

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 734, Disciplinary Docket No. 3
Petitioner	:	Supreme Court
	:	
v.	:	No. 52 DB 2002 – Disciplinary Board
	:	
MARC M. SCOLA	:	Attorney Registration No. 68357
	:	
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

By Order dated April 19, 2002, the Supreme Court of Pennsylvania placed Respondent, Marc M. Scola, on temporary suspension based on his criminal conviction of theft by deception and tampering with witnesses and informants.

On May 6, 2002, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline charging Respondent with violation of Pa.R.D.E. 203(b)(1), RPC 8.4(b), and RPC 8.4(c). Respondent did not file an Answer. Prior to the pre-hearing conference, Respondent entered into Joint Stipulations of Law and Fact in which he admitted all of the allegations set forth in the Petition for Discipline. A pre-hearing conference was held on September 27, 2002. Respondent did not attend.

A disciplinary hearing was held on October 15, 2002, before Hearing Committee 1.22 comprised of Chair Shelley Roxanne Smith, Esquire, and Members Michael David Schaff, Esquire, and Warren Elliot Kampf, Esquire. Respondent did not attend the disciplinary hearing.

The Committee filed a Report on February 24, 2003 and recommended that Respondent be Disbarred.

This matter was adjudicated by the Disciplinary Board at the meeting of May 14, 2003.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg PA 17101, 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 the aforesaid Rules.

2. Respondent was born in 1966 and was admitted to practice law in the Commonwealth of Pennsylvania in 1993. His last registered office address for the practice of law was 61 Mallard Drive, P.O. Box 282, Allamuchy, NJ 07820. His current residential address is P.O. Box 254, Mt. Olive, NJ 07828. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On July 9, 2001, Respondent pleaded guilty to one count of third degree theft by deception in violation of N.J.S. 2C:20-4/2-6 and one count of third degree tampering with witnesses and informants in violation of N.J.S. 2C:20-5(a)(1). State of New Jersey v. Marc Scola, New Jersey Superior Court Law Division - Criminal, Morris County, IND/ACC No. 00-09-128-S.

4. On December 7, 2001, the Honorable B. Theodore Bozonelis sentenced Respondent to two years probation on each count to run concurrently and ordered him to make restitution to First Union National Bank in the amount of \$19,800.

5. By Order dated April 19, 2002, the Supreme Court of Pennsylvania, pursuant to Pa.R.D.E. 214(d)(1), placed Respondent on temporary suspension and referred his criminal conviction matter to the Disciplinary Board pursuant to Pa.R.D.E. 214(f)(1).

6. Other than his current temporary suspension, Respondent has no record of discipline in Pennsylvania.

7. Respondent did not attend the pre-hearing conference held on September 27, 2002.

8. At the pre-hearing conference, the Designated Member in charge directed Disciplinary Counsel to communicate with Respondent the rulings made at the conference.

9. By letter of September 27, 2002, Disciplinary Counsel advised Respondent of the rulings made, including that Respondent was required to advise Office of Disciplinary Counsel whether he was going to appear at the disciplinary hearing scheduled for October 15, 2002.

10. Upon receipt of the correspondence from Disciplinary Counsel, Respondent hand wrote "I will not attend" on the letter, signed it and returned it to Disciplinary Counsel on October 3, 2002.

11. Respondent did not attend the disciplinary hearing held on October 15, 2002.

III. CONCLUSIONS OF LAW

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

1. 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.
2. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
3. Pa.R.D.E. 203(b)(1) – Respondent’s conviction for theft by deception and tampering with witnesses and informants constitutes a conviction of a serious crime and is an independent basis for discipline.

IV. DISCUSSION

This matter is before the Disciplinary Board upon a Petition for Discipline charging Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement based on his conviction of one count of theft by deception and one count of tampering with witnesses and informants.

When a disciplinary proceeding is commenced against an attorney based on a criminal conviction, the Board's sole responsibility is to determine the appropriate measure of discipline relative to the seriousness of the crime. Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982). All aggravating and mitigating circumstances should be taken into consideration in the Board's final analysis of discipline. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983).

According to Count Two of the Indictment, Respondent "purposely did obtain property of another in excess of \$500 by deception...[by] purposely caus[ing] [eight] checks...in the total amount of approximately \$40,125...drawn on the checking account of Pell Enterprises at First Union National Bank, to be paid, creating and reinforcing the false impression that the Pell Enterprises account was sufficiently funded...[with knowledge that] the account was insufficiently funded...' (Ex.D).

According to Count Three of the Indictment, Respondent, "believing that an investigation was pending or about to be instituted...knowingly attempted to induce and otherwise cause an individual...to testify and inform falsely that he possessed no relevant information about specific checks drawn on the Pell Enterprises account for which there were insufficient funds..." (Ex.D).

In sentencing Respondent, New Jersey Superior Court Judge B. Theodore Bozonelis described Respondent's crimes as follows: "Defendant is an attorney who was involved in [a] check cashing scheme with his law partner, Scott Walterscheid, and

attempted to persuade a codefendant to blame a 3rd party and deny knowledge of [the]scheme.” (Ex. B)

There is no question that Respondent's crimes constitute egregious professional misconduct warranting serious discipline.

In the matter of Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999), the Supreme Court imposed a five year suspension on an attorney who had been convicted of one count of mail fraud and who suborned the false testimony of his mother before a grand jury. Respondent's crimes are similar to those of Mr. Valentino. Both attorneys committed crimes that defrauded others of property. While Mr. Valentino engaged in mail fraud, Respondent engaged in theft by deception. Both attorneys advised witnesses to testify falsely in connection with a criminal investigation into their activities.

Mr. Valentino was not disbarred due to the existence of a number of mitigating factors. Mr. Valentino cooperated with federal prosecutors and brought his malfeasance in regard to the subornation of perjury to the attention of the court. Additionally, Mr. Valentino had no prior record of discipline and presented substantial evidence of good character at the disciplinary hearing.

In the instant matter, the only mitigating factor present is Respondent's lack of prior record. There is no evidence that Respondent cooperated with New Jersey authorities, nor was any evidence of good character introduced at the hearing.

Respondent's misconduct is worthy of disbarment. Pertinent to this recommendation is Respondent's failure to appear for the disciplinary hearing. This is a significant aggravating circumstance demonstrating Respondent's lack of interest in retaining his law license and a lack of regard for the disciplinary system. His failure to attend his own hearing leaves unresolved questions as to Respondent's remorse and acceptance of responsibility. Respondent is not fit to practice law in Pennsylvania.

The Board recommends that Respondent be Disbarred.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Marc M. Scola, be Disbarred from the practice of law in this Commonwealth.

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: _____
Lisa A. Watkins, Member

Date: August 21, 2003

Board Member Sheerer did not participate in the May 14, 2003 adjudication.

“PER CURIAM:

AND NOW, this 14th day of November, 2003, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 21, 2003, it is hereby

ORDERED that MARC M. SCOLA be and he is DISBARRED from the Bar of this Commonwealth, 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.”