Supplemental Memorandum of Law in Further Support of its Motion for Sanctions, IT IS HEREBY ORDERED that:

(1) Defendant **SHALL** submit to the Court within 30 days of the date of this Order an affidavit which sets forth an accounting of the reasonable fees and costs incurred in this litigation;

(2) Marvin I. Barish, Esquire, **SHALL** be disqualified from further representation of Plaintiff in this matter; and

3. The Clerk of Court **SHALL** refer this Court's Findings of Fact and Conclusions of Law, with relevant transcripts, to the Disciplinary Board of the Supreme Court of Pennsylvania for review and consideration.

BY THE COURT

HERBERT J. HUTTON, J.