IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 2193 Disciplinary Docket No. 3
	:	No. 51 DB 2014
v.	:	
	:	Attorney Registration No. 60360
ROBERT PHILIP TUERK, Respondent	:	(Philadelphia)

ORDER

PER CURIAM

AND NOW, this 15th day of October, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board, and the responses thereto, Robert Philip Tuerk 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. The Request for Oral Argument is denied. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 10/15/2015

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 51 DB 2014
v.	:	Attorney Registration No. 60360
ROBERT PHILIP TUERK Respondent	:	(Philadelphia)

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 April 7, 2014, Office of Disciplinary Counsel charged Robert Philip Tuerk with violations of the Rules of Professional Conduct in connection with his Application for Admission to the Bar of the United States District Court for the Eastern District of Pennsylvania. Respondent filed an Answer to Petition for Discipline on April 29, 2014.

A disciplinary hearing was held on July 23, 2014, before a District I Hearing Committee comprised of Chair Marc P. Weingarten, Esquire and Members

Nolan G. Shenai, Esquire and Katherine E. Missimer, Esquire. Respondent was represented by Samuel C. Stretton, Esquire. Petitioner presented two fact witnesses and forty (40) exhibits. Respondent presented the testimony of six character witnesses and six (6) exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 10, 2014, concluding that Respondent violated the Rules as contained in the Petition, and recommending that he be suspended for a period of one year and one day.

Respondent filed a Brief on Exceptions on January 7, 2015 and requested oral argument.

Petitioner filed a Brief on Exceptions on January 16, 2015.

Oral argument was held on March 27, 2015, before a three-member panel of the Disciplinary Board.

This matter was adjudicated by the Board at the meeting on April 23, 2015.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

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 Robert Philip Tuerk. He was born in 1963 and was admitted to practice law in the Commonwealth of Pennsylvania in 1991. His attorney registration address is 1515 Market Street, Suite 1200, Philadelphia, PA 19102. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a record of prior discipline in Pennsylvania. By Supreme Court Order dated January 31, 1996, he was suspended for a period of one year and one day. The suspension was based on his failure to disclose a prior arrest on his application for admission to the Pennsylvania Bar. By Order dated April 17, 2001, Respondent was reinstated to the practice of law.

4. Local Civil Rule 83.5(f) of the United States District Court for the Eastern District of Pennsylvania ("EDPA") provides, in pertinent part, that an attorney applying for first-time admission to the Bar of the Court who has previously been publicly disciplined by a court of any state must:

a. Simultaneously inform the Court of the public discipline;

b. File the petition for admission with the Chief Judge of the EDPA; and

c. Establish, by clear and convincing evidence at a hearing scheduled by the Chief Judge, that the attorney has the moral qualifications, competency and learning in the law, and that the attorney's admission will not be detrimental to the integrity of the profession or the administration of justice or subversive to the public interest.

5. Respondent had never been admitted to practice before the EDPA.

6. On February 22, 2012, Respondent went to the Clerk's Office for the EDPA with Anthony M. Crane, Esquire, a member of the Bar of the EDPA.

7. Respondent received from the Clerk's Office an Application for Admission to practice law before the EDPA ("the Application"); the Application had Local Civil Rule 83.5 printed, in full, on the reverse side.

8. Respondent completed the application at the Clerk's Office. Respondent's completed application:

a. Stated that Respondent had "read and familiarized" himself with Local Civil Rule 83.5(f);

b. Stated that Respondent had "satisfied the attorney admission requirements" of Local Civil Rule 83.5(f);

c. Was sworn to and signed by Respondent; and

d. Contained Mr. Crane's signed Motion and Certificate providing that Respondent's "private and public character is good."

9. Respondent failed to comply with the requirements of Local Civil Rule 83.5(f) and file a petition for first-time admission with the Chief Judge of the EDPA, the Honorable J. Curtis Joyner.

10. Thereafter, Respondent paid his application fee to the court clerk and went to the Honorable John R. Padova's courtroom, at which time:

a. Mr. Crane moved Respondent's admission to the EDPA;

b. Judge Padova admitted Respondent to the practice of law before the EDPA; and

c. Deputy Clerk Michael Beck signed Respondent's admission documents.

11. Respondent failed to simultaneously inform the Court that he had previous public discipline in Pennsylvania.

12. As a result of Respondent's failure to comply with the requirements of Local Civil Rule 83.5(f), the EDPA admitted Respondent without a hearing to determine whether Respondent had the moral qualifications, competency and learning in the law and that Respondent's admission would not be detrimental to the integrity of the profession or the administration of justice or subversive to the public interest.

13. Respondent knew that he was admitted to the EDPA without complying with the mandated requirements and failed to take reasonable remedial measures to correct the Court's erroneous admission of Respondent to practice before the EDPA.

14. By Order dated May 15, 2012, Chief Judge Joyner issued a Rule to Show Cause mandating that within fourteen (14) days, Respondent show cause why his admission to the EDPA should not be vacated for Respondent's failure to comply with Local Civil Rule 83.5(f).

15. By Memorandum and Order dated June 12, 2012, Chief Judge Joyner referred Respondent's admission matter to a committee of the EDPA composed of Judge Padova, the Honorable Legrome D. Davis, and the Honorable Paul S. Diamond, to make a recommendation as to whether Respondent should be admitted to the Bar of the EDPA.

16. On July 17, 2012, the EDPA sent to Respondent a Notice of a Rule to Show Cause hearing to be held before the committee on September 20, 2012.

17. Respondent received the Notice.

18. On August 12, 2012, Respondent filed a bankruptcy petition with the United States Bankruptcy Court for the Eastern District of Pennsylvania on behalf of Amy Nicole Pond; the Bankruptcy Court docketed the case as Bankruptcy Petition #12-17887- mdc.

19. Respondent filed the Amy Nicole Pond matter after he had notice that a Rule to Show Cause hearing was scheduled as to why his admission to the EDPA should not be vacated for his failure to comply with Local Civil Rule 83.5(f).

20. On September 20, 2012, Respondent attended the Show Cause hearing before Judges Padova, Davis and Diamond; at the hearing:

a. Judge Davis asked Respondent whether he had ever appeared as an attorney in the EDPA prior to February 2012 (N.T. p. 24);

b. Respondent admitted that in 2003, he filed a complaint and pleadings in the EDPA on behalf of Helena Costello (N.T. pp.24-25); and

c. Respondent explained that at the time he handled the Costello matter, he thought he did not need to be a member of the EDPA to handle a case before the EDPA (N.T. p. 25).

21. On September 24, 2012, Respondent filed with the EDPA a document captioned "Amendment of Respondent's Testimony"; in Respondent's Amendment, Respondent:

a. Explained that after the Show Cause hearing, he checked data bases and old files for other federal court matters he handled when he was not admitted before the EDPA and other federal courts;

b. Advised the Court that he handled three (3) *pro se* cases, one of which was in the United States Supreme Court;

c. Explained that he also handled three (3) third-party cases, one of which was in the Bankruptcy Court for the EDPA (Marissa Palermo, #04-15231-bif) and two (2) of which were in the Southern District of Florida; and

d. Informed the Court that Respondent had retained Samuel C. Stretton, Esquire to represent Respondent in his admission matter.

22. Respondent failed to inform the Court that he also handled three (3) bankruptcy matters in the EDPA: Abington Construction, Inc., Bankruptcy Petition #03-12995; A. Krause Development, Inc., Bankruptcy Petition #02-12996; and Pilar A. Morgan, Bankruptcy Petition #04-18574.

23. On September 24, 2012, Mr. Stretton entered his appearance on Respondent's behalf and filed a motion to reopen the matter and to schedule a second Rule to Show Cause hearing.

24. On September 26, 2012, Judge Padova granted the motion.

25. On October 17, 2012, Respondent attended a second Rule to Show Cause hearing before Judges Padova, Davis and Diamond; at the hearing:

a. Respondent testified that he "assumed" that once an attorney is a member of a state bar, then the attorney can practice in front of the federal district court (N.T. 39);

b. Judge Davis stated that Respondent had failed to advise the committee of the three additional cases that Respondent had handled before the EDPA (N.T. 52-53);

c. Respondent orally withdrew his Application before the EDPA (N.T. pp. 64-65); and

d. Respondent agreed to promptly file a written motion to withdraw his Application for Admission to the EDPA.

26. On October 18, 2012, Respondent filed a motion to withdraw his Application for Admission to the EDPA.

27. On October 25, 2012, Chief Judge Joyner:

a. Granted Respondent's motion to withdraw his Application;

b. Vacated the EDPA's February 22, 2012 erroneous admission of Respondent to the practice of law under Local Civil Rule 83.5(a); and

c. Ordered that Respondent could not apply for admission to the EDPA for at last one year from the date of the Court's Order.

28. Respondent testified on his own behalf.

29. Following Respondent's reinstatement to practice law in 2001, he practiced mostly as a solo practitioner and represented clients in Traffic Court and handled criminal misdemeanors and summary offenses. N.T. 130-131.

30. Respondent chaired the Traffic Law Committee of the Philadelphia Bar Association, participated in community organizations and performed *pro bono* work. N.T. 134.

31. Respondent discussed his prior arrest in 1985, which was for soliciting a prostitute who was an undercover police officer. His arrest record was later expunged. N.T. 135, 136.

32. Following reinstatement, in addition to his practice as noted above, Respondent handled several federal cases, primarily bankruptcy. He stated he was not aware that he had to be separately admitted to practice before the EDPA. He believed that as a member of the state bar, he could appear in federal court. N.T. 142-143.

33. Respondent has acknowledged that he was wrong in this belief. N.T. 143-144.

34. Respondent's reason for seeking admission to the EDPA in 2012 was because he wanted to help a family friend with a bankruptcy issue. He asked Attorney Anthony Crane to be his sponsor. N.T. 145, 146.

35. Respondent indicated that Attorney Crane never advised him of the procedures for admission to Federal Court. He indicated that Mr. Crane never told him not to proceed with admission. N.T. 146, 146, 148-150.

36. Respondent indicated he had two conversations with the courtroom deputy clerk, Michael Beck, regarding Respondent's prior suspension and that Mr. Beck told Respondent to sit down after Respondent indicated that he had an active license. N.T. 150 – 153. Mr. Beck testified that he did not recall Respondent asking him about the local rules. N.T. 51.

37. Respondent asserted that the Application itself was insufficient to direct him as it was really a form and not an application. N.T. 237, 247.

38. Respondent testified on several occasions that he accepted blame, but always added he should not have relied on Mr. Crane or Mr. Beck. N.T. 153, 154, 167, 168.

39. Respondent stated "I should never have picked Anthony Crane as my sponsor." N.T. 270.

40. When asked what he learned from the experience, Respondent stated, "Don't rely upon certain people." N.T. 165.

41. Respondent believes his misconduct was a combination of his reliance on Messrs. Crane and Beck and his failure to read and follow the rules. N.T. 273.

42. Respondent accepted responsibility when directly asked by his counsel and stated he blamed himself. N.T. 183, 270. He further stated, "This is totally my responsibility to overcome others when they don't act in my best interest..." N.T. 270.

43. Respondent presented six (6) character witnesses:

a. Charles Junod, Esquire has practiced law in the Commonwealth for thirty-three (33) years and has known Respondent for eight (8) or nine (9) years. Mr. Junod indicated that Respondent was very diligent and prepared in Traffic Court cases. He stated that Respondent's reputation in the community as a peaceful and law-abiding person is good and that his reputation as a truthful and honest person is also good. N.T. 69, 70, 71.

b. Ronald Chesin, Esquire has practiced law for forty-two (42) years and has known Respondent for about ten (10) years, having met him in Traffic Court. He indicated that Respondent has a good reputation as a truthful and honest person and as a peaceful and law-abiding person. N.T.80, 82, 83, 86, 87.

c. Leonard Hansberger is the owner and president of Alliance Recovery Systems, LLC. He has known Respondent for seven (7) years.

He has hired Respondent to represent his company in the past and indicated he would hire Respondent again. Mr. Hansberger indicated that Respondent has an excellent reputation in the community as a peaceful and law-abiding person and for being a truthful and honest person. N.T. 93.

d. Peter Lavini is a Captain in the Philadelphia Sheriff's Office and has known Respondent for twelve (12) years. N.T. 101 He confirmed Respondent's excellent reputation in the community as a truthful and honest person and as a peaceful and law-abiding person. N.T. 103. He also testified to Respondent's diligence and preparation for court proceedings. N.T. 105.

e. David Waties, Esquire has practiced law in Pennsylvania since 1985 and has known Respondent since 1990. He noted that Respondent was an active Chair of the Philadelphia Bar Association's Traffic Court Committee. He also indicated Respondent's excellent reputation in the community as a peaceful and law abiding person and as a truthful and honest person. N.T. 110-112.

f. Vincent DeFino, Esquire has practiced law for twenty (20) years, including in the Traffic Court. He has known Respondent for fifteen (15) years. He confirmed that Respondent's current reputation as a truthful and honest person is impeccable and that his current reputation as a peaceful and law-abiding person is also very good. N.T. 117, 118.

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 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

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

Disciplinary proceedings against Respondent were initiated by Office of Disciplinary Counsel by way of a Petition for Discipline filed on April 7, 2014. The Petition charged Respondent with violating Rules of Professional Conduct 3.3(a)(1), 3.3(a)(3), 8.4(a), 8.4(c) and 8.4(d) in connection with his Application for Admission to

the Bar of the United States District Court for the Eastern District of Pennsylvania. Respondent filed his Answer on April 29, 2014, in which he admitted the factual allegations contained in the Petition, but denied committing the Rule violations. Respondent has since admitted that he violated all of the Rules contained in the Petition. Petitioner has established 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).

Respondent's misconduct arose in the course of his application for admission to federal court. Respondent knowingly failed to comply with the requirements for admission to practice law before the EDPA, falsely swore on his Application for Admission that he had complied with the admissions requirements, filed the Application, which contained misrepresentations of material fact, with the clerk's office and was admitted to the Bar of the EDPA under false pretenses. Two Rule to Show Cause hearings were held before a panel of federal judges where Respondent failed to voluntarily admit any of his transgressions. On the advice of counsel, he orally withdrew his Application for Admission at the conclusion of the second day of hearings.

Respondent, upon reading Local Civil Rule 83.5, was aware that it provided for a specific procedure for attorneys who had a prior record of discipline, was aware that this procedure was different than the procedure for attorneys without prior discipline, was aware that the procedure required Respondent to file a petition with the Chief Judge, and was aware that the Rule required him to simultaneously inform the court of his prior discipline. Further, Respondent was aware that the Application for Admission required him to swear that he had "satisfied the attorney admissions requirements of the said local Civil Rule 83.5."

Despite Respondent's knowledge of the specific requirements pertaining to his situation as a formerly suspended attorney, he participated in the attorney admissions ceremony and failed to advise Judge Padova about his prior discipline. Respondent chose to remain silent. Prior to the admissions ceremony, Respondent conversed with the courtroom deputy clerk and Respondent's sponsor, ostensibly seeking counsel; however, Respondent's choice to go forward without advising Judge Padova of his status was his decision alone, as the responsibility to comply with the local Rule lay solely with Respondent, despite his attempts to place blame on others.

We note that throughout the disciplinary hearing, Respondent was given various opportunities to accept full responsibility for his misconduct. While he ultimately replied "yes" in response to his counsel's question, "do you accept responsibility," Respondent on several occasions asserted that he should not have "relied" on Mr. Crane or Mr. Beck and that the Application itself was insufficient to direct him to proper compliance.

Having concluded that Respondent violated the Rules, this matter is ripe for the determination of discipline. It is well-established that in evaluating professional discipline, each case must be decided individually on its own unique facts and circumstances. *Office of Disciplinary Counsel v. Lucarini*, 427 A.2d 186 (Pa. 1983). In order to "strive for consistency so that similar misconduct is not punished in radically different ways," *Office of Disciplinary Counsel v Cappuccio*, 48 A.3d 1231 (Pa. 2012) (quoting *Lucarini*, 473 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the respondent's conduct against other similar transgressions." *In re Anonymous No. 56 DB 94 (Linda Gertrude Roback)*, 28 Pa. D. & C. 4th 398 (1995). As always, the Board is ever mindful when adjudicating each case that the primary purpose

of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts and deter unethical conduct. *Office of Disciplinary Counsel v. Czmus*, 889 A.2d 117 (Pa. 2005).

There are a number of disciplinary cases involving attorneys who have made misrepresentations on their applications for admission to the Bar. The Supreme Court has imposed public discipline in recognition of the importance of an attorney's candor on his or her bar application. *See, Office of Disciplinary Counsel v. Deborah Griffin*, 20 Pa. D. & C. 4th 385 (1994) (Griffin, who failed to disclose on her Bar application that she had been arrested and pleaded guilty to falsification of social security numbers, received a two-year suspension); *Office of Disciplinary Counsel v. Ronda B. Goldfein*, No. 8 DB 94, 29 Pa. D. & C. 4th 315 (1995) (Goldfein failed to disclose arrests on her bar applications in Pennsylvania and New Jersey and she failed to disclose that she had failed several other bar examinations was suspended for one year); *Office of Disciplinary Counsel v. Daryl B. Magid*, 68 DB 1993, 34 Pa. D. & C. 4th 292 (1996) (Magid suspended for three years after he made a number of false statements on his application to the Pennsylvania Bar, and exhibited disrespect for the attorney disciplinary system); *Office of Disciplinary Counsel v. Edward John King*, No. 91 DB 2007 (Pa. 2007) (King failed to report two arrests on his Pennsylvania and New Jersey Bar Applications and failed to report on his Pennsylvania Bar Application that he provided false information on his law school application, was suspended for one year). The instant matter is analogous to the cited cases, as it involves Respondent's lack of candor in connection with his admission to the federal bar.

Petitioner requests the Board to recommend suspension of Respondent for a period of no less than two years, based on the weight of the aggravating factors,

particularly Respondent's history of discipline. Respondent seeks public censure with probation or stayed suspension with one year of probation.

The Hearing Committee did not accept either recommendation, instead recommending that Respondent be suspended for a period of one year and one day.

Having reviewed the parties' recommendations, the Committee's Report and recommendation and the oral arguments presented before the three-member Board panel, the Board concludes that a suspension for one year and one day is appropriate discipline.

Aggravating factors exist in this disciplinary matter. Respondent was previously suspended for a period of one year and one day for failing to disclose his prior arrest on his Pennsylvania Bar application. In the present case, Respondent made a similar omission by failing to reveal his prior discipline in order to fulfill the requirements of Local Civil Rule 83.5. Respondent argues that this previous suspension is remote in time, occurring as it did in 1996, and should not be accorded tremendous weight. While it is a fact that nearly twenty (20) years have passed since the imposition of the suspension, it remains that the underlying circumstances are troublingly similar, and must be accorded weight in the analysis of discipline.

Respondent displayed a lack of sincere remorse and a failure to recognize responsibility that constitute aggravating factors. Respondent was asked several times by Petitioner, the Hearing Committee and his own counsel whether he accepted responsibility for his actions. Throughout the hearing he deflected full responsibility by apportioning blame to Mr. Beck and to Mr. Crane, and even to the application itself. By dodging responsibility, he appeared cavalier and dismissive of his conduct. In the end, Respondent did accept responsibility when pointedly asked by his counsel, but

unfortunately Respondent left a lingering impression that such acceptance was grudgingly given.

In mitigation, Respondent presented six character witnesses who each credibly testified to Respondent's good reputation in the community for truthfulness and honesty. Testimony revealed that Respondent has been involved in service activities that have benefited his community. While this character testimony and his community involvement are properly considered as mitigating factors in the Board's analysis of discipline, we find that such factors do not outweigh the gravity of the misconduct and the aggravating factors.

The totality of the facts and circumstances persuade the Board that a one year and one day suspension is warranted. Respondent's misconduct is at a level that cannot be appropriately addressed by public censure or a stayed suspension, and requires that Respondent formally seek reinstatement to practice law in Pennsylvania in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert Philip Tuerk, 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:_____
Brian John Cali, Board Member

Date: July 20, 2015