

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1728 Disciplinary Docket No. 3
Petitioner :
 : No. 197 DB 2009
v. :
 : Attorney Registration No. 52144
TIMOTHY SHAWN GORDON, :
Respondent : (Out Of State)

ORDER

PER CURIAM:

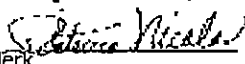
AND NOW, this 11th day of August, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board and Dissenting Opinion dated March 31, 2011, it is hereby

ORDERED that Timothy Shawn Gordon is suspended from the Bar of this Commonwealth for a period of one year, the suspension is stayed in its entirety and he is placed on probation for a period of one year, subject to the following conditions:

1. Respondent shall continue treatment with Dr. Matthew Wagner or another similarly qualified mental healthcare professional, who is to direct and supervise Respondent's activities.
2. Respondent shall cooperate with the directions of the mental healthcare professional supervising his treatment, take medications as prescribed and engage in therapy and counseling sessions as directed.
3. Respondent shall file quarterly written reports with the Secretary of the Board and shall attach physician's reports verifying the above counseling and treatment.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 8/11/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 197 DB 2009
Petitioner	:	
	:	
v.	:	Attorney Registration No. 52144
	:	
TIMOTHY SHAWN GORDON	:	
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

On December 29, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Timothy Shawn Gordon. The Petition alleged that Respondent engaged in violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of the unauthorized practice of law. Respondent filed an Answer to Petition on February 19, 2010.

A disciplinary hearing was held on May 27, 2010 before a Hearing Committee comprised of Chair Howard A. Rothenberg, Esquire, and Members Richard G. Fine, Esquire, and Charles J. Vogt, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 13, 2010, concluding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of six months, with the suspension stayed in its entirety and probation of three years with conditions.

Petitioner filed a Brief on Exceptions on September 30, 2010.

This matter was adjudicated by the Disciplinary Board at the meeting on January 19, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave., 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 Timothy Shawn Gordon. He was born in 1957 and was admitted to practice law in the Commonwealth in 1988. He maintains his office at 112 N. Potomac St., Hagerstown, Maryland, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no record of professional discipline in Pennsylvania.

4. Respondent did not provide a record of his completion of his annual Continuing Legal Education requirements for the Compliance Year 2008 to the Pennsylvania Continuing Legal Education Board (CLE Board).

5. Respondent was properly notified by the CLE Board of his failure to notify them, or provide a record, of his completion of any of the required 12 hours of CLE in the Preliminary Annual Report sent to him on February 1, 2008. Respondent did not reply to this notice and did not make any inquiry to the CLE Board concerning his status.

6. Respondent was notified that he was not in compliance with the CLE requirements in the Annual CLE Report sent to him on June 20, 2008. Respondent did not reply to this notice and did not make any inquiry to the CLE Board concerning his status.

7. Respondent was again notified that he was not in compliance with the CLE requirements in the Annual CLE Report sent to him on September 24, 2008. In this notice, Respondent was advised that his failure to come into compliance with the CLE requirements would result in his name being placed on the final non-compliant list submitted to the Supreme Court of Pennsylvania on October 24, 2008. Respondent did not reply to this notice and did not make any inquiry to the CLE Board concerning his status.

8. Respondent, who is also licensed to practice law in Maryland where he maintains his office, had apparently completed his CLE hours for 2008 in a timely manner. However, the Maryland CLE provider failed to properly report those hours to the CLE Board in Pennsylvania. Respondent failed to adequately respond to the CLE Board pursuant to the three notices he received.

9. By Order of the Supreme Court of Pennsylvania dated November 12, 2008, Respondent was placed on inactive status, effective 30 days thereafter.

10. Respondent made no reply to, or inquiry regarding, the Order of the Court that placed him on inactive status. He did not promptly notify any of his existing clients that he was no longer eligible to practice law in Pennsylvania and did not file a Statement of Compliance with the Secretary of the Disciplinary Board of the Supreme Court of Pennsylvania.

11. Respondent took on new client engagements during the time when he was not eligible to practice law in Pennsylvania.

12. On July 24, 2009, Respondent appeared in the Court of Common Pleas of Adams County in front of Judge John D. Kuhn on a custody matter, after being placed on inactive status.

13. On July 27, 2009, Respondent appeared in the Court of Common Pleas of Adams County in front of Judge Robert G. Bigham on a custody matter, after being placed on inactive status.

14. Respondent was queried by Judge Bigham as to his inactive status. Respondent represented to Judge Bigham that he believed he was in compliance with CLE requirements. Respondent subsequently represented to Judge Bigham's staff that he had cleared the matter up and that the CLE Board had given him a verbal assurance over the telephone that he was in compliance.

15. Respondent filed motions in the Court of Common Pleas for Franklin-Fulton Counties in 13 matters, between February 11, 2009 and August 4, 2009, after being placed on inactive status.

16. Respondent appeared before the Court of Common Pleas of Franklin-Fulton Counties in three matters between January 26, 2009, and April 6, 2009, after being placed on inactive status.

17. Respondent was listed as counsel of record in six matters in the Court of Common Pleas of Franklin-Fulton Counties for which some type of court action took place during the time period he was on inactive status.

18. Respondent was not working under the supervision of a member in good standing of the bar in Pennsylvania while handling any of the matters listed above.

19. When the Maryland CLE credits were finally reported to the PA CLE Board, and his reinstatement fee paid, sufficient time had elapsed that, per the PA CLE Board Rules, Respondent needed to also take his 2009 and 2010 credits. He was informed of the requirements by letters of May 7, 2009 and August 11, 2009 from the CLE Board. He complied with this requirement and was reinstated to active status on August 27, 2009. He was so notified by written correspondence from the Attorney Registration Office of the Disciplinary Board in Pennsylvania.

20. Respondent properly took responsibility for all of the foregoing and for continuing to practice law while on inactive status.

21. Respondent understands that he did not meet his obligations regarding his license by failing to follow up on the notices sent to him.

22. Respondent expressed sincere remorse for his misconduct.

23. Respondent presented evidence that he suffered from a psychiatric disorder during the time frame in question.

24. Respondent is under the care of Dr. Matthew Wagner, a psychiatrist licensed in the State of Maryland who has treated him since January 29, 2009.

25. Dr. Wagner testified by deposition on April 29, 2010. He initially diagnosed Respondent with major depression and alcohol abuse, with a later “working” or “tentative” diagnosis of bipolar disorder.

26. The symptoms of the disorders include difficulty functioning in normal activities, difficulty concentrating, negative thinking, sleep and appetite disturbances, anxiety, and a tendency to procrastinate.

27. Dr. Wagner credibly testified that Respondent's condition would have impaired his ability to respond appropriately to the details of keeping his license in order.

28. Respondent is being treated with psychotherapy and medication and has been compliant with his treatment.

29. Respondent primarily represents the Washington County, Maryland Department of Social Services, and maintains only a limited practice involving “thin file cases” in Pennsylvania. At the time of the hearing, he had two open files in Pennsylvania.

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. RPC 1.16(a)(1) - a lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if (1) the representation will result in a violation of the Rules of Professional Conduct or other law.

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.

3. RPC 5.5(b) - 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.

4. Pa.R.D.E. 217(a) - A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension, administrative suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere.

5. Pa.R.D.E. 217(b) – A formerly admitted attorney shall promptly notify, or cause to be notified by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension, administrative suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney.

6. Pa.R.D.E. 217(c) - A formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status by registered or certified mail, return receipt requested: (1) all persons or their agents or guardians to whom a fiduciary duty is owed, and (2) all other persons with whom the formerly admitted attorney may expect to have professional

contacts, under circumstances where there is a reasonable probability that they may infer that he continues as an attorney in good standing.

7. Pa.R.D.E. 217(d) - A formerly admitted attorney shall not accept new retainers or engage as an attorney for another in any new case or legal matter.

8. Pa.R.D.E. 217(e) - A formerly admitted attorney must file with the Board a verified statement indicating that the provisions of the suspension order and the Rules of Disciplinary Enforcement have been complied with.

9. Pa.R.D.E. 217(i) - A formerly admitted attorney shall keep and maintain records of his compliance with each step taken under these rules.

10. Pa.R.D.E. 217(j)(1),(2),(3) and (4)(i)(ii)(iii)(iv)(v)(vi)(vii) - A formerly admitted attorney may not engage in any form of law-related activities in the Commonwealth and is specifically prohibited from performing law-related activities (i) for a law firm with which he was associated or affiliated on or after the date on which the acts that resulted in his placement on inactive status occurred; (ii) from an office that is not staffed by a supervising attorney on a full-time basis; (iii) performing any law-related activities for a client who was previously represented by the formerly admitted attorney; (iv) representing himself as a lawyer or person of similar status; (v) having contact with clients except as provided by Pa.R.D.E. 217(j)(3); (vi) rendering legal consultation or advice to a client; (vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer.

11. Respondent has shown by clear and convincing evidence that he suffered from a psychiatric disorder which was a causal factor in his misconduct. Office of Disciplinary Counsel v. Braun, 533 A.2d 894 (Pa. 1989).

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of charges against Respondent alleging that he engaged in the unauthorized practice of law while on inactive status due to Continuing Legal Education requirement deficiencies. The facts of this matter are essentially uncontested by Respondent.

Respondent failed to timely have his Maryland CLE credits applied to his Pennsylvania CLE requirements and failed to address this issue when contacted on three occasions by the CLE Board and on one occasion by the Disciplinary Board. He was placed on inactive status by the Supreme Court of Pennsylvania on November 12, 2008, effective December 12, 2008, due to his failure to fulfill CLE requirements. Respondent was notified of his transfer to inactive status and his obligation to comply with provisions of the Rules of Disciplinary Enforcement. The Rules make clear that Respondent was not permitted to practice law while on inactive status. Yet, Respondent continued to practice law in Pennsylvania. He filed motions and pleadings and appeared in Pennsylvania courts on behalf of clients. Respondent was not returned to active status until August 27, 2009, approximately eight and one-half months later. He came into compliance with CLE requirements and paid all outstanding fees and costs. Respondent has taken full responsibility for his failure to comply with CLE and his subsequent unauthorized practice of law, and has expressed genuine remorse and a desire to avoid similar problems in the future.

Respondent provided credible evidence that he suffered from a major depressive disorder and alcohol abuse during the time frame in question. Dr. Matthew Wagner, a psychiatrist licensed in the State of Maryland, opined that Respondent's disorder impaired his ability to respond appropriately to the things he needed to do to keep

his law license in order. Respondent currently engages in therapy and takes medication to treat his disorder. Respondent is compliant with his treatment plan.

Disciplinary case law in similar matters shows that attorneys who engage in the unauthorized practice of law generally receive a suspension of at least one year and one day. In a case decided in December 2004, the Disciplinary Board recognized that the Supreme Court of Pennsylvania has clearly determined that practicing law while on inactive status is a serious disciplinary offense. Office of Disciplinary Counsel v. Sharon Goldin-Didinsky, 87 DB 2003 (Pa. Dec. 4, 2004) (while on inactive status, the attorney communicated with Pennsylvania courts regarding matters pending in those courts, used letterhead with a Pennsylvania office address but did not have a Pennsylvania office; suspended for one year and one day). Other cases have resulted in suspensions of one year and one day. Office of Disciplinary Counsel v. Harry Curtis Forrest, Jr., 134 DB 2003 (Pa. Mar. 24, 2005); Office of Disciplinary Counsel v. Nathaniel M. Davis, No. 71 DB 2005 (Pa. Aug. 22, 2006).

In the instant matter, the Board recognizes several significant distinguishing factors from the cited cases in which a suspension of one year and one day was given. Respondent has no prior professional discipline in Pennsylvania since he began practicing in 1988. The length of time during which Respondent committed violations was eight and one-half months, as opposed to longer periods of unethical activity by other attorneys. The transfer to inactive status was not the result of Respondent's failure to complete the required CLE, but rather the result of a failure to make sure that the CLE which had been completed was properly registered with the CLE Board. Respondent was totally remorseful and credibly testified that he would not be lackadaisical about his CLE credits in the future. Respondent provided clear and convincing evidence through his own testimony and that of

his psychiatrist, that he suffered from a mental disorder at the time of the misconduct, which was a causal factor. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

These compelling factors persuade the Board that a suspension for a period of one year is appropriate, with the suspension stayed and probation imposed for one year.

This sanction reflects the seriousness of Respondent's unauthorized practice of law, yet allows for mitigation related to the specific circumstances of this matter.

V. RECOMMENDATION

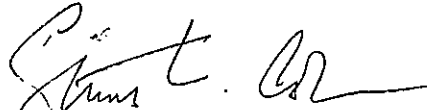
The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Timothy Shawn Gordon, be Suspended from the practice of law for a period of one year, that the suspension be stayed in its entirety and that he be placed on Probation for a period of one year, subject to the following conditions:

1. Respondent shall continue treatment with Dr. Matthew Wagner or another similarly qualified mental healthcare professional, who is to direct and supervise Respondent's activities.
2. Respondent shall cooperate with directions of the mental healthcare professional supervising his treatment, take medications as prescribed and engage in therapy and counseling sessions as directed.
3. Respondent shall file quarterly written reports with the Secretary of the Board and shall attach physician's reports verifying the above counseling and treatment.

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 Member

Date: March 31, 2011

Board Members Nasatir and McLemore dissent and would recommend a three month Suspension.

Board Members Bevilacqua, Buchholz and Lawrence recused and Board Member Todd did not participate in the adjudication.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 197 DB 2009
Petitioner :
v. : Attorney Registration No. 52144
TIMOTHY SHAWN GORDON :
Respondent : (Out of State)

DISSENTING OPINION

DISCUSSION

A majority of the Disciplinary Board has recommended that Respondent be suspended from the practice of law for a period of one year, that the suspension be stayed in its entirety and that he be placed on probation for a period of one year with conditions.

I dissent. I respectfully recommend to the Court that Respondent be suspended for a period of three months.

Respondent engaged in the unauthorized practice of law in Pennsylvania for a period of eight and one-half months. Generally, lawyers who engage in such misconduct are suspended for some period of time due to the seriousness of the offense. Office of Disciplinary Counsel v. Sharon Goldin-Didinsky, 87 DB 2003 (Pa. Dec. 4, 2004). This is well-established in numerous disciplinary cases in Pennsylvania. The length of the suspension is dependent on the aggravating and mitigating factors, and suspensions have ranged from a short three month time frame to one year and one day or more. Office of Disciplinary Counsel v. Nicholas R. Perrella, 66 Pa. D. & C. 4th 19 (2003) (attorney received

a three month suspension for handling one case while on inactive status); Office of Disciplinary Counsel v. David S. Bloom, 44 DB 2008 (Pa. June 2, 2010) (attorney suspended for six months after he represented four separate clients while on inactive status; some mitigation found); Office of Disciplinary Counsel v. James E. Harvin, 108 DB 2008 (Pa. June 16, 2010) (attorney engaged in the unauthorized practice of law while on inactive status; no mitigation; suspension for one year and one day).

Herein, Respondent presented mitigating factors in the nature of his sincere remorse and recognition of wrongdoing, his cooperation with Petitioner, and Braun evidence that he suffered from clinical depression which was a causal factor in his misconduct. The majority is correct in concluding that this mitigation lessens the degree of severity of the sanction, but I disagree that it provides Respondent a way to avoid serving any suspension whatsoever.

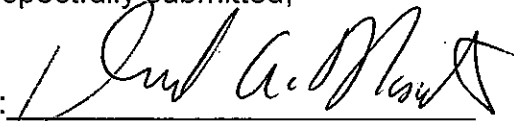
Respondent's depression, while apparently preventing him from fulfilling his CLE requirements in Pennsylvania, did not prevent him from going to court in Pennsylvania and pursuing his clients' matters. Even after Judge Bigham questioned him about his inactive status, Respondent answered misleadingly and continued to practice law in Pennsylvania. Additionally, Respondent had no difficulties fulfilling his obligations to the Maryland bar. I find these facts to be troubling.

A common thread in all of the cited cases is that each attorney served some actual amount of time on suspension, even after mitigation was found. Office of Disciplinary Counsel v. Thomas Harrigan, 123 DB 2000 (Pa. Nov. 25, 2002) (attorney continued to practice law while on inactive status; prior discipline; Braun mitigation found due to attorney's depression; one year and one day suspension); Office of Disciplinary

Counsel v. Paul Charles Quinn, 39 DB 2006 (Pa. Oct. 19, 2007) (attorney repeatedly failed to timely complete CLE requirements; engaged in the practice of law while on inactive status; mitigation found due to attorney's personal circumstances; suspension of three months). The mitigation presented by these attorneys served to lessen the duration of the suspension, but did not eliminate suspension.

I am persuaded that case precedent supports a recommendation that Respondent serve a suspension of three months.

Respectfully submitted,

By: 
David A. Nasatir, Board Member

Date: March 31, 2011

Board Member McLemore joins in this Dissent.