

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1819 Disciplinary Docket No. 3
Petitioner :
: No. 217 DB 2010
v. :
: Attorney Registration No. 34822
RONALD I. KAPLAN, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 5th day of June, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated January 24, 2012, it is hereby

ORDERED that Ronald I. Kaplan is suspended from the Bar of this Commonwealth for a period of five years and he shall comply with all the provisions of Rule 217, Pa. R.D.E.

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

Messrs. Justice Baer and McCaffery dissent and would disbar respondent.

A True Copy Patricia Nicola
As Of 6/5/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 217 DB 2010
Petitioner	:	
v.	:	Attorney Registration No. 34822
RONALD I. KAPLAN	:	
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.

1) HISTORY OF PROCEEDINGS

On November 1, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Ronald I. Kaplan. The Petition charged Respondent with professional misconduct arising out of allegations that he engaged in the unauthorized practice of law, made multiple misrepresentations to the Court, and engaged in attempts to conceal his unauthorized practice. Respondent filed an Answer to Petition on December 13, 2010.

A disciplinary hearing was held on April 14, 2011, before a District I Hearing Committee comprised of Chair Ryan J. Cassidy, Esquire, and Members Barry I. Gross, Esquire, and Kevin E. Raphael, Esquire. Respondent was represented by Glen R. Morris, Esquire. Petitioner introduced a Joint Stipulation and exhibits ODC-1 through ODC - 7, and ODC - 22. Respondent presented one witness and his own testimony.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on August 31, 2011, concluding that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement as contained in the Petition for Discipline, and recommending that he be disbarred.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on October 18, 2011.

2) FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is invested, pursuant to Pa. R.D.E. 207, 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 Ronald I. Kaplan. He was born in 1957 and was admitted to practice law in the Commonwealth in 1981. His last attorney registration address is 1337 Wolf Street, First Floor, Philadelphia PA 19148. However, his current mailing address is 1724-26 Jackson Street, Philadelphia PA 19145. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By Order dated August 2, 2006, effective September 1, 2006, the Supreme Court of Pennsylvania suspended Respondent from the practice of law in the Commonwealth for a period of one year and one day.

4. On April 21, 2008, Respondent filed a Petition for Reinstatement.

5. On or about April 28, 2009, Respondent filed a Petition to Withdraw Reinstatement Application, therein requesting to withdraw his reinstatement petition.

6. By Order dated July 24, 2009, the Supreme Court denied Respondent's Petition to Withdraw Reinstatement Application, and denied Respondent's Petition for Reinstatement.

7. Respondent remains a suspended attorney and is ineligible to practice law in Pennsylvania.

8. Since October 9, 2006, Respondent has been employed by Eric J. Linder, Esquire, as a secretary and law clerk.

9. On May 18, 2010, Respondent appeared at Philadelphia Family Court on behalf of Michael D. Grannell, for a hearing before Support Master Daniel Sulman.

10. Mr. Grannell was a former long-time client of Respondent prior to Respondent's suspension.

11. Prior to the hearing, Respondent completed an Attorney's Entry of Appearance Form by writing Mr. Linder's name and attorney registration number; writing Respondent's home address and Respondent's cell telephone numbers, and signing Mr. Linder's name.

12. Mr. Linder did not know Mr. Grannell, Mr. Grannell was not Mr. Linder's client, and Mr. Linder was unaware that Respondent was appearing in court.

13. Respondent used Mr. Linder's name and attorney registration number, and signed Mr. Linder's name without Mr. Linder's knowledge and authorization.

14. Respondent's entries on the Attorney's Entry of Appearance Form were false, deceptive, and designed to conceal Respondent's identity from the court.

15. During the hearing, Respondent identified himself on the record as "Ron Cohen" and stated that he was from Mr. Linder's office.

16. Support Master Sulman who recognized Respondent gave him an opportunity to substitute his alias with his correct name.

17. Respondent again affirmed that his name was "Mr. Cohen".

18. Respondent's misrepresentation to the Support Master was false, deceptive, and designed to conceal Respondent's identity from the court.

19. Mr. Linder never authorized Respondent to represent that Respondent was acting under authority of Mr. Linder or his office, and Respondent knew he was not authorized to do so.

20. Respondent represented Mr. Grannell during the entire hearing and told him prior thereto that he was suspended from practice. Respondent did not charge Mr. Grannell a fee.

21. On July 1, 2010, Disciplinary Counsel caused an ODC investigator to hand deliver to the office of Mr. Linder a DB-7 letter addressed personally and specifically to Mr. Linder. The letter contained allegations of unauthorized practice of law by Respondent.

22. Respondent opened and read the DB-7 letter, which referenced Respondent's actions in the Grannell matter.

23. On or about July 6, 2010, Respondent directed a temporary secretary to telephone Disciplinary Counsel to secure an extension of time for Mr. Linder to respond to the DB-7 letter.

24. On July 6, 2010, the secretary called Disciplinary Counsel and requested an extension.

25. Mr. Linder who did not know that a DB-7 letter had been served at his office had not authorized Respondent or anyone to request an extension on his behalf.

26. Mr. Linder had no knowledge of the secretary's phone call to Disciplinary Counsel.

27. Respondent instructed the secretary to request an extension of time because he had not notified Mr. Linder of the DB-7 letter and wanted more time to decide how he would address the matter.

28. Respondent testified at the disciplinary hearing on April 14, 2011.

29. Respondent stated that even though he was aware that appearing at the support hearing and representing Mr. Grannell was wrong, he did it anyway.

30. Respondent claimed that the misrepresentation of his name at the hearing before the support master was not planned.

31. This testimony is not credible, as Respondent was offered an immediate opportunity to correct the misidentification, but did not do so.

32. Respondent admitted that he did not take any affirmative steps to correct his false identification during the support hearing. He further admitted that at the time he said the name "Ron Cohen" on the record, he knew he was wrong.

33. Respondent admitted he took no steps to self-report his misconduct to the Office of Disciplinary Counsel.

34. Respondent took steps to conceal his conduct after the hearing by failing to inform Mr. Linder of the letter from the Office of Disciplinary Counsel.

3) 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 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 5.5(a) - A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

3. RPC 8.4(a) - It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct through the acts of another.

4. 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.

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

6. RPC - 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

7. Pa.R.D.E. 203(b) via:

a. Pa.R.D.E. 217(j)(4)(iii) - A formerly admitted attorney is specifically prohibited from performing any law-related services for any client who in the past was represented by the formerly admitted attorney;

b. Pa.R.D.E. 217(j)(4)(iv) - a formerly admitted attorney is specifically prohibited from representing himself as a lawyer or person of similar status;

c. Pa.R.D.E. 217(j)(4)(v) - A formerly admitted attorney is specifically prohibited from having any client contact except on ministerial matters and while under the supervision of any attorney;

d. Pa.R.D.E. 217(j)(4)(vi) - A formerly admitted attorney is specifically prohibited from rendering legal consultation or advice to a client;

e. Pa.R.D.E. 217(j)(4)(vii) - A formerly admitted attorney is specifically prohibited from appearing on behalf of a client in any hearing or proceeding before, inter alia, any judicial officer, court, hearing officer, or any other adjudicative person or body.

IV. DISCUSSION

Respondent was charged with violating numerous provisions of the Code of Professional Responsibility resulting from his representation of a former client before a Master in a custody proceeding while Respondent was under suspension from the practice of law by Order of the Supreme Court. Respondent stipulated to all of the Rules violations and facts alleged by Petitioner in support thereof. Under the circumstances we find that Petitioner clearly met its burden of proving Respondent's ethical misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981).

The issue to which we now turn is whether the appropriate penalty for Respondent's ethical misconduct is disbarment or an additional term of suspension from the practice of law.

The record reveals that Respondent is currently a suspended attorney ineligible to practice law in Pennsylvania. On August 2, 2006, he was suspended by Order of the Supreme Court for a period of one year and one day. On July 24, 2009 the Court denied Respondent's request for reinstatement.

During his years of suspension Respondent was employed as a legal secretary/paralegal by his longstanding friend, Eric Linder Esquire. It is apparent from

the record that Respondent abided by the rules governing suspension while he worked for Mr. Linder until May 18, 2010 when he appeared at a Philadelphia Family Court hearing before Support Master Daniel Sulman on behalf of his former client, Michael D. Grannell. Mr. Grannell, who had a prior professional relationship with Respondent, contacted him when he needed representation in a support matter. It is undisputed that Respondent told his former client that he could not represent him because he had been suspended from the practice of law and that Respondent suggested that he retain Mr. Linder. It is further undisputed that Mr. Grannell was unable to afford Mr. Linder's services and asked Respondent to help him because he feared that he would suffer serious consequences if he appeared at his hearing without representation. Respondent agreed to help his former client but did not charge him a fee. Respondent's agreement to undertake this one assignment requiring one court appearance resulted in the multitude of disciplinary code violations that are the subject of this case.

Since he knew that he was unauthorized to practice law Respondent forged Mr. Linder's name on his Entry of Appearance. Next, when asked to identify himself by the Master Respondent gave the pseudonym "Ron Cohen". When the Master, who apparently recognized Respondent from prior appearances, gave Respondent the opportunity to cure his deceptive response, Respondent repeated his newly created alias and proceeded to represent Mr. Grannell at the hearing.

As a result of Respondent's conduct before the Support Master the Office of Disciplinary Counsel issued a DB-7 letter addressed to Mr. Linder and caused it to be hand-delivered to Mr. Linder's office. Respondent intercepted the letter before Mr.

Linder could see it and compounded his rapidly escalating ethical violations by instructing a third person, a temporary secretary, to contact the Office of Disciplinary Counsel to ask for an extension of time for Mr. Linder to answer the letter. This was done without Mr. Linder's knowledge or authorization. When Respondent completely ran out of options he finally confessed his wrongdoing to Mr. Linder and then subsequently to the Office of Disciplinary Counsel and the hearing committee.

The Office of Disciplinary Counsel and hearing committee recommended that Petitioner be disbarred for his ethical misconduct. While we believe that Respondent's ethical lapses are serious and deserving of harsh discipline we do not believe that under the relevant decisional law disbarment is required.

In most of the cases involving the unauthorized practice of law by suspended attorneys where disbarment was the discipline imposed the offending lawyers virtually ignored their suspensions and continued practicing as if they had never been ordered to stop doing so.¹ For example in, Office of Disciplinary Counsel v. Herman, 493 Pa. 267, 426 A.2d 101 (1981), the Pennsylvania Supreme Court ordered an attorney disbarred who, while under a three-year suspension, never ceased practicing law. In Herman the Court archly observed that the attorney "continued to practice such that his law practice was effectively uninterrupted by the Court's order of suspension." Herman supra at 272, 103. Similarly in Office of Disciplinary Counsel v.

¹ We note that not all cases fitting this pattern result in disbarment. In Office of Disciplinary Counsel v. Criden, No. 48 DB97, 42 Pa. D+C 4th 254, 275 (1998), an attorney who continued practicing during a three-year suspension was given a consecutive four year term of suspension.

Galfand, No. 4 DB 2010 (D. Bd. Rpt. 3/10/11), the Disciplinary Board recommended that an attorney who engaged in the practice of law with his law partner wife after his suspension be disbarred. In Galfand the Board noted that the suspension “did not give him any pause.” Finally in Office of Disciplinary Counsel v. Jackson and Office of Disciplinary Counsel v. Anonymous Attorney, 536 Pa. 26, 637 A.2d 615 (1994), the Supreme Court ordered the disbarment of an attorney who while under a five-year suspension represented numerous clients in workmen’s compensation matters and split legal fees with his employer.

Respondent’s case is clearly distinguishable from the decisions discussed above because, unlike the lawyers therein, his unauthorized practice of law was limited to a single appearance on behalf of a person who not only was fully aware of Respondent’s suspended status but also paid no money for his services.

Further, in most of the cases resulting in disbarment the attorneys were guilty of other serious ethical breaches that simply are not present here. See Jackson supra, where the suspended attorney represented people in cases in which he had previously served as a workmen’s compensation referee and assisted a claimant in the commission of perjury. See also Galfand supra, where the suspended attorney misappropriated, commingled, and converted client funds to his own use. Not only did Respondent not steal from Mr. Granell, he charged him no fee whatsoever.

As the Supreme Court stated in Jackson and as the decisional law discussed above reflects, “disbarment is an extreme response to an ethical violation and will only be imposed in the most egregious situation.” Jackson supra at 619. While we recognize that there is no per se discipline and that each case must

be judged on its own facts we still seek guidance from relevant decisional law in order to attempt to achieve consistency in the discipline we recommend. We believe that Respondent's conduct here is simply not as egregious as the conduct of the suspended attorneys mentioned in the previously cited precedents and therefore does not warrant disbarment.

Nonetheless, we believe that Respondent's knowing violation of his order of suspension, forgery of his employer's signature on his Entry of Appearance, intentional use of an alias before the Master in an attempt to conceal his identity and deceive the Master, interception of a DB-7 letter addressed to his employer, involvement of a third-party to deceive the Office of Disciplinary Counsel by asking for an extension of time to answer the DB-7 letter, and failure to self report his misconduct are serious ethical breaches that should carry grave consequences. Accordingly, we recommend that Respondent be suspended from the practice of law for an additional term of five years.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Ronald I. Kaplan, be Suspended from the practice of law for a period of five years.

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: 
Howell K. Rosenberg, Board Member

Date: January 24, 2012

Board Members Lawrence and Bevilacqua dissent and would recommend Disbarment.