

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2308 Disciplinary Docket No. 3
: :
Petitioner : No. 137 DB 2015
: :
v. : Colorado Registration No. 37875
: :
BRENDAN J. MAGEE, : (Out of State)
: :
Respondent : :
: :
: :

ORDER

PER CURIAM

AND NOW, this 19th day of December, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, Brendan J. Magee is suspended from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E.208(g).

A True Copy Patricia Nicola
As Of 12/19/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 137 DB 2015 |
| Petitioner | : | |
| | : | |
| v. | : | Colorado Registration No. 37875 |
| | : | |
| BRENDAN J. MAGEE | : | |
| Respondent | : | (Out of State) |

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 August 25, 2015, Office of Disciplinary Counsel charged Brendan J. Magee with violations of the Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), arising out of allegations that he engaged in the unauthorized practice of law in the Commonwealth of Pennsylvania. Respondent did not file an Answer to the Petition for Discipline.

A prehearing conference was held on October 22, 2015, and a disciplinary hearing was held on December 10, 2015, before a District II Hearing Committee comprised of Chair Nelson J. Sack, Esquire and Members Jeffrey A. Krawitz, Esquire and Gunther O. Carrle, Esquire. Respondent appeared *pro se*. On Petitioner's motion, ten exhibits were admitted into evidence. Petitioner did not call any witnesses. Respondent testified on his own behalf but called no other witnesses and offered no exhibits into evidence.

Following the submission of a Brief by Petitioner, the Hearing Committee filed a Report on April 15, 2016, concluding that Respondent violated the Rules as charged in the Petition for Discipline and recommending that he be suspended for a period of one year and one day.

The parties did not file Briefs on Exceptions to the Hearing Committee Report.

The Disciplinary Board adjudicated this matter at the meeting on July 23, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207, Pa.R.D.E., with the power and duty to investigate all matters involving alleged misconduct of any attorney subject to its jurisdiction and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Brendan J. Magee. He has never been admitted to practice law in the Commonwealth of Pennsylvania. Petition for Discipline (“Pet.”) ¶2.

3. Respondent was admitted to practice law in in the State of Colorado on October 23, 2006. Pet. ¶3.

4. Respondent’s Colorado law license is currently active. Pet. ¶4. At all times relevant to this proceeding, the only jurisdiction where Respondent was licensed to practice law was Colorado. Pet. ¶12.

5. At all times relevant to this proceeding, Respondent maintained with the Colorado Supreme Court a firm name of Magee & Associates, P.C., and a business address at 507 South Church Street, Clifton Heights, Pennsylvania, 19018. Pet. ¶5.

6. On February 20, 2014, Respondent appeared as counsel on behalf of a parent (“Parent”) and her minor child (“Child”) at an expulsion hearing held in the Upper Darby High School, 601 Lansdowne Avenue, Upper Darby, Pennsylvania.¹ Pet. ¶7; Office of Disciplinary Counsel (“ODC”) - 8.

7. The Parent is Respondent’s wife, whom he married on February 14, 2013, and the Child is his stepson. N.T. 15, 30, 39.

8. Respondent signed in at the expulsion hearing as Child’s “Attorney.” ODC-9; N.T. 40, 41.

9. There is no credible evidence of record that Respondent made any disclosure to school officials and their counsel before, during or after the expulsion hearing that Respondent was Child’s stepfather. ODC-8; ODC-9; N.T. 40-42.

¹ The names of Parent and Child will not be disclosed in the interests of privacy and confidentiality.

10. At the outset of the expulsion hearing, counsel for the school administration asked Respondent to provide his attorney identification number. Pet. ¶¶8; ODC-8.

11. Respondent stated that his attorney identification number was 37875. Pet. ¶¶9; ODC-8.

12. The attorney identification number supplied by Respondent is the Registration/Bar Number assigned to his license to practice law in Colorado. Pet. ¶¶10. Pennsylvania attorney registration number 37875 is assigned to Leon Earl Cremer. Pet. ¶¶10. Mr. Cremer has no involvement in this disciplinary proceeding.

13. There is no credible evidence of record that Respondent disclosed to school officials and their counsel before, during or after the expulsion hearing that he was a Colorado attorney and did not have a Pennsylvania attorney identification number because he had never been admitted to practice law in Pennsylvania. Pet. ¶¶11; N.T. 42-45.

14. Throughout the expulsion hearing, Respondent acted as attorney for Child and Parent. Pet. ¶¶13; ODC-8; N.T. 44-45.

15. Thereafter, Respondent continued his representation of Child and Parent through February 5, 2015. Pet. ¶¶14; N.T. 45-47.

16. On February 5, 2015, Respondent sent an email on behalf of Child and Parent to Daniel P. McGarry, Assistant Superintendent of Curriculum and Instruction for the Upper Darby School district:

I'm writing to petition for [Child] to return to Drexel Hill Middle School. [Child] was expelled as of February 4, 2014, for violating school conduct codes regarding bringing a weapon to school. [Child] has successfully completed his SAP Program requirements, has completed all tutoring and ongoing educational requirements,

and has complied with all court orders, including the terms and conditions of his court-ordered probation, with regard to the criminal charges related to the aforementioned incident. [Child] has not had any subsequent disciplinary or legal problems since the incident and is ready to return to school.

I have cc'd [Child's] mother on this email, and my representation of [Child] is hereafter terminated. Please feel free to contact me or [Child's] mother directly regarding this matter, with instructions for [Child] returning to middle school. I can be reached at [], [Parent] can be reached at []. [sic] and correspondence can be sent directly to [Parent] and [Child] at their physical address at [], PA 19018. Thank you for your attention to this matter.

Pet. ¶15; N.T. 45-47.

17. Respondent's provision of legal services in Pennsylvania:
 - a. Was not taken in association with a lawyer who is admitted to practice law in this jurisdiction and who actively participated in the matter;
 - b. Was not in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction in which Respondent was authorized by law or ordered to appear or reasonably expected to be so authorized;
 - c. Was not in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding in this or another jurisdiction in which Respondent's services arose out of or were reasonably related to his practice in a jurisdiction in which he was admitted to practice and did not require *pro hac vice* admission;

d. Did not arise out of and was not reasonably related to Respondent's legal practice in a jurisdiction in which he was admitted to practice;

e. Was not provided to Respondent's employer or its organizational affiliates; and

f. Was not authorized by federal law or other law of this jurisdiction.

Pet. ¶¶16.

18. Respondent established an office or other systematic and continuous presence in Pennsylvania for the practice of law and held out to the public or otherwise represented that he was admitted to practice law in Pennsylvania. Pet ¶¶17; ODC-7; ODC-10.

19. Until at least May 2015, Respondent maintained a LinkedIn profile that represented to the public that he is and has been an attorney and shareholder at Magee & Associates, said to be located in Media, Pennsylvania, since August 2012. Pet. ¶¶18; ODC-10; N.T. 51-53, 91-93.

20. Respondent published on his LinkedIn profile that he has represented clients through his Pennsylvania law firm, Magee & Associates, which "include the following Pennsylvania Commonwealth entities: Upper Darby, Haverford Township, Media Municipal, Springfield Municipal, Delaware County, Bucks County (Doylestown), and Montgomery County." Pet. ¶¶19; ODC-10.

21. This representation is false in light of Respondent's testimony at the disciplinary hearing that his practice of law in Pennsylvania was limited to the

representation of Parent and Child in connection with the expulsion hearing. N.T. 33-34, 56-57.

22. Respondent's LinkedIn profile represented that he is and has been licensed to practice law in Colorado, California and Pennsylvania since October 2006, under a single license number 37875. Pet. ¶¶20, ODC-10.

23. Respondent has never been licensed to practice law in Pennsylvania or in California. Pet. ¶¶22; N.T. 61-63.

24. Respondent claimed the false information he included on his LinkedIn profile was the result of his not being "careful in writing" the profile. Respondent explained that he made a mistake when he cut and pasted information from his resume into his profile. N.T. 57. This claim is not credible.

25. Respondent claimed he did not recall holding out to the public that he was operating the law firm of Magee & Associates out of Media, Pennsylvania dating back to 2012. N.T. 53. This claim is not credible.

26. On April 27, 2015, Office of Disciplinary Counsel Auditor Daniel G. Richer hand-delivered to Respondent at his business address, 507 South Church Street, Clifton Heights, Pennsylvania 19018, a DB-7 Request for Statement of Respondent's Position, dated March 23, 2015, in connection with the foregoing conduct ("DB-7 Letter"). The DB-7 Letter had been mailed to Respondent on March 23, 2015, by certified mail, return receipt requested, but Respondent failed to claim the certified mailing. Pet ¶¶23; ODC-2.

27. The DB-7 letter stated, in part:

Please note that failure to respond to this request for your statement of position without good cause is an independent ground

for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement...If you do not respond or provide a good cause for failing to respond within 30 days, the Office of Disciplinary Counsel may seek to impose discipline for your violation of Pa.R.D.E. 203(b)(7).

Pet. ¶24; ODC-11.

28. Respondent admitted that he read the DB-7 letter but claimed that he was confused and did not understand if he was required to respond in writing. N.T. 67-68. This claim is not credible.

29. Respondent failed to respond to the DB-7 Letter and to provide good cause for his failure to do so within thirty days of his receipt of the DB-7 Letter. Pet. ¶25.

30. On June 24, 2015, Auditor Richer hand-delivered to Respondent at the same address a follow-up letter from Disciplinary Counsel, dated June 15, 2015. Pet. ¶26; ODC-3.

31. The follow-up letter from Disciplinary Counsel stated that if Respondent failed to answer the allegations of misconduct contained in the DB-7 Letter or provide good cause for failing to do so by June 29, 2015, the Office of Disciplinary Counsel would proceed to make its recommendation in connection with the matter and might seek to impose discipline for Respondent's misconduct, including his violation of Pa.R.D.E. 203(b)(7). Pet. ¶27; ODC-3.

32. Respondent never responded to Disciplinary Counsel's follow-up letter. Pet. ¶28; N.T. 67.

33. Respondent did not file an Answer to Petition for Discipline, which was served on August 26, 2015. ODC-5.

34. Respondent failed to participate in the disciplinary process until the date of the prehearing conference. N.T. 67-76.

35. Aside from Respondent's limited acknowledgment that he engaged in a single instance of the unauthorized practice of law by his appearance at the expulsion hearing and that his actions were "foolish," Respondent did not accept responsibility for his misconduct. N.T. 32, 35-36, 120-121.

36. Respondent's testimony at the disciplinary hearing relating to the misconduct is not credible.

37. Contrary to his testimony, Respondent did not disclose to school authorities in advance of the expulsion hearing that he was Child's stepfather and that he was licensed to practice law in Colorado and not Pennsylvania. ODC-8.

38. Contrary to his testimony, Respondent's appearance at the expulsion hearing without disclosure of his true licensing status was planned and was not "born of necessity." N.T. 32-33.

39. Contrary to his testimony, Respondent's misrepresentations in the LinkedIn profile he created are not attributable to "careless editing" or to not being "careful in writing" the profile.

40. Respondent has a criminal history. He has been arrested, charged and convicted in Pennsylvania on three occasions in connection with motor vehicle incidents which took place on October 18, 2011, August 14, 2012, and August 28, 2012. ODC-B; ODC-C; ODC-D; ODC-E; ODC-F; ODC-G.

a. In connection with the October 18, 2011 arrest, Respondent was convicted on three counts: Count 1—Accidents Involving Death or Personal Injury, 75 Pa.C.S. §3742(a); Count 2—Simple Assault, 18 Pa.C.S.

§2701(a) ; and Count 4–Criminal Mischief, 18 Pa.C.S. §3304(a)(4). Respondent was sentenced to confinement for a minimum period of three days and a maximum period of six days in county prison, subject to immediate parole after three days for a minimum period of thirty-six months. ODC–C.

b. In connection with the August 14, 2012 arrest, Respondent was found guilty of one count charged: Count 6-Careless Driving, 75 Pa.C.S. §3714(a). ODC–E.

c. In connection with the August 28, 2012 arrest, Respondent entered an open plea to Count I–Driving under Influence of Alcohol or Controlled Substance (First Offense), 75 Pa.C.S. § 3802(a)(1), and was sentenced on August 26, 2013, to probation for a maximum period of six months, subject to various conditions. ODC-G.

41. Other than Respondent's own testimony, he offered no evidence to reflect that he reported his criminal conduct in Pennsylvania to the Colorado Attorney Regulation Counsel.

42. Respondent did not offer any exhibits into evidence nor did he present any fact witnesses or character witnesses.

III. CONCLUSIONS OF LAW

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

1. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania pursuant to RPC 8.5(a), which provides that a lawyer not admitted to this jurisdiction is subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction.

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

3. RPC 5.5(b)(1) – A lawyer who is not admitted to practice in this jurisdiction shall not, except as authorized by the Pennsylvania Rules of Professional Conduct, Pennsylvania Board of Law Examiners Rule 302 or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law.

4. RPC 5.5(b)(2) – A lawyer who is not admitted to practice in this jurisdiction shall not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

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

6. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Board Rules, §87.7(b) for a statement of the respondent-attorney's position shall be a ground for discipline.

IV. DISCUSSION

This matter is before the Board for consideration of the charges filed against Respondent that he engaged in the unauthorized practice of law in Pennsylvania. Initially, we address the issue of this Board's jurisdiction over Respondent, who has never been admitted to practice law in this Commonwealth, but who is a licensed member of the Colorado bar as of October 23, 2006. Our review of the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement leads us to conclude that Respondent is subject to the disciplinary authority of the Supreme Court.

As set forth in RPC 8.5(a), "[a] lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." The purpose of this provision is set forth within Comment [1] to the Rule:

It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in his jurisdiction is for the protection of the citizens of this jurisdiction.

For the protection of the citizens of the Commonwealth of Pennsylvania, disciplinary authorities have jurisdiction to address the misconduct of Respondent, a Colorado attorney. See Pa.R.D.E. 201(a) ("The exclusive jurisdiction of the Supreme Court and the Board under these rules extends to...(6) [a]ny attorney not admitted in this Commonwealth who practices law or renders or offers to render any legal services in this Commonwealth.")

Petitioner bears the burden of proving, by evidence that is clear and satisfactory, that Respondent's actions constitute professional misconduct. **Office of**

Disciplinary Counsel v. Robert B. Surrick, 749 A.2d 441, 444 (Pa. 2000). Petitioner met its burden by the facts pled in the Petition for Discipline, which are deemed admitted pursuant to Pa.R.D.E. 208(b)(3), due to Respondent's failure to respond to the Petition.

Respondent's appearance on February 20, 2014, at the school expulsion hearing in Upper Darby, Pennsylvania, violated RPC 5.5(a), which prohibits a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. Respondent, a lawyer solely licensed in Colorado, appeared as counsel on behalf of Child and identified himself only in the role of attorney without making any reference to his personal relationship to Parent and Child. Upon request by school officials, Respondent gave his attorney identification number as "37875," but failed to indicate that this number was his Colorado license number and he was not licensed in Pennsylvania.

Respondent explained that he appeared as counsel in an effort to help his wife and stepson, which he admitted was "foolish." N.T. 32, 35-36, 121. While Respondent admitted he engaged in the unauthorized practice of law on that single occasion, he claimed he informed the school administration and its representatives that he was a Colorado attorney and that he was the stepfather of Child. There is no credible evidence in the record to support Respondent's claims. Respondent identified himself as Child's attorney without disclosing that he was admitted to practice law only in Colorado and not in Pennsylvania.

RPC 5.5(b)(1) prohibits a lawyer who is not admitted to practice law in Pennsylvania from "establish[ing] an office or other systematic and continuous presence

in this jurisdiction for the practice of law.” The evidence establishes that Respondent maintained a law firm in Pennsylvania dating back to at least 2012.

In connection with his Colorado law license, Respondent registered with the Colorado Supreme Court that his law firm name was Magee & Associates, P.C., which operated at a business address of 507 South Church Street, Clifton Heights, PA 19018. In his LinkedIn profile, Respondent identified his law firm as “Magee & Associates, located in Media, Pennsylvania,” which he represented as providing legal services “in the Philadelphia Metropolitan Area” (among others) dating back to August 2012.

Respondent claimed at the disciplinary hearing that his law firm name had been registered at all times in Colorado and had never been used to provide legal services in Pennsylvania. Although he disputed providing “507 South Church Street, Clifton Heights, PA 19018” as a business address of record to the Colorado Supreme Court, Respondent failed to substantiate his claims with any credible evidence to explain how this address came to be registered with the lawyer regulatory authorities in Colorado. Similarly, Respondent was reluctant to accept any blame for the statements in his LinkedIn profile, attributing them to “careless editing” that he claimed occurred when he cut and pasted various parts of his resume into his profile. Respondent did not dispute that he created the profile, prepared the detailed description of his law firm and its services, and published the information. Respondent’s claims that he never intended to establish a presence for the practice of law in Pennsylvania are not credible.

RPC 5.5(b)(2) prohibits a lawyer from “hold[ing] out to the public or otherwise represent[ing] that the lawyer is admitted to practice law in this jurisdiction.” By representing in clear and unequivocal terms in his LinkedIn profile that he was

licensed to practice law in Pennsylvania, we conclude that Respondent violated this rule. Respondent's claim that his misrepresentation of his licensing status arose from carelessness is unconvincing and not credible. Respondent's actions did not stem from an innocent mistake. The record supports the conclusion that Respondent intended to portray himself as a licensed Pennsylvania lawyer with a law office in Pennsylvania, who represented Pennsylvania clients.

Respondent's overt misrepresentations in his LinkedIn profile and his deceit in connection with the expulsion hearing violated RPC 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent misrepresented on his LinkedIn profile that he is licensed in Pennsylvania and California. These statements are false, as Respondent has never been admitted in Pennsylvania and California. It appears that Respondent created a LinkedIn profile containing false information in order to attract clients in Pennsylvania and other jurisdictions where he was not licensed to practice law. By doing so, Respondent engaged in dishonest and deceptive behavior.

Further evidence of Respondent's deceptive conduct can be found in the events surrounding the expulsion hearing. Other than Respondent's own testimony, which we find to be not credible, the record reflects Respondent's intent to hide his lack of a Pennsylvania law license and his personal relationship to Child and Parent. Respondent signed in at the expulsion hearing only as "Attorney;" he introduced himself on the record of the expulsion hearing as attorney for Child and Parent; neither Respondent nor any other participant in the expulsion hearing referenced Respondent as having a personal or familial relationship with Child or Parent; Respondent was asked to supply his attorney identification number on the record of the expulsion

proceeding and, in response, stated only a number, withholding that the number was issued by the Colorado bar authorities; and, Respondent's February 5, 2015 email requesting Child's return to school identified himself only as Child's attorney, again failing to identify any familial or personal relationship. In sum, Respondent was very careful never to disclose that he was not licensed in Pennsylvania and that he had a familial relationship with his client. Respondent's pattern of deceptive conduct, undertaken in an effort to engage in the unauthorized practice law in this Commonwealth, violated RPC 8.4(c).

Finally, Respondent violated Pa.R.D.E. 203(b)(7) by failing to respond without good cause to Petitioner's request for a statement of Respondent's position. Respondent, who was specifically informed on more than one occasion that a failure to respond to the DB-7 Letter without good cause constituted an independent ground for discipline, supplied no response to the DB-7 Letter and no good cause for his failure to do so. Similar to his excuses for his other misconduct, Respondent's claim at the disciplinary hearing that he was "confused about if [he] had to respond in writing" to the DB-7 Letter is unconvincing. N.T. 67. The DB-7 Letter specifically stated in several places that there would be consequences for failing to respond to the letter. At the disciplinary hearing, Petitioner drew Respondent's attention to the language of the letter and Respondent admitted he had read it upon receipt. N.T. 68-69. Respondent chose to ignore the disciplinary process by failing to respond to the DB-7 and later failing to respond to the Petition for Discipline.

The great weight of the evidence demonstrates that Respondent created an office or other systematic presence in Pennsylvania, which he attempted to support with false representations that he was licensed to practice law in Pennsylvania, and

engaged in the unauthorized practice of law when he represented Child during the expulsion process. At the disciplinary hearing, Respondent failed to express recognition or remorse for his actions and exhibited a marked lack of credibility.

Having concluded that Respondent engaged in professional misconduct, we consider the issue of the appropriate sanction. Petitioner seeks a suspension of one year and one day. Respondent did not offer a recommendation for discipline. The Hearing Committee recommended a suspension of one year and one day.

After reviewing Petitioner's recommendation and the Report and recommendation of the Hearing Committee, 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**, 7 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be suspended from the practice of law for a period of one year and one day.

Respondent's actions constitute significant misconduct. While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of public discipline in the form of a one year and one day period of suspension when, as here, an attorney's unauthorized practice of law and related misconduct would likely pose a serious risk of harm to the public if he continues to practice law. **Office of Disciplinary Counsel v. Robert S. Lucarini**, 472 A.2d 186, 189-91 (Pa. 1983).

As a general matter, license suspension has been the form of discipline imposed for the unauthorized practice of law in Pennsylvania. See **Office of Disciplinary Counsel v. Harry Curtis Forrest, Jr.**, 134 DB 2003 (D. Br. Rpt. 12/30/04) (S. Ct. Order 3/25/05) (respondent-attorney suspended for a period of one year and one day to address his unauthorized practice of law in two matters, his use of legal

letterhead in correspondence to a judge and his failure to advise his clients, opposing counsel or the judges of his inability to practice law due to inactive status); ***Office of Disciplinary Counsel v. Sharon Goldin-Didinsky***, No. 87 DB 2003 (D. Bd. Rpt. 8/27/04) (S. Ct. Order 12/13/04) (respondent-attorney suspended for one year and one day after practicing law on two occasions while on inactive status, making misrepresentations to a court administrator and a magisterial district judge that she was licensed in Pennsylvania and using letterhead falsely indicating that she had an office address in Pennsylvania); ***Office of Disciplinary Counsel v. James Edward Harvin***, No. 108 DB 2008 (D.Bd. Rpt. 3/5/10) (S. Ct. Order 6/16/10) (respondent-attorney suspended for one year and one day after he continued to represent his client while on inactive status and failed to advise his client, opposing counsel or the court of his inability to practice law; aggravating factor was a prior informal admonition).

Where the scope and duration of the misconduct has been limited and the respondent-attorney demonstrates mitigation, a suspension for one year or less has been imposed. See ***Office of Disciplinary Counsel v. Paul Charles Quinn***, 39 DB 2006 (D.Bd. Rpt. 6/14/07) (S. Ct. Order 10/19/07) (respondent-attorney suspended for three months resulting from his unauthorized practice of law in one client matter over a four month period of time; respondent-attorney was credible and remorseful, among other mitigating factors); ***Office of Disciplinary Counsel v. Julie Ann Marzano***, 46 DB 2006 (D. Bd. Rpt. 5/16/07) (S. Ct. Rpt. 8/1/07) (respondent-attorney suspended for a period of nine months after three incidents of unauthorized practice of law involving the representation of family or friends; mitigating factors were no prior disciplinary record and expressions of genuine remorse).

The instant matter differs in two significant and aggravating ways from the above cited cases, in that Respondent never held a Pennsylvania law license and was dishonest in his testimony and showed no remorse. Respondent showed extreme contempt for the law of Pennsylvania by ignoring its lawyer licensing process. The fact that Respondent knew he was prohibited outright from practicing law in this jurisdiction exacerbates his ensuing dishonest conduct and leads us to conclude that a suspension for more than one year is consistent with the guiding disciplinary cases. We find no mitigating circumstances that would reduce the sanction to a shorter period of suspension.

In Pennsylvania, a reinstatement proceeding is required for attorneys who are suspended for more than one year. Though no reinstatement process would be triggered here because Respondent has never been admitted to practice law in Pennsylvania, Respondent's suspension will be reported to the lawyer regulatory authorities in Colorado, who will have the opportunity to impose reciprocal discipline.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Brendan J. Magee, be Suspended from the practice of law for a period of one year and one day.

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: 

John P. Goodrich, Board Member

Date: 10/4/16

Board Member Cordisco did not participate.