

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2140 Disciplinary Docket No. 3
: :
Petitioner : Nos. 21 and 150 DB 2013
: :
v. : Attorney Registration No. 48490
: :
KEVIN MARK KALLENBACH : (Erie County)
: :
Respondent : :
: :
:

ORDER

PER CURIAM

AND NOW, this 27th day of April, 2017, a Rule having been entered by this Court on February 23, 2017 pursuant to Pa.R.D.E. 208(h), directing Respondent to show cause why the stayed suspension order of this Court should not be modified, and upon consideration of the responses filed, Respondent is directed to serve a three-month suspension, followed by a twenty-one-month period of probation, subject to the same conditions imposed by the May 11, 2015 order. Respondent is directed to comply with all the provisions of Pa.R.D.E. 217.

Respondent shall pay the additional expenses incurred as a result of the revocation proceedings. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 4/27/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 2140 Disciplinary Docket No. 3
Petitioner	:	
	:	Nos. 21 & 150 DB 2013
v.	:	
	:	Attorney Registration No. 48490
KEVIN MARK KALLENBACH	:	
Respondent	:	(Erie County)

THE REPORT AND RECOMMENDATION OF
DESIGNATED MEMBER 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(h)(1) of the Pennsylvania Rules of Disciplinary Enforcement, this designated member of the Disciplinary Board of the Supreme Court of Pennsylvania herewith submits a recommendation to your Honorable Court with respect to the Petition to Schedule a Probation Violation Hearing by Petitioner, Office of Disciplinary Counsel.

I. HISTORY OF PROCEEDINGS

By Order dated May 11, 2015, The Supreme Court of Pennsylvania suspended Respondent from the practice of law for one year and one day. Pursuant to that Order, the suspension was stayed in its entirety, and Respondent was placed on probation for two years, subject to certain conditions.

On January 4, 2017, Office of Disciplinary Counsel filed a Petition to Schedule a Probation Violation Hearing, which alleged that Respondent violated the conditions of his probation. Petitioner requested that a Member of the Disciplinary Board be designated to hold a hearing as required by Pa.R.D.E. 208(h), to determine whether Respondent's probation should be modified.

A hearing was held on January 31, 2017, before Disciplinary Board Member Lawrence M. Kelly, Esquire. Respondent appeared and was represented by Keith H. Clelland, Esquire. Petitioner offered the testimony of Patricia J. Kennedy, Esquire, and offered into evidence Petitioner's Exhibits 1 – 8, which were admitted. Respondent testified on his own behalf.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner is Office of Disciplinary Counsel, whose principal office is situated at 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania 17106. Petitioner is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Kevin Mark Kallenbach. He was admitted to the practice of law in Pennsylvania in 1986. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. On May 11, 2015, the Supreme Court suspended Respondent from the practice of law for a period of one year and one day. Pursuant to that Order, the suspension was stayed in its entirety, and Respondent was placed on probation for two years. Petitioner's Exhibit 1.

4. As set forth in the Court's May 11, 2015, Order, Respondent's probation was subject to certain conditions, including the appointment of, and cooperation with, a practice monitor.

5. In accordance with the May 11, 2015 Order, the practice monitor was required to:

a. Periodically examine Respondent's law office organization and procedures to ensure that Respondent kept his client informed about the status of their matter, replied to client requests for information in a timely and honest manner, worked on cases in a reasonably prompt and diligent matter, filed documents with the Court in a timely manner as required to protect his clients' interests, and provided clients with written fee agreements as required by RPC 1.5(b);

b. Meet with Respondent at least monthly to examine Respondent's progress towards satisfactory and timely completion of clients' legal matters, verification of deadlines, progress on cases, and regular client contact;

c. File quarterly written reports on a Board approved form with the Secretary of the Board; and

d. Immediately report to the Secretary any violations of the terms and conditions of probation.

Petitioner's Exhibit 1.

6. At the time the May 11, 2015 Order was entered, Respondent was employed by Erie County as an assistant public defender. N.T. 81.

7. Patricia J. Kennedy, Chief Public Defender of Erie County, was appointed as Respondent's practice monitor. Petitioner's Exhibit 1.

8. Ms. Kennedy filed quarterly written reports as directed by the Order of May 11, 2015. Petitioner's Exhibits 3-8.

9. In the quarterly report filed on December 14, 2016, Ms. Kennedy reported that:

a. Respondent did not make the effort to meet with the Practice Monitor on a monthly basis;

b. Respondent avoided speaking with the Practice Monitor;

c. Respondent did not properly pursue his duties as an Erie County Assistant Public Defender; and

d. Respondent resigned from his position with Erie County in December of 2016.

Petitioner's Exhibit 8.

10. Following receipt of the December 14, 2016 quarterly report, Petitioner filed a Petition to Schedule a Probation Violation Hearing.

11. Ms. Kennedy testified at the probation violation hearing.

12. In the six quarterly reports filed by Ms. Kennedy, she indicated that she met with Respondent during all reporting periods except during the June 1, 2016, and December 1, 2016 reporting periods. Petitioner's Exhibits 6 and 8.

13. Ms. Kennedy expressed general concerns as to Respondent's practice, which included, among other things, failing to return closed files to the office, late filings of motions in three cases, which left cases "in limbo," and failing to be proactive with his cases. Petitioner's Exhibit 3, 4, 5, 7.

14. Ms. Kennedy expressed concerns as to Respondent's attitude and cooperation. N.T. 29; Petitioner's Exhibits 4, 5.

15. Ms. Kennedy indicated on all of the reports except for the December 14, 2016, quarterly report that Respondent was in compliance with the conditions of probation.

16. Respondent testified on his own behalf.

17. Respondent is aware that a condition of his probation is that the practice monitor was required to file quarterly reports of meetings. N.T. 103.

18. Respondent admits that he did not seek out Ms. Kennedy for meetings, but waited until she set the schedule, as she was Respondent's employer and he gave her deference. N.T. 91, 93, 94.

19. Respondent believes that he met with Ms. Kennedy frequently, either at the Public Defender's Office or at Respondent's private office. N.T. 82, 83.

20. Respondent was required pursuant to the May 11, 2015 Order to undergo a mental health evaluation, begin any treatment as necessary, and submit a copy of the evaluation to the Board. Petitioner's Exhibit 1.

21. Respondent complied with these conditions of his probation order. N.T. 31-32, 103-104.

22. Keith H. Clelland, Esquire, Respondent's counsel, volunteered to act as Respondent's practice monitor. Mr. Clelland has known Respondent for many years through the public defender's office, is in the same office space with Respondent and sees Respondent on a daily basis. N.T. 107.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the terms and conditions of his probation by failing to file motions in three separate cases in a timely fashion. Furthermore, Respondent failed to take affirmative steps to schedule meetings with the practice monitor when same was necessary.

IV. DISCUSSION

The evidence of record demonstrates that Respondent did not fully comply with the terms and conditions of his court-ordered probation. He failed to regularly meet with his practice monitor during two quarterly reporting periods, and Ms. Kennedy indicated that she had general concerns with Respondent's practice habits, including the late filing of motions in three separate cases. However, the totality of the record reflects that Respondent met with Ms. Kennedy on a frequent basis during the majority of the quarterly reporting periods, which began in 2015, and Ms. Kennedy did not report Respondent as noncompliant with his probation conditions until the last quarterly report

filed on December 14, 2016. Furthermore, the late filing of motions did not harm the clients.

Violation of the terms of probation is a serious matter. These conditions are in place for the protection of the public. I conclude that there is no evidence that Respondent harmed any clients or that he is unfit to practice law and poses a danger to the public. Under the circumstances of this particular matter, and with the agreement of the parties, an extension of the period of probation with a new practice monitor is the appropriate resolution.

V. RECOMMENDATION

This Member respectfully recommends that the probation previously ordered by the Supreme Court on May 11, 2015, be modified as follows:

The probation imposed on May 11, 2015, is extended for two years until May 11, 2019. In addition to the Conditions set forth in the Order of May 11, 2015, the following change is made:

1. Keith H. Clelland, Esquire, is hereby appointed to serve as Respondent's practice monitor.

Respondent shall abide by all the conditions mandated by the Supreme Court's May 11, 2015 Order.

It is further recommended that the additional expenses incurred in connection with the violation of probation proceeding be paid by Respondent.

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA



Lawrence M. Kelly, Designated Member

Date: 2/7/17