
[J-14-1999]
IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 306 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 26 DB 97 Disciplinary Board
	:	
v.	:	Attorney Registration No. 37959
	:	
PHILIP A. VALENTINO,	:	(Philadelphia)
	:	
Respondent	:	ARGUED: February 2, 1999
	:	

DISSENTING OPINION

MR. JUSTICE NIGRO

DECIDED: MAY 20, 1999

The Majority concludes that the appropriate discipline to be imposed upon Respondent is a five-year suspension retroactive to February 24, 1997, the date that he was placed on temporary suspension by order of this Court. I respectfully disagree. Given the seriousness of Respondent's misconduct, I believe the appropriate discipline to be imposed is disbarment.

Contrary to the Majority's conclusion, I believe that Respondent's conviction of the serious crime of mail fraud, which is a *per se* ground for discipline under Pennsylvania Rule of Disciplinary Enforcement 203(B)(1), as well as his violations of Pennsylvania Rules of Professional Conduct 3.4(b)¹ and 8.4(b)², do indeed rise to the level of misconduct demonstrated in Office of Disciplinary Counsel v. Holston, 533 Pa.

¹ Rule 3.4(b) of the Pennsylvania Rules of Professional Conduct states that a lawyer shall not falsify evidence, counsel or assist a witness to testify falsely.

² Rule 8.4(b) of the Pennsylvania Rules of Professional Conduct states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's

78, 619 A.2d 1054 (1993). In Holston, the respondent forged a judge's name on a fabricated divorce decree in an attempt to cover up his failure to competently represent his client in the divorce. When questioned about the divorce decree, the respondent lied to the judge, telling him that he did not know how he got the document. However, shortly thereafter, the respondent consulted with an attorney, realized the gravity of his misconduct, and informed the judge that he was responsible for forging his signature on the divorce decree. In mitigation, the respondent argued that he was under extreme personal and financial pressures, that once he realized his error he admitted his misconduct to the judge, that he had fully admitted his wrongdoings, and that he was active in his church and community. Given the egregious nature of Holston's misconduct, however, the Court found that the only appropriate form of discipline that would protect both the integrity of the bar and the administration of justice was disbarment. In reaching this conclusion, the Court stated that:

Respondent acted dishonestly and has demonstrated his unfitness to continue practicing law. Truth is the cornerstone of the judicial system and a license to practice law requires allegiance and fidelity to truth. Respondent's lying to the court and dishonesty in forging a court order are the antithesis of these requirements. Accordingly, we deem disbarment to be the appropriate remedy in this case

Holston, 533 Pa. at 84, 619 A.2d at 1057.

I do not discern any appreciable difference between Respondent's misconduct and the misconduct that resulted in Holston's disbarment. If anything, I believe that Respondent's misconduct may be more egregious than the misconduct that resulted in

honesty, trustworthiness or fitness as a lawyer in other respects.

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Holston's disbarment, because Respondent committed his misconduct over an extended period of time, and because Respondent directed his own mother, as her attorney, to perjure herself and open herself to potential criminal liability. Although Respondent decided to correct his mother's perjurious testimony soon after her appearance before the grand jury, and thereafter cooperated fully with the authorities' investigation into his collusion with Dr. Moses, Respondent has nevertheless dealt a serious blow to both the standing and integrity of the bar and the administration of justice. Therefore, I cannot concur in the Majority's conclusion that a five-year suspension is appropriate in the instant case. Instead, in accordance with the Report and Recommendation of the Disciplinary Board issued on August 28, 1998, I would disbar Respondent retroactive to the date of his temporary suspension on February 24, 1995.

Messrs. Justice Castille and Saylor join in the dissenting opinion.