

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2255 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 110 DB 2014
	:	
v.	:	Attorney Registration No. 36583
	:	
CHARLES ELLIS STEELE,	:	(Allegheny County)
	:	
Respondent	:	
	:	
	:	

ORDER

PER CURIAM

AND NOW, this 6th day of June, 2016, the Application for Relief is granted. Furthermore, upon consideration of the Report and Recommendations of the Disciplinary Board and the responses thereto, Charles Ellis Steele is suspended from the Bar of this Commonwealth for a period of one year. Respondent shall comply with all the provisions of Pa.R.D.E 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 6/6/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 110 DB 2014
Petitioner	:	
	:	
v.	:	Attorney Registration No. 36583
	:	
CHARLES ELLIS STEELE	:	
Respondent	:	(Allegheny County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on July 21, 2014, Office of Disciplinary Counsel charged Charles Ellis Steele with violations of the Rules of Professional Conduct arising out of allegations that he made false statements to a tribunal, gave false evidence to a court, made false statements to others, engaged in the unlawful practice of law and engaged in conduct prejudicial to the administration of justice. Respondent filed an Answer to Petition for Discipline on September 2, 2014.

A disciplinary hearing was held on December 19, 2014 before a District IV Hearing Committee comprised of Chair Susan Shin Connelly, Esquire and Members Kirsten Sigurdson, Esquire and Anne N. John, Esquire. Respondent was represented by Jonathan D. Steele, Esquire and Robert H. Davis, Jr., Esquire. Petitioner submitted fifteen exhibits. Respondent submitted nine exhibits, testified on his own behalf and presented two additional witnesses.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on August 5, 2015, concluding that Respondent engaged in ethical misconduct and recommending that he be suspended for a period of one year and one day followed by a period of probation of not less than two years.

On August 21, 2015, Petitioner filed a Brief on Exceptions.

On September 22, 2015, Respondent filed a Brief on Exceptions.

On October 9, 2015 Petitioner filed a Brief Opposing Exceptions.

Oral argument was held before a three-member panel of the Disciplinary Board on January 5, 2016.

This matter was adjudicated by the Disciplinary Board at the meeting on January 21, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an

attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Charles Ellis Steele. He was born in 1950 and was admitted to practice law in the Commonwealth of Pennsylvania in 1982. His attorney registration address is 428 Forbes Avenue, Suite 700, Pittsburgh, PA 15219. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent was admitted to practice law before the United States District Court for the Western District of Pennsylvania ("Western District") in 1982.

4. Respondent was admitted to practice law before the United States Court of Appeals for the Third Circuit ("Third Circuit") in 1983.

5. Respondent was found guilty of eleven counts of mail fraud and four counts of obstruction of justice in the Western District on December 20, 1996. Petition for Discipline ("PD") 5; Respondent's Answer ("RA") 5.

6. On March 13, 1997, Respondent was temporarily suspended from the practice of law in the Commonwealth of Pennsylvania. PD 7; RA 7; Petitioner's Exhibit ("PE") 1.

7. Respondent was suspended from the practice of law in the Western District by Order dated May 9, 1997. No order lifting that suspension had been issued by the Western District as of the date of the disciplinary hearing. PD 8; RA 8; PE 2.

8. By Order dated October 28, 1998, Respondent was disbarred on consent by the Supreme Court of Pennsylvania, retroactive to April 12, 1997, the effective date of his temporary suspension. PD 9; RA 9; PE 3; PE 4.

9. By Order dated February 24, 1999, Respondent was disbarred on consent by the Third Circuit, with an effective date of October 28, 1998. No order of reinstatement had been issued by the Third Circuit as of the date of the disciplinary hearing. PD 10; RA 10; PE 5.

10. By Order of the Supreme Court of Pennsylvania dated June 24, 2005, Respondent was reinstated to practice law in the courts of the Commonwealth. PD 11; RA 11; PE 8.

11. Beginning in 2006 and continuing to May 30, 2014, Respondent represented clients as counsel of record in civil actions filed in the Western District in 36 cases. PD 14; RA 14; Respondent's Exhibit ("RE") 1.

12. On or about December 5, 2007, with regard to a matter for which he had been counsel of record in the Western District, Respondent filed an appeal in the Third Circuit on behalf of his client, Samuel K. Tranter. PD 15; RA 15; PE 9.

13. By order of court dated December 27, 2007, the Third Circuit did not accept the appeal, stating that Respondent is "precluded from practice in this Court and is not a member in good standing in the Court's bar." PE 9.

14. On about March 23, 2012, a civil complaint was filed on behalf of Karen Hertzler in the United States District Court for the Middle District of Pennsylvania ("Middle District".) PE 10.

15. On about March 28, 2012, in Ms. Hertzler's case, Respondent filed a Petition for Special Admission to Practice in the Middle District. PE 11.

16. In his Petition for Special Admission to Practice before the Middle District, Respondent was asked to provide, among other things, the names of the

Courts to which he was admitted to practice and the dates of his admissions thereto. PE 11.

17. In response with regard to the jurisdictions where he was admitted to practice, and as to where he was in good standing Respondent stated that he was admitted to “PA Supreme Court (June 24, 2005)” and the “USDC Western District of PA (June 24, 2005).” PE 11.

18. Although Respondent was reinstated to practice in Pennsylvania on June 24, 2005, he was admitted to practice thereto on October 20, 1982. PD 22; RA 22.

19. As to the Western District, Respondent was admitted to that court on November 5, 1982 and was not in good standing, having never been reinstated from his May 9, 1997 suspension. PD 23; RA 23.

20. The Petition for Special Admission to Practice requested the following information:

All occasions, if any, on which I have been convicted of a crime (subsequent to my becoming an attorney), censured, suspended, disciplined or disbarred by any Court are set forth as follows: (state the facts and circumstances connected with each; if none, state 'none').

PE 11.

21. In response, Respondent stated: “None as per LR 83.8.2.1.” PE 11.

22. “LR 83.8.2.1” is the Middle District rule concerning *pro hac vice* admissions. PD 26; RA 26.

23. In fact, Respondent had been convicted in the Western District of eleven counts of mail fraud and four counts of obstruction of justice, had been suspended in the Western District, disbarred on consent in the Supreme Court of

Pennsylvania, and disbarred on consent in the Third Circuit. The information he provided in the Petition for Special Admission to Practice was false. PE 11.

24. On April 9, 2012, Respondent's Petition for Special Admission to Practice before the Middle District was granted. PE 11.

25. On about April 20, 2012, Tara E. Fertelmes, Esquire filed a civil action in the United States District Court for the Eastern District of Pennsylvania ("Eastern District") on behalf of Karen Gokay. PE 13.

26. On about September 17, 2012, with regard to Ms. Gokay's case, Respondent filed an Application to be allowed to actively participate in the conduct of any trial, pretrial, or post-trial proceeding on behalf of Ms. Gokay, as required pursuant to Eastern District Civ. Rule 83.5.2(b). PE 14.

27. The Application requested information on the jurisdictions where he was admitted, both state and federal.

28. Respondent stated that he was admitted in the Western District as of June 24, 2005 and was a member in good standing, as well as a member in good standing in the Supreme Court of Pennsylvania. PE 14.

29. Respondent did not include in the Application the fact that he had been admitted to practice before the Third Circuit in 1983 but was disbarred on consent in that Court. PE 14.

30. At the time of the filing of the Petition, Respondent's license to practice in the Western District continued to be suspended.

31. As part of completing his Petition, Respondent was required to have an attorney sponsor certify that he was a member "in good standing" in the referenced state and federal courts. PE 14.

32. Respondent's admission to practice in the Eastern District in Ms. Gokay's case was moved by Ms. Fertelmes, a member in good standing of that court. PE 14.

33. Ms. Fertelmes made her recommendation based on Respondent's representation to her that he was a member in good standing in the Western District. PE 14.

34. On September 20, 2012, Respondent's admission to practice law before the Eastern District was granted. PE 15.

35. Respondent testified on his own behalf at the disciplinary hearing.

36. Respondent knew that his petition for special admission to the Middle District was incomplete and misleading, as he did not disclose his criminal conviction, his disbarment by the Supreme Court of Pennsylvania, or his suspension by the Western District. N.T. 57, 58.

37. Respondent knew that at the time he completed his petition for special admission to the Middle District on March 27, 2012, he had been disbarred on consent in the Third Circuit and that the petition was incomplete and misleading. N.T. 58, 70, 87.

38. Respondent tried to find a rule that he "would come under without having to answer that question." N.T. 58.

39. Respondent was embarrassed and was trying to avoid a direct answer. N.T. 48, 52-53, 56.

40. Respondent believed that upon his reinstatement to the Supreme Court of Pennsylvania he had also been readmitted to the Western District. N.T. 35, 43.

41. Respondent was not in possession of an order lifting his suspension in the Western District.

42. Respondent acknowledged he was in error to think that he was readmitted based upon a reading of the letter from the Disciplinary Board dated June 27, 2005, which informed him of his reinstatement in the Supreme Court of Pennsylvania. He admitted he did not read the local rules of the Western District which specified the procedures for readmission. N.T. 35, 36.

43. Respondent moved for the admission of his two sons to the Western District before Judge Mark Hornak. Respondent contends he never would have moved his sons for admission to the Court had he appreciated the fact that he was not a member in good standing in the court. N.T. 42

44. Respondent practiced openly and conspicuously in the Western District. N.T. 42.

45. Respondent became aware of his suspension from the Western District in May of 2014. N.T. 61-62.

46. Respondent filed a petition for reinstatement to the Western District on August 28, 2014. RE 7.

47. Respondent expressed sincere remorse for his actions.

III. CONCLUSIONS OF LAW

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

1. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

2. RPC 3.3(a)(3) – A lawyer shall not knowingly offer evidence that the lawyer knows to be false.

3. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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

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

IV. DISCUSSION

Respondent has been charged with practicing law in the Western District and Third Circuit while he was still removed from practice in those jurisdictions and making misstatements on applications to the Eastern District and the Middle District in order to obtain special admission.

Preliminarily, we address Respondent's claim that the instant proceeding should be stayed until the pending matter of Respondent's reinstatement in the Western District is determined by that jurisdiction. After review of the parties' arguments, we reject this claim. The Supreme Court of Pennsylvania has the authority to determine who is fit to practice before it, without any deference to any other jurisdiction. This was made clear in *Office of Disciplinary Counsel v. Marcone*, 855 A.2d 654 (Pa. 2004),

where the Court considered whether it should hold in contempt a suspended Pennsylvania attorney who had been readmitted to practice before the Eastern District of Pennsylvania. Despite the fact that the Eastern District had reinstated the attorney, the Court found him in contempt for violating the Supreme Court's order suspending the attorney. It found that, because the attorney was still suspended in Pennsylvania, his opening of an office and representing clients in federal court constituted activities which the attorney was prohibited from pursuing pursuant to Rule 217(j), Pa.R.D.E.

Having disposed of this issue, we turn to the charged violations of the Rules. Petitioner must establish by a preponderance of clear and satisfactory evidence that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441, 444 (Pa. 2000). We conclude that Petitioner has met its burden.

Respondent has been charged with engaging in misconduct by holding himself out as an attorney eligible to practice law and practicing law in the Western District when in fact his suspension in that jurisdiction remained in effect. The record demonstrates that Respondent was suspended in the Western District on May 9, 1997 and has not been reinstated, yet he was counsel of record in 36 cases in the Western District from 2006 to 2014. Respondent explained that he believed his reinstatement to the Supreme Court of Pennsylvania on June 24, 2005 simultaneously enabled him to resume his practice of law in the Western District. It was this subjective belief that provided the impetus for Respondent's continued practice of law in the Western District of the Federal Court. His actions during the time frame of 2006 to 2014 show that he practiced openly and conspicuously in the Western District, even sponsoring the admissions of his two sons. There is no evidence to suggest that Respondent acted in

a way intended to deceive judges and other practitioners as to his status. Upon discovering his suspended status in 2014, Respondent filed for reinstatement, which petition is pending. Respondent has acknowledged that his belief that he was reinstated and a member in good standing was inaccurate and further that he did not consult the Western District rules governing reinstatement. Respondent's practice in the Western District at a time when he was suspended is a technical violation of RPC 5.5(a); however, we find that Respondent credibly explained that he subjectively believed, albeit wrongly that he was reinstated in the Western District.

In 2007, Respondent filed an appeal in the Third Circuit in a matter for which he had been counsel of record in the Western District. Shortly thereafter, the Third Circuit informed Respondent that he was precluded from practicing as he had been disbarred from the Third Circuit effective October 28, 1998. Respondent violated RPC 5.5(a) by attempting to practice law in a jurisdiction where he was disbarred.

In the Petition for Special Admission to the United States District Court for the Middle District of Pennsylvania filed in 2012, Respondent did not disclose his criminal conviction and prior disbarment in the Supreme Court of Pennsylvania, nor did he disclose his suspension in the Western District or his disbarment in the Third Circuit. He was directly asked about these issues and instead of honestly answering the question, he provided a false and misleading response. Respondent admits knowingly misleading the court. His only explanation is his embarrassment at his prior conviction and disbarment. This cannot be viewed as a defense to or mitigation of his misconduct. Respondent's dishonest actions constitute violations of RPC 3.3(a)(1), 3.3(a)(3), 8.4(c) and 8.4(d).

Respondent's Application for Special Admission in the Eastern District filed in 2012 contained misstatements as to his status in the Western District, as he indicated that he was admitted in the Western District on June 24, 2005 and was a member in good standing, contrary to the continuing order of suspension in that jurisdiction. In addition, the attorney who sponsored Respondent's admission did so based on Respondent's representation to her that he was admitted in good standing in the Western District. We find Respondent's actions not nearly as serious as what occurred in the Middle District, as Respondent harbored a belief that he was in good standing in the Western District. Nonetheless, Respondent's actions constitute at least technical violations of RPC 3.3(a)(1), 3.3(a)(3), 8.4(c) and 8.4(d), as he was in fact, not admitted to the Western District.

Having concluded that Respondent violated the Rules, this matter is ripe for the determination of discipline. Petitioner seeks disbarment based on Respondent's false filings in federal court, his unauthorized practice of law and his prior disciplinary history of disbarment. Respondent argues that either a public or private reprimand is appropriate because Respondent did not knowingly engage in the unauthorized practice of law. The Hearing Committee has recommended a suspension for one year and one day with probation for a period of not less than two years.

After reviewing the Committee's Report and recommendation, the parties' briefs and the oral arguments presented before the three-member Board panel, and after considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be suspended for a period of one year.

In considering the totality of Respondent's misconduct, it is clear that his dishonesty in the face of direct questions on his special admission petition in the Middle District constitutes the most serious act of misconduct in this matter. This misconduct can be distinguished from the misconduct cited by Petitioner as a basis for disbarment. In the matter of *Office of Disciplinary Counsel v. Holston*, 619 A.2d 1054 (Pa. 1993), in order to conceal a lack of action on a client's divorce, the lawyer presented the client with a false divorce decree, bearing the forged signature of a judge. When the lawyer was confronted by the judge about where he had gotten the decree, the lawyer lied and was eventually disbarred by the Supreme Court. In *Office of Disciplinary Counsel v. Valentino*, 730 A.2d 479 (Pa. 1999), the attorney engaged in five cases of fraud against insurance companies, one of which involved fraudulent billing of a personal injury case of the attorney's mother. The attorney advised his mother to give false grand jury testimony, which she did. Realizing that he had put his mother in jeopardy, the attorney admitted his involvement. He was suspended for a period of five years. The acts of dishonesty in the cited cases involved direct lies to a judge, forgery of a signature and suborning perjury. Respondent, in contrast, was dishonest on an application for admission, an act we view as substantially less egregious.

Petitioner also relies on Respondent's prior discipline as a basis for its current recommendation of disbarment. While we recognize that a history of prior discipline serves as an aggravating factor, *Office of Disciplinary Counsel v. Grigsby*, 425 A.2d 730 (Pa. 1981), we do not conclude that it warrants disbarment under these particular circumstances. Respondent was disbarred on October 28, 1998, retroactive to April 12, 1997. The disbarment was the result of his conviction of mail fraud and obstruction of justice, based on his fraudulent inflation of bills to various school districts

and other clients. Respondent was reinstated on June 24, 2005. We accord weight to this history in our analysis of discipline; however, we note that the conduct involved in the prior matter, which occurred more than ten years ago, is different than the instant matter.

The recent case of *Office of Disciplinary Counsel v. Robert Philip Tuerk*, No. 51 DB 2014 (2015) provides guidance as it contains a fact pattern similar to the instant case. Mr. Tuerk's misconduct arose in the course of his application for admission to the Eastern District. He filed an application that contained misrepresentations of material fact involving his prior suspension for one year and one day for failing to disclose a prior arrest on his Pennsylvania Bar application. Two rule to show cause hearings were held before a panel of federal judges where Mr. Tuerk failed to voluntarily admit his transgressions. The Board found that Mr. Tuerk displayed a lack of sincere remorse and a failure to recognize responsibility. Furthermore, although the prior discipline was twenty years old, it was troublingly similar to Mr. Tuerk's current misconduct. The Board recommended a one year and one day suspension, which the Court imposed.

Like Mr. Tuerk, Respondent made material misrepresentations on his application to the Middle District; however, Mr. Tuerk exacerbated his misconduct by failing to be truthful before the judicial panel. We believe that this distinction between the cases establishes the basis for recommending a one year suspension for Respondent, as opposed to a lengthier suspension that would require Respondent to petition for reinstatement. The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system. *Office of Disciplinary Counsel v. Stern*, 526 A.2d 1180

(Pa. 1987). Under the circumstances of this particular matter, a one year suspension is sufficient to call appropriate attention to Respondent's conduct while protecting the public.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Charles Ellis Steele, be Suspended from the practice of law for a period of one year.

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: Lawrence M. Kelly
Lawrence M. Kelly, Board Member

Date: 3/14/16

Vice-Chair Penny dissented and would recommend a one year and one day suspension.

Board Member Lewis did not participate in the adjudication.