

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1653 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 188 DB 2010
v.	:	
	:	Attorney Registration No. 39462
DAVID J. MURPHY	:	
Respondent	:	(Delaware 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 Order of March 24, 2011, the Supreme Court of Pennsylvania placed David J. Murphy on temporary suspension from the practice of law as a result of his conviction of 64 counts of forgery, 64 counts of identity theft, two counts of perjury, 64 counts of false signatures in nomination petitions, and one count of criminal conspiracy. On May 3, 2011, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent based on the criminal convictions. Respondent filed an Answer to Petition for Discipline on June 15, 2011.

A disciplinary hearing was held on September 27, 2011, before a District II Hearing Committee comprised of Chair Albert P. Massey, Jr., Esquire, and Members Michael W. McTigue, Jr., Esquire, and Nicholas E. Chemicles, Esquire. Respondent was represented by James C. Schwartzman, Esquire. Petitioner introduced into evidence eight exhibits. Respondent presented the testimony of two character witnesses and his own testimony. He offered one exhibit.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on February 7, 2012 and recommended that Respondent be suspended for a period of three years, retroactive to March 24, 2011.

Petitioner filed a Brief on Exceptions on February 21, 2012.

Respondent filed a Brief Opposing Exceptions on March 7, 2012.

This matter was adjudicated by the Disciplinary Board at the meeting on March 21, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and 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 said Rules of Disciplinary Enforcement.

2. Respondent is David J. Murphy. He was born in 1953 and was admitted to practice law in the Commonwealth in 1983. His registered address is 42 E. Second St., Media, PA 19063. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in Pennsylvania.

4. From January 6, 1992 until August 26, 2009, Respondent served as a Magisterial District Judge of Delaware County, Pennsylvania, in District Court 32-2-38.

5. On or about March 6-9, 2009, Respondent conspired with Deborah West to forge 64 signatures of individuals on Republican and Democratic Party nominating petitions in connection with his re-election for Magisterial District Judge.

6. Ms. West was Respondent's long-time friend since 1991. In 2006, the relationship developed into a romantic one, although Respondent remained married to his wife.

7. The forgeries took place at Ms. West's kitchen table, where both Respondent and Ms. West had sat down for approximately an hour and a half, filling out voters' names on the petitions and knowingly forging their signatures.

8. The next day, knowing the petitions were fraudulent, Respondent took them to be notarized.

9. The Notary notarized the petitions as authentic based upon Respondent's representations.

10. The notarized petitions contained a sworn *Affidavit of Circulator* and sworn *Candidate's Affidavit* signed by Respondent which falsely attested to the authenticity of the signatures.

11. On March 10, 2009, Respondent filed the 64 forged petitions with the Delaware County Election Bureau.

12. After the May primary election and sometime in August 2009, Respondent went to see Ward Williams, the Magisterial District Judge Court Administrator in Delaware County. Respondent informed Mr. Williams that Respondent had forged signatures on nominating petitions.

13. Several weeks later, the President Judge of Delaware County called Respondent into his office and advised him that Mr. Williams had reported the conversation with Respondent. The President Judge advised he was going to initiate an investigation and Respondent would be informed of the results.

14. Respondent was placed on paid administrative leave as a Magisterial District Judge from August 6, 2009 through March 29, 2010.

15. Respondent was successful in his bid for re-election and his commission for another term was issued in December 2009. Respondent signed his Oath of Office on January 4, 2010.

16. On March 31, 2010, Respondent retired from his position as Magisterial District Judge and forfeited his pension.

17. On July 21, 2010, Respondent entered a plea of guilty in the Court of Common Pleas of Delaware County to 64 counts of forgery, in violation of Title 18 Pa.C.S.A. §4101; 64 counts of identity theft, in violation of 18 Pa.C.S.A. §4120; one count of criminal conspiracy to commit identity theft, in violation of Title 18 Pa.C.S.A. §903; two counts of perjury, in violation of Title 25 Pa.C.S.A. §3502; and 64 counts of false signatures and statements in nominating petitions and papers, in violation of Title 25 Pa.C.S.A. §3513.

18. On July 21, 2010, Respondent was sentenced by the Honorable John Rufe to an aggregate period of probation of four years, ordered to perform 200 hours of community service, and to obey the general conditions of his probationary sentence.

19. Respondent reported the fact of his conviction to the Secretary of the Board.

20. On September 24, 2010, the Judicial Conduct Board filed a Complaint against Respondent with the Court of Judicial Discipline.

21. By Opinion dated November 23, 2010, the Court of Judicial Discipline found that Respondent's conduct "was so extreme that it brings the judicial office itself into disrepute."

22. By Order dated January 11, 2011, the Court of Judicial Discipline ordered Respondent to be removed from office and prohibited from holding any judicial office in the Commonwealth of Pennsylvania.

23. By Order of March 24, 2011, the Supreme Court of Pennsylvania placed Respondent on temporary suspension.

24. Respondent experienced many personal difficulties during and prior to the time frame of the misconduct.

25. Respondent and his wife, Gail Murphy, have two daughters who reside with them. At the time of the hearing, the daughters were 26 and 19 years of age.

26. Mrs. Murphy is a lawyer, having graduated law school in 1981. She handled insurance defense work for the Margolis Edelstein law firm. In early 2000, Mrs. Murphy's legal career was cut short by a debilitating neurological disease. The Murphys learned that the symptoms were the result of an auto immune response in Mrs. Murphy's brain to her having breast cancer. Mrs. Murphy's body attacked those portions of her brain

that would normally allow her to speak, walk, and move. Her cognitive abilities have not been affected. The disease has left Mrs. Murphy wheelchair bound, legally blind and unable to care for herself.

27. The stress of Mrs. Murphy's disease took a toll on the Murphy family. The two daughters were 14 and 7 at the time the disease struck. For the Murphys' older daughter, the situation resulted in incidents with alcohol and prescription drugs. The drug dependence was at its worst in 2008 and 2009, resulting in abnormal sleep patterns and behavioral issues. In 2009, Respondent was able to help his daughter find a psychiatrist who successfully treated her. She is no longer dependent on drugs and is an active college student.

28. The younger Murphy daughter developed a physical reaction to her mother's condition, resulting in an eye problem and eating issues.

29. Since June 2000, Respondent and his daughters have helped to care for Mrs. Murphy's needs. Because of her disability, Mrs. Murphy has a home health care aide. This aide currently helps Mrs. Murphy for two hours per day, five days per week, which is what Respondent can afford. The rest of the time Respondent is the primary caregiver for his wife.

30. While preparing to run for office in 2009, Respondent was caring for his wife and continuing to work. His oldest daughter's addiction to prescription drugs was ongoing. At the same time, Respondent's father was ill and in hospice care, and his mother had been diagnosed with breast cancer.

31. Respondent explained that he engaged in unlawful conduct because he had so many struggles and stressful situations in his life, and he did not have time to

secure the 100 voter signatures he needed on each petition in order to have his name placed on the election ballot.

32. Respondent asked several people to secure ten signatures on each petition, but when the petitions were returned to Respondent, they had only a few signatures. With the submission deadline a few days away, and being short the required number of signatures, he and Deborah West, his co-defendant, signed the names of registered voters from the list they had.

33. Respondent went to see Ward Williams, the Magisterial District Judge Court Administrator, as "a preemptive strike" in an attempt to salvage a decent outcome from the situation. Respondent explained that he had been threatened by Ms. West, who demanded money to be quiet about their activities. Respondent and Ms. West no longer have a relationship.

34. Since being placed on temporary suspension by the Court on March 24, 2011, Respondent and his family have lived on Mrs. Murphy's Social Security Disability benefits and private disability payments.

35. Respondent presented the testimony of two character witnesses.

36. Paul Strasser is a marketing executive who has known Respondent since college. He is aware of Mrs. Murphy's medical condition and the toll it has taken on the Murphy family. Mr. Strasser opined that among the people he knows that know Respondent, Respondent has a very good reputation as a truthful, honest and law-abiding person. Mr. Strasser opined that Respondent took ownership of his actions and expressed remorse.

37. Jo Anna Collins has had a social and professional relationship with Respondent and his wife for many years. Respondent has done legal work for Ms. Collins

in the past. Although she believes forgery is not ethical behavior for anyone, it does not alter her opinion as to Respondent's reputation for being truthful and law-abiding.

38. Respondent cooperated with the disciplinary system.

39. Respondent expressed remorse for his misconduct.

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) – Conviction of a crime shall be grounds for discipline.

2. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

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

4. 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

This matter is before the Disciplinary Board upon a Petition for Discipline charging Respondent with professional misconduct arising out of his criminal convictions. In disciplinary matters arising from criminal convictions, the conviction is conclusive evidence of the commission of the crime, and the sole issue to be resolved is the extent of

discipline to be imposed. Pa.R.D.E. 214(e) and (f)(1). The discipline imposed must take into consideration the facts and circumstances surrounding the conviction. Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982). Consideration is to be given to any aggravating or mitigation factors. Office of Disciplinary Counsel v. Francis Peter Eagen, III, No, 102 DB 2003, 73 Pa. D. & C. 4th 217 (2004).

Respondent engaged in serious criminal activity. As an elected Magisterial District Judge, he conspired with another individual to forge 64 signatures of individuals on nominating petitions in connection with his re-election. Knowing the petitions were false, Respondent took them to be notarized and filed the forged petitions with the Delaware County Election Bureau. Respondent revealed his misconduct some five months later, after being threatened by his co-conspirator. Respondent has been punished in the criminal system with probation for a period of four years and community service, and the Court of Judicial Discipline has prohibited Respondent from holding any judicial office in the Commonwealth.

The Supreme Court of Pennsylvania has consistently held that offenses of dishonesty demonstrate unfitness to practice law and is reprehensible conduct for an attorney. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). The respondent in Grigsby was disbarred for false swearing in applying for a driver's license and in claiming, before a retraction, that a bank account which a judgment creditor sought to attach in an execution proceeding, did not belong to respondent. Mr. Grigsby had an extensive history of discipline. The Court imposed disbarment in In re Perrone, 777 A.2d 413 (Pa. 2001), where the respondent knowingly submitted false fee petitions with notarized affidavits, and in Office of Disciplinary Counsel v. Holsten, 619 A.2d 1054 (Pa. 1993), where the respondent knowingly forged a divorce decree and lied to the court.

The instant case involves the perpetration of a fraud on the citizens and voters of Delaware County by an attorney who was an elected Magisterial District Justice. This fact adds a more complex element to the analysis. For guidance, we look to similar cases involving elected officials.

In the serious matter of Office of Disciplinary Counsel v. Francis Peter Eagen, III, No. 102 DB 2003, 73 Pa. D. & C. 4th 217 (2004), Mr. Eagen's actions involved irregularities in the appointment and administration of guardianship estates which were under his supervision as a judge in the Orphan's Court. Mr. Eagen was convicted of one count of obstruction of the administration of law or other governmental function, for which he received probation for two years and a fine. Two aggravating factors were found by the Disciplinary Board. The first was that Mr. Eagen did not appear for his disciplinary hearing. The second was that he was a judge of the Court of Common Pleas at the time of the misconduct. The Supreme Court disbarred Mr. Eagen.

In In re Melograne, 888 A.2d 753 (Pa. 2005), Mr. Melograne was a district justice who was convicted of conspiracy to violate civil rights based on his participation in a conspiracy with two employees of the Court of Common Pleas of Allegheny County to bring about unfavorable rulings for two individuals in their statutory appeals. Mr. Melograne presented the testimony of two character witnesses and several letters of recommendation, and showed that he had no prior discipline and was active in civic and cultural organizations. The Court was not persuaded by the mitigation and found that disbarment was the appropriate sanction, in consideration of the fact that Mr. Melograne's criminal misconduct occurred while he served as a district justice and affected the fairness of adjudications.

The above-cited cases make clear that Respondent's position as a Magisterial District Justice is an aggravating factor. The unique posture of a respondent who is a judge makes the offense a more serious one than a singular violation of the disciplinary rules by an individual attorney, and may result in disbarment. Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982).

In contrast with the Eagen and Melograne matters, we find that Respondent presented compelling evidence in mitigation. Respondent cooperated in the investigation by Petitioner, demonstrated remorse and recognition of wrongdoing, has not been professionally disciplined since his admission to practice law in 1983, and offered the testimony of two credible character witnesses. Moreover, Respondent's evidence of the overwhelming personal family issues he has struggled with during the past ten or more years constitutes mitigating evidence.

Petitioner urges the Board to recommend disbarment; Respondent requests that the Board adopt the Hearing Committee's recommendation of a three year period of suspension, retroactive to the date of Respondent's temporary suspension.

For the reasons discussed above, we conclude that disbarment is not the appropriate sanction to address Respondent's misconduct, because unlike respondents who were disbarred for similar acts, this Respondent has presented compelling mitigating evidence. Therefore, the question for the Board is what length of suspension will appropriately address Respondent's misconduct.

We start our analysis with the three year suspension recommendation made by the Hearing Committee. Our review of the pertinent cases cited by the Committee suggests that this length of suspension is inappropriate to address the magnitude of Respondent's criminal misconduct, aggravated by his position as a Magisterial District

Justice. The cases cited in support of the three year suspension begin with a one year and one day suspension imposed on a chief prosecutor in the Marine Corps who pled guilty to false swearing. Office of Disciplinary Counsel v. Kirk Allen McDaniel, 30 DB 1998, 399 Disciplinary Docket No. 3 (Pa. May 11, 2005). An assistant public defender in Allegheny County who was convicted of smuggling contraband into the county jail for his client was suspended for two years. Office of Disciplinary Counsel v. Richard J. McCague, 175 DB 2003, 940 Disciplinary Docket No. 3 (Pa. Nov. 30, 2006).

A case resulting in a three year suspension was that of Office of Disciplinary Counsel v. John T. Olshock, No. 28 DB 2002, 862 Disciplinary Docket No. 3 (Pa. Oct. 24, 2003). Mr. Olshock, who was the First Assistant District Attorney for Washington County, misappropriated funds from an estate he was handling in his private practice. A five year suspension was imposed on a respondent who pled guilty to mail fraud. Office of Disciplinary Counsel v. Charles P. Mirarchi, III, No. 10 DB 2006, 1077 Disciplinary Docket No. 3 (Pa. Sept. 7, 2007). At the time of the misconduct, Mr. Mirarchi was a deputy commissioner of elections employed by the City of Philadelphia and his duties included voter registration and election bureau issues. In reaching the decision to suspend the respondent for five years, the Court considered the character evidence presented, the respondent's years of handling criminal appointment cases, his rehabilitation efforts to overcome a gambling addiction, lack of prior discipline, remorse and acceptance of responsibility.

The attorney in Office of Disciplinary Counsel v. Ernest D. Preate, 731 A.2d 129 (Pa. 1999) was suspended for a period of five years retroactive to his temporary suspension after he was convicted of one count of mail fraud. At the time of the guilty plea, Mr. Preate was the Attorney General of Pennsylvania. The gravamen of his crime was that

illegal cash contributions were made to Mr. Preate's campaign committee which were improperly reported in the campaign finance report required by law to be filed with the Bureau of Elections.

The case law persuades the Board that a five year period of suspension, retroactive to the date of temporary suspension, is the appropriate sanction for Respondent's misconduct. The Court has been consistent in its application of severe sanctions upon those who engage in egregious acts of dishonesty, such as forgery, false swearing, perjury, and fraud. Disbarment is not applicable due to the unique mitigating facts of this matter; however, a five year suspension follows precedent and is necessary to protect the public and to maintain the integrity of the judicial system.

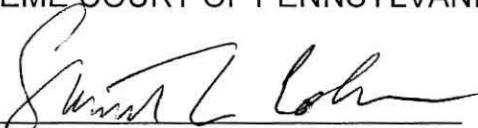
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, David J. Murphy, be Suspended from the practice of law for a period of five years retroactive to March 24, 2011.

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: 
Stewart L. Cohen, Board Chair

Date: May 4, 2012

Mr. Bevilacqua dissented and would recommend Disbarment.

Mr. Buchholz did not participate in the adjudication.

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DAVID J. MURPHY	:	
Respondent	:	(Delaware County)

DISSENTING OPINION

DISCUSSION

I dissent because only disbarment serves the interests of justice and preserves the integrity of the legal profession.

The facts are not in dispute. At all relevant times Respondent was serving as a magistrate judge in Delaware County, Pennsylvania when his conduct was determined to be "so extreme that it brings the judicial office itself, into disrepute". That was the conclusion of the Court of Judicial Discipline which not only ordered that Respondent be removed as a magistrate judge but also prohibited Respondent from holding judicial office in the future.

The clear teaching of this Court is that our system of lawyer discipline is to maintain the integrity of the legal system and to protect the public from unfit attorneys. The Respondent's admittedly corrupt and criminal behavior, while a sitting judge, directly implicates this Court's direction that we should consider "the impact of the conduct upon the system and its effect on the perception of that system by the society it serves". Keller,

506 A.2d at 878. Its impact on society's perception of the legal system is neither trivial nor inconsequential. It is devastating. A reasonable observer, whether or not a citizen of Delaware County might conclude, based on the widely disseminated reporting of Respondent's illegal conduct, that holding judicial office is not the result of a fair electoral process but is rather an insiders' game used by the privileged to perpetuate their own entitlements. Only disbarment can hope to correct such a cynical and jaundiced perception of the legal profession.

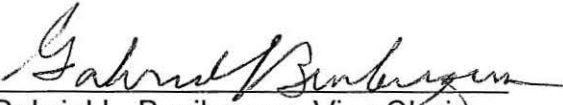
It is also the correct discipline when certain facts, incorrectly described by others as mitigating, are appropriately considered. Respondent admitted his criminal conduct to the Delaware County Court Administrator only after his jilted lover threatened to expose their conspiracy. The timing of his admission speaks more to equivocation and evasion than to the "taking of responsibility". Had he truly taken responsibility for his crime, he should have confessed his misconduct before being threatened with exposure, and he should have insisted on a leave of absence while his conduct was evaluated by his superiors. This he did not do. Instead he continued to serve as a judge for several weeks until told to step aside by the Delaware County President Judge. That he continued to decide cases; that many months later in January of 2009, he brazenly took his oath of office; and, when this Court issued a Rule to Show Cause why he should not be suspended Respondent, acting pro se, objected that the "offenses do not rise to the level of serious offenses" because the criminal case against him was of a "de minimus nature" all strongly suggest that he did not take responsibility for his crime. His temporizing and equivocations more appropriately support the conclusion that his behavior after the fact is an aggravating not a mitigating factor.

Further, while recognizing that caring for the sick members of your family may in certain situations be mitigating, in this case Respondent's romantic relationship with his co-conspirator, while his wife was fighting to survive breast cancer, is hard to accept as mitigating.

For all who recognize the special privilege implicit in the license to practice law; and, for all who trust the ability of the profession to regulate itself, there is only one sanction that maintains the integrity of that profession.

Respondent should be disbarred.

Respectfully submitted,

By: 
Gabriel L. Bevilacqua, Vice Chair

Date: May 4, 2012